



Criminal Justice Subcommittee

Wednesday, January 24, 2018

8:00 AM – 11:00 AM

404 HOB

Meeting Packet

Richard Corcoran
Speaker

Ross Spano
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Wednesday, January 24, 2018 08:00 am
End Date and Time: Wednesday, January 24, 2018 11:00 am
Location: Sumner Hall (404 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 333 Temporary Employment or Appointment of Officers by Burgess
HB 547 Reports Concerning Seized or Forfeited Property by Killebrew
HB 581 Subpoenas in Investigations of Sexual Offenses by Latvala
HB 621 School Safety by Rommel
HB 1201 Education for Prisoners by Ahern
HB 1249 Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-Enabled Household Devices by Grant, J.
HB 1301 Sexual Offenders and Predators by Fitzenhagen
HB 1391 Sexual Offenses Against Students by Rodrigues
HB 1417 Juvenile Justice by McClure
HB 1419 Firearms by McClure

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, January 23, 2018.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 23, 2018.

NOTICE FINALIZED on 01/22/2018 4:21PM by Kim.Breanna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 333 Temporary Employment or Appointment of Officers
SPONSOR(S): Burgess, Jr.
TIED BILLS: IDEN./SIM. **BILLS:** SB 470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Bruno <i>RB</i>	Sumner <i>RB</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Law enforcement officers in Florida must complete a commission-approved basic recruit training program or qualify for an exemption from the training requirement. A person may be exempt from the basic recruit training requirement if he or she completed a comparable basic recruit training program in another state or for the Federal Government and served as a full-time sworn officer in another state or for the Federal Government for at least 1 year. A person is ineligible for this exemption if more than 8 years have passed since his or her most recent qualifying employment.

HB 333 proposes an additional exemption to the basic recruit training program for an applicant who has served in the special operations forces of the U.S. military for at least five years. The bill defines special operations forces to include servicemembers of the Army 75th Ranger Regiment; the Navy SEALs and Special Warfare-Craft Crewman; the Air Force Combat Control, Pararescue, and Tactical Air Control Party specialists; Marine Corps Critical Skills Operators; and any other component of the Special Operations Command approved by the Criminal Justice Standards and Training Commission.

The bill may have a positive fiscal impact on local government.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Law Enforcement Officer Minimum Qualifications

In Florida, a law enforcement officer is a person who:

- Is elected, appointed, or employed full-time by any municipality, the state, or a political subdivision;
- Is vested with authority to bear arms and make arrests; and
- Is primarily responsible for the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of this state.¹

At a minimum, a person must meet the following requirements in order to be a law enforcement officer in Florida:

- Be at least 19 years old;
- Be a U.S. citizen;
- Be a high school graduate or its equivalent;
- Not have any disqualifying criminal history, including a conviction for a felony, a conviction for a misdemeanor involving perjury or false statement, or a dishonorable discharge from the Armed Forces;
- Document his or her processed fingerprints on file with the employing agency;
- Pass a physical examination;
- Have good moral character, as determined by a background investigation;
- Submit an affidavit-of-applicant form;
- Complete a commission-approved basic recruit training program;
- Pass the officer certification examination; and
- Comply with continuing training or education requirements.²

Basic Recruit Training

The Criminal Justice Standards and Training Commission (Commission) was created within the Florida Department of Law Enforcement to establish, implement, and evaluate criminal justice standards and training for all law enforcement, correctional, and correctional probation officers.³ Among the Commission's responsibilities are establishing uniform minimum training standards and minimum curricular requirements for criminal justice training schools.⁴ The Commission is required to design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for the basic recruit training program.⁵ The 2017 basic recruit training program is 770 hours long, covering the following topics:

- Introduction to Law Enforcement;
- Legal;
- Interactions in a Diverse Community;
- Interviewing and Report Writing;
- Fundamentals of Patrol;
- Calls for Service;
- Criminal Investigations;

¹ S. 943.10(1), F.S.

² S. 943.13, F.S.

³ S. 943.12, F.S.

⁴ SS. 943.12(5) & (8), F.S.

⁵ S. 943.17, F.S.

- Crime Scene to Courtroom;
- Critical Incidents;
- Traffic Stops;
- DUI Traffic Stops;
- Traffic Crash Investigations;
- Law Enforcement Vehicle Operations;
- First Aid for Criminal Justice Officers;
- Criminal Justice Firearms;
- Criminal Justice Defensive Tactics;
- Dart-Firing Stun Gun; and
- Criminal Justice Officer Physical Fitness Training.⁶

Exemption from the Basic Recruit Training Requirement

A person may be exempt from the basic recruit training requirement if he or she completed a comparable basic recruit training program in another state or for the Federal Government and served as a full-time sworn officer in another state or for the Federal Government for at least 1 year.⁷ A person is ineligible for this exemption if more than 8 years have passed since his or her most recent qualifying employment.⁸ The employing agency or criminal justice selection center⁹ must verify an applicant's exempt status and submit documentation of the exemption to the Commission.¹⁰ Within one year, the applicant must demonstrate proficiency in high-liability areas, as defined by the Commission, and pass the officer certification examination.¹¹ The high-liability areas requiring a demonstration of proficiency include law enforcement vehicle operations, first aid for criminal justice officers, criminal justice firearms, criminal justice defensive tactics, dart-firing stun gun, and criminal justice officer physical fitness training.¹²

United States Special Operations Forces

Special operations forces are those active and reserve component forces of the U.S. Armed Forces specifically organized, trained, and equipped to conduct and support special operations.¹³ These small, specially organized units are manned by people carefully selected and trained to operate under physically demanding and psychologically stressful conditions to accomplish missions using modified equipment and unconventional applications of tactics against strategic and operational objectives.¹⁴ Special operations forces fall under the United States Special Operations Command, which includes:

- Army Special Operations Command;
- Naval Special Warfare Command;
- Air Force Special Operations Command; and
- Marine Corps Forces Special Operations Command.¹⁵

⁶ Rule 11B-35.002, F.A.C.

⁷ S. 943.13(9), F.S.

⁸ Id.

⁹ A criminal justice selection center provides standardized evaluation of preservice and inservice candidates for all units of the criminal justice system in the region, thereby establishing a pool of qualified officers for criminal justice agencies throughout the region. S. 943.256, F.S.

¹⁰ S. 943.131(2), F.S.

¹¹ Id.

¹² Florida Department of Law Enforcement, *Florida Law Enforcement Academy (Version 2017.07) #2000*, available at: <http://www.fdle.state.fl.us/CJSTC/Curriculum/Active-Courses/2000.aspx> (last viewed January 22, 2018).

¹³ Congressional Research Service, *U.S. Special Operations Forces (SOF): Background and Issues for Congress* (January 6, 2017), available at: <https://fas.org/sgp/crs/natsec/RS21048.pdf> (last viewed January 22, 2018).

¹⁴ Joint Special Operations Task Force Operations, *Joint Publication 3-05.1*, at I-1 (April 26, 2007), available at: https://fas.org/irp/doddir/dod/jp3_05_01.pdf (last viewed January 22, 2018).

¹⁵ United States Special Operations Command Office of Communication, *2018 Fact Book*, available at: <http://www.socom.mil/FactBook/2018%20Fact%20Book.pdf> (last viewed January 22, 2018).

Effect of Proposed Changes

HB 333 proposes an additional exemption to the basic recruit training program for an applicant who has served in the special operations forces of the U.S. military for at least five years. The bill defines special operations forces to include servicemembers of the Army 75th Ranger Regiment; the Navy SEALs and Special Warfare-Craft Crewman; the Air Force Combat Control, Pararescue, and Tactical Air Control Party specialists; the Marine Corps Critical Skills Operators; and any other component of the Special Operations Command approved by the Commission.

A veteran of the special operations forces with the requisite 5-years of experience could become a law enforcement officer without completing the 770 hours of basic recruit training. An exempt applicant would still have to meet other minimum qualifications, such as passing a physical examination and having good moral character. Additionally, as with applicants currently exempt due to prior law enforcement experience in another jurisdiction, an exempt applicant must demonstrate proficiency in high-liability areas and pass the officer certification examination within 1 year of receiving the exemption.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 943.10, F.S., relating to definitions; ss. 943.085-943.255.
- Section 2:** Amends s. 943.131, F.S., relating to temporary employment or appointment; minimum basic recruit training exemption.
- Section 3:** Reenacts s. 626.989, F.S., relating to investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.
- Section 4:** Reenacts s. 943.13, F.S., relating to officers' minimum qualifications for employment or appointment.
- Section 5:** Reenacts s. 943.133, F.S., relating to responsibilities of employing agency, commission, and program with respect to compliance with employment qualifications and the conduct of background investigations; injunctive relief.
- Section 6:** Reenacts s. 943.1395, F.S., relating to certification for employment or appointment; concurrent certification; reemployment or reappointment; inactive status; revocation; suspension; investigation.
- Section 7:** Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:

The bill may have a positive fiscal impact on local government. Law enforcement agencies who sponsor applicants during their basic recruit training program would no longer pay for exempt applicants' training and may see decreased expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Law Enforcement has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the Commission to verify that an applicant has at least 5 years of experience in the special operations forces but does not provide that having such experience is grounds for an exemption under s. 943.13, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to temporary employment or appointment
 3 of officers; amending s. 943.10, F.S.; defining the
 4 term "special operations forces"; amending s. 943.131,
 5 F.S.; requiring an employing agency or criminal
 6 justice selection center to verify and document that
 7 certain applicants have served in the special
 8 operations forces for a minimum period and completed
 9 certain training if they seek an exemption from a
 10 basic recruit training program approved by the
 11 Criminal Justice Standards and Training Commission;
 12 requiring the employing agency or selection center to
 13 submit the documentation to the commission; reenacting
 14 ss. 626.989(7), 943.13(9), 943.133(1) and (6), and
 15 943.1395(3), (9), and (10), F.S., relating to
 16 investigations by the Division of Investigative and
 17 Forensic Services, officers' minimum qualifications
 18 for employment or appointment, the responsibilities of
 19 certain employing entities, and certification for
 20 certain employment or appointment, respectively, to
 21 incorporate the amendment made to s. 943.131, F.S., in
 22 references thereto; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:
 25

26 Section 1. Subsection (22) is added to section 943.10,
 27 Florida Statutes, to read:

28 943.10 Definitions; ss. 943.085-943.255.—The following
 29 words and phrases as used in ss. 943.085-943.255 are defined as
 30 follows:

31 (22) "Special operations forces" means those active and
 32 reserve component forces of the military services designated by
 33 the Secretary of Defense and specifically organized, trained,
 34 and equipped to conduct and support special operations. The term
 35 includes, but is not limited to, servicemembers of the United
 36 States Army Special Forces, the United States Army 75th Ranger
 37 Regiment; the United States Navy SEALs and Special Warfare
 38 Combatant-Craft Crewmen; the United States Air Force Combat
 39 Control, Pararescue, and Tactical Air Control Party specialists;
 40 the United States Marine Corps Critical Skills Operators; and
 41 any other component of the United States Special Operations
 42 Command approved by the commission.

43 Section 2. Subsection (2) of section 943.131, Florida
 44 Statutes, is amended to read:

45 943.131 Temporary employment or appointment; minimum basic
 46 recruit training exemptions ~~exemption~~.—

47 (2) If an applicant seeks an exemption from completing a
 48 commission-approved basic recruit training program, the
 49 employing agency or criminal justice selection center must do
 50 one of the following, as appropriate:

51 (a) Verify that the applicant has successfully completed a
52 comparable basic recruit training program for the discipline in
53 which the applicant is seeking certification in another state or
54 for the Federal Government or a previous Florida basic recruit
55 training program. Further, the employing agency or criminal
56 justice selection center must verify and document that the
57 applicant has served as a full-time sworn officer in another
58 state or for the Federal Government for at least 1 year provided
59 there is no more than an 8-year break in employment or was a
60 previously certified Florida officer provided there is no more
61 than an 8-year break in employment, as measured from the
62 separation date of the most recent qualifying employment to the
63 time a complete application is submitted for an exemption under
64 this section. ~~When~~ The employing agency or criminal justice
65 selection center shall submit ~~obtains written~~ documentation of
66 satisfaction of this requirement to the commission ~~regarding the~~
67 ~~applicant's criminal justice experience, the documentation must~~
68 ~~be submitted to the commission. The commission shall adopt rules~~
69 ~~that establish criteria and procedures to determine if the~~
70 ~~applicant is exempt from completing the commission-approved~~
71 ~~basic recruit training program and, upon making a determination,~~
72 ~~shall notify the employing agency or criminal justice selection~~
73 ~~center. An applicant who is exempt from completing the~~
74 ~~commission-approved basic recruit training program must~~
75 ~~demonstrate proficiency in the high-liability areas, as defined~~

76 ~~by commission rule, and must complete the requirements of s.~~
77 ~~943.13(10) within 1 year after receiving an exemption. If the~~
78 ~~proficiencies and requirements of s. 943.13(10) are not met~~
79 ~~within the 1 year, the applicant must seek an additional~~
80 ~~exemption pursuant to the requirements of this subsection.~~
81 ~~Except as provided in subsection (1), before the employing~~
82 ~~agency may employ or appoint the applicant as an officer, the~~
83 ~~applicant must meet the minimum qualifications described in s.~~
84 ~~943.13(1)-(8), and must fulfill the requirements of s.~~
85 ~~943.13(10).~~

86 (b) Verify and document that the applicant has served in
87 the special operation forces for a minimum of 5 years and has
88 successfully completed a special operation forces training
89 course. The employing agency or criminal justice selection
90 center shall submit documentation of satisfaction of these
91 requirements to the commission.

92
93 The commission shall adopt rules that establish criteria and
94 procedures to determine if the applicant is exempt from
95 completing the commission-approved basic recruit training
96 program and, upon making a determination, shall notify the
97 employing agency or criminal justice selection center. An
98 applicant who is exempt from completing the commission-approved
99 basic recruit training program must demonstrate proficiency in
100 the high-liability areas as defined by commission rule, and must

101 complete the requirements of s. 943.13(10) within 1 year after
102 receiving an exemption. If the proficiencies and requirements of
103 s. 943.13(10) are not met within the 1-year period, the
104 applicant must seek an additional exemption pursuant to the
105 requirements of this subsection. Except as provided in
106 subsection (1), before the employing agency may employ or
107 appoint the applicant as an officer, the applicant must meet the
108 minimum qualifications described in s. 943.13(1)-(8), and must
109 fulfill the requirements of s. 943.13(10).

110 Section 3. For the purpose of incorporating the amendment
111 made by this act to section 943.131, Florida Statutes, in a
112 reference thereto, subsection (7) of section 626.989, Florida
113 Statutes, is reenacted to read:

114 626.989 Investigation by department or Division of
115 Investigative and Forensic Services; compliance; immunity;
116 confidential information; reports to division; division
117 investigator's power of arrest.-

118 (7) Division investigators shall have the power to make
119 arrests for criminal violations established as a result of
120 investigations. Such investigators shall also be considered
121 state law enforcement officers for all purposes and shall have
122 the power to execute arrest warrants and search warrants; to
123 serve subpoenas issued for the examination, investigation, and
124 trial of all offenses; and to arrest upon probable cause without
125 warrant any person found in the act of violating any of the

126 provisions of applicable laws. Investigators empowered to make
 127 arrests under this section shall be empowered to bear arms in
 128 the performance of their duties. In such a situation, the
 129 investigator must be certified in compliance with the provisions
 130 of s. 943.1395 or must meet the temporary employment or
 131 appointment exemption requirements of s. 943.131 until
 132 certified.

133 Section 4. For the purpose of incorporating the amendment
 134 made by this act to section 943.131, Florida Statutes, in a
 135 reference thereto, subsection (9) of section 943.13, Florida
 136 Statutes, is reenacted to read:

137 943.13 Officers' minimum qualifications for employment or
 138 appointment.-On or after October 1, 1984, any person employed or
 139 appointed as a full-time, part-time, or auxiliary law
 140 enforcement officer or correctional officer; on or after October
 141 1, 1986, any person employed as a full-time, part-time, or
 142 auxiliary correctional probation officer; and on or after
 143 October 1, 1986, any person employed as a full-time, part-time,
 144 or auxiliary correctional officer by a private entity under
 145 contract to the Department of Corrections, to a county
 146 commission, or to the Department of Management Services shall:

147 (9) Complete a commission-approved basic recruit training
 148 program for the applicable criminal justice discipline, unless
 149 exempt under this subsection. An applicant who has:

150 (a) Completed a comparable basic recruit training program

151 for the applicable criminal justice discipline in another state
 152 or for the Federal Government; and

153 (b) Served as a full-time sworn officer in another state
 154 or for the Federal Government for at least 1 year provided there
 155 is no more than an 8-year break in employment, as measured from
 156 the separation date of the most recent qualifying employment to
 157 the time a complete application is submitted for an exemption
 158 under this section,

159
 160 is exempt in accordance with s. 943.131(2) from completing the
 161 commission-approved basic recruit training program.

162 Section 5. For the purpose of incorporating the amendment
 163 made by this act to section 943.131, Florida Statutes, in
 164 references thereto, subsections (1) and (6) of section 943.133,
 165 Florida Statutes, are reenacted to read:

166 943.133 Responsibilities of employing agency, commission,
 167 and program with respect to compliance with employment
 168 qualifications and the conduct of background investigations;
 169 injunctive relief.-

170 (1) The employing agency is fully responsible for the
 171 collection, verification, and maintenance of documentation
 172 establishing that an applicant complies with the requirements of
 173 ss. 943.13 and 943.131, and any rules adopted pursuant to ss.
 174 943.13 and 943.131.

175 (6) If an employing agency employs or appoints an officer

176 in violation of this section or of s. 943.13, s. 943.131, or s.
177 943.135, or any rules adopted pursuant thereto, the Department
178 of Legal Affairs, at the request of the chair of the commission,
179 shall apply to the circuit court in the county of the employing
180 agency for injunctive relief prohibiting the employment or
181 appointment of the person contrary to this section.

182 Section 6. For the purpose of incorporating the amendment
183 made by this act to section 943.131, Florida Statutes, in
184 references thereto, subsections (3), (9), and (10) of section
185 943.1395, Florida Statutes, are reenacted to read:

186 943.1395 Certification for employment or appointment;
187 concurrent certification; reemployment or reappointment;
188 inactive status; revocation; suspension; investigation.—

189 (3) Any certified officer who has separated from
190 employment or appointment and who is not reemployed or
191 reappointed by an employing agency within 4 years after the date
192 of separation must meet the minimum qualifications described in
193 s. 943.13, except for the requirement found in s. 943.13(9).
194 Further, such officer must complete any training required by the
195 commission by rule in compliance with s. 943.131(2). Any such
196 officer who fails to comply with the requirements provided in s.
197 943.131(2) must meet the minimum qualifications described in s.
198 943.13, to include the requirement of s. 943.13(9).

199 (9) Each person employed pursuant to s. 943.131 is subject
200 to discipline by the commission. Persons who have been subject

201 to disciplinary action pursuant to this subsection are
202 ineligible for employment or appointment under s. 943.131.

203 (a) The commission shall cause to be investigated any
204 conduct defined in subsection (6) or subsection (7) by a person
205 employed under s. 943.131 and shall set disciplinary guidelines
206 and penalties prescribed in rules applicable to such
207 noncertified persons.

208 (b) The disciplinary guidelines and prescribed penalties
209 must be based upon the severity of specific offenses. The
210 guidelines must provide reasonable and meaningful notice to
211 officers and to the public of penalties that may be imposed for
212 prohibited conduct. The penalties must be consistently applied
213 by the commission.

214 (c) In addition, the commission may establish violations
215 and disciplinary penalties for intentional abuse of the
216 employment option provided by s. 943.131 by an individual or
217 employing agency.

218 (10) An officer whose certification has been revoked
219 pursuant to this section shall be ineligible for employment or
220 appointment under s. 943.131.

221 Section 7. This act shall take effect July 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Burgess offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (22) is added to section 943.10,
8 Florida Statutes, to read:

9 943.10 Definitions; ss. 943.085-943.255.—The following
10 words and phrases as used in ss. 943.085-943.255 are defined as
11 follows:

12 (22) "Special operations forces" means those active and
 13 reserve component forces of the military services designated by
 14 the Secretary of Defense and specifically organized, trained,
 15 and equipped to conduct and support special operations. The term
 16 includes, but is not limited to, servicemembers of the United



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17 States Army Special Forces; the United States Army 75th Ranger
18 Regiment; the United States Navy SEALs and Special Warfare
19 Combatant-Craft Crewmen; the United States Air Force Combat
20 Control, Pararescue, and Tactical Air Control Party specialists;
21 the United States Marine Corps Critical Skills Operators; and
22 any other component of the United States Special Operations
23 Command approved by the commission.

24 Section 2. Subsection (9) of section 943.13, Florida
25 Statutes, is amended to read:

26 943.13 Officers' minimum qualifications for employment or
27 appointment.—On or after October 1, 1984, any person employed or
28 appointed as a full-time, part-time, or auxiliary law
29 enforcement officer or correctional officer; on or after October
30 1, 1986, any person employed as a full-time, part-time, or
31 auxiliary correctional probation officer; and on or after
32 October 1, 1986, any person employed as a full-time, part-time,
33 or auxiliary correctional officer by a private entity under
34 contract to the Department of Corrections, to a county
35 commission, or to the Department of Management Services shall:

36 (9) Complete a commission-approved basic recruit training
37 program for the applicable criminal justice discipline, unless
38 exempt under this subsection. An applicant who has:

39 (a) Completed a comparable basic recruit training program
40 for the applicable criminal justice discipline in another state
41 or for the Federal Government⁺ and served as a full-time sworn

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Amendment No.

42 officer in another state or for the Federal Government for at
43 least 1 year, provided there is no more than an 8-year break in
44 employment, as measured from the separation date of the most
45 recent qualifying employment to the time a complete application
46 for an exemption under this subsection is submitted; or

47 (b) Served in the special operations forces for a minimum
48 of 5 years, provided there is no more than a 4-year break from
49 the applicant's special operations forces experience, as
50 measured from the separation date from the special operations
51 forces to the time a complete application for an exemption under
52 this subsection is submitted; Served as a full-time sworn
53 officer in another state or for the Federal Government for at
54 least 1 year provided there is no more than an 8-year break in
55 employment, as measured from the separation date of the most
56 recent qualifying employment to the time a complete application
57 is submitted for an exemption under this section,

58
59 is exempt in accordance with s. 943.131(2) from completing the
60 commission-approved basic recruit training program.

61 Section 3. Subsection (2) of section 943.131, Florida
62 Statutes, is amended, and subsections (3) and (4) are added to
63 section 943.131, Florida Statutes, to read:

64 943.131 Temporary employment or appointment; minimum basic
65 recruit training exemptions.-



Amendment No.

66 (2) If an applicant seeks an exemption from completing a
67 commission-approved basic recruit training program, the
68 employing agency, training center, or criminal justice selection
69 center must verify and document that the applicant has:

70 (a) Successfully completed a comparable basic recruit
71 training program for the discipline in which the applicant is
72 seeking certification in another state or for the Federal
73 Government or a previous Florida basic recruit training program.
74 Further, the employing agency, training center, or criminal
75 justice selection center must verify that the applicant has
76 served as a full-time sworn officer in another state or for the
77 Federal Government for at least 1 year provided there is no more
78 than an 8-year break in employment or was a previously certified
79 Florida officer provided there is no more than an 8-year break
80 in employment, as measured from the separation date of the most
81 recent qualifying employment to the time a complete application
82 is submitted for an exemption under this section. ~~When~~ The ~~the~~
83 employing agency, training center, or criminal justice selection
84 center shall submit ~~obtains~~ written documentation of
85 satisfaction of this requirement to the commission; or ~~regarding~~
86 ~~the applicant's criminal justice experience, the documentation~~
87 ~~must be submitted to the commission. The commission shall adopt~~
88 ~~rules that establish criteria and procedures to determine if the~~
89 ~~applicant is exempt from completing the commission-approved~~
90 ~~basic recruit training program and, upon making a determination,~~

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Amendment No.

91 ~~shall notify the employing agency or criminal justice selection~~
92 ~~center. An applicant who is exempt from completing the~~
93 ~~commission approved basic recruit training program must~~
94 ~~demonstrate proficiency in the high liability areas, as defined~~
95 ~~by commission rule, and must complete the requirements of s.~~
96 ~~943.13(10) within 1 year after receiving an exemption. If the~~
97 ~~proficiencies and requirements of s. 943.13(10) are not met~~
98 ~~within the 1 year, the applicant must seek an additional~~
99 ~~exemption pursuant to the requirements of this subsection.~~
100 ~~Except as provided in subsection (1), before the employing~~
101 ~~agency may employ or appoint the applicant as an officer, the~~
102 ~~applicant must meet the minimum qualifications described in s.~~
103 ~~943.13(1) (8), and must fulfill the requirements of s.~~
104 ~~943.13(10).~~

105 (b) Served in the special operation forces for a minimum
106 of 5 years, provided there is no more than a 4-year break from
107 the applicant's special operations forces experience, as
108 measured from the separation date from the special operations
109 forces to the time a complete application for an exemption under
110 this subsection is submitted. The employing agency, training
111 center, or criminal justice selection center shall further
112 verify and document the specific training and experience the
113 applicant received during his or her special operations forces
114 service that is relevant to law enforcement. The employing
115 agency, training center, or criminal justice selection center

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116 shall submit documentation of satisfaction of these requirements
117 to the commission.

118 (3) The commission shall adopt rules that establish
119 criteria and procedures to determine if the applicant is exempt
120 from completing the commission-approved basic recruit training
121 program and, upon making a determination, shall notify the
122 employing agency, training center, or criminal justice selection
123 center. The commission may require an exempt applicant to
124 complete additional training as it deems appropriate based on
125 the applicant's prior training and experience.

126 (4) Within 1 year after receiving an exemption, an
127 applicant who is exempt from completing the commission-approved
128 basic recruit training program must:

129 (a) Complete all additional required training as required
130 by the commission;

131 (b) Demonstrate proficiency in the high-liability areas as
132 defined by commission rule; and

133 (c) Complete the requirements of s. 943.13(10).

134
135 If the proficiencies and requirements of s. 943.13(10) are not
136 met within the 1-year period, the applicant must seek an
137 additional exemption pursuant to the requirements of this
138 subsection. Except as provided in subsection (1), before the
139 employing agency may employ or appoint the applicant as an
140 officer, the applicant must meet the minimum qualifications

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141 described in s. 943.13(1)-(8), and must fulfill the requirements
142 of s. 943.13(10).

143 Section 4. For the purpose of incorporating the amendment
144 made by this act to section 943.131, Florida Statutes, in a
145 reference thereto, Subsection (7) of section 626.989, Florida
146 Statutes, is reenacted to read:

147 626.989 Investigation by department or Division of
148 Investigative and Forensic Services; compliance; immunity;
149 confidential information; reports to division; division
150 investigator's power of arrest.—

151 (7) Division investigators shall have the power to make
152 arrests for criminal violations established as a result of
153 investigations. Such investigators shall also be considered
154 state law enforcement officers for all purposes and shall have
155 the power to execute arrest warrants and search warrants; to
156 serve subpoenas issued for the examination, investigation, and
157 trial of all offenses; and to arrest upon probable cause without
158 warrant any person found in the act of violating any of the
159 provisions of applicable laws. Investigators empowered to make
160 arrests under this section shall be empowered to bear arms in
161 the performance of their duties. In such a situation, the
162 investigator must be certified in compliance with the provisions
163 of s. 943.1395 or must meet the temporary employment or
164 appointment exemption requirements of s. 943.131 until
165 certified.

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166 Section 5. For the purpose of incorporating the amendment
167 made by this act to section 943.131, Florida Statutes, in a
168 reference thereto, Subsections (1) and (6) of section 943.133,
169 Florida Statutes, are reenacted to read:

170 943.133 Responsibilities of employing agency, commission,
171 and program with respect to compliance with employment
172 qualifications and the conduct of background investigations;
173 injunctive relief.—

174 (1) The employing agency is fully responsible for the
175 collection, verification, and maintenance of documentation
176 establishing that an applicant complies with the requirements of
177 ss. 943.13 and 943.131, and any rules adopted pursuant to ss.
178 943.13 and 943.131.

179 (6) If an employing agency employs or appoints an officer
180 in violation of this section or of s. 943.13, s. 943.131, or s.
181 943.135, or any rules adopted pursuant thereto, the Department
182 of Legal Affairs, at the request of the chair of the commission,
183 shall apply to the circuit court in the county of the employing
184 agency for injunctive relief prohibiting the employment or
185 appointment of the person contrary to this section.

186 Section 6. For the purpose of incorporating the amendment
187 made by this act to section 943.131, Florida Statutes, in a
188 reference thereto, Subsections (3), (9), and (10) of section
189 943.1395, Florida Statutes, are reenacted to read:



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190 943.1395 Certification for employment or appointment;
191 concurrent certification; reemployment or reappointment;
192 inactive status; revocation; suspension; investigation.—

193 (3) Any certified officer who has separated from
194 employment or appointment and who is not reemployed or
195 reappointed by an employing agency within 4 years after the date
196 of separation must meet the minimum qualifications described in
197 s. 943.13, except for the requirement found in s. 943.13(9).
198 Further, such officer must complete any training required by the
199 commission by rule in compliance with s. 943.131(2). Any such
200 officer who fails to comply with the requirements provided in s.
201 943.131(2) must meet the minimum qualifications described in s.
202 943.13, to include the requirement of s. 943.13(9).

203 (9) Each person employed pursuant to s. 943.131 is subject
204 to discipline by the commission. Persons who have been subject
205 to disciplinary action pursuant to this subsection are
206 ineligible for employment or appointment under s. 943.131.

207 (a) The commission shall cause to be investigated any
208 conduct defined in subsection (6) or subsection (7) by a person
209 employed under s. 943.131 and shall set disciplinary guidelines
210 and penalties prescribed in rules applicable to such
211 noncertified persons.

212 (b) The disciplinary guidelines and prescribed penalties
213 must be based upon the severity of specific offenses. The
214 guidelines must provide reasonable and meaningful notice to



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215 officers and to the public of penalties that may be imposed for
216 prohibited conduct. The penalties must be consistently applied
217 by the commission.

218 (c) In addition, the commission may establish violations
219 and disciplinary penalties for intentional abuse of the
220 employment option provided by s. 943.131 by an individual or
221 employing agency.

222 (10) An officer whose certification has been revoked
223 pursuant to this section shall be ineligible for employment or
224 appointment under s. 943.131.

225 Section 7. This act shall take effect July 1, 2018.

226 -----

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

228 Remove everything before the enacting clause and insert:
229 An act relating to temporary employment or appointment of
230 officers; amending s. 943.10, F.S.; defining the term "special
231 operations forces"; amending s. 943.13, F.S.; exempting
232 applicants who have served at least 5 years in the special armed
233 forces from the basic recruit training requirement, provided
234 there is no more than a 4-year break from the applicant's
235 special operations forces experience; amending s. 943.131, F.S.;
236 requiring an employing agency, training center, or criminal
237 justice selection center to verify and document that certain
238 applicants have served in the special operations forces for a
239 minimum period and completed certain training if they seek an



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240 exemption from a basic recruit training program approved by the
241 Criminal Justice Standards and Training Commission; requiring
242 the employing agency, training center, or selection center to
243 submit the documentation to the commission; reenacting ss.
244 626.989(7), 943.13(9), 943.133(1) and (6), and 943.1395(3), (9),
245 and (10), F.S., relating to investigations by the Division of
246 Investigative and Forensic Services, officers' minimum
247 qualifications for employment or appointment, the
248 responsibilities of certain employing entities, and
249 certification for certain employment or appointment,
250 respectively, to incorporate the amendment made to s. 943.131,
251 F.S., in references thereto; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 547 Reports Concerning Seized or Forfeited Property

SPONSOR(S): Killebrew

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>(WJS)</i>	Sumner <i>TS</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Contraband Forfeiture Act allows law enforcement agencies to seize certain property that is being used for criminal purposes. Every law enforcement agency must submit an annual report to the Florida Department of Law Enforcement (FDLE) indicating whether the agency has seized or forfeited property under the Florida Contraband Forfeiture Act. The report is due by October 10 of each year, and failure to timely file the report can result in fines.

HB 547 changes the due date for a law enforcement agency to file the forfeiture reports with FDLE to 30 days after the end of the agency's fiscal year.

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

The effective date of the bill is July 1, 2018.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Contraband Forfeiture Act¹ (Act) allows law enforcement agencies to seize certain types of property being used for criminal purposes, including controlled substances, currency used to violate Florida's gambling laws, property used to violate Florida's beverage or tobacco laws, untaxed motor fuel, vehicles or other property used to commit any felony, and other enumerated items.² Such seizure generally occurs when the owner of the property is arrested for a criminal offense that forms the basis for determining that the property is contraband subject to seizure.³ The seizing agency must file a complaint in circuit court stating why the property is subject to forfeiture.⁴ If the court ultimately finds proof beyond a reasonable doubt that the property was being used in violation of the Act, the court must order the seized property forfeited to the law enforcement agency making the seizure.⁵

Under the Act, every law enforcement agency⁶ must submit an annual report to the Florida Department of Law Enforcement (FDLE) indicating whether the agency has seized or forfeited property under the Florida Contraband Forfeiture Act.⁷ The annual report must, at a minimum, specify the type of property, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended. The annual report must be submitted annually in an electronic form by October 10. Failure to timely submit the report may result in a civil fine of \$5,000.⁸

FDLE is required to compile the information and data collected from the seizure and forfeiture reports and submit to the Office of Program Policy Analysis and Government Accountability a report listing the agencies who failed to meet the reporting requirements and a summary of any action taken against the noncomplying agency by the Chief Financial Officer.⁹

Some agencies subject to the Act have the end of their fiscal year on September 30, giving them only ten days to submit the seizure and forfeiture report to FDLE.

Effect of the Bill

HB 547 changes the deadline for law enforcement agencies to submit their seizure and forfeiture reports to FDLE from October 10 to within 30 days after the end of the agency's fiscal year. This gives each agency an equal amount of time after the end of its fiscal year—30 days—to submit its seizure and forfeiture report, regardless of when the agency's fiscal year ends.

B. SECTION DIRECTORY:

Section 1: Amends s. 932.7061, F.S., regarding the reporting deadline.

Section 2: Provides an effective date of July 1, 2018.

¹ The "Florida Contraband Forfeiture Act" is composed of ss. 932.701 - 932.7062, F.S.

² SS. 932.701(2), 932.703, F.S.

³ S. 932.703, F.S.

⁴ S. 932.704, F.S.

⁵ S. 932.704(8).

⁶ According to FDLE, over 400 law enforcement agencies are subject to s. 932.7061, F.S.

⁷ S. 932.7061, F.S.

⁸ S. 932.7062, F.S.

⁹ S. 932.7061(2), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to reports concerning seized or
 3 forfeited property; amending s. 932.7061, F.S.;
 4 revising the deadline for an annual report by law
 5 enforcement agencies concerning property seized or
 6 forfeited under the Florida Contraband Forfeiture Act;
 7 providing an effective date.

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

10
 11 Section 1. Subsection (1) of section 932.7061, Florida
 12 Statutes, is amended to read:

13 932.7061 Reporting seized property for forfeiture.—

14 (1) Every law enforcement agency shall submit an annual
 15 report to the Department of Law Enforcement indicating whether
 16 the agency has seized or forfeited property under the Florida
 17 Contraband Forfeiture Act. A law enforcement agency receiving or
 18 expending forfeited property or proceeds from the sale of
 19 forfeited property in accordance with the Florida Contraband
 20 Forfeiture Act shall submit a completed annual report within 30
 21 days after the end of its fiscal year ~~by October 10~~ documenting
 22 the receipts and expenditures. The report shall be submitted in
 23 an electronic form, maintained by the Department of Law
 24 Enforcement in consultation with the Office of Program Policy
 25 Analysis and Government Accountability, to the entity that has

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26 budgetary authority over such agency and to the Department of
27 Law Enforcement. The annual report must, at a minimum, specify
28 the type, approximate value, court case number, type of offense,
29 disposition of property received, and amount of any proceeds
30 received or expended.

31 Section 2. This act shall take effect July 1, 2018.



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Killebrew offered the following:

4

5 **Amendment**

6 Remove lines 20-21 and insert:

7 Forfeiture Act shall submit a completed annual report by

8 December 1 ~~October 10~~ documenting

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 581 Subpoenas in Investigations of Sexual Offenses
SPONSOR(S): Latvala and others
TIED BILLS: IDEN./SIM. BILLS: SB 618

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>WJJ</i>	Sumner <i>TS</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A subpoena is an order directed to a person requiring his or her attendance at a particular time and place to testify as a witness. A subpoena may also require the witness to bring documents or other tangible evidence which may be introduced as evidence in a case. The Sixth Amendment to the United States Constitution guarantees the defendant in a criminal case the right to have compulsory process for obtaining witnesses in his or her favor. Subpoenas may be issued in a criminal investigation or a criminal prosecution.

In some cases, federal and state law authorizes investigating authorities to issue a subpoena and require the recipient of the subpoena to not disclose the existence or contents of the subpoena. Such authority is provided in limited circumstances where disclosure of the subpoena could result in the destruction of evidence or other harm to the investigation.

HB 581 creates a new section of law to specifically address the use of a subpoena in an investigation involving allegations of sexual abuse of a child, a child sexual offender's failure to register as a sexual predator or sexual offender, or the suspected commission of certain sex crimes.

In investigations involving sexual abuse of a child, the bill authorizes an investigative or law enforcement officer to:

- Use a subpoena to obtain information pertaining to the subscriber or customer, other than contents of a communication (without notice to the subscriber or customer of an electronic communications service provider or remote computing service provider).
- With prior notice, or delayed notice, use a subpoena to obtain contents of a communication that has been in electronic storage for more than 180 days.

The bill allows an investigative or law enforcement officer to prohibit a subpoena recipient from disclosing to any person for 180 days the existence of the subpoena or delay required notification for 180 days, under certain circumstances. A court may grant an extension of the nondisclosure period or delay notification.

The bill also specifies other procedures such as the time subpoenaed information must be produced, the compensation of a subpoenaed witness, and a prohibition on compelling production of protected records.

The bill may have indeterminate litigation costs to a subpoena recipient that chooses to challenge provisions of the bill in court. The bill may have an indeterminate fiscal impact on the state and does not appear to have a fiscal impact on local governments.

The effective date of the bill is October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Subpoenas in General

A subpoena is an order directed to a person which requires his or her attendance at a particular time and place to testify as a witness. A subpoena may also require the witness to bring documents or other tangible evidence that may be introduced as evidence in a case.¹ The Sixth Amendment to the United States Constitution guarantees the defendant in a criminal case the right to have compulsory processes for obtaining witnesses in his or her favor.² Subpoenas may be issued in a criminal investigation³ or in a criminal prosecution during discovery⁴ or for trial⁵ by the defendant, his or her counsel, or the state attorney. Generally, a subpoena must state the name of the court and the title of action and the time and the place at which the witness is commanded to give testimony or produce evidence.⁶ Once a witness is subpoenaed by either party, he or she must remain available for attendance until the case is resolved or until he or she is excused by the court hearing the case.⁷ A witness's failure to do so could result in being held in contempt of court.⁸ In some cases, a subpoena may require the recipient of the subpoena to not disclose the existence or contents of the subpoena.

Investigative Subpoenas in Criminal Cases

An investigative subpoena is used to allow the State to obtain information necessary to determine whether a criminal activity has occurred or is occurring.⁹ The state attorney has authority under s. 27.04, F.S., to compel witness testimony and production of records and other information.¹⁰ Section 16.56(3), F.S., provides the same authority to the statewide prosecutor.

Overview of Section 934.23, F.S.

Section 934.23, F.S., is patterned after the federal Stored Communications Act ("SCA").¹¹ Section 934.23, F.S., specifies how an investigative or law enforcement officer may obtain the content of a wire or electronic communication that:

- Has been in electronic storage in an electronic communications system;
- A wire or electronic communication held or maintained on a remote computing service; and
- A record or other information pertaining to a subscriber or customer of such service, not including the contents of a communication.

¹ See *Black's Law Dictionary* 1467 (8th ed. 2004).

² U.S. Const. amend. 6.

³ Florida law authorizes certain entities to use subpoenas for the purpose of conducting criminal investigations, including, but not limited to, s. 409.920, F.S. (authorizing the Attorney General to subpoena witnesses or materials, including medical records, during an investigation for Medicaid fraud); s. 415.107, F.S. (authorizing a criminal justice agency investigating a report related to abuse, neglect, or exploitation of a vulnerable adult to subpoena related records); and s. 414.411, F.S. (authorizing Department of Financial Services to subpoena witnesses and records related to a public assistance fraud investigation).

⁴ Rule 3.220(h) allows any party to conduct a deposition by oral examination of any person authorized by the rule, generally including listed witnesses, co-defendants, or unlisted witnesses who have information relevant to the offense charged. The rule provides that the issuance of the subpoena for deposition is the same as provided for in the Florida Rules of Civil Procedure.

⁵ Subpoenas for testimony before the court and subpoenas for production of tangible evidence before the court may generally be issued by the clerk of the court or by any attorney of record in the case. Fla. R. Civ. P. 3.361(a).

⁶ *Id.*

⁷ S. 914.03, F.S.

⁸ *Id.*

⁹ *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).

¹⁰ *State v. Jett*, 358 So. 2d 875, 876 (Fla. 3d DCA 1978).

¹¹ The "Stored Communications Act" is Title II of the Electronic Communications Privacy Act of 1986 (ECPA), Pub. L. No. 99-508, 100 Stat. 1848 (1986).

Important Definitions Used in s. 934.23, F.S.

- "Investigative or law enforcement officer" means:
 - Any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in Chapter 934, F.S., or similar federal offenses;
 - Any attorney authorized by law to prosecute or participate in the prosecution of such offenses; or
 - Any other attorney representing the State of Florida or political subdivision thereof in any civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.¹²
- "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce. Not included in this definition are any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.¹³
- "Contents" means any information concerning the substance, purport, or meaning of any wire, oral, or electronic communication.¹⁴
- "Electronic Communication Service" ("ECS") means any service which provides to users thereof the ability to send or receive wire or electronic communications.¹⁵
- "Remote Computing Service" ("RCS") means the provision to the public of computer storage or processing services by means of an electronic communications system.¹⁶

Obtaining Evidence Under s. 934.23, F.S.

Consent of the Subscriber or Customer

An investigative or law enforcement officer who obtains the consent of the subscriber or customer to the disclosure of a record or other information, the officer can require an ECS provider or RCS provider to disclose the record or other information, not including the contents of a communication.¹⁷

Subpoena without Notice to the Subscriber or Customer

An investigative or law enforcement officer with a subpoena may obtain from the ECS provider or RCS provider basic information, including session information, regarding a subscriber or customer of the provider, without the need to provide notice to the subscriber or customer. This information includes:

- Name and address;
- Local and long-distance telephone connection records, or records of session times or durations;
- Length of service, including the starting date of service;
- Types of services used;

¹² S. 934.02(6), F.S.

¹³ S. 934.02(12), F.S.

¹⁴ S. 934.02(7), F.S.

¹⁵ S. 934.02(14), F.S.

¹⁶ S. 934.02(19), F.S.

¹⁷ S. 934.23(4)(a)3., F.S.

- Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- Means and source of payment, including any credit card or bank account number of a subscriber to or customer.¹⁸

Subpoena with Prior Notice to the Subscriber or Customer

An investigative or law enforcement officer who obtains a subpoena and provides prior notice to the subscriber or customer or delayed notice pursuant to s. 934.25, F.S., may obtain:

- Whatever can be obtained by subpoena without prior notice;
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for more than 180 days;
- An electronic communication that is held or maintained on a RCS:
 - On behalf of a subscriber or customer of the RCS and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service; and
 - Solely for the purposes of providing storage or computing processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.¹⁹

Court Order for Disclosure without Prior Notice

A court may order disclosure if an investigative or law enforcement officer offers specific and articulable facts showing that there are reasonable grounds to believe the contents of a wire or electronic communication or the records of other information sought are relevant and material to an ongoing criminal investigation. An investigative or law enforcement officer who obtains a court order for disclosure may obtain:

- Whatever can be obtained by subpoena without prior notice; and
- From an ECS provider or RCS provider, a record or other information pertaining to the subscriber or customer of such service, not including contents of communication.²⁰

Court Order for Disclosure with Prior Notice

An investigative or law enforcement officer who obtains a court order for disclosure, and gives prior notice to the subscriber or customer or complies with the delayed notice provisions of s. 934.25, F.S., may obtain:

- Whatever can be obtained by a court order for disclosure;
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for more than 180 days; and
- Contents of an electronic communication that is held or maintained on a RCS as described in s. 934.23(3), F.S.²¹

Search Warrant

An investigative or law enforcement officer who obtains a search warrant may obtain:

- Whatever can be obtained pursuant to a court order for disclosure with notice; and
- Contents of a wire or electronic communication that have been held in electronic storage in an electronic communication system for 180 days or less.²²

¹⁸ S. 934.23(4)(a)4., (b), (c), F.S.

¹⁹ S. 934.23(2)(b)1., (3), F.S.

²⁰ S. 934.23(5), F.S.

²¹ S. 934.23(1), (2), (3), F.S.

•
Process for Delayed Notice Under Section 934.25, F.S.

Section 934.25 provides that in certain situations the notice required in s. 934.23(2) may be delayed when an "adverse result" may occur, which means any of the following acts:

- Endangering the life or physical safety of an individual.
- Fleeing from prosecution.
- Destroying or tampering with evidence.
- Intimidating potential witnesses.
- Seriously jeopardizing an investigation or unduly delaying a trial.²³

If an investigative or law enforcement officer seeks to obtain evidence from an RCS provider under s. 934.23(2), F.S., pursuant to a court order for disclosure or subpoena, the officer may delay required notice under 934.23(2), F.S., as follows:

- If the officer requests a court order delaying notification for up to 90 days, the court must grant the request if it determines that there is a reason to believe that notification of the existence of the court order may have an adverse result.
- If the officer has a subpoena, the officer may delay the notification for up to 90 days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result.

The 90-day period may be extended by court order, but only in 90-day increments and only in accordance with s. 934.25(6), F.S., which requires the officer to demonstrate to the court or certify that there is reason to believe notification will result in any act specified as an adverse result.²⁴

Upon the expiration of the period of delay of notification under s. 934.25(1), F.S. or s. 934.25(4), F.S., the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:

- States with reasonable specificity the nature of the law enforcement inquiry, and
- Informs the subscriber or customer:
 - That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested;
 - That notification of such subscriber or customer was delayed;
 - The investigative or law enforcement officer or the court that made the certification or determination pursuant to which delay was made; and
 - Which provision of ss. 934.21-934.28, F.S. allowed such delay.²⁵

An investigative or law enforcement officer acting under s. 934.23, F.S., when not required to notify the subscriber or customer under s. 934.23(2)(a), F.S. (warrant), or to the extent such notice may be delayed pursuant to s.934.25(1), F.S. (subpoena or court order for disclosure), may also apply to a court for an order commanding an ECS provider or RCS provider to whom a warrant, subpoena, or court order is directed not to notify any other person of the existence of the warrant, subpoena, or court order. The order of nondisclosure is for such period as the court deems appropriate and can only be entered if the court determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in an adverse result.²⁶

²² S. 934.23(1), F.S.

²³ S. 934.25(2), F.S.

²⁴ S. 934.25(4), F.S.

²⁵ S. 934.25(5), F.S.

²⁶ S. 934.25(6), F.S.

Effect of Proposed Changes

The bill creates s. 934.255, F.S. to specifically address the use of subpoenas by an investigative or law enforcement officer conducting an investigation into allegations of the sexual abuse of a child, a child sexual offender's failure to register as a sexual predator or sexual offender, or an individual's suspected commission of any sexual crime as defined in s. 775.21(4)(a), F.S.

Definitions

The bill provides the following definitions of terms relevant to the provisions of the bill:

- "Child" means a person under 18 years of age.
- "Child sexual offender" means a person required to register as a sexual offender under s. 943.0435, F.S., or as a sexual predator under s. 775.21, F.S., and the registration was for a conviction of an offense in which a child was the victim.
- "Deliver" is construed in accordance with completed delivery, as provided for in Rule 1.080(b) of the Florida Rules of Civil Procedure.
- "Sexual abuse of a child" means a criminal offense based on any conduct described in s. 39.01(71), F.S.
- "Supervisory official" means the person in charge of an investigating or law enforcement agency's or entity's headquarters or regional office; the state attorney of the circuit from which the subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certifications.

Adverse Result

The phrase "adverse result" is used multiple times throughout the bill and has the same meaning as the an adverse result under s. 934.25(2), F.S., referring to any of the following acts:

- Endangering the life or physical safety of an individual;
- Fleeing from prosecution;
- Destroying or tampering with evidence;
- Intimidating potential witnesses; or
- Seriously jeopardizing an investigation or unduly delaying a trial.

Investigative Subpoena for Records or Other Information

The bill authorizes an investigative or law enforcement officer to use a subpoena in an investigation into allegations of the sexual abuse of a child, a child sexual offender's failure to register as a sexual predator or sexual offender, or an individual's suspected commission of any crime listed in s. 775.21(4)(a), F.S., to compel the production of records, documents, or other tangible objects and the testimony of the subpoena recipient to authenticate such information. This investigative subpoena does not apply to information held or maintained by an electronic communication service (ECS) provider or remote computing service (RCS) provider, which are addressed separately in the bill.

In an investigation involving allegations of the sexual abuse of a child, an investigative or law enforcement officer may, without notice to the subscriber or customer of an ECS provider or RCS provider, obtain records or other information pertaining to the subscriber or customer, not including the contents of a communication. The information can be obtained "in the manner prescribed in s. 934.23(4)(a),"²⁷ or through the use of a subpoena to compel the provider to produce records,

²⁷ Section 932.23(4)(a), F.S., authorizes the officer to obtain such information pursuant to a warrant, court order for disclosure, or consent of the subscriber or customer. This section also authorizes the officer to seek such information under s. 934.23(4)(b), F.S., which provides that certain basic subscriber or customer information may be obtained through the use of a subpoena.

documents, or other tangible objects and the testimony of the subpoena recipient to authenticate such information.

In an investigation involving allegations of the sexual abuse of a child, an investigative or law enforcement officer may require, through the use of a subpoena, an ECS or RCS provider to disclose the contents of any wire or electronic communication that has been in storage for more than 180 days. This is only allowed, however, to an electronic communication that is held or maintained on an RCS both

- On behalf of a subscriber or customer and received by means of electronic transmission from, or created by means of, computer processing of communications received by means of electronic transmission from a subscriber or customer; and
- Solely for the purpose of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.

In this situation, the investigative or law enforcement officer may give prior notice to the provider, or may provide delayed notice to the subscriber or customer, as discussed below.

A subpoena must describe the records, documents, or other tangible objects required to be produced, and prescribe a date by which such information must be produced. A subpoena issued in the course of an investigation into a child sexual offender's alleged failure to register as a sexual predator or sexual offender, may require production as soon as possible, but must allow the subpoena recipient a minimum of 24 hours after service of the subpoena to produce the records, documents, or other tangible objects.

Compensation of a Subpoenaed Witness

A witness who is subpoenaed to appear to testify to authenticate subpoenaed records or other information must be paid the same fees and mileage rate paid to a witness appearing before a court of competent jurisdiction in the state.

Prohibition on Compelling Disclosure of Protected Documents

A subpoena may not compel the production of any record, document, or other tangible object which would otherwise be protected from production under the standards applicable to a subpoena duces tecum if issued by a court of competent jurisdiction.

Process for Relief from Subpoena

At any time before the date prescribed in the subpoena by which records, documents, or other tangible objects must be produced, a person or entity receiving a subpoena may, before a judge of competent jurisdiction, petition for an order modifying or setting aside the subpoena or a prohibition of disclosure.

Ability to Retain Subpoenaed Records or Other Information

An investigative or law enforcement officer who uses a subpoena to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

Prohibition on Disclosure of the Existence of a Subpoena

The bill authorizes an investigative or law enforcement officer to prohibit a subpoena recipient from disclosing to any person for 180 days the existence of the subpoena, if the subpoena is accompanied

by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an "adverse result" as defined above.

A subpoena recipient may disclose information otherwise subject to any applicable nondisclosure requirements to:

- Persons as necessary to comply with subpoena;
- An attorney in order to obtain legal advice or assistance regarding compliance with the subpoena;
- Any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification.

However, the subpoena recipient must notify any person to whom disclosure of the subpoena is made of the existence of, and length of time associated with, the nondisclosure requirement. Any person to whom disclosure of the subpoena is subject to the same nondisclosure requirements as the subpoena recipient.

At the request of the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification, the subpoena recipient must identify, before or at the time of compliance with the subpoena, the name of any person to whom disclosure was allowably made; and the subpoena recipient has an ongoing duty to disclose the identity of any individuals notified of the subpoena's existence throughout the nondisclosure period.

The investigative or law enforcement officer must maintain a true copy of any written certification obtained from his or her supervisory official.

Delayed Notification

An investigative or law enforcement officer who obtains a subpoena may delay the notification requirement for up to 180 days after the execution of a written certification of a supervisory official. However, if there is reason to believe that notification of the existence of the subpoena may have an adverse result, the bill indicates that an exception applies but does not specify how or to what extent.

Court-Ordered Extension of the Nondisclosure Period or Delay of Notification

The court may extend the nondisclosure period or the delay of notification for a period of up to 90 days upon application. Alternatively, if an investigative or law enforcement officer provides certification, the court may extent the period "for such period as the court deems appropriate," if the court determines that there is reason to believe that notification of the existence of the subpoena will result in an adverse result.

Expiration of Nondisclosure Period or Delay of Notification

Upon expiration of the nondisclosure period or delay in notification period, an investigative or law enforcement officer who receives records or information pursuant to the subpoena must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request, along with notice that states with reasonable specificity the nature of the law enforcement inquiry and informs the subscriber or customer of all of the following:

- That information maintained for such subscriber or customer was supplied to or requested by the investigative or law enforcement officer;
- The date on which the information was supplied or requested;
- That notification was delayed;
- The investigative or law enforcement officer or court that made the written certification or determination for the delay.
- Which legal provision under ss. 934.21 - 934.28 allowed for the delay.

Court Order Prohibiting Notification

An investigative or law enforcement officer may request the court to issue an order prohibiting a provider of ECS or RCS to whom the subpoena is directed, and for a time period deemed by the court as appropriate, from notifying any other person of the existence of the subpoena except as otherwise authorized by the bill. The court must enter the order if it determines there is reason to believe notification of the existence of the warrant, subpoena, or court order will result in an adverse result.

Compliance with Chapter 48, F.S.

The bill requires subpoenas issued in accordance with the bill's language to be served in accordance with Chapter 48, F.S. (dealing with process and service of process), except that service may be made on a corporation or partnership or other certain associations by delivering the subpoena to an officer or other specified person.

Compelling Compliance with a Subpoena

The bill allows the investigative or law enforcement officer who sought the subpoena to petition the court to compel compliance if necessary. The court may address the matter as indirect criminal contempt pursuant to Rule 3.840 of the Florida Rules of Criminal Procedure.

Any prohibited disclosure of a subpoena for which a period of prohibition of disclosure, a delay of notification, or an extension thereof is in effect is punishable as provided in 932.43, F.S., which provides that it is a third-degree felony for a person having knowledge of a subpoena issued or obtained by an investigative or law enforcement officer to give notice or attempt to give notice of the subpoena with the intent to obstruct, impede, or prevent:

- A criminal investigation or prosecution; or
- The obtaining by the officer of the information or materials sought pursuant to a subpoena.

The bill provides an effective date of October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Creates s. 934.255, F.S., relating to subpoenas in investigations of sexual offenses.

Section 2: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be indeterminate litigation costs to a subpoena recipient that chooses to challenge provisions of the bill in court.

D. FISCAL COMMENTS:

There may be insignificant indeterminate costs associated with workload impact for certifications relevant to nondisclosure or delay of notification. There may also be some indeterminate litigation costs associated with defending provisions of the bill if challenged in court.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

The bill may implicate the Fourth Amendment to the United States Constitution (relating to searches and seizures).

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 181 through 187 state that an investigative or law enforcement officer may delay notification of the subpoena for up to 180 days after the execution of a written certification of a supervisory official "unless there is reason to believe that notification of the existence of the subpoena may have an adverse result . . ." It is unclear what sort of exception is meant to apply in the event there is reason to believe notification of the existence of the subpoena may have an adverse result.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled

2 An act relating to subpoenas in investigations of
3 sexual offenses; creating s. 934.255, F.S.; defining
4 terms; authorizing an investigative or law enforcement
5 officer conducting an investigation into specified
6 matters to subpoena certain persons or entities for
7 the production of records, documents, or other
8 tangible things and testimony; specifying requirements
9 for the issuance of a subpoena; requiring that a
10 subpoenaed witness be paid certain fees and mileage;
11 prohibiting the use of a subpoena to compel records,
12 documents, or other tangible objects protected under
13 certain circumstances; authorizing a subpoenaed person
14 to petition a court for an order modifying or setting
15 aside the subpoena or a prohibition on disclosure;
16 authorizing an investigative or law enforcement
17 officer to retain subpoenaed records, documents, or
18 other tangible objects under certain circumstances;
19 prohibiting the disclosure of a subpoena for a
20 specified period if the disclosure might result in an
21 adverse result; providing exceptions; specifying the
22 acts that constitute an adverse result; requiring the
23 investigative or law enforcement officer to maintain a
24 true copy of a written certification; authorizing a
25 court to grant extension of certain periods under

26 certain circumstances; requiring an investigative or
 27 law enforcement officer to serve or deliver a copy of
 28 the process along with specified information upon the
 29 expiration of a nondisclosure period or delay of
 30 notification; authorizing an investigative or law
 31 enforcement officer to apply to a court for an order
 32 prohibiting certain entities from notifying the
 33 existence of a subpoena under certain circumstances;
 34 requiring that a subpoena be served in a specified
 35 manner; authorizing an investigative or law
 36 enforcement officer to petition a court to compel
 37 compliance; authorizing a court to punish a person who
 38 does not comply with a subpoena as indirect criminal
 39 contempt; providing criminal penalties; providing an
 40 effective date.

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

43
 44 Section 1. Section 934.255, Florida Statutes, is created
 45 to read:

- 46 934.255 Subpoenas in investigations of sexual offenses.—
 47 (1) As used in this section, the term:
 48 (a) "Child" means a person under 18 years of age.
 49 (b) "Child sexual offender" means a person required to
 50 register as a sexual offender under s. 943.0435 or as a sexual

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51 predator under s. 775.21, and the registration was for a
52 conviction of an offense in which a child was the victim.

53 (c) "Deliver" is construed in accordance with completed
54 delivery, as provided for in Rule 1.080(b) of the Florida Rules
55 of Civil Procedure.

56 (d) "Sexual abuse of a child" means a criminal offense
57 based on any conduct described in s. 39.01(71).

58 (e) "Supervisory official" means the person in charge of
59 an investigating or law enforcement agency's or entity's
60 headquarters or regional office; the state attorney of the
61 circuit from which the subpoena has been issued; the statewide
62 prosecutor; or an assistant state attorney or assistant
63 statewide prosecutor specifically designated by the state
64 attorney or statewide prosecutor to make such written
65 certification.

66 (2) An investigative or law enforcement officer who is
67 conducting an investigation into:

68 (a) Allegations of the sexual abuse of a child, a child
69 sexual offender's failure to register as required by chapter 943
70 or chapter 775, or an individual's suspected commission of a
71 crime listed in s. 775.21(4)(a) may use a subpoena to compel the
72 production of records, documents, or other tangible objects and
73 the testimony of the subpoena recipient concerning the
74 production and authenticity of such records, documents, or
75 objects, except as provided in paragraphs (b) and (c).

76 (b) Allegations of the sexual abuse of a child may require
77 a provider of electronic communication services or remote
78 computing services to disclose a record or other information
79 pertaining to a subscriber or customer of such service, not
80 including the contents of a communication, when the
81 investigative or law enforcement officer obtains such
82 information in the manner prescribed in s. 934.23(4)(a), or
83 through the use of a subpoena that is served upon a provider of
84 electronic communication services or remote computer services,
85 compelling the provider to produce records, documents, or other
86 tangible objects and testimony concerning their production and
87 authenticity. An investigative or law enforcement officer who
88 receives records or information from a provider of electronic
89 communication services or remote computing services under this
90 paragraph is not required to provide notice to a subscriber or
91 customer of that provider.

92 (c) Allegations of the sexual abuse of a child may
93 require, through the use of a subpoena, a provider of electronic
94 communication services or remote computing services to disclose
95 a record or other information, including the contents of any
96 wire or electronic communication that has been in electronic
97 storage in an electronic communications system for more than 180
98 days and to which this subsection is made applicable by
99 paragraph (d), with prior notice, or with delayed notice
100 pursuant to subsection (8), from the investigative or law

101 enforcement officer to the subscriber or customer.

102 (d) Paragraph (c) applies to any electronic communication
103 that is held or maintained on a remote computing service:

104 1. On behalf of a subscriber or customer of such service
105 and received by means of electronic transmission from, or
106 created by means of, computer processing of communications
107 received by means of electronic transmission from, a subscriber
108 or customer of such service.

109 2. Solely for the purposes of providing storage or
110 computer processing services to a subscriber or customer, if the
111 provider is not authorized to access the contents of any such
112 communication for purposes of providing any service other than
113 storage or computer processing.

114
115 A subpoena issued under this subsection must describe the
116 records, documents, or other tangible objects required to be
117 produced, and must prescribe a date by which such records,
118 documents, or other tangible objects must be produced. A
119 subpoena issued under this subsection and in the course of an
120 investigation into a child sexual offender's alleged failure to
121 register, as required by chapter 943 or chapter 775, may require
122 production as soon as possible, but must allow the subpoena
123 recipient a minimum of 24 hours after service of the subpoena to
124 produce the records, documents, or other tangible objects.

125 (3) A witness who is subpoenaed to appear to testify under

126 subsection (2) and who complies with the subpoena must be paid
127 the same fees and mileage rate paid to a witness appearing
128 before a court of competent jurisdiction in this state.

129 (4) A subpoena issued pursuant to subsection (2) may not
130 compel the production of any record, document, or other tangible
131 object which would otherwise be protected from production under
132 the standards applicable to a subpoena duces tecum if issued by
133 a court of competent jurisdiction.

134 (5) At any time before the date prescribed in the subpoena
135 by which records, documents, or other tangible objects must be
136 produced, a person or entity receiving a subpoena issued
137 pursuant to subsection (2) may, before a judge of competent
138 jurisdiction, petition for an order modifying or setting aside
139 the subpoena or a prohibition of disclosure issued under
140 subsections (7) or (12).

141 (6) An investigative or law enforcement officer who uses a
142 subpoena issued under subsection (2) to obtain any record,
143 document, or other tangible object may retain such items for use
144 in any ongoing criminal investigation or a closed investigation
145 with the intent that the investigation may later be reopened.

146 (7) If a subpoena issued under subsection (2) is served
147 upon a recipient and accompanied by a written certification of a
148 supervisory official that there is reason to believe that
149 notification of the existence of the subpoena may have an
150 adverse result, as described in subsection (9), the subpoena

151 recipient is prohibited from disclosing to any person for a
152 period of 180 days the existence of the subpoena.

153 (a) A recipient of a subpoena issued under subsection (2)
154 that is accompanied by a written certification issued pursuant
155 to this subsection is authorized to disclose information
156 otherwise subject to any applicable nondisclosure requirement to
157 persons as is necessary to comply with the subpoena, to an
158 attorney in order to obtain legal advice or assistance regarding
159 compliance with the subpoena, or to any other person as allowed
160 and specifically authorized by the investigative or law
161 enforcement officer who obtained the subpoena or the supervisory
162 official who issued the written certification. The subpoena
163 recipient shall notify any person to whom disclosure of the
164 subpoena is made pursuant to this paragraph of the existence of,
165 and length of time associated with, the nondisclosure
166 requirement.

167 (b) A person to whom disclosure of the subpoena is made
168 under paragraph (a) is subject to the nondisclosure requirements
169 of this subsection in the same manner as the subpoena recipient.

170 (c) At the request of the investigative or law enforcement
171 officer who obtained the subpoena or the supervisory official
172 who issued the written certification, the subpoena recipient
173 shall identify to the investigative or law enforcement officer
174 or supervisory official, before or at the time of compliance
175 with the subpoena, the name of any person to whom disclosure was

176 made under paragraph (a). If the investigative or law
177 enforcement officer or supervisory official makes such a
178 request, the subpoena recipient has an ongoing duty to disclose
179 the identity of any individuals notified of the subpoena's
180 existence throughout the nondisclosure period.

181 (8) An investigative or law enforcement officer who
182 obtains a subpoena under subsection (2) may delay the
183 notification required under paragraph (2)(c) for a period not to
184 exceed 180 days after the execution of a written certification
185 of a supervisory official unless there is reason to believe that
186 notification of the existence of the subpoena may have an
187 adverse result described in subsection (9).

188 (9) Any of the following acts by a subpoena recipient
189 constitute an adverse result:

190 (a) Endangering the life or physical safety of an
191 individual.

192 (b) Fleeing from prosecution.

193 (c) Destroying or tampering with evidence.

194 (d) Intimidating potential witnesses.

195 (e) Seriously jeopardizing an investigation or unduly
196 delaying a trial.

197 (10) The investigative or law enforcement officer shall
198 maintain a true copy of a written certification obtained under
199 subsection (7) or subsection (8).

200 (11) The court may grant an extension of the nondisclosure

201 period provided in subsection (7) or the delay of notification
202 provided in subsection (8) of up to 90 days upon application, or
203 by certification by an investigative or law enforcement officer,
204 but only in accordance with subsection (13).

205 (12) Upon the expiration of the nondisclosure period
206 provided in subsection (7) or delay of notification in
207 subsection (8), an investigative or law enforcement officer who
208 receives records or information pursuant to a subpoena issued
209 under paragraph (2)(c) must serve upon or deliver by registered
210 or first-class mail to the subscriber or customer a copy of the
211 process or request, together with notice that:

212 (a) States with reasonable specificity the nature of the
213 law enforcement inquiry; and

214 (b) Informs the subscriber or customer of all of the
215 following:

216 1. That information maintained for such subscriber or
217 customer by the service provider named in the process or request
218 was supplied to or requested by the investigative or law
219 enforcement officer and the date on which such information was
220 so supplied or requested.

221 2. That notification of such subscriber or customer was
222 delayed.

223 3. What investigative or law enforcement officer or what
224 court made the written certification or determination pursuant
225 to which that delay was made.

226 4. Which provision of ss. 934.21-934.28 allowed such a
227 delay.

228 (13) An investigative or law enforcement officer acting
229 under paragraph (2)(b), when not required to notify the
230 subscriber or customer, or to the extent that such notice may be
231 delayed pursuant to subsection (8), may apply to a court for an
232 order prohibiting a provider of electronic communication
233 services or remote computing services to whom the subpoena is
234 directed, for such period as the court deems appropriate, from
235 notifying any other person of the existence of such subpoena
236 except as specifically authorized in subsection (7). The court
237 shall enter such order if it determines that there is reason to
238 believe that notification of the existence of the warrant,
239 subpoena, or court order will result in an adverse result, as
240 specified under subsection (9).

241 (14) A subpoena issued under subsection (2) shall be
242 served in accordance with chapter 48, except that service may be
243 made on a domestic or foreign corporation or on a partnership or
244 other unincorporated association that is subject to suit under a
245 common name by delivering the subpoena to an officer, a managing
246 or general agent, or any other agent authorized by appointment
247 or by law to receive service of process. The affidavit of the
248 individual serving the subpoena entered on a true copy of the
249 subpoena is proof of service.

250 (15) In the case of contumacy by a person served a

251 subpoena issued under subsection (2), or his or her refusal to
252 comply with such a subpoena, the investigative or law
253 enforcement officer who sought the subpoena may petition a court
254 of competent jurisdiction to compel compliance. The court may
255 address the matter as indirect criminal contempt pursuant to
256 Rule 3.840 of the Florida Rules of Criminal Procedure. Any
257 prohibited disclosure of a subpoena issued under subsection (2)
258 for which a period of prohibition of disclosure provided in
259 subsection (7), a delay of notification in subsection (8), or an
260 extension thereof under subsection (11) is in effect is
261 punishable as provided in s. 934.43.

262 Section 2. This act shall take effect October 1, 2018.



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Latvala offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
7 Section 1. Section 934.255, Florida Statutes, is created
8 to read:

9 934.255 Subpoenas in investigations of sexual offenses.-

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

11 (a) "Child" means a person under 18 years of age.

12 (b) "Deliver" is construed in accordance with completed
13 delivery, as provided for in Rule 1.080(b) of the Florida Rules
14 of Civil Procedure.

15 (c) "Sexual abuse of a child" means a criminal offense
16 based on any conduct described in s. 39.01(71).



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17 (d) "Supervisory official" means the person in charge of
18 an investigating or law enforcement agency's or entity's
19 headquarters or regional office; the state attorney of the
20 circuit from which the subpoena has been issued; the statewide
21 prosecutor; or an assistant state attorney or assistant
22 statewide prosecutor specifically designated by the state
23 attorney or statewide prosecutor to make such written
24 certification.

25 (2) An investigative or law enforcement officer who is
26 conducting an investigation into:

27 (a) Allegations of the sexual abuse of a child or an
28 individual's suspected commission of a crime listed in s.
29 943.0435(1)(h)1.a.(I) may use a subpoena to compel the
30 production of records, documents, or other tangible objects and
31 the testimony of the subpoena recipient concerning the
32 production and authenticity of such records, documents, or
33 objects, except as provided in paragraphs (b) and (c).

34 (b) Allegations of the sexual abuse of a child may use a
35 subpoena to require a provider of electronic communication
36 services or remote computing services to disclose a record or
37 other information pertaining to a subscriber or customer of such
38 service as described in 934.23(4)(b), not including the contents
39 of a communication. An investigative or law enforcement officer
40 who receives records or information from a provider of
41 electronic communication services or remote computing services



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42 under this paragraph is not required to provide notice to a
43 subscriber or customer of that provider.

44 (c) Allegations of the sexual abuse of a child may use a
45 subpoena to require a provider of remote computing services to
46 disclose the contents of any wire or electronic communication
47 that has been in electronic storage in an electronic
48 communications system for more than 180 days and to which this
49 paragraph is made applicable by paragraph (d), with prior
50 notice, or with delayed notice pursuant to subsection (6), from
51 the investigative or law enforcement officer to the subscriber
52 or customer.

53 (d) Paragraph (c) applies to any electronic communication
54 that is held or maintained on a remote computing service:

55 1. On behalf of a subscriber or customer of such service
56 and received by means of electronic transmission from, or
57 created by means of computer processing of communications
58 received by means of electronic transmission from, a subscriber
59 or customer of such service.

60 2. Solely for the purposes of providing storage or
61 computer processing services to a subscriber or customer, if the
62 provider is not authorized to access the contents of any such
63 communication for purposes of providing any service other than
64 storage or computer processing.



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66 A subpoena issued under this subsection must describe the
67 records, documents, or other tangible objects required to be
68 produced, and must prescribe a date by which such records,
69 documents, or other tangible objects must be produced.

70 (3) At any time before the date prescribed in the subpoena
71 by which records, documents, or other tangible objects must be
72 produced, a person or entity receiving a subpoena issued
73 pursuant to subsection (2) may, before a judge of competent
74 jurisdiction, petition for an order modifying or setting aside
75 the subpoena or a prohibition of disclosure issued under
76 subsection (5) or subsection (9).

77 (4) An investigative or law enforcement officer who uses a
78 subpoena issued under subsection (2) to obtain any record,
79 document, or other tangible object may retain such items for use
80 in any ongoing criminal investigation or a closed investigation
81 with the intent that the investigation may later be reopened.

82 (5) If a subpoena issued under subsection (2) is served
83 upon a recipient and accompanied by a written certification of a
84 supervisory official that there is reason to believe that
85 notification of the existence of the subpoena may have an
86 adverse result, as described in subsection (7), the subpoena
87 recipient is prohibited from disclosing to any person for a
88 period of 180 days the existence of the subpoena.

89 (a) A recipient of a subpoena issued under subsection (2)
90 that is accompanied by a written certification issued pursuant



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91 to this subsection is authorized to disclose information
92 otherwise subject to any applicable nondisclosure requirement to
93 persons as is necessary to comply with the subpoena, to an
94 attorney in order to obtain legal advice or assistance regarding
95 compliance with the subpoena, or to any other person as allowed
96 and specifically authorized by the investigative or law
97 enforcement officer who obtained the subpoena or the supervisory
98 official who issued the written certification. The subpoena
99 recipient shall notify any person to whom disclosure of the
100 subpoena is made pursuant to this paragraph of the existence of,
101 and length of time associated with, the nondisclosure
102 requirement.

103 (b) A person to whom disclosure of the subpoena is made
104 under paragraph (a) is subject to the nondisclosure requirements
105 of this subsection in the same manner as the subpoena recipient.

106 (c) At the request of the investigative or law enforcement
107 officer who obtained the subpoena or the supervisory official
108 who issued the written certification, the subpoena recipient
109 shall identify to the investigative or law enforcement officer
110 or supervisory official, before or at the time of compliance
111 with the subpoena, the name of any person to whom disclosure was
112 made under paragraph (a). If the investigative or law
113 enforcement officer or supervisory official makes such a
114 request, the subpoena recipient has an ongoing duty to disclose



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115 the identity of any individuals notified of the subpoena's
116 existence throughout the nondisclosure period.

117 (6) An investigative or law enforcement officer who
118 obtains a subpoena pursuant to paragraph (2)(c) may delay the
119 notification required under that paragraph for a period not to
120 exceed 180 days upon the execution of a written certification of
121 a supervisory official that there is reason to believe that that
122 notification of the existence of the subpoena may have an
123 adverse result described in subsection (7).

124 (7) Any of the following acts constitute an adverse
125 result:

126 (a) Endangering the life or physical safety of an
127 individual.

128 (b) Fleeing from prosecution.

129 (c) Destroying or tampering with evidence.

130 (d) Intimidating potential witnesses.

131 (e) Seriously jeopardizing an investigation or unduly
132 delaying a trial.

133 (8) The investigative or law enforcement officer shall
134 maintain a true copy of a written certification obtained under
135 subsection (5) or subsection (6).

136 (9) The court may grant extensions of the nondisclosure
137 period provided in subsection (5) or the delay of notification
138 provided in subsection (6) of up to 90 days each upon



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139 application by an investigative or law enforcement officer, but
140 only in accordance with subsection (11).

141 (10) Upon the expiration of the period of delay of
142 notification in subsection (6) or subsection (9), an
143 investigative or law enforcement officer who receives records or
144 information pursuant to a subpoena issued under paragraph (2)(c)
145 must serve upon or deliver by registered or first-class mail to
146 the subscriber or customer a copy of the process or request,
147 together with notice that:

148 (a) States with reasonable specificity the nature of the
149 law enforcement inquiry; and

150 (b) Informs the subscriber or customer of all of the
151 following:

152 1. That information maintained for such subscriber or
153 customer by the service provider named in the process or request
154 was supplied to or requested by the investigative or law
155 enforcement officer and the date on which such information was
156 so supplied or requested.

157 2. That notification of such subscriber or customer was
158 delayed.

159 3. What investigative or law enforcement officer or what
160 court made the written certification or determination pursuant
161 to which that delay was made.

162 4. Which provision of ss. 934.21-934.28 allowed such a
163 delay.

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Amendment No.

164 (11) An investigative or law enforcement officer acting
165 under paragraph (2)(b), when not required to notify the
166 subscriber or customer, or to the extent that such notice may be
167 delayed pursuant to subsection (6), may apply to a court for an
168 order prohibiting a provider of electronic communication
169 services or remote computing services to whom the subpoena is
170 directed, for such period as the court deems appropriate, from
171 notifying any other person of the existence of such subpoena
172 except as specifically authorized in subsection (5). The court
173 shall enter such order if it determines that there is reason to
174 believe that notification of the existence of the subpoena will
175 result in an adverse result, as specified under subsection (7).

176 (12) In the case of contumacy by a person served a
177 subpoena issued under subsection (2), or his or her refusal to
178 comply with such a subpoena, the investigative or law
179 enforcement officer who sought the subpoena may petition a court
180 of competent jurisdiction to compel compliance. The court may
181 address the matter as indirect criminal contempt pursuant to
182 Rule 3.840 of the Florida Rules of Criminal Procedure. Any
183 prohibited disclosure of a subpoena issued under subsection (2)
184 for which a period of prohibition of disclosure provided in
185 subsection (5), a delay of notification in subsection (6), or an
186 extension thereof under subsection (9) is in effect is
187 punishable as provided in s. 934.43.



Amendment No.

188 (13) No cause of action shall lie in any court against any
189 provider of wire or electronic communication service, its
190 officers, employees, agents, or other specified persons for
191 providing information, facilities, or assistance in accordance
192 with the terms of a subpoena under this section.

193 (14) (a) A provider of wire or electronic communication
194 services or a remote computing service, upon the request of an
195 investigative or law enforcement officer, shall take all
196 necessary steps to preserve records and other evidence in its
197 possession pending the issuance of a court order or other
198 process.

199 (b) Records referred to in paragraph (a) shall be retained
200 for a period of 90 days, which shall be extended for an
201 additional 90 days upon a renewed request by an investigative or
202 law enforcement officer.

203 (15) A provider of electronic communication service, a
204 remote computing service, or any other person who furnished
205 assistance pursuant to this section shall be held harmless from
206 any claim and civil liability resulting from the disclosure of
207 information pursuant to this section and shall be reasonably
208 compensated for reasonable expenses incurred in providing such
209 assistance. A witness who is subpoenaed to appear to testify
210 under subsection (2) and who complies with the subpoena must be
211 paid the same fees and mileage rate paid to a witness appearing
212 before a court of competent jurisdiction in this state.



Amendment No.

213 Section 2. This act shall take effect October 1, 2018.

214

215 -----

216

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

217

Remove everything before the enacting clause and insert:

218

219

A bill to be entitled

220

An act relating to subpoenas in investigations of

221

sexual offenses; creating s. 934.255, F.S.; defining

222

terms; authorizing an investigative or law enforcement

223

officer conducting an investigation into specified

224

matters to subpoena certain persons or entities for

225

the production of records, documents, or other

226

tangible things and testimony; specifying requirements

227

for the issuance of a subpoena; authorizing a

228

subpoenaed person to petition a court for an order

229

modifying or setting aside the subpoena or a

230

prohibition on disclosure; authorizing an

231

investigative or law enforcement officer to retain

232

subpoenaed records, documents, or other tangible

233

objects under certain circumstances; prohibiting the

234

disclosure of a subpoena for a specified period if the

235

disclosure might result in an adverse result;

236

providing exceptions; specifying the acts that

237

constitute an adverse result; requiring the



Amendment No.

238 | investigative or law enforcement officer to maintain a
239 | true copy of a written certification; authorizing a
240 | court to grant extension of certain periods under
241 | certain circumstances; requiring an investigative or
242 | law enforcement officer to serve or deliver a copy of
243 | the process along with specified information upon the
244 | expiration of a nondisclosure period or delay of
245 | notification; authorizing an investigative or law
246 | enforcement officer to apply to a court for an order
247 | prohibiting certain entities from notifying any person
248 | of the existence of a subpoena under certain
249 | circumstances; authorizing an investigative or law
250 | enforcement officer to petition a court to compel
251 | compliance; authorizing a court to punish a person who
252 | does not comply with a subpoena as indirect criminal
253 | contempt; providing criminal penalties; precluding a
254 | cause of action against certain entities or persons
255 | for providing information, facilities, or assistance
256 | in accordance with terms of a subpoena; providing for
257 | preservation of evidence pending issuance of process;
258 | providing that certain entities or persons shall be
259 | held harmless from any claim and civil liability
260 | resulting from disclosure of specified information;
261 | providing for reasonable compensation for reasonable
262 | expenses incurred in providing assistance; requiring

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Amendment No.

263 | that a subpoenaed witness be paid certain fees and
264 | mileage; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 621 School Safety
SPONSOR(S): Rommel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Bruno <i>RB</i>	Sumner <i>RB</i>
2) PreK-12 Quality Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Unless exempted, a person may not carry a concealed firearm or weapon in public without a license issued by the Department of Agriculture and Consumer Services. However, a licensee may not carry a concealed firearm in certain locations, including schools and colleges. Both federal and state law generally prohibit possession of a firearm in a school zone. Florida law criminalizes possession of a firearm on school property as a third degree felony, punishable by up to 5 years of incarceration and a \$5,000 fine.

HB 621 provides an exception to this prohibition by authorizing school principals and district school superintendents to designate certain persons to carry a concealed weapon or firearm on school property. A designee must submit proof that he or she has completed a minimum of 40 hours of a school safety program and annually complete 8 hours of active shooter training and 4 hours of firearm proficiency training. Persons eligible to be a designee are defined as:

- Current and veteran members of the United States Armed Forces who have not been found to have committed a firearms-related disciplinary infraction during his or her military service;
- A current or former law enforcement officer who has not been found to have committed a firearms-related disciplinary infraction during his or her law enforcement service; or
- Persons in possession of a valid license to carry a concealed weapon or firearm.

The bill allows a school to create a school safety program for employees and volunteers. Volunteers will be required to provide proof of certain training and undergo a level 2 background screening before becoming a designee to carry a concealed weapon or firearm on school property. To maintain designee status, volunteers will need to be re-screened every 5 years and complete any additional screening deemed appropriate by the school principal or district school superintendent.

The bill requires each school to establish model emergency management and preparedness procedures for active shooter situations and participate in active shooter training conducted by the law enforcement agency or agencies designated as first responders for the school. The bill requires schools to allow the law enforcement agency or agencies designated as first responders to tour the campus every 3 years and document recommended changes related to school safety and emergency issues.

The bill provides intent language and makes conforming cross-reference changes and non-substantive changes to style and grammar throughout the bill.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Unless exempt, a person may not carry a concealed firearm or weapon at a school or college.¹ Both Florida and federal laws criminalize possession of a firearm on school property.²

Firearms on School Property - Federal Law

Federal law prohibits possession of a firearm in a school zone.³ A person who unlawfully possesses a firearm in a school zone faces up to 5 years in federal prison.⁴ The federal prohibition does not apply to possession of a firearm:

- On private property not part of school grounds;
- By a person licensed to possess a firearm by the state in which the school zone is located;
- That is:
 - Not loaded; and
 - Locked in a container, or a locked firearms rack that is on a motor vehicle.
- By an individual for use in a program approved by a school in the school zone;
- By an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- By a law enforcement officer acting in his or her official capacity; or
- That is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if entry on school premises is authorized by school authorities.⁵

Firearms on School Property - Florida Law

Under Florida law, possessing a firearm or weapon at a school-sponsored event or on the property of any school, school bus, or school bus stop is a third degree felony,⁶ punishable by up to 5 years of incarceration and a \$5,000 fine.⁷ Under this law, a school is any public or private preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school.⁸ Exceptions to the prohibition on possessing a firearm on school property include when a person carries a firearm:

- In a case to a firearms program, class, or function approved by the principal or chief administrative officer of the school;
- In a case to a firearms training range at a career center; or
- In a vehicle under certain circumstances, except that school districts may adopt written and published policies that waive the exception for purposes of student and campus parking privileges.⁹

¹ S. 790.06(12)(1), F.S.

² S. 790.115(2)(a); 18 USC s. 922(q)(2)

³ 18 USC § 922(q)(2)(A).

⁴ 18 USC §§ 924(1)(1)(B) & 924(4).

⁵ 18 USC § 922(q)(2)(B).

⁶ S. 790.115(2)(c), F.S.

⁷ SS. 775.082 & 775.083, F.S.

⁸ S. 790.115(2)(a), F.S.

⁹ *Id.*

District School Board Duties Relating to School Safety

Current law requires school boards to establish model emergency management and emergency preparedness procedures for the following life-threatening emergencies:

- Weapon use and hostage situations;
- Hazardous materials and toxic chemical spills;
- Weather emergencies; and
- Exposure as a result of a manmade emergency.¹⁰

Current law does not specifically require any procedures for or training in active shooter situations.

School districts are required to conduct self-assessments on how they perform against the Security Best Practices developed by the Office of Program Policy Analysis and Government Accountability. Based on this assessment, the district school superintendent must provide recommendations to the district school board that identify strategies and activities the school board should implement to improve school safety. Current law does not require the superintendent to make recommendations to law enforcement agencies designated as first responders to improve school safety.

Effect of Proposed Changes

HB 621 amends s. 790.115, F.S., to allow, but not mandate, public and nonpublic k-12 schools, career centers, or postsecondary schools to designate one or more individuals as authorized to carry a concealed weapon or firearm on school property. A designee is defined as an individual who is:

- A veteran of the United States Armed Forces who was honorably discharged and who has not been found to have committed a firearms-related disciplinary infraction during his or her military service;
- An active duty member of the United States Armed Forces, the Florida National Guard, or the United States Reserve Forces who has not been found to have committed a firearms-related disciplinary infraction during his or her military service;
- A current or former law enforcement officer who has not been found to have committed a firearms-related disciplinary infraction during his or her law enforcement service; or
- In possession of a valid license to carry a concealed weapon or firearm, pursuant to s. 79.06, F.S.

The bill authorizes a designee to only carry a weapon or firearm in a concealed manner and keep the concealed weapon or firearm on the designee's person at all times while performing his or her official duties. A designee must submit proof that he or she has completed a minimum of 40 hours of a school safety program and annually complete 8 hours of active shooter training and 4 hours of firearm proficiency training.¹¹

The bill allows schools to create a school safety program for employees and volunteers. The bill allows each school principal or district school superintendent to designate one or more designees who have provided proof of completion of training as created by the Criminal Justice Standards and Training Commission and administered and certified by the Criminal Justice Training Center. Volunteers will be required to undergo a level 2 background screening¹² before becoming a designee, and again every 5 years thereafter as well as any additional screening deemed appropriate by the school principal or district school superintendent.

¹⁰ S. 1006.07(4), F.S.; Exposure as a result of a manmade emergency would include exposure to radioactive materials from a nuclear source such as a nuclear reactor or bomb.

¹¹ The training is defined and administered by the Florida Department of Law Enforcement.

¹² A level 2 background check requires that a person undergo security background investigations as a condition of employment and continued employment which includes but may not be limited to, fingerprinting, for statewide criminal history records checks through FDLE, and national criminal history records checks through local law enforcement agencies. See S. 435.02, F.S.

The bill requires each school to establish model emergency management and preparedness procedures for active shooter situations and participate in training conducted by the law enforcement agency or agencies designated as first responders¹³ to the school's campus. The bill requires a district school board or private school principal or governing board to allow the law enforcement agency or agencies designated as first responders to tour the campus every 3 years. The district school board or the principal or governing board of a private school must document changes related to school safety and emergency issues recommended by law enforcement.

The bill also provides intent language, makes conforming cross-reference changes, and makes non-substantive changes to style and grammar throughout the bill.

The bill is effective July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Provides legislative intent.

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

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

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

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

Section 6: Amends s. 790.251, F.S., relating to protection of the right to keep and bear arms in motor vehicles for self-defense and other lawful purposes; prohibited acts; duty of public and private employers; immunity from liability; enforcement.

Section 7: Amends s. 921.0022, F.S., relating to criminal punishment code, offense severity ranking chart.

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

Section 9: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to school safety; providing
3 legislative intent; amending s. 790.115, F.S.;
4 providing an exception to a prohibition on possessing
5 firearms or other specified devices on school property
6 or other specified areas for authorized concealed
7 weapon or firearm licensees who are designated by
8 school principals or district school superintendents;
9 providing requirements for designees; amending s.
10 1006.07, F.S.; requiring district school boards to
11 formulate and prescribe policies and procedures for
12 active shooter and hostage situations; requiring that
13 active shooter situation training for each school be
14 conducted by the law enforcement agency or agencies
15 that are designated as first responders to the
16 school's campus; requiring that district school boards
17 and private school principals or governing boards
18 allow campus tours by such law enforcement agency or
19 agencies for specified purposes; requiring that
20 certain recommendations be documented by such board or
21 principal; amending s. 1006.12, F.S.; permitting
22 district school boards to commission one or more
23 school safety officers on each school campus;
24 requiring district school superintendents to provide
25 recommendations concerning school safety and security

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26 to certain law enforcement agencies; amending ss.
27 435.04, 790.251, 921.0022, and 1012.315, F.S.;
28 conforming cross-references; providing an effective
29 date.

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

32
33 Section 1. It is the intent of the Legislature to prevent
34 violent crimes from occurring on school grounds. The Legislature
35 acknowledges that the safekeeping of our students, teachers, and
36 campuses is imperative. In addition, the Legislature's intent is
37 not to mandate that a school or administration building have one
38 or more designees as described in the amendments made by this
39 act to s. 790.115, Florida Statutes, but to allow the school
40 principal or district school superintendent the opportunity to
41 designate one or more such designees.

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

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

47 (1) As used in this section, the term "school" means any
48 preschool, elementary school, middle school, junior high school,
49 secondary school, career center, or postsecondary school,
50 whether public or nonpublic.

51 ~~(2)(1)~~ A person who exhibits any sword, sword cane,
52 firearm, electric weapon or device, destructive device, or other
53 weapon as defined in s. 790.001(13), including a razor blade,
54 box cutter, or common pocketknife, except as authorized in
55 support of school-sanctioned activities, in the presence of one
56 or more persons in a rude, careless, angry, or threatening
57 manner and not in lawful self-defense, at a school-sponsored
58 event or on the grounds or facilities of any school, school bus,
59 or school bus stop, or within 1,000 feet of the real property
60 that comprises a ~~public or private elementary school, middle~~
61 ~~school, or secondary~~ school, during school hours or during the
62 time of a sanctioned school activity, commits a felony of the
63 third degree, punishable as provided in s. 775.082, s. 775.083,
64 or s. 775.084. This subsection does not apply to the exhibition
65 of a firearm or weapon on private real property within 1,000
66 feet of a school by the owner of such property or by a person
67 whose presence on such property has been authorized, licensed,
68 or invited by the owner.

69 (3) Subsection (4) does not apply to a school employee or
70 volunteer who has been designated by his or her school
71 principal, or, for an administration building, a district
72 employee or volunteer who has been designated by his or her
73 district school superintendent, as authorized to carry a
74 concealed weapon or firearm on school property.

75 (a)1. A designee authorized to carry a concealed weapon or

76 firearm on such school property under this subsection may only
77 carry such weapon or firearm in a concealed manner. The weapon
78 or firearm must be carried on the designee's person at all times
79 while the designee is performing his or her official school
80 duties.

81 2. The designee must submit to the authorizing school
82 principal or district school superintendent proof of completion
83 of a minimum of 40 hours of a school safety program and annually
84 complete 8 hours of active shooter training and 4 hours of
85 firearm proficiency training as the program and these trainings
86 are defined and administered by the Department of Law
87 Enforcement. For purposes of this subsection, a designee is an
88 individual who is:

89 a. A veteran of the United States Armed Forces who was
90 honorably discharged and who has not been found to have
91 committed a firearms-related disciplinary infraction during his
92 or her military service;

93 b. An active duty member of the United States Armed
94 Forces, the Florida National Guard, or the United States Reserve
95 Forces who has not been found to have committed a firearms-
96 related disciplinary infraction during his or her military
97 service;

98 c. A current or former law enforcement officer who has not
99 been found to have committed a firearms-related disciplinary
100 infraction during his or her law enforcement service; or

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101 d. In possession of a valid permit under s. 790.06.
102 (b) School principals and district school superintendents
103 may create a school safety program for school employees or
104 volunteers. Each school principal, or, for an administration
105 building, the district school superintendent, may designate one
106 or more designees who have provided proof of completion of
107 training as created by the Criminal Justice Standards and
108 Training Commission and administered and certified by the
109 Criminal Justice Training Center. The school principal or
110 district school superintendent must require volunteers to
111 undergo level 2 background screening pursuant to s. 435.04
112 before being designated and every 5 years thereafter and may
113 require additional screening for all designees.

114 ~~(4) (a) (2) (a)~~ A person shall not possess any firearm,
115 electric weapon or device, destructive device, or other weapon
116 as defined in s. 790.001(13), including a razor blade or box
117 cutter, except as authorized in support of school-sanctioned
118 activities, at a school-sponsored event or on the property of
119 any school, school bus, or school bus stop; however, a person
120 may carry a firearm:

121 1. In a case to a firearms program, class, or function
122 which has been approved in advance by the principal or chief
123 administrative officer of the school as a program or class to
124 which firearms could be carried;

125 2. In a case to a career center having a firearms training

126 range; or

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

131

132 ~~For the purposes of this section, "school" means any preschool,~~
133 ~~elementary school, middle school, junior high school, secondary~~
134 ~~school, career center, or postsecondary school, whether public~~
135 ~~or nonpublic.~~

136 (b) A person who willfully and knowingly possesses any
137 electric weapon or device, destructive device, or other weapon
138 as defined in s. 790.001(13), including a razor blade or box
139 cutter, except as authorized in support of school-sanctioned
140 activities, in violation of this subsection commits a felony of
141 the third degree, punishable as provided in s. 775.082, s.
142 775.083, or s. 775.084.

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

147 2. A person who stores or leaves a loaded firearm within
148 the reach or easy access of a minor who obtains the firearm and
149 commits a violation of subparagraph 1. commits a misdemeanor of
150 the second degree, punishable as provided in s. 775.082 or s.

151 775.083; except that this subparagraph does not apply if the
152 firearm was stored or left in a securely locked box or container
153 or in a location which a reasonable person would have believed
154 to be secure, or was securely locked with a firearm-mounted
155 push-button combination lock or a trigger lock; if the minor
156 obtains the firearm as a result of an unlawful entry by any
157 person; or to members of the United States Armed Forces, the
158 Florida National Guard, ~~or~~ state militia, or the United States
159 Reserve Forces, or to police or other law enforcement officers,
160 with respect to firearm possession by a minor which occurs
161 during or incidental to the performance of their official
162 duties.

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

168 (e) The penalties of this subsection shall not apply to
169 persons licensed under s. 790.06. Persons licensed under s.
170 790.06 shall be punished as provided in s. 790.06(12), except
171 that a licenseholder who unlawfully discharges a weapon or
172 firearm on school property as prohibited by this subsection
173 commits a felony of the second degree, punishable as provided in
174 s. 775.082, s. 775.083, or s. 775.084.

175 (5)~~(3)~~ This section does not apply to any law enforcement

176 officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),
177 (8), (9), or (14).

178 ~~(6)(4)~~ Notwithstanding s. 985.24, s. 985.245, or s.
179 985.25(1), any minor under 18 years of age who is charged under
180 this section with possessing or discharging a firearm on school
181 property shall be detained in secure detention, unless the state
182 attorney authorizes the release of the minor, and shall be given
183 a probable cause hearing within 24 hours after being taken into
184 custody. At the hearing, the court may order that the minor
185 continue to be held in secure detention for a period of 21 days,
186 during which time the minor shall receive medical, psychiatric,
187 psychological, or substance abuse examinations pursuant to s.
188 985.18, and a written report shall be completed.

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

192 1006.07 District school board duties relating to student
193 discipline and school safety.—The district school board shall
194 provide for the proper accounting for all students, for the
195 attendance and control of students at school, and for proper
196 attention to health, safety, and other matters relating to the
197 welfare of students, including:

198 (4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

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

201 limited to, fires, natural disasters, active shooter and hostage
 202 situations, and bomb threats, for all the public schools of the
 203 district which comprise grades K-12. District school board
 204 policies shall include commonly used alarm system responses for
 205 specific types of emergencies and verification by each school
 206 that drills have been provided as required by law and fire
 207 protection codes. The emergency response agency that is
 208 responsible for notifying the school district for each type of
 209 emergency must be listed in the district's emergency response
 210 policy.

211 (b) Establish model emergency management and emergency
 212 preparedness procedures, including emergency notification
 213 procedures pursuant to paragraph (a), for the following life-
 214 threatening emergencies:

215 1. Weapon-use, and hostage, and active shooter situations.
 216 The active shooter situation training for each school must be
 217 conducted by the law enforcement agency or agencies that are
 218 designated as first responders to the school's campus.

219 2. Hazardous materials or toxic chemical spills.

220 3. Weather emergencies, including hurricanes, tornadoes,
 221 and severe storms.

222 4. Exposure as a result of a manmade emergency.

223 (6) SAFETY AND SECURITY BEST PRACTICES.—Use the Safety and
 224 Security Best Practices developed by the Office of Program
 225 Policy Analysis and Government Accountability to conduct a self-

226 assessment of the school districts' current safety and security
 227 practices. Based on these self-assessment findings, the district
 228 school superintendent shall provide recommendations to the
 229 district school board and the law enforcement agency or agencies
 230 that are designated as first responders to the district's campus
 231 which identify strategies and activities that the district
 232 school board should implement in order to improve school safety
 233 and security. Annually each district school board must receive
 234 the self-assessment results at a publicly noticed district
 235 school board meeting to provide the public an opportunity to
 236 hear the district school board members discuss and take action
 237 on the report findings. Each district school superintendent
 238 shall report the self-assessment results and school board action
 239 to the commissioner within 30 days after the district school
 240 board meeting.

241 (7) SAFETY IN CONSTRUCTION AND PLANNING.-A district school
 242 board or private school principal or governing board must allow
 243 the law enforcement agency or agencies that are designated as
 244 first responders to the school's or district's campus to tour
 245 such campus once every 3 years. Any changes related to school
 246 safety and emergency issues recommended by a law enforcement
 247 agency based on a campus tour must be documented by the district
 248 school board or private school principal or governing board.

249 Section 4. Paragraph (b) of subsection (2) of section
 250 1006.12, Florida Statutes, is amended to read:

251 1006.12 School resource officers and school safety
252 officers.-

253 (2)

254 (b) A district school board may commission one or more
255 school safety officers for the protection and safety of school
256 personnel, property, and students on each school campus within
257 the school district. The district school superintendent may
258 recommend and the district school board may appoint the ~~one or~~
259 ~~more~~ school safety officers.

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

262 435.04 Level 2 screening standards.-

263 (2) The security background investigations under this
264 section must ensure that no persons subject to the provisions of
265 this section have been arrested for and are awaiting final
266 disposition of, have been found guilty of, regardless of
267 adjudication, or entered a plea of nolo contendere or guilty to,
268 or have been adjudicated delinquent and the record has not been
269 sealed or expunged for, any offense prohibited under any of the
270 following provisions of state law or similar law of another
271 jurisdiction:

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

274 (r) Section 790.115(4)(b) ~~790.115(2)(b)~~, relating to
275 possessing an electric weapon or device, destructive device, or

276 other weapon on school property.

277 Section 6. Paragraph (a) of subsection (7) of section
 278 790.251, Florida Statutes, is amended to read:

279 790.251 Protection of the right to keep and bear arms in
 280 motor vehicles for self-defense and other lawful purposes;
 281 prohibited acts; duty of public and private employers; immunity
 282 from liability; enforcement.-

283 (7) EXCEPTIONS.-The prohibitions in subsection (4) do not
 284 apply to:

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

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

289 921.0022 Criminal Punishment Code; offense severity
 290 ranking chart.-

291 (3) OFFENSE SEVERITY RANKING CHART

292 (d) LEVEL 4

293

Florida	Felony	Description
Statute	Degree	
316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer

294

			who is in a patrol vehicle with siren and lights activated.
295	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
296	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
297	517.07(1)	3rd	Failure to register securities.
298	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
299	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
300	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
301	784.075	3rd	Battery on detention or

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			commitment facility staff.
302	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
303	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
304	784.081(3)	3rd	Battery on specified official or employee.
305	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
306	784.083(3)	3rd	Battery on code inspector.
307	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
308	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.

309

787.04(2) 3rd Take, entice, or remove child
beyond state limits with
criminal intent pending custody
proceedings.

310

787.04(3) 3rd Carrying child beyond state
lines with criminal intent to
avoid producing child at
custody hearing or delivering
to designated person.

311

787.07 3rd Human smuggling.

312

790.115(2) 3rd Exhibiting firearm or weapon
~~790.115(1)~~ within 1,000 feet of a school.

313

790.115(4)(b) 3rd Possessing electric weapon or
~~790.115(2)(b)~~ device, destructive device, or
other weapon on school
property.

314

790.115(4)(c) 3rd Possessing firearm on school
~~790.115(2)(c)~~ property.

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316	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
317	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
318	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
319	810.06	3rd	Burglary; possession of tools.
320	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
321	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.

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322	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
323	817.505(4)(a)	3rd	Patient brokering.
324	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
325	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
326	817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
327	817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
328	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any

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			registered horse or cattle.
329	837.02 (1)	3rd	Perjury in official proceedings.
330	837.021 (1)	3rd	Make contradictory statements in official proceedings.
331	838.022	3rd	Official misconduct.
332	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
333	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Families.
334	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
335	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of

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			protection or communication.
336	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
337	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
338	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
339	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
340	914.14(2)	3rd	Witnesses accepting bribes.
341	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
342	914.23(2)	3rd	Retaliation against a witness,

343			victim, or informant, no bodily injury.
344	918.12	3rd	Tampering with jurors.
345	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
346	(f)	LEVEL 6	
347	Florida Statute	Felony Degree	Description
348	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
349	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
350	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
351			

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352	499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
353	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
354	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
355	775.0875(1)	3rd	Taking firearm from law enforcement officer.
356	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
357	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
358	784.041	3rd	Felony battery; domestic battery by strangulation.

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359	784.048 (3)	3rd	Aggravated stalking; credible threat.
360	784.048 (5)	3rd	Aggravated stalking of person under 16.
361	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
362	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
363	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
364	784.081 (2)	2nd	Aggravated assault on specified official or employee.
365	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
	784.083 (2)	2nd	Aggravated assault on code inspector.

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366

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

367

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

368

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

369

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.

370

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

371

794.011(8)(a) 3rd Solicitation of minor to

			participate in sexual activity by custodial adult.
372	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
373	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.
374	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
375	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
376	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
377	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.

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378

812.014(2)(b)1. 2nd Property stolen \$20,000 or
more, but less than \$100,000,
grand theft in 2nd degree.

379

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

380

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

381

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

382

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

383

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

384

817.505(4)(b) 2nd Patient brokering; 10 or more

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			patients.
385	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
386	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
387	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
388	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
389	827.03(2)(c)	3rd	Abuse of a child.
390	827.03(2)(d)	3rd	Neglect of a child.
391	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
392	836.05	2nd	Threats; extortion.

393	836.10	2nd	Written threats to kill or do bodily injury.
394	843.12	3rd	Aids or assists person to escape.
395	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
396	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
397	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
398	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
399	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.

400

944.40 2nd Escapes.

401

944.46 3rd Harboring, concealing, aiding
escaped prisoners.

402

944.47(1)(a)5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

403

951.22(1) 3rd Intoxicating drug, firearm, or
weapon introduced into county
facility.

404

405 Section 8. Paragraphs (n) and (o) of subsection (1) of
406 section 1012.315, Florida Statutes, are amended to read:

407 1012.315 Disqualification from employment.—A person is
408 ineligible for educator certification, and instructional
409 personnel and school administrators, as defined in s. 1012.01,
410 are ineligible for employment in any position that requires

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411 direct contact with students in a district school system,
412 charter school, or private school that accepts scholarship
413 students under s. 1002.39 or s. 1002.395, if the person,
414 instructional personnel, or school administrator has been
415 convicted of:

416 (1) Any felony offense prohibited under any of the
417 following statutes:

418 (n) Section 790.115(2) ~~790.115(1)~~, relating to exhibiting
419 firearms or weapons at a school-sponsored event, on school
420 property, or within 1,000 feet of a school.

421 (o) Section 790.115(4)(b) ~~790.115(2)(b)~~, relating to
422 possessing an electric weapon or device, destructive device, or
423 other weapon at a school-sponsored event or on school property.

424 Section 9. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1201 Education for Prisoners
SPONSOR(S): Ahern
TIED BILLS: IDEN./SIM. BILLS: SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>WSS</i>	Sumner <i>TS</i>
2) Education Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law provides for the funding of postsecondary workforce education programs, which are programs that provide the competencies beyond a high school diploma that are needed for specific occupations. The programs are administered by school districts and Florida College System institutions. They include adult general education programs designed to improve the employability skills of the state's workforce, career certificate programs, applied technology diploma programs, continuing workforce education courses, degree career education programs, and apprenticeship and preapprenticeship programs. State funds allocated for postsecondary workforce programs are explicitly prohibited from being used to educate state or federal inmates.

HB 1201 allows postsecondary workforce program funds to be used for the education of state inmates who have two years or less remaining on their sentences. It also authorizes the Department of Corrections (DOC) to contract with a district school board, the Florida Virtual School, or a charter school to provide educational, career, or vocational training to inmates through DOC's Correctional Education Program.

The bill further provides that each county may contract with a district school board, the Florida Virtual School, or a charter school to provide certain education services for inmates in county detention facilities.

The bill may have an indeterminate positive fiscal impact on counties.

The effective date of the bill is July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Postsecondary Workforce Education Programs

Postsecondary workforce education programs are courses and programs administered by school districts and Florida College System institutions which are designed to provide education for occupations that require skills beyond a high school diploma but do not require a four-year degree.¹ They include adult general education programs designed to improve the employability skills of the state's workforce, career certificate programs, applied technology diploma programs, continuing workforce education courses, degree career education programs, and apprenticeship and preapprenticeship programs.² Any school district or Florida College System institution may conduct a workforce education program, in which case it may receive funds through the General Appropriations Act.³ If a school district or college receives workforce education funds, it must use those funds to benefit the workforce education programs it provides.⁴

Education for Inmates

The Correctional Education Program is a statutorily created program for educating prisoners and is administered by the Department of Corrections (DOC).⁵ The program is charged with developing guidelines for collecting education-related information on each inmate, monitoring and assessing all inmate education program services, approving educational programs, contracting with school districts and colleges, and developing goals for the program, among other responsibilities.⁶ DOC is vested with the authority and responsibility to manage and operate the Correctional Education Program as provided by law.⁷

Since 2011, state funds allocated for postsecondary workforce programs are explicitly prohibited from being used to educate state or federal inmates.⁸

Effect of Proposed Changes

HB 1201 removes the outright prohibition on using postsecondary workforce program funds to educate prisoners. The bill permits postsecondary workforce program funds to be used for the education of state inmates who have two years or less remaining on their sentences. The prohibition against using postsecondary workforce program funds to educate state inmates with more than two years remaining on their sentences and federal inmates remains in law.

The bill authorizes DOC to contract with a district school board, the Florida Virtual School, or a charter school authorized under s. 1002.33, F.S., to provide education services in the Correctional Education Program. Such services may include educational, career, or vocational training authorized by DOC.

Lastly, the bill also authorizes a county to contract with a district school board, the Florida Virtual School, or a charter school authorized under s. 1002.33, F.S., to provide education services for inmates

¹ S. 1003.01(4)(c), F.S.; OPPAGA Report No. 01-56 (Nov. 2001) at ii.

² S. 1011.80(1), F.S.

³ S. 1011.80(2), (6)(a), F.S.

⁴ S. 1011.80(7)(a), F.S.

⁵ S. 944.801(1), F.S.

⁶ S. 944.801, F.S.

⁷ S. 944.801(2), F.S.

⁸ S. 1011.80(7)(b), F.S.; Ch. 2011-63, s. 35, Laws of Fla.; see also 2011 SB 2150 Final Bill Analysis at 12-13.

at county detention facilities. Such services may include educational, career, or vocational training authorized by the county sheriff or chief correctional officer.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 944.801, F.S., relating to education for state prisoners.

Section 2: Amends s. 951.176, F.S., relating to provision of education programs for youth.

Section 3: Amends s. 1011.80, F.S., relating to funds for operation of workforce education programs.

Section 4: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in greater numbers of state prisoners being better educated upon release, which could have an indeterminate positive impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to education for prisoners; amending
 s. 944.801, F.S.; authorizing the Department of
 Corrections to contract with certain entities to
 provide education services for the Correctional
 Education Program; amending s. 951.176, F.S.;
 authorizing each county to contract with certain
 entities to provide education services for county
 inmates; amending s. 1011.80, F.S.; authorizing the
 use of state funds for the operation of postsecondary
 workforce programs for the education of certain state
 inmates; providing an effective date.

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

Section 1. Subsections (4) and (5) of section 944.801,
 Florida Statutes, are renumbered as subsections (5) and (6),
 respectively, and a new subsection (4) is added to that section,
 to read:

944.801 Education for state prisoners.—

(4) The department may contract with a district school
 board, the Florida Virtual School, or a charter school
 authorized to operate under s. 1002.33 to provide education
 services in the Correctional Education Program. The education
 services may include any educational, career, or vocational

26 training that is authorized by the department.

27 Section 2. Section 951.176, Florida Statutes, is amended
28 to read:

29 951.176 Provision of education ~~programs for youth.~~

30 (1) Each county may contract with a district school board,
31 the Florida Virtual School, or a charter school authorized to
32 operate under s. 1002.33 to provide education services for
33 inmates at county detention facilities. The education services
34 may include any educational, career, or vocational training that
35 is authorized by the sheriff or chief correctional officer, or
36 his or her designee.

37 (2) Minors who have not graduated from high school and
38 eligible students with disabilities under the age of 22 who have
39 not graduated with a standard diploma or its equivalent who are
40 detained in a county or municipal detention facility as defined
41 in s. 951.23 shall be offered educational services by the local
42 school district in which the facility is located. These
43 educational services shall be based upon the estimated length of
44 time the youth will be in the facility and the youth's current
45 level of functioning. School district superintendents or their
46 designees shall be notified by the county sheriff or chief
47 correctional officer, or his or her designee, upon the
48 assignment of a youth under the age of 21 to the facility. A
49 cooperative agreement with the local school district and
50 applicable law enforcement units shall be developed to address

51 | the notification requirement and the provision of educational
 52 | services to these youth.

53 | Section 3. Paragraph (b) of subsection (7) of section
 54 | 1011.80, Florida Statutes, is amended to read:

55 | 1011.80 Funds for operation of workforce education
 56 | programs.-

57 | (7)

58 | (b) State funds provided for the operation of
 59 | postsecondary workforce programs may not be expended for the
 60 | education of state inmates with more than 24 months of time
 61 | remaining to serve on their sentence or federal inmates.

62 | Section 4. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1249 Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-Enabled Household Devices

SPONSOR(S): Grant

TIED BILLS: IDEN./SIM. BILLS: SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Bruno <i>TS</i>	Sumner <i>TS</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Under current law, law enforcement may only intercept oral, wire, or electronic communications through the issuance of an interception order. This order requires more than just a showing of probable cause, as required for a standard criminal search warrant. HB 1249 amends s. 934.09, F.S., to require a warrant rather than an order to intercept wire, oral, or electronic communications. The change is only to the terminology, as the requirements for an interception warrant under the bill remain identical to the heightened requirements for an interception order under current law.

The bill significantly broadens the scope of conduct constituting the unlawful access of stored communications by including accessing a cell phone, portable electronic communication device, or microphone-enabled household device when used to obtain wire, oral, or electronic communications stored therein. Current law covers only accessing a facility where electronic communications are stored. The bill has the effect of criminalizing reading text messages, emails, or other communications on another's cell phone without authorization from that person.

The bill groups several types of location tracking methods available to law enforcement under s. 934.42, F.S., relating to mobile tracking devices. The bill expands the scope of this statute to include:

- Cell-site location data;
- Precise global positioning satellite location data; and
- Historical global positioning satellite location data.

The bill requires a court to find probable cause and issue a warrant in order to authorize the use of any mobile location tracking device. The officer must install the device within 10 days of the warrant's issuance. Additionally, the bill places time constraints on how long such a device may be used; the timeframe in which the device is used must be specified in the warrant and may not exceed 45 days from when the warrant was issued. Upon a showing of good cause the court may grant one or more extensions, each of which may not exceed 45 days.

The bill imposes notice requirements for law enforcement use of a location tracking device. Within 10 days after the surveillance timeframe specified in the warrant, the officer executing the warrant must serve a copy on the person whom, or whose property, law enforcement tracked. The court may grant an extension of the notice requirement for up to 90 days upon law enforcement request.

The bill may have an indeterminate negative fiscal impact on state and local government.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Fourth Amendment, Generally

The Fourth Amendment of the United States Constitution guarantees:

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and
- No warrants shall issue without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹

Under Fourth Amendment jurisprudence, a search occurs whenever the government intrudes upon an area in which a person has reasonable expectation of privacy.² A warrantless search is generally per se unreasonable,³ unless an exception to the warrant requirement applies.⁴

The Florida Constitution similarly protects the people against unreasonable searches and seizures, and that right is construed in conformity with the Fourth Amendment of the U.S. Constitution.⁵ Both the Florida and federal constitutions law require a warrant to be supported by probable cause, as established by oath or affirmation, and to particularly describe the place to be searched and items or people to be seized.

Advancing technology has presented law enforcement with new means of investigation and surveillance, and the courts with new questions about the Fourth Amendment implications of this technology.

Searches of Cell Phones

An exception to the warrant requirement is a search incident to arrest, which allows law enforcement to perform a warrantless search of an arrested person, and the area within the arrestee's immediate control, in the interest of officer safety, and to prevent escape and the destruction of evidence.⁶

In *Riley v. California*,⁷ the U.S. Supreme Court held that law enforcement must obtain a search warrant to search the digital contents of a cell phone seized incident to arrest. The Court considered the advanced capabilities of modern cell phones, which it further noted "are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."⁸ It reasoned that a modern smartphone's immense storage capacity allows that phone to carry tremendous quantity and variety of records regarding a person's private life, such as photographs, prescriptions, bank records, contacts, and videos.⁹

¹ U.S. CONST. AMEND. IV.

² *Katz v. United States*, 389 U.S. 347 (1967).

³ *United States v. Harrison*, 689 F.3d 301, 306 (3d Cir.2012)

⁴ Examples of exceptions to the warrant requirement include exigent circumstances, searches of motor vehicles, and searches incident to arrest.

⁵ Fla. Const. Art. 1, s. 12.

⁶ *Chimel v. California*, 395 U.S. 752 (1969).

⁷ 134 S.Ct. 2473 (2014).

⁸ *Id.* at 2484.

⁹ *Id.* at 2489.

Wiretapping and Stored Communications

By Law Enforcement

Wiretapping generally refers to electronic or mechanical eavesdropping on communications.¹⁰ Law enforcement use of a wiretap is subject to Fourth Amendment protections under the United States Constitution.¹¹

In Florida, law enforcement officers may apply for an order authorizing the interception of wire, oral or electronic communication.¹² The requirements to obtain an interception order include the standard requirements of probable cause, oath or affirmation, and particularity as required with a search warrant, but the statute imposes a number of heightened requirements in order for law enforcement to intercept private wire, oral, or electronic communications. The application for an interception order must include:

- The identity of the investigative or law enforcement officer making the application and the officer authorizing the application.
- A full and complete statement of the facts and circumstances relied upon by the applicant to justify his or her belief that an order should be issued, including:
 - Details as to the particular offense that has been, is being, or is about to be committed.
 - A particular description of the nature and location of the facilities from which, or the place where, the communications are to be intercepted, with exceptions.
- A particular description of the type of communications sought to be intercepted.
- The identity of the person, if known, committing the offense and whose communications are to be intercepted.
- A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.
- A statement of the period of time for which the interception is required to be maintained and, if the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter.
- A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application.
- When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception or a reasonable explanation of the failure to obtain such results.¹³

Additionally, the court may require an applicant to furnish additional testimony or documentary evidence in support of the application for an interception order. Only the Governor, the Attorney General, the statewide prosecutor, or any state attorney may authorize the application for an interception order, and the order must pertain to certain enumerated crimes.¹⁴ Upon receiving such an order, a provider of wire, oral, or electronic communication service, or a landlord, custodian, or other person may not disclose the existence of any interception or the device used to accomplish the interception.¹⁵

¹⁰ BLACK'S LAW DICTIONARY (10th ed. 2014), wiretapping.

¹¹ *Katz v. United States*, 389 U.S. 347 (1967).

¹² S. 934.09, F.S.

¹³ *Id.*

¹⁴ S. 934.07, F.S.

¹⁵ S. 934.03(2)(a)3., F.S.

By the General Public

Wiretapping by the general public is prohibited under Florida law.¹⁶ Subject to exceptions, it is a third degree felony¹⁷ for a person to:

- Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;
- Intentionally use, endeavor to use, or procure any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:
 - Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or
 - Such device transmits communications by radio or interferes with the transmission of such communication;
- Intentionally disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the illegal interception of a wire, oral, or electronic communication;
- Intentionally use, or endeavor to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the illegal interception of a wire, oral, or electronic communication; or
- Intentionally disclose, or endeavor to disclose, to any other person the contents of any wire, oral, or electronic communication intercepted by authorized means when that person:
 - Knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation;
 - Has obtained or received the information in connection with a criminal investigation; and
 - Intends to improperly obstruct, impede, or interfere with a duly authorized criminal investigation.¹⁸

The penalty for wiretapping may be decreased to a misdemeanor¹⁹ under the following circumstances:

- The person has no prior wiretapping offenses;
- The conduct was not done for tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; and
- The intercepted communication was a radio communication that was not scrambled, encrypted, or transmitted using modulation techniques intended to preserve the privacy of such communication.²⁰

Stored Communications

Separate from wiretapping, Florida law also criminally penalizes unlawful accessing stored communications by:

- Intentionally accessing without authorization a facility through which an electronic communication service is provided, or
- Intentionally exceeding an authorization to access such facility.²¹

The penalties for unlawfully accessing stored communications varies based on specific intent and number of offenses. If the offense is committed for the purpose of commercial advantage, malicious destruction or damage, or private commercial gain, it is a first degree misdemeanor for a first offense and a third degree felony for second and subsequent offenses.²² If the offense was not committed for

¹⁶ S. 934.03, F.S.

¹⁷ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. SS. 775.082 & 775.083, F.S.

¹⁸ S. 934.03(1), F.S.

¹⁹ Misdemeanors are classified as either first- or second-degree. A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. A second degree misdemeanor is punishable by up to 60 days in the county jail and a \$500 fine. SS. 775.082 & 775.083, F.S. Under s. 934.03(4), F.S., wiretapping may be either a first- or second-degree misdemeanor, depending on the specific type of communication intercepted.

²⁰ S. 934.03(4), F.S.

²¹ S. 934.21(1), F.S.

²² S. 934.21(2)(a), F.S.

commercial advantage, malicious destruction or damage, or private commercial gain, it is a second degree misdemeanor.²³

New Technologies

Several technologies now use microphone-enabled features. These devices may be activated in different ways. Some, such as many Smart TVs, require the user to manually activate the microphone by pressing a button.²⁴ Some respond to a trigger phrase that activates the device to begin transmitting information. These devices, which include many home assistant devices such as the Google Home and Amazon Echo, constantly "listen" for the trigger phrase in order to activate.²⁵ The devices record commands in order to fulfill the requests, and the recordings are stored remotely.²⁶ Other devices, such as baby-monitors and home security systems, are always recording.²⁷

As these microphone-enabled devices grow in popularity, concerns mount about privacy. A security expert recently demonstrated how an Amazon Echo might be hacked.²⁸ Additionally, prosecutors in Arkansas requested to obtain recordings possibly made by an Amazon Echo in a murder case.²⁹

Pen Registers and Trap and Trace Devices

Pen registers and trap and trace devices can track incoming and outgoing phone calls in real time. Historically, a pen register was understood to record the telephone numbers dialed from the target telephone, and a trap and trace device to record the telephone numbers from incoming calls to the target telephone.³⁰

Florida law defines a pen register as a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, but such information does not include the contents of any communication.³¹ A trap and trace device under the statute means a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, but such information does not include the contents of any communication.³² Florida's definition of these terms are substantially similar to the definitions in the federal Pen Register Act.³³ The broader statutory definitions draw more types of non-content information under the purview of a pen register or trap and trace device orders.³⁴

Law enforcement may only install a pen register or trap and trace device pursuant to an order under s. 934.33, F.S. The application for such an order must include:

- The identity of the applicant specified in the section and the identity of the law enforcement agency conducting the investigation; and

²³ S. 934.21(2)(b), F.S.

²⁴ Future of Privacy Forum, *Microphones and the Internet of Things* (August 2017), available at: <https://fpf.org/wp-content/uploads/2017/08/Microphones-Infographic-Final.pdf> (last visited January 22, 2018).

²⁵ *Id.*

²⁶ Nicole Chavez, *Arkansas judge drops murder charge in Amazon Echo case*, CNN (Dec. 2, 2017), available at: <http://www.cnn.com/2017/11/30/us/amazon-echo-arkansas-murder-case-dismissed/index.html> (last visited January 22, 2018).

²⁷ *Supra* FN 24.

²⁸ Jay McGregor, *Listening-in on a Hacked Amazon Echo is Terrifying*, Forbes (Sept. 7, 2017), available at: <https://www.forbes.com/sites/jaymcgregor/2017/09/07/listening-in-on-a-hacked-amazon-echo-is-terrifying/#32744f415c7f> (last visited January 22, 2018).

²⁹ *Supra* FN 26.

³⁰ *Tracey v. State*, 152 So.3d 504, 506 (Fla. 2014).

³¹ S. 934.02(20), F.S.

³² S. 934.02(21), F.S.

³³ 18 USC § 3127.

³⁴ For example, the U.S. Department of Justice used pen register orders to track real-time locations of a cell-phone using a cell-site simulator until September 2015. U.S. Department of Justice, *Department of Justice Policy Guidance: Use of Cell-Site Simulator Technology* (Sept. 3, 2015), available at: <https://www.justice.gov/opa/file/767321/download> (last visited January 22, 2018).

- A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.³⁵

The statutory requirement of relevancy to an ongoing criminal investigation falls short of the probable cause standard, as required for the issuance of a search warrant.

Case Law

In *Smith v. Maryland*,³⁶ the U.S. Supreme Court considered whether Fourth Amendment protections applied where the government installed and used a pen register at a telephone company's offices without a warrant to record the telephone numbers a target phone dialed. Through the pen register, law enforcement discovered that a telephone in Smith's home had been used to place a telephone call to a robbery victim who had received threatening calls. The Court held that there was no expectation of privacy in dialed telephone numbers, as they were voluntarily transmitted to the telephone company.³⁷

The Florida Supreme Court (FSC) considered a pen register and trap and trace order in *Tracey v. State*³⁸ in which law enforcement obtained not only numbers dialed but real-time location information. Officers in *Tracey* applied for the numbers associated with incoming and outgoing calls; however, the phone company also provided real-time cell-site location information, which officers used to track Tracey's location and movements.³⁹ The FSC held that the real-time location tracking of Tracey through his cell phone was a search under the Fourth Amendment and therefore required either a warrant or an exception to the warrant requirement.

Mobile Tracking Devices

A mobile tracking device is an electronic or mechanical device which permits the tracking of the movement of a person or object, such as a GPS tracker.⁴⁰ Law enforcement officers are authorized to install mobile tracking devices for the purpose of collecting tracking and location information after a court order is issued under s. 934.42(2), F.S. The statute requires law enforcement to provide a statement to the court that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.⁴¹ A certification of relevance is a lower standard than probable cause standard required for obtaining a lawful warrant.

In 2012, the United States Supreme Court addressed mobile tracking devices in *United States v. Jones*.⁴² The Court held that the installation of a GPS tracking device on a vehicle without a warrant violated the Fourth Amendment as an unlawful search.⁴³ Prior to the *Jones* decision, installation of a mobile tracking device was not considered a search when used to track a person's public movements.⁴⁴ As searches are generally per se unreasonable absent a warrant, it is likely that the *Jones* decision requires a warrant, supported by probable cause, for installation of a mobile tracking unit.

Historical Cell Site Data

Cell phones connect to cell sites or base towers in order to make calls, send text messages, use data, and perform other functions.⁴⁵ These cell sites are located at fixed geographic locations. The phone

³⁵ S. 934.32(2), F.S.

³⁶ 442 U.S. 735 (1979).

³⁷ Id. at 742-44.

³⁸ 152 So.3d 504 (Fla. 2014).

³⁹ Id. at 507-508.

⁴⁰ S. 934.42, F.S.

⁴¹ S. 934.42(2)(b), F.S.

⁴² 565 U.S. 400 (2012).

⁴³ Id.

⁴⁴ *United States v. Knotts*, 460 U.S. 276 (1983).

⁴⁵ Center for the Advancement of Public Integrity, *Does Seeking Cell Site Location Information Require a Warrant? The Current State of Law in a Rapidly Changing Field* (August 1, 2016), available at: <http://www.law.columbia.edu/sites/default/files/microsites/public->

connects to the cell site with the strongest available signal and may connect to different cell sites as it moves through a coverage area.⁴⁶ The phone company keeps a record of the cell sites that a phone connects to for certain actions.⁴⁷ This data can approximate a person's location, although it is possible for a cell site to have a coverage area of approximately 2,700 miles⁴⁸ and for a phone to connect to a tower other than the one closest to it.⁴⁹

Under current Florida law, law enforcement may obtain historical cell site data without a warrant under s. 934.23, F.S., which allows an officer to seek a court order compelling an electronic communication service provider to release records other than the content of communications.⁵⁰ To obtain such an order, the officer must offer specific and articulable facts showing that there are reasonable grounds to believe the records are relevant and material to an ongoing criminal investigation,⁵¹ which is a lower standard than probable cause.

Florida's Fourth District Court of Appeals (4th DCA) considered whether obtaining historical cell site data requires a finding of probable cause and warrant in *Johnson v. State*.⁵² The 4th DCA held that there was no expectation of privacy in the data because:

- The data is not content based; and
- The data reveals only a person's past location, rather than pinpointing a current location.⁵³

Under the *Johnson* holding, if there is no expectation of privacy in historical cell site data, then law enforcement does not conduct a search under the Fourth Amendment by obtaining it. However, more recently, the FSC noted a federal circuit split on the issue of requiring a probable cause determination to obtain historical cell site data in *Tracey v. State*.⁵⁴ Although the FSC discussed historical cell site data in its analysis, the issue in *Tracey* related to pen register and trap and trace devices; therefore the FSC did not decide whether historical cell site data requires more than the statutory criteria under s. 934.23, F.S.⁵⁵

The Sixth Circuit Court of Appeals (6th Circuit) addressed the issue of requiring probable cause to obtain historical cell site information in *U.S. v. Carpenter*.⁵⁶ The 6th Circuit held that the Government did not conduct a search, for Fourth Amendment purposes, when it obtained historical cell site data, and thus, government could obtain the records pursuant to Stored Communications Act,⁵⁷ based on reasonable grounds for believing that the records were relevant and material to an ongoing investigation.⁵⁸ *Carpenter* appealed, and the case is now pending before the U.S. Supreme Court.⁵⁹

[integrity/files/does_seeking_cell_site_location_information_require_a_search_warrant_-_wesley_cheng_-_august_2016_update_0.pdf](#) (last visiting January 22, 2018).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Aaron Blank, *The Limitations and Admissibility of Using Historical Cellular Site Data to Track the Location of a Cellular Phone*, 18 Richmond J.L. & Tech.3 (2011), available at: <http://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1354&context=jolt> (last visited Jan. 21, 2018).

⁴⁹ *Supra* FN 17.

⁵⁰ S. 934.23(4)(a)2., F.S.

⁵¹ S. 934.23(5), F.S.

⁵² 110 So.3d 954 (Fla. 4th DCA 2013).

⁵³ *Id.* at 958.

⁵⁴ 152 So.3d 504 (Fla. 2014).

⁵⁵ *Id.* at 516.

⁵⁶ 819 F.3d 880 (6th Cir. 2016).

⁵⁷ The federal Stored Communications Act, 18 USC. § 2703(d), requires the same standard as Florida's s. 934.23(5), F.S. to obtain historical cell site data through a court order.

⁵⁸ *Carpenter*, 819 F.3d at 886.

⁵⁹ *Carpenter v. U.S.*, Docket No. 16-402, available at: <https://www.supremecourt.gov/docket/docketfiles/html/public/16-402.html> (last visited January 22, 2018).

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DATE: 1/23/2018

Cell-Site Simulators

A cell-site simulator functions like a cellular tower.⁶⁰ The simulator causes each cellular device within a certain radius to connect and transmit its standard unique identifying number to the simulator.⁶¹ Law enforcement can use this capability to help locate a cell phone whose unique identifying number is known or to determine the unique identifier of a cell phone in the simulator's proximity.⁶² A cell-site simulator provides only the relative signal strength and general direction of a target phone; it does not have the same capabilities as a GPS locator.⁶³

In 2015, the U.S. Department of Justice (USDOJ) issued written guidance on the use of a cell-site simulator. In this memorandum, USDOJ began requiring federal agencies to obtain a search warrant supported by probable cause in order to use a cell-site simulator.⁶⁴ The District of Columbia Court of Appeals,⁶⁵ U.S. District Court for Northern California,⁶⁶ and U.S. District Court for Southern New York⁶⁷ have held that use of a cell-site simulator constitutes a search under the Fourth Amendment, requiring either probable cause and a warrant or that an exception to the warrant requirement.

Effect of Proposed Changes

Wiretapping and Stored Communications

HB 1249 amends s. 934.09, F.S., to require a warrant rather than an order to intercept wire, oral, or electronic communications. The change is only to the terminology, as the requirements for an interception warrant under the bill remain identical to the requirements for an interception order under current law.

The bill amends the definition of oral communication to explicitly include communication recorded by a microphone-enabled device. The bill defines microphone-enabled device as a device, sensor, or other physical object within a residence:

- Capable of connecting to the Internet, directly or indirectly, or to another connected device;
- Capable of creating, receiving, accessing, processing, or storing electronic data or communications;
- That communicates with, by any means, another entity or individual; and
- That contains a microphone designed to listen for and respond to environmental cues.

By including communication recorded by a microphone-enabled device in the definition of oral communication, the bill ensures that communication intercepted through a microphone-enabled device is subject to Florida's wiretapping protections, including criminal penalties for those who violate the wiretapping statute and stringent requirements for law enforcement interception of such communication.

The bill amends a requirement under current law that the prosecution disclose the contents of intercepted wire, oral, or electronic communication at least 10 days prior to trial. The bill retains the requirement to disclose intercepted communication but eliminates the 10 day requirement.

⁶⁰ U.S. Department of Justice, *Department of Justice Policy Guidance: Use of Cell-Site Simulator Technology*, at 1 (Sept. 3, 2015), available at: <https://www.justice.gov/opa/file/767321/download> (last visited January 22, 2018).

⁶¹ *Id.* at 2

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 3.

⁶⁵ *Jones v. U.S.*, Case No. 15-CF-322 (Sept. 21, 2017), available at: <https://www.dccourts.gov/sites/default/files/2017-09/15-CF-322.pdf> (last visited January 22, 2018).

⁶⁶ *U.S. v. Ellis*, Case No. 13-CR-00818, Pretrial Order No. 3 Denying Motions to Suppress (Aug. 24, 2017), available at: <https://www.documentcloud.org/documents/3962321-Gov-Uscourts-Cand-273044-337-0.html> (last visited January 22, 2018).

⁶⁷ *U.S. v. Lambis*, Case No. 15cr734, Opinion and Order (July 12, 2016), available at:

<https://www.documentcloud.org/documents/2992109-Pauley-Stingray-Opinion-7-12-16.html#document/p6/a307678> (last visited January 22, 2018).

The bill significantly broadens the scope of conduct constituting unlawful access of stored communications by including accessing a cell phone, portable electronic communication device, or microphone-enabled household device when used to obtain wire, oral, or electronic communications stored therein. Current law covers only accessing a facility where electronic communications are stored. The bill has the effect of criminalizing reading text messages, emails, or other communications on another's cell phone without authorization from that person. The punishment scheme remains the same as current law:

- If the offense is committed for the purpose of commercial advantage, malicious destruction or damage, or private commercial gain, it is:
 - A first degree misdemeanor, punishable by up to 1 year in the county jail and a \$1,000 fine, for a first offense; or
 - A third degree felony, punishable by up to 5 years in prison and a \$5,000 fine, for second and subsequent offenses.
- If the offense was not committed for commercial advantage, malicious destruction or damage, or private commercial gain, it is a second degree misdemeanor, punishable by up to 60 days in the county jail and a \$500 fine.

Location Tracking

The bill groups several types of location tracking methods available to law enforcement under s. 934.42, F.S., currently relating to mobile tracking devices. The bill expands the scope of this statute to also include:

- Cell-site location data;
- Precise global positioning satellite location data; or
- Historical global positioning satellite location data.

The bill requires the court to find probable cause and issue a warrant in order to authorize the use of any location tracking device. The officer must install the device within 10 days of the warrant's issuance. Additionally, the bill places time constraints on how long such a device may be used; the timeframe in which the device is used must be specified in the warrant and may not exceed 45 days from when the warrant was issued. Upon a showing of good cause the court may grant one or more extensions. The extensions must also not exceed 45 days.

The bill imposes notice requirements for law enforcement use of a location tracking device. Within 10 days after the surveillance timeframe specified in the warrant, the officer executing the warrant must serve a copy on the person whom, or whose property, law enforcement tracked. The officer may serve this notice by delivering a copy to the person or leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who lives there and by mailing a copy to the person's last known address. The court may grant an extension of the notice requirement for up to 90 days upon law enforcement request.

The bill allows for the installation of a mobile tracking device before a warrant if an emergency exists which:

- Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner; and
- Requires the installation or use of a mobile tracking device before a warrant authorizing such installation or use can, with due diligence, be obtained; and
- There are grounds upon which a warrant could be issued to authorize the installation and use,

When tracking someone without a warrant under this provision of the bill, law enforcement must terminate the surveillance when the information sought is obtained, when the application for the warrant is denied or when 48 hours have lapsed since the installation or use of the mobile tracking device began, whichever is earlier.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 92.605, F.S., relating to production of certain records by Florida businesses and out-of-state corporations.
- Section 2:** Amends s. 934.01, F.S., relating to legislative findings.
- Section 3:** Amends s. 934.02, F.S., relating to definitions.
- Section 4:** Amends s. 934.03, F.S., relating to interception and disclosure of wire, oral, or electronic communications.
- Section 5:** Amends s. 934.07, F.S., relating to authorization for interception of wire, oral, or electronic communications.
- Section 6:** Amends s. 934.08, F.S., relating to authorization for disclosure and use of intercepted wire, oral, or electronic communications.
- Section 7:** Amends s. 934.09, F.S., relating to procedure for interception of wire, oral, or electronic communications.
- Section 8:** Amends s. 934.10, F.S., relating to civil remedies.
- Section 9:** Amends s. 934.21, F.S., relating to unlawful access to stored communications; penalties.
- Section 10:** Amends s. 934.42, F.S., relating to mobile tracking device authorization.
- Section 11:** Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill expands the scope of activity for which a person may be criminally liable for unlawfully accessing stored communications. To the extent that persons are arrested for, charged with and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill expands the scope of activity for which a person may be criminally liable for unlawfully accessing stored communications. To the extent that persons are arrested for, charged with and convicted of, the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact on local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The does not appear to affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

By changing the terminology for an interception "order" to a "warrant" but not replacing the word "order" in ss. 934.03, 943.07, and 934.08, F.S., the bill creates the potential for conflict between the sections. Additionally, the bill does not specifically define "warrant" in the context of ch. 934, F.S. This may cause confusion, as the requirements for an interception warrant are significantly higher than for a standard search warrant.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the search of the content,
 3 information, and communications of cellular phones,
 4 portable electronic communication devices, and
 5 microphone-enabled household devices; amending s.
 6 92.605, F.S.; including a reference to chapter 934,
 7 F.S., in provisions concerning production of certain
 8 business records; requiring that law enforcement
 9 adhere to the requirements of chapter 934, F.S., in
 10 order to obtain content of electronic communications;
 11 amending s. 934.01, F.S.; providing legislative
 12 findings; amending s. 934.02, F.S.; providing
 13 definitions; amending ss. 934.03, 934.07, 934.08, and
 14 934.09, F.S.; conforming provisions to changes made by
 15 the act; amending s. 934.10, F.S.; conforming
 16 provisions to changes made by the act; revising
 17 provisions concerning when a judge may authorize
 18 interception; amending s. 934.21, F.S.; conforming
 19 provisions to changes made by the act; prohibiting
 20 unlawful access to communications stored in specified
 21 devices; providing penalties; amending s. 934.42,
 22 F.S.; requiring that law enforcement obtain a warrant
 23 to acquire certain location information; providing
 24 procedures for such warrants; providing limited
 25 exceptions in certain circumstances; providing an

26 | effective date.

27 |

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

29 |

30 | Section 1. Subsection (9) of section 92.605, Florida
31 | Statutes, is amended to read:

32 | 92.605 Production of certain records by Florida businesses
33 | and out-of-state corporations.—

34 | (9) In any criminal case, the content of any electronic
35 | communication may be obtained under this section only by court
36 | order or by the issuance of a search warrant, as provided in
37 | chapter 934, unless otherwise required by ~~provided under~~ the
38 | Electronic Communications Privacy Act or other provision of law.

39 | Section 2. Section 934.01, Florida Statutes, is amended to
40 | read:

41 | 934.01 Legislative findings.—On the basis of its own
42 | investigations and of published studies, the Legislature makes
43 | the following findings:

44 | (1) Wire communications are normally conducted through the
45 | use of facilities which form part of an intrastate network. The
46 | same facilities are used for interstate and intrastate
47 | communications.

48 | (2) In order to protect effectively the privacy of wire,
49 | ~~and~~ oral, and electronic communications, to protect the
50 | integrity of court and administrative proceedings, and to

51 prevent the obstruction of intrastate commerce, it is necessary
52 for the Legislature to define the circumstances and conditions
53 under which the interception of wire, ~~and~~ oral, and electronic
54 communications may be authorized and to prohibit any
55 unauthorized interception of such communications and the use of
56 the contents thereof in evidence in courts and administrative
57 proceedings.

58 (3) Organized criminals make extensive use of wire, ~~and~~
59 oral, and electronic communications in their criminal
60 activities. The interception of such communications to obtain
61 evidence of the commission of crimes or to prevent their
62 commission is an indispensable aid to law enforcement and the
63 administration of justice.

64 (4) To safeguard the privacy of innocent persons, the
65 interception of wire, ~~or~~ oral, or electronic communications when
66 none of the parties to the communication has consented to the
67 interception should be allowed only when authorized by a court
68 of competent jurisdiction and should remain under the control
69 and supervision of the authorizing court. Interception of wire,
70 ~~and~~ oral, and electronic communications should further be
71 limited to certain major types of offenses and specific
72 categories of crime with assurance that the interception is
73 justified and that the information obtained thereby will not be
74 misused.

75 (5) To safeguard the privacy of innocent persons, the

76 | Legislature recognizes that the subjective expectation of
 77 | privacy in precision location data that society is now prepared
 78 | to accept is objectively reasonable. As such, the law
 79 | enforcement collection of the precise location of a person, cell
 80 | phone, or portable electronic communication device without the
 81 | consent of the person or owner of the cell phone or portable
 82 | electronic communication device should be allowed only when
 83 | authorized by a warrant issued by a court of competent
 84 | jurisdiction and should remain under the control and supervision
 85 | of the authorizing court.

86 | (6) The Legislature recognizes that the use of portable
 87 | electronic communication devices is growing at a rapidly
 88 | increasing rate. These devices can store, and encourage the
 89 | storing of, an almost limitless amount of personal and private
 90 | information. Often linked to the Internet, these devices are
 91 | commonly used to access personal and business information and
 92 | databases in computers and servers that can be located anywhere
 93 | in the world. The user of a portable electronic communication
 94 | device has a reasonable and justifiable expectation of privacy
 95 | in the information that these devices contain.

96 | (7) The Legislature recognizes that the use of household
 97 | electronic devices, including microphone-enabled household
 98 | devices, is growing at a rapidly increasing rate. These devices
 99 | often contain microphones that listen for and respond to
 100 | environmental triggers. These household devices are generally

101 connected to and communicate through the Internet resulting in
 102 the storage of and accessibility to daily household information
 103 in a device itself or in a remote computing service. Persons
 104 should not have to choose between using household technological
 105 enhancements and conveniences or preserving the right to privacy
 106 in one's home.

107 Section 3. Subsection (2) of section 934.02, Florida
 108 Statutes, is amended, and subsections (27) and (28) are added to
 109 that section, to read:

110 934.02 Definitions.—As used in this chapter:

111 (2) "Oral communication" means any oral communication
 112 uttered by a person exhibiting an expectation that such
 113 communication is not subject to interception under circumstances
 114 justifying such expectation, including the use of a microphone-
 115 enabled household device, and does not mean any public oral
 116 communication uttered at a public meeting or any electronic
 117 communication.

118 (27) "Microphone-enabled household device" means a device,
 119 sensor, or other physical object within a residence:

120 (a) Capable of connecting to the Internet, directly or
 121 indirectly, or to another connected device;

122 (b) Capable of creating, receiving, accessing, processing,
 123 or storing electronic data or communications;

124 (c) That communicates with, by any means, another entity
 125 or individual; and

126 (d) That contains a microphone designed to listen for and
 127 respond to environmental cues.

128 (28) "Portable electronic communication device" means an
 129 object capable of being easily transported or conveyed by a
 130 person which is capable of creating, receiving, accessing, or
 131 storing electronic data or communications and that communicates
 132 with, by any means, another device, entity, or individual.

133 Section 4. Paragraph (a) of subsection (2) of section
 134 934.03, Florida Statutes, is amended to read:

135 934.03 Interception and disclosure of wire, oral, or
 136 electronic communications prohibited.—

137 (2)(a)1. It is lawful under this section and ss. 934.04-
 138 934.09 for an operator of a switchboard, or an officer,
 139 employee, or agent of a provider of wire or electronic
 140 communication service whose facilities are used in the
 141 transmission of a wire or electronic communication, to
 142 intercept, disclose, or use that communication in the normal
 143 course of his or her employment while engaged in any activity
 144 which is a necessary incident to the rendition of his or her
 145 service or to the protection of the rights or property of the
 146 provider of that service, except that a provider of wire
 147 communication service to the public shall not utilize service
 148 observing or random monitoring except for mechanical or service
 149 quality control checks.

150 2. Notwithstanding any other law, a provider of wire,

151 | oral, or electronic communication service, or an officer,
 152 | employee, or agent thereof, or landlord, custodian, or other
 153 | person, may provide information, facilities, or technical
 154 | assistance to a person authorized by law to intercept wire,
 155 | oral, or electronic communications if such provider, or an
 156 | officer, employee, or agent thereof, or landlord, custodian, or
 157 | other person, has been provided with:

158 | a. A court order directing such assistance signed by the
 159 | authorizing judge; ~~or~~

160 | b. A certification in writing by a person specified in s.
 161 | 934.09(7) that no warrant or court order is required by law,
 162 | that all statutory requirements have been met, and that the
 163 | specified assistance is required, setting forth the period of
 164 | time during which the provision of the information, facilities,
 165 | or technical assistance is authorized and specifying the
 166 | information, facilities, or technical assistance required; or

167 | c. A warrant issued by a judge of competent jurisdiction
 168 | as required by law.

169 | 3. A provider of wire, oral, or electronic communication
 170 | service, or an officer, employee, or agent thereof, or landlord,
 171 | custodian, or other person may not disclose the existence of any
 172 | interception or the device used to accomplish the interception
 173 | with respect to which the person has been served with a warrant
 174 | or furnished an order under this section and ss. 934.04-934.09,
 175 | except as may otherwise be required by legal process and then

176 only after prior notice to the Governor, the Attorney General,
 177 the statewide prosecutor, or a state attorney, as may be
 178 appropriate. Any such disclosure renders such person liable for
 179 the civil damages provided under s. 934.10, and such person may
 180 be prosecuted under s. 934.43. An action may not be brought
 181 against any provider of wire, oral, or electronic communication
 182 service, or an officer, employee, or agent thereof, or landlord,
 183 custodian, or other person for providing information,
 184 facilities, or assistance in accordance with the terms of a
 185 court order under this section and ss. 934.04-934.09.

186 Section 5. Subsection (1) and paragraph (b) of subsection
 187 (2) of section 934.07, Florida Statutes, are amended to read:

188 934.07 Authorization for interception of wire, oral, or
 189 electronic communications.—

190 (1) The Governor, the Attorney General, the statewide
 191 prosecutor, or any state attorney may authorize an application
 192 to a judge of competent jurisdiction for, and such judge may
 193 issue ~~grant~~ in conformity with ss. 934.03-934.09 a warrant as
 194 required by law or an order authorizing or approving the
 195 interception of, wire, oral, or electronic communications by:

196 (a) The Department of Law Enforcement or any law
 197 enforcement agency as defined in s. 934.02 having responsibility
 198 for the investigation of the offense as to which the application
 199 is made when such interception may provide or has provided
 200 evidence of the commission of the offense of murder, kidnapping,

201 aircraft piracy, arson, gambling, robbery, burglary, theft,
 202 dealing in stolen property, criminal usury, bribery, or
 203 extortion; any felony violation of ss. 790.161-790.166,
 204 inclusive; any violation of s. 787.06; any violation of chapter
 205 893; any violation of ~~the provisions of~~ the Florida Anti-Fencing
 206 Act; any violation of chapter 895; any violation of chapter 896;
 207 any violation of chapter 815; any violation of chapter 847; any
 208 violation of s. 827.071; any violation of s. 944.40; or any
 209 conspiracy or solicitation to commit any violation of the laws
 210 of this state relating to the crimes specifically enumerated in
 211 this paragraph.

212 (b) The Department of Law Enforcement, together with other
 213 assisting personnel as authorized and requested by the
 214 department under s. 934.09(5), for the investigation of the
 215 offense as to which the application is made when such
 216 interception may provide or has provided evidence of the
 217 commission of any offense that may be an act of terrorism or in
 218 furtherance of an act of terrorism or evidence of any conspiracy
 219 or solicitation to commit any such violation.

220 (2)

221 (b) Upon its receipt of information of the contents of an
 222 intercepted communications from a law enforcement agency, the
 223 Department of Law Enforcement shall promptly review the
 224 information to determine whether the information relates to an
 225 actual or anticipated act of terrorism as defined in this

226 section. If, after reviewing the contents of the intercepted
 227 communications, there is probable cause that the contents of the
 228 intercepted communications meet the criteria of paragraph
 229 (1)(b), the Department of Law Enforcement may make application
 230 for the interception of wire, oral, or electronic communications
 231 consistent with paragraph (1)(b). The department may make an
 232 independent new application for interception based on the
 233 contents of the intercepted communications. Alternatively, the
 234 department may request the law enforcement agency that provided
 235 the information to join with the department in seeking a new
 236 warrant as required by law or an amendment of the original
 237 interception order, or may seek additional authority to continue
 238 intercepting communications under the direction of the
 239 department. In carrying out its duties under this section, the
 240 department may use the provisions for an emergency interception
 241 provided in s. 934.09(7) if applicable under statutory criteria.

242 Section 6. Subsection (5) of section 934.08, Florida
 243 Statutes, is amended to read:

244 934.08 Authorization for disclosure and use of intercepted
 245 wire, oral, or electronic communications.—

246 (5) When an investigative or law enforcement officer,
 247 while engaged in intercepting wire, oral, or electronic
 248 communications in the manner authorized herein, intercepts wire,
 249 oral, or electronic communications relating to offenses other
 250 than those specified in the warrant or order of authorization or

251 approval, the contents thereof and evidence derived therefrom
 252 may be disclosed or used as provided in subsections (1) and (2).
 253 Such contents and any evidence derived therefrom may be used
 254 under subsection (3) when authorized or approved by a judge of
 255 competent jurisdiction when such judge finds on subsequent
 256 application that the contents were otherwise intercepted in
 257 accordance with ~~the provisions of~~ this chapter. Such application
 258 shall be made as soon as practicable.

259 Section 7. Section 934.09, Florida Statutes, is amended to
 260 read:

261 934.09 Procedure for interception of wire, oral, or
 262 electronic communications.—

263 (1) Each application for a warrant ~~an order~~ authorizing or
 264 approving the interception of a wire, oral, or electronic
 265 communication under ss. 934.03-934.09 shall be made in writing
 266 upon oath or affirmation to a judge of competent jurisdiction
 267 and shall state the applicant's authority to make such
 268 application. Each application shall include the following
 269 information:

270 (a) The identity of the investigative or law enforcement
 271 officer making the application and the officer authorizing the
 272 application.

273 (b) A full and complete statement of the facts and
 274 circumstances relied upon by the applicant to justify his or her
 275 belief that a warrant ~~an order~~ should be issued, including:

276 1. Details as to the particular offense that has been, is
 277 being, or is about to be committed.

278 2. Except as provided in subsection (11), a particular
 279 description of the nature and location of the facilities from
 280 which, or the place where, the communications are to be
 281 intercepted.

282 3. A particular description of the type of communications
 283 sought to be intercepted.

284 4. The identity of the person, if known, committing the
 285 offense and whose communications are to be intercepted.

286 (c) A full and complete statement as to whether or not
 287 other investigative procedures have been tried and failed or why
 288 they reasonably appear to be unlikely to succeed if tried or to
 289 be too dangerous.

290 (d) A statement of the period of time for which the
 291 interception is required to be maintained and, if the nature of
 292 the investigation is such that the authorization for
 293 interception should not automatically terminate when the
 294 described type of communication has been first obtained, a
 295 particular description of facts establishing probable cause to
 296 believe that additional communications of the same type will
 297 occur thereafter.

298 (e) A full and complete statement of the facts concerning
 299 all previous applications known to the individual authorizing
 300 and making the application, made to any judge for authorization

301 | to intercept, or for approval of interceptions of, wire, oral,
 302 | or electronic communications involving any of the same persons,
 303 | facilities, or places specified in the application, and the
 304 | action taken by the judge on each such application.

305 | (f) When the application is for the extension of a warrant
 306 | ~~an order~~, a statement setting forth the results thus far
 307 | obtained from the interception or a reasonable explanation of
 308 | the failure to obtain such results.

309 | (2) The judge may require the applicant to furnish
 310 | additional testimony or documentary evidence in support of the
 311 | application.

312 | (3) Upon such application, the judge may authorize a
 313 | warrant ~~enter an~~ ex parte ~~order~~, as requested or as modified,
 314 | authorizing or approving interception of wire, oral, or
 315 | electronic communications within the territorial jurisdiction of
 316 | the court in which the judge is sitting, and outside such
 317 | jurisdiction but within the State of Florida in the case of a
 318 | mobile interception device authorized by the judge within such
 319 | jurisdiction, if the judge determines on the basis of the facts
 320 | submitted by the applicant that:

321 | (a) There is probable cause for belief that an individual
 322 | is committing, has committed, or is about to commit an offense
 323 | as provided in s. 934.07.

324 | (b) There is probable cause for belief that particular
 325 | communications concerning that offense will be obtained through

326 | such interception.

327 | (c) Normal investigative procedures have been tried and
 328 | have failed or reasonably appear to be unlikely to succeed if
 329 | tried or to be too dangerous.

330 | (d) Except as provided in subsection (11), there is
 331 | probable cause for belief that the facilities from which, or the
 332 | place where, the wire, oral, or electronic communications are to
 333 | be intercepted are being used, or are about to be used, in
 334 | connection with the commission of such offense, or are leased
 335 | to, listed in the name of, or commonly used by such person.

336 | (4) Each warrant ~~order~~ authorizing or approving the
 337 | interception of any wire, oral, or electronic communication
 338 | shall specify:

339 | (a) The identity of the person, if known, whose
 340 | communications are to be intercepted.

341 | (b) The nature and location of the communications
 342 | facilities as to which, or the place where, authority to
 343 | intercept is granted.

344 | (c) A particular description of the type of communication
 345 | sought to be intercepted and a statement of the particular
 346 | offense to which it relates.

347 | (d) The identity of the agency authorized to intercept the
 348 | communications and of the person authorizing the application.

349 | (e) The period of time during which such interception is
 350 | authorized, including a statement as to whether ~~or not~~ the

351 | interception shall automatically terminate when the described
 352 | communication has been first obtained.

353 |
 354 | A warrant ~~An order~~ authorizing the interception of a wire, oral,
 355 | or electronic communication shall, upon the request of the
 356 | applicant, direct that a provider of wire or electronic
 357 | communication service, landlord, custodian, or other person
 358 | shall furnish the applicant forthwith all information,
 359 | facilities, and technical assistance necessary to accomplish the
 360 | interception unobtrusively and with a minimum of interference
 361 | with the services that such service provider, landlord,
 362 | custodian, or person is according the person whose
 363 | communications are to be intercepted. The obligation of a
 364 | provider of wire, oral, or electronic communication service
 365 | under such a warrant ~~an order~~ may include, but is not limited
 366 | to, conducting an in-progress trace during an interception, or
 367 | providing other assistance to support the investigation as may
 368 | be specified in the warrant ~~order~~. Any provider of wire or
 369 | electronic communication service, landlord, custodian, or other
 370 | person furnishing such facilities or technical assistance shall
 371 | be compensated therefor by the applicant for reasonable expenses
 372 | incurred in providing such facilities or assistance.

373 | (5) No warrant ~~order~~ entered under this section may
 374 | authorize or approve the interception of any wire, oral, or
 375 | electronic communication for any period longer than is necessary

376 | to achieve the objective of the authorization or in any event
 377 | longer than 30 days. Such 30-day period begins on the day on
 378 | which the agent or officer of the law enforcement agency first
 379 | begins to conduct an interception under the warrant ~~order~~ or 10
 380 | days after the warrant is approved ~~order is entered~~, whichever
 381 | occurs earlier. Extensions of a warrant ~~an order~~ may be granted
 382 | but only upon application for an extension made in accordance
 383 | with subsection (1) and upon the court making the findings
 384 | required by subsection (3). The period of extension shall be no
 385 | longer than the authorizing judge deems necessary to achieve the
 386 | purposes for which it was granted and in no event for longer
 387 | than 30 days. Every warrant ~~order~~ and extension thereof shall
 388 | contain a provision that the authorization to intercept shall be
 389 | executed as soon as practicable, shall be conducted in such a
 390 | way as to minimize the interception of communications not
 391 | otherwise subject to interception under ss. 934.03-934.09, and
 392 | must terminate upon attainment of the authorized objective or in
 393 | any event in 30 days. If the intercepted communication is in
 394 | code or foreign language and an expert in that foreign language
 395 | or code is not reasonably available during the interception
 396 | period, minimization may be accomplished as soon as practicable
 397 | after such interception. An interception under ss. 934.03-934.09
 398 | may be conducted in whole or in part by government personnel or
 399 | by an individual operating under a contract with the government,
 400 | acting under the supervision of an agent or officer of the law

401 enforcement agency authorized to conduct the interception.

402 (6) Whenever a warrant ~~an order~~ authorizing interception
 403 is granted ~~entered~~ pursuant to ss. 934.03-934.09, the warrant
 404 ~~order~~ may require reports to be made to the judge who issued the
 405 warrant ~~order~~ showing what progress has been made toward
 406 achievement of the authorized objective and the need for
 407 continued interception. Such reports shall be made at such
 408 intervals as the judge may require.

409 (7) Notwithstanding any other provision of this chapter,
 410 any investigative or law enforcement officer specially
 411 designated by the Governor, the Attorney General, the statewide
 412 prosecutor, or a state attorney acting under this chapter, who
 413 reasonably determines that:

414 (a) An emergency exists that:

415 1. Involves immediate danger of death or serious physical
 416 injury to any person, the danger of escape of a prisoner, or
 417 conspiratorial activities threatening the security interest of
 418 the nation or state; and

419 2. Requires that a wire, oral, or electronic communication
 420 be intercepted before a warrant ~~an order~~ authorizing such
 421 interception can, with due diligence, be obtained; and

422 (b) There are grounds upon which a warrant ~~an order~~ could
 423 be entered under this chapter to authorize such interception
 424
 425 may intercept such wire, oral, or electronic communication if an

426 application for a warrant ~~an order~~ approving the interception is
 427 made in accordance with this section within 48 hours after the
 428 interception has occurred or begins to occur. In the absence of
 429 a warrant ~~an order~~, such interception shall immediately
 430 terminate when the communication sought is obtained or when the
 431 application for the warrant ~~order~~ is denied, whichever is
 432 earlier. If such application for approval is denied, or in any
 433 other case in which the interception is terminated without a
 434 warrant ~~an order~~ having been issued, the contents of any wire,
 435 oral, or electronic communication intercepted shall be treated
 436 as having been obtained in violation of s. 934.03(4), and an
 437 inventory shall be served as provided for in paragraph (8)(e) on
 438 the person named in the application.

439 (8)(a) The contents of any wire, oral, or electronic
 440 communication intercepted by any means authorized by ss. 934.03-
 441 934.09 shall, if possible, be recorded on tape or wire or other
 442 comparable device. The recording of the contents of any wire,
 443 oral, or electronic communication under this subsection shall be
 444 kept in such a way as will protect the recording from editing or
 445 other alterations. Immediately upon the expiration of the ~~period~~
 446 ~~of~~ the warrant ~~order~~, or extensions thereof, such recordings
 447 shall be made available to the judge approving the warrant
 448 ~~issuing such order~~ and sealed under his or her directions.
 449 Custody of the recordings shall be wherever the judge orders.
 450 They shall not be destroyed except upon an order of the issuing

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451 or denying judge, or that judge's successor in office, and in
452 any event shall be kept for 10 years. Duplicate recordings may
453 be made for use or disclosure pursuant to ~~the provisions of s.~~
454 934.08(1) and (2) for investigations, or for purposes of
455 discovery as required by law.

456 (b) The presence of the seal provided for by this
457 subsection, or a satisfactory explanation for the absence
458 thereof, shall be a prerequisite for the use or disclosure of
459 the contents of any wire, oral, or electronic communication or
460 evidence derived therefrom under s. 934.08(3), as required by
461 federal law.

462 (c) Applications made and warrants ~~orders~~ granted under
463 ss. 934.03-934.09 shall be sealed by the judge. Custody of the
464 applications and warrants ~~orders~~ shall be wherever the judge
465 directs. As required by ~~federal~~ law, such applications and
466 warrants ~~orders~~ shall be disclosed for purposes of discovery or
467 ~~only~~ upon a showing of good cause before a judge of competent
468 jurisdiction and shall not be destroyed except on order of the
469 issuing or denying judge, or that judge's successor in office,
470 and in any event shall be kept for 10 years.

471 (d) Any violation of ~~the provisions of~~ this subsection may
472 be punished as contempt of the issuing or denying judge.

473 (e) Within a reasonable time but not later than 90 days
474 after the termination of the period of a warrant ~~an order~~ or
475 extensions thereof, the issuing or denying judge shall cause to

476 | be served on the persons named in the warrant ~~order~~ or the
 477 | application, and such other parties to intercepted
 478 | communications as the judge may determine in his or her
 479 | discretion to be in the interest of justice, an inventory which
 480 | shall include notice of:

481 | 1. The fact of the approval of the warrant ~~entry of the~~
 482 | ~~order~~ or the application.

483 | 2. The date of the approval of the warrant ~~entry~~ and the
 484 | period of authorized, approved, or disapproved interception, or
 485 | the denial of the application.

486 | 3. The fact that during the period wire, oral, or
 487 | electronic communications were or were not intercepted.

488 |
 489 | The judge, upon the filing of a motion, may make available to
 490 | such person or the person's counsel for inspection such portions
 491 | of the intercepted communications, applications, and warrants
 492 | ~~orders~~ as the judge determines to be in the interest of justice.
 493 | On an ex parte showing of good cause to a judge of competent
 494 | jurisdiction, the serving of the inventory required by this
 495 | paragraph may be postponed.

496 | (9) ~~As required by federal law,~~ The contents of any
 497 | intercepted wire, oral, or electronic communication or evidence
 498 | derived therefrom shall not be received in evidence or otherwise
 499 | disclosed in any trial, hearing, or other proceeding unless each
 500 | party, ~~not less than 10 days before the trial, hearing, or~~

501 | ~~proceeding,~~ has been furnished with a copy of the warrant ~~court~~
 502 | ~~order~~ and accompanying application under which the interception
 503 | was authorized or approved. ~~This 10-day period may be waived by~~
 504 | ~~the judge if he or she finds that it was not possible to furnish~~
 505 | ~~the party with the above information 10 days before the trial,~~
 506 | ~~hearing, or proceeding and that the party will not be prejudiced~~
 507 | ~~by the delay in receiving such information.~~

508 | (10)(a) Any aggrieved person prior to or in any trial,
 509 | hearing, or proceeding in or before any court, department,
 510 | officer, agency, regulatory body, or other authority may move to
 511 | suppress the contents of any intercepted wire, oral, or
 512 | electronic communication, or evidence derived therefrom, on the
 513 | grounds that:

- 514 | 1. The communication was unlawfully intercepted;
- 515 | 2. The warrant ~~order of authorization or approval~~ under
 516 | which it was intercepted is insufficient on its face; or
- 517 | 3. The interception was not made in conformity with the
 518 | warrant ~~order of authorization or approval~~.

519 | (b) Except as otherwise provided in the applicable Florida
 520 | Rules of Criminal Procedure, in a criminal matter:

521 | 1. Such motion shall be made before the trial, hearing, or
 522 | proceeding unless there was no opportunity to make such motion
 523 | or the person was not aware of the grounds of the motion.

524 | 2. If the motion is granted, the contents of the
 525 | intercepted wire or oral communication, or evidence derived

526 | therefrom, shall be treated as having been obtained in violation
 527 | of ss. 934.03-934.09 and shall not be admissible as evidence.

528 | 3. The judge, upon the filing of such motion by the
 529 | aggrieved person, may make available to the aggrieved person or
 530 | his or her counsel for inspection such portions of the
 531 | intercepted communication or evidence derived therefrom as the
 532 | judge determines to be in the interest of justice.

533 | (c)~~(b)~~ In addition to any other right to appeal, the state
 534 | shall have the right to appeal from an order granting a motion
 535 | to suppress made under paragraph (a) or the denial of an
 536 | application for a warrant ~~an order of approval~~ if the attorney
 537 | shall certify to the judge or other official granting such
 538 | motion or denying such application that the appeal is not taken
 539 | for purposes of delay. Such appeal shall be taken within 30 days
 540 | after the date the order was entered and shall be diligently
 541 | prosecuted.

542 | (d)~~(e)~~ The remedies and sanctions described in ss. 934.03-
 543 | 934.10 with respect to the interception of electronic
 544 | communications are the only judicial remedies and sanctions for
 545 | violations of those sections involving such communications.

546 | (11) The requirements of subparagraph (1)(b)2. and
 547 | paragraph (3)(d) relating to the specification of the facilities
 548 | from which, or the place where, the communication is to be
 549 | intercepted do not apply if:

550 | (a) In the case of an application with respect to the

551 interception of an oral communication:

552 1. The application is by an agent or officer of a law
 553 enforcement agency and is approved by the Governor, the Attorney
 554 General, the statewide prosecutor, or a state attorney.

555 2. The application contains a full and complete statement
 556 as to why such specification is not practical and identifies the
 557 person committing the offense and whose communications are to be
 558 intercepted.

559 3. The judge finds that such specification is not
 560 practical.

561 (b) In the case of an application with respect to a wire
 562 or electronic communication:

563 1. The application is by an agent or officer of a law
 564 enforcement agency and is approved by the Governor, the Attorney
 565 General, the statewide prosecutor, or a state attorney.

566 2. The application identifies the person believed to be
 567 committing the offense and whose communications are to be
 568 intercepted and the applicant makes a showing that there is
 569 probable cause to believe that the person's actions could have
 570 the effect of thwarting interception from a specified facility
 571 or that the person whose communications are to be intercepted
 572 has removed, or is likely to remove, himself or herself to
 573 another judicial circuit within the state.

574 3. The judge finds that such showing has been adequately
 575 made.

576 4. The warrant ~~order~~ authorizing or approving the
 577 interception is limited to interception only for such time as it
 578 is reasonable to presume that the person identified in the
 579 application is or was reasonably proximate to the instrument
 580 through which such communication will be or was transmitted.

581
 582 ~~Consistent with this paragraph, a judge of competent~~
 583 ~~jurisdiction may authorize interception within this state,~~
 584 ~~whether the interception is within or outside the court's~~
 585 ~~jurisdiction, if the application for the interception makes a~~
 586 ~~showing that some activity or conspiracy believed to be related~~
 587 ~~to, or in furtherance of, the criminal predicate for the~~
 588 ~~requested interception has occurred or will likely occur, or the~~
 589 ~~communication to be intercepted or expected to be intercepted is~~
 590 ~~occurring or will likely occur, in whole or in part, within the~~
 591 ~~jurisdiction of the court where the order is being sought.~~

592 (12) If an interception of a communication is to be
 593 carried out pursuant to subsection (11), such interception may
 594 not begin until the facilities from which, or the place where,
 595 the communication is to be intercepted is ascertained by the
 596 person implementing the interception warrant ~~order~~. A provider
 597 of wire or electronic communications service that has received a
 598 warrant ~~an order~~ as provided under paragraph (11) (b) may
 599 petition the court to modify or quash the warrant ~~order~~ on the
 600 ground that the interception cannot be performed in a timely or

601 reasonable fashion. The court, upon notice to the state, shall
 602 decide such a petition expeditiously.

603 (13) Consistent with this section, a judge of competent
 604 jurisdiction may authorize interception within this state,
 605 whether the interception is within or outside the court's
 606 jurisdiction, if the application for the interception makes a
 607 showing that some activity or conspiracy believed to be related
 608 to, or in furtherance of, the criminal predicate for the
 609 requested interception has occurred or will likely occur, or the
 610 communication to be intercepted or expected to be intercepted is
 611 occurring or will likely occur, in whole or in part, within the
 612 jurisdiction of the court where the warrant is being sought.

613 Section 8. Paragraph (a) of subsection (2) of section
 614 934.10, Florida Statutes, is amended to read:

615 934.10 Civil remedies.—

616 (2) A good faith reliance on:

617 (a) A warrant, court order, subpoena, or legislative
 618 authorization as provided in ss. 934.03-934.09,

619
 620 shall constitute a complete defense to any civil or criminal, or
 621 administrative action arising out of such conduct under the laws
 622 of this state.

623 Section 9. Section 934.21, Florida Statutes, is amended to
 624 read:

625 934.21 Unlawful access to stored communications;

626 penalties.—

627 (1) Except as provided in subsection (4)~~(3)~~, whoever:

628 (a) Intentionally accesses without authorization a
629 facility through which an electronic communication service is
630 provided, or

631 (b) Intentionally exceeds an authorization to access such
632 facility,

633

634 and thereby obtains, alters, or prevents authorized access to a
635 wire or electronic communication while it is in electronic
636 storage in such system shall be punished as provided in
637 subsection (3)~~(2)~~.

638 (2) Except as provided in subsection (4), whoever
639 intentionally and unlawfully accesses without authorization a
640 cell phone, portable electronic communication device, or
641 microphone-enabled household device and thereby obtains wire,
642 oral, or electronic communications stored within the cell phone,
643 portable electronic communication device, or microphone-enabled
644 household device shall be punished as provided in subsection
645 (3).

646 ~~(3)(2)~~ The punishment for an offense under subsection (1)
647 or subsection (2) is as follows:

648 (a) If the offense is committed for purposes of commercial
649 advantage, malicious destruction or damage, or private
650 commercial gain, the person ~~is~~:

651 1. In the case of a first offense under this subsection,
 652 commits ~~guilty of~~ a misdemeanor of the first degree, punishable
 653 as provided in s. 775.082, s. 775.083, or s. 934.41.

654 2. In the case of any subsequent offense under this
 655 subsection, commits ~~guilty of~~ a felony of the third degree,
 656 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
 657 s. 934.41.

658 (b) In any other case, the person commits ~~is guilty of~~ a
 659 misdemeanor of the second degree, punishable as provided in s.
 660 775.082 or s. 775.083.

661 ~~(4)(3)~~ Subsection (1) does not apply with respect to
 662 conduct authorized:

663 (a) By the person or entity providing a wire or electronic
 664 communications service;

665 (b) By a user of a wire or electronic communications
 666 service with respect to a communication of or intended for that
 667 user; or

668 (c) In s. 934.09, s. 934.23, or s. 934.24.

669 Section 10. Section 934.42, Florida Statutes, is amended
 670 to read:

671 934.42 Mobile tracking device and location tracking
 672 authorization.—

673 (1) An investigative or law enforcement officer may make
 674 application to a judge of competent jurisdiction for a warrant
 675 ~~an order~~ authorizing or approving the installation and use of a

676 mobile tracking device or the acquisition of cell-site location
 677 data, precise global positioning satellite location data, or
 678 historical global positioning satellite location data.

679 (2) An application under subsection (1) ~~of this section~~
 680 must include:

681 (a) A statement of the identity of the applicant and the
 682 identity of the law enforcement agency conducting the
 683 investigation.

684 (b) A statement setting forth a reasonable period of time
 685 that the device may be used or the location data may be
 686 obtained. The time must not exceed 45 days from the date the
 687 warrant was issued. The court may, for good cause, grant one or
 688 more extensions for a reasonable period of time not to exceed 45
 689 days each ~~certification by the applicant that the information~~
 690 ~~likely to be obtained is relevant to an ongoing criminal~~
 691 ~~investigation being conducted by the investigating agency.~~

692 (c) A statement of the offense to which the information
 693 likely to be obtained relates.

694 (d) A statement whether it may be necessary to use and
 695 monitor the mobile tracking device outside the jurisdiction of
 696 the court from which authorization is being sought.

697 (3) Upon application made as provided under subsection
 698 (2), the court, if it finds probable cause, ~~that the~~
 699 ~~certification~~ and the statements required by subsection (2) have
 700 been made in the application, shall grant a warrant ~~enter an ex~~

701 parte ~~order~~ authorizing the installation and use of a mobile
 702 tracking device. Such warrant ~~order~~ may authorize the use of the
 703 device within the jurisdiction of the court and outside that
 704 jurisdiction but within the State of Florida if the device is
 705 installed within the jurisdiction of the court. The warrant must
 706 command the officer to complete any installation authorized by
 707 the warrant within a specified period of time not to exceed 10
 708 calendar days.

709 (4) A court may not require greater specificity or
 710 additional information beyond that which is required by law and
 711 this section as a requisite for issuing a warrant ~~an order~~.

712 (5) Within 10 days after the time period specified in
 713 paragraph (2)(b) has ended, the officer executing a warrant must
 714 return the warrant to the issuing judge. The officer may do so
 715 by reliable electronic means.

716 (6) Within 10 days after the time period specified in
 717 paragraph (2)(b) has ended, the officer executing a warrant must
 718 serve a copy of the warrant on the person who, or whose
 719 property, was tracked. Service may be accomplished by delivering
 720 a copy to the person who, or whose property, was tracked or by
 721 leaving a copy at the person's residence or usual place of abode
 722 with an individual of suitable age and discretion who resides at
 723 that location and by mailing a copy to the person's last known
 724 address. Upon request of the law enforcement agency, the court
 725 may delay notice for a period of 90 days as provided in s.

726 934.25.

727 ~~(7)(5)~~ The standards established by Florida courts and the
 728 United States Supreme Court for the installation, use, or ~~and~~
 729 monitoring of mobile tracking devices shall apply to the
 730 installation, use, or monitoring ~~and use~~ of any device as
 731 authorized by this section.

732 ~~(8)(6)~~ As used in this section, the term "mobile tracking
 733 device" or a "tracking device" means an electronic or mechanical
 734 device, including a cell phone or a portable electronic
 735 communication device, which permits the tracking of the movement
 736 of a person or object and may be used to access cell-site
 737 location data, precise global positioning satellite location
 738 data, or historical global positioning satellite location data.

739 (9)(a) Notwithstanding any other provision of this
 740 chapter, any investigative or law enforcement officer specially
 741 designated by the Governor, the Attorney General, the statewide
 742 prosecutor, or a state attorney acting pursuant to this chapter
 743 who reasonably determines that:

- 744 1. An emergency exists which:
 - 745 a. Involves immediate danger of death or serious physical
 - 746 injury to any person or the danger of escape of a prisoner; and
 - 747 b. Requires the installation or use of a mobile tracking
 - 748 device before a warrant authorizing such installation or use
 - 749 can, with due diligence, be obtained; and

- 750 2. There are grounds upon which a warrant could be issued

751 under this chapter to authorize such installation or use,
 752
 753 may install or use a mobile tracking device if, within 48 hours
 754 after the installation or use has occurred or begins to occur, a
 755 warrant approving the installation or use is issued in
 756 accordance with this section.

757 (b) In the absence of an authorizing warrant, such
 758 installation or use shall immediately terminate when the
 759 information sought is obtained, when the application for the
 760 warrant is denied, or when 48 hours have lapsed since the
 761 installation or use of the mobile tracking device began,
 762 whichever is earlier.

763 (c) The knowing installation or use by any investigative
 764 or law enforcement officer of a mobile tracking device pursuant
 765 to paragraph (a) without application for the authorizing warrant
 766 within 48 hours after the installation or use begins constitutes
 767 a violation of this section.

768 Section 11. This act shall take effect July 1, 2018.



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee
3 Representative Grant, J. offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
7 Section 1. Section 934.01, Florida Statutes, is amended to
8 read:

9 934.01 Legislative findings.—On the basis of its own
10 investigations and of published studies, the Legislature makes
11 the following findings:

12 (1) Wire communications are normally conducted through the
13 use of facilities which form part of an intrastate network. The
14 same facilities are used for interstate and intrastate
15 communications.



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16 (2) In order to protect effectively the privacy of wire,
17 ~~and oral, and electronic~~ communications, to protect the
18 integrity of court and administrative proceedings, and to
19 prevent the obstruction of intrastate commerce, it is necessary
20 for the Legislature to define the circumstances and conditions
21 under which the interception of wire, ~~and oral, and electronic~~
22 communications may be authorized and to prohibit any
23 unauthorized interception of such communications and the use of
24 the contents thereof in evidence in courts and administrative
25 proceedings.

26 (3) Organized criminals make extensive use of wire, ~~and~~
27 oral, ~~and electronic~~ communications in their criminal
28 activities. The interception of such communications to obtain
29 evidence of the commission of crimes or to prevent their
30 commission is an indispensable aid to law enforcement and the
31 administration of justice.

32 (4) To safeguard the privacy of innocent persons, the
33 interception of wire, ~~or oral, or electronic~~ communications when
34 none of the parties to the communication has consented to the
35 interception should be allowed only when authorized by a court
36 of competent jurisdiction and should remain under the control
37 and supervision of the authorizing court. Interception of wire,
38 ~~and oral, and electronic~~ communications should further be
39 limited to certain major types of offenses and specific
40 categories of crime with assurance that the interception is



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41 justified and that the information obtained thereby will not be
42 misused.

43 (5) To safeguard the privacy of innocent persons, the
44 Legislature recognizes that the subjective expectation of
45 privacy in precision location data that society is now prepared
46 to accept is objectively reasonable. As such, the law
47 enforcement collection of the precise location of a person, cell
48 phone, or portable electronic communication device without the
49 consent of the person or owner of the cell phone or portable
50 electronic communication device should be allowed only when
51 authorized by a warrant issued by a court of competent
52 jurisdiction and should remain under the control and supervision
53 of the authorizing court.

54 (6) The Legislature recognizes that the use of portable
55 electronic communication devices is growing at a rapidly
56 increasing rate. These devices can store, and encourage the
57 storing of, an almost limitless amount of personal and private
58 information. Often linked to the Internet, these devices are
59 commonly used to access personal and business information and
60 databases in computers and servers that can be located anywhere
61 in the world. The user of a portable electronic communication
62 device has a reasonable and justifiable expectation of privacy
63 in the information that these devices contain.

64 (7) The Legislature recognizes that the use of household
65 electronic devices, including microphone-enabled household



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66 devices, is growing at a rapidly increasing rate. These devices
67 often contain microphones that listen for and respond to
68 environmental triggers. These household devices are generally
69 connected to and communicate through the Internet resulting in
70 the storage of and accessibility to daily household information
71 in a device itself or in a remote computing service. Persons
72 should not have to choose between using household technological
73 enhancements and conveniences or preserving the right to privacy
74 in one's home.

75 Section 2. Subsection (2) of section 934.02, Florida
76 Statutes, is amended, and subsections (27) and (28) are added to
77 that section, to read:

78 934.02 Definitions.—As used in this chapter:

79 (2) "Oral communication" means any oral communication
80 uttered by a person exhibiting an expectation that such
81 communication is not subject to interception under circumstances
82 justifying such expectation, including the use of a microphone-
83 enabled household device, and does not mean any public oral
84 communication uttered at a public meeting or any electronic
85 communication.

86 (27) "Microphone-enabled household device" means a device,
87 sensor, or other physical object within a residence:

88 (a) Capable of connecting to the Internet, directly or
89 indirectly, or to another connected device;



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90 (b) Capable of creating, receiving, accessing, processing,
91 or storing electronic data or communications;

92 (c) That communicates with, by any means, another entity
93 or individual; and

94 (d) That contains a microphone designed to listen for and
95 respond to environmental cues.

96 (28) "Portable electronic communication device" means an
97 object capable of being easily transported or conveyed by a
98 person which is capable of creating, receiving, accessing, or
99 storing electronic data or communications and that communicates
100 with, by any means, another device, entity, or individual.

101 Section 3. Section 934.21, Florida Statutes, is amended to
102 read:

103 934.21 Unlawful access to stored communications;
104 penalties.-

105 (1) Except as provided in subsection (4)~~(3)~~, whoever:

106 (a) Intentionally accesses without authorization a
107 facility through which an electronic communication service is
108 provided, or

109 (b) Intentionally exceeds an authorization to access such
110 facility,

111
112 and thereby obtains, alters, or prevents authorized access to a
113 wire or electronic communication while it is in electronic



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114 storage in such system shall be punished as provided in
115 subsection (3)~~(2)~~.

116 (2) Except as provided in subsection (4), whoever
117 intentionally and unlawfully accesses without authorization a
118 cell phone, portable electronic communication device, or
119 microphone-enabled household device and thereby obtains wire,
120 oral, or electronic communications stored within the cell phone,
121 portable electronic communication device, or microphone-enabled
122 household device shall be punished as provided in subsection
123 (3).

124 ~~(3)~~~~(2)~~ The punishment for an offense under subsection (1)
125 or subsection (2) is as follows:

126 (a) If the offense is committed for purposes of commercial
127 advantage, malicious destruction or damage, or private
128 commercial gain, the person ~~is~~:

129 1. In the case of a first offense under this subsection,
130 commits guilty~~of~~ a misdemeanor of the first degree, punishable
131 as provided in s. 775.082, s. 775.083, or s. 934.41.

132 2. In the case of any subsequent offense under this
133 subsection, commits guilty~~of~~ a felony of the third degree,
134 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
135 s. 934.41.

136 (b) In any other case, the person commits ~~is guilty~~ of a
137 misdemeanor of the second degree, punishable as provided in s.
138 775.082 or s. 775.083.



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139 ~~(4)(3)~~ Subsection (1) does not apply with respect to
140 conduct authorized:

141 (a) By the person or entity providing a wire or electronic
142 communications service;

143 (b) By a user of a wire or electronic communications
144 service with respect to a communication of or intended for that
145 user; or

146 (c) In s. 934.09, s. 934.23, or s. 934.24.

147 Section 4. Section 934.42, Florida Statutes, is amended to
148 read:

149 934.42 Mobile tracking device and location tracking
150 authorization.—

151 (1) An investigative or law enforcement officer may make
152 application to a judge of competent jurisdiction for a warrant
153 ~~an order~~ authorizing or approving the installation and use of a
154 mobile tracking device or the acquisition of cell-site location
155 data, precise global positioning satellite location data, or
156 historical global positioning satellite location data.

157 (2) An application under subsection (1) ~~of this section~~
158 must include:

159 (a) A statement of the identity of the applicant and the
160 identity of the law enforcement agency conducting the
161 investigation.

162 (b) A statement setting forth a reasonable period of time
163 that the device may be used or the location data may be



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164 obtained. The time must not exceed 45 days from the date the
165 warrant was issued. The court may, for good cause, grant one or
166 more extensions for a reasonable period of time not to exceed 45
167 days each ~~certification by the applicant that the information~~
168 ~~likely to be obtained is relevant to an ongoing criminal~~
169 ~~investigation being conducted by the investigating agency.~~

170 (c) A statement of the offense to which the information
171 likely to be obtained relates.

172 (d) A statement whether it may be necessary to use and
173 monitor the mobile tracking device outside the jurisdiction of
174 the court from which authorization is being sought.

175 (3) Upon application made as provided under subsection
176 (2), the court, if it finds probable cause, ~~that the~~
177 ~~certification~~ and the statements required by subsection (2) have
178 been made in the application, shall grant a warrant ~~enter an ex~~
179 ~~parte order~~ authorizing the installation and use of a mobile
180 tracking device. Such warrant ~~order~~ may authorize the use of the
181 device within the jurisdiction of the court and outside that
182 jurisdiction but within the State of Florida if the device is
183 installed within the jurisdiction of the court. The warrant must
184 command the officer to complete any installation authorized by
185 the warrant within a specified period of time not to exceed 10
186 calendar days.



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187 (4) A court may not require greater specificity or
188 additional information beyond that which is required by law and
189 this section as a requisite for issuing a warrant ~~an order~~.

190 (5) Within 10 days after the time period specified in
191 paragraph (2)(b) has ended, the officer executing a warrant must
192 return the warrant to the issuing judge. The officer may do so
193 by reliable electronic means.

194 (6) Within 10 days after the time period specified in
195 paragraph (2)(b) has ended, the officer executing a warrant must
196 serve a copy of the warrant on the person who, or whose
197 property, was tracked. Service may be accomplished by delivering
198 a copy to the person who, or whose property, was tracked or by
199 leaving a copy at the person's residence or usual place of abode
200 with an individual of suitable age and discretion who resides at
201 that location and by mailing a copy to the person's last known
202 address. Upon request of the law enforcement agency, the court
203 may delay notice for a period of 90 days as provided in s.
204 934.25.

205 (7)~~(5)~~ The standards established by Florida courts and the
206 United States Supreme Court for the installation, use, or ~~and~~
207 monitoring of mobile tracking devices shall apply to the
208 installation, use, or monitoring ~~and use~~ of any device as
209 authorized by this section.

210 (8)~~(6)~~ As used in this section, the term "mobile tracking
211 device" or a "tracking device" means an electronic or mechanical



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212 device, including a cell phone or a portable electronic
213 communication device, which permits the tracking of the movement
214 of a person or object and may be used to access cell-site
215 location data, precise global positioning satellite location
216 data, or historical global positioning satellite location data.

217 (9) (a) Notwithstanding any other provision of this
218 chapter, any investigative or law enforcement officer specially
219 designated by the Governor, the Attorney General, the statewide
220 prosecutor, or a state attorney acting pursuant to this chapter
221 who reasonably determines that:

222 1. An emergency exists which:

223 a. Involves immediate danger of death or serious physical
224 injury to any person or the danger of escape of a prisoner; and

225 b. Requires the installation or use of a mobile tracking
226 device before a warrant authorizing such installation or use
227 can, with due diligence, be obtained; and

228 2. There are grounds upon which a warrant could be issued
229 under this chapter to authorize such installation or use,

230
231 may install or use a mobile tracking device if, within 48 hours
232 after the installation or use has occurred or begins to occur, a
233 warrant approving the installation or use is issued in
234 accordance with this section.

235 (b) In the absence of an authorizing warrant, such
236 installation or use shall immediately terminate when the



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237 information sought is obtained, when the application for the
238 warrant is denied, or when 48 hours have lapsed since the
239 installation or use of the mobile tracking device began,
240 whichever is earlier.

241 (c) The knowing installation or use by any investigative
242 or law enforcement officer of a mobile tracking device pursuant
243 to paragraph (a) without application for the authorizing warrant
244 within 48 hours after the installation or use begins constitutes
245 a violation of this section.

246 Section 5. This act shall take effect July 1, 2018.

247 -----

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

249 Remove everything before the enacting clause and insert:

250 A bill to be entitled

251 An act relating to the search of the content,
252 information, and communications of cellular phones,
253 portable electronic communication devices, and
254 microphone-enabled household devices; amending s.
255 934.01, F.S.; providing legislative findings; amending
256 s. 934.02, F.S.; providing definitions; amending s.
257 934.21, F.S.; conforming provisions to changes made by
258 the act; prohibiting unlawful access to communications
259 stored in specified devices; providing penalties;
260 amending s. 934.42, F.S.; requiring that law
261 enforcement obtain a warrant to acquire certain



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262 | location information; providing procedures for such
263 | warrants; providing limited exceptions in certain
264 | circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1301 Sexual Offenders and Predators
SPONSOR(S): Fitzenhagen
TIED BILLS: **IDEN./SIM. BILLS:** SB 1226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Sumner <i>TS</i>	Sumner <i>TS</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred. A sexual predator or sexual offender must comply with a number of statutory registration requirements. Failure to comply with these requirements is generally a third degree felony.

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence. Residence is defined for purposes of the registration as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- "Transient residence" means a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

HB 1301 reduces the number of days used to determine residency from 5 to 3 for sexual predators or sexual offenders to register. Penalties for failure to timely register are increased after July 1, 2018, and carry a mandatory minimum sentence as follows:

- First offense -- 6 months of community control with electronic monitoring.
- Second offense -- 1 year of community control with electronic monitoring.
- Third offense -- 2 years of community control with electronic monitoring.

The bill appears to have an indeterminate fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida was the first state to list sexual predators and offenders on the Internet and make information about sexual predators available through a 24-hour/day hotline.¹ There were 471 sexual predators and approximately 8,000 sexual offenders listed when the database was created in 1997. Currently, there are 11,000 registered predators and 54,000 registered offenders.²

Sexual Predator or Sexual Offender Registration

Current law requires all sexual predators and sexual offenders to comply with a number of statutory registration requirements. Failure to comply with these requirements is generally a third degree felony.³ After conviction of a qualifying offense, a sexual offender or predator must register at the sheriff's office within 48 hours of establishing or maintaining a residence.⁴

Information Required for Registration

During his or her initial registration, the registrant must provide certain information to the sheriff's department, including:

- His or her name and social security number;
- Eye and hair color;
- Address and e-mail address;
- Home and cellular telephone numbers and internet identifiers;
- Employment information;
- Vehicle information; and
- Fingerprints and palm prints.

The sheriff then provides the information to the FDLE for inclusion in the statewide database.

A sexual predator or sexual offender must also update his or her registration at specified intervals and immediately report any changes to registration information.⁵

Residence

Residence, for the purposes of registration, is defined as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 5 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

¹ The Public Safety Information Act of 1997, CH 1997-299, L.O.F.

² Florida Department of Law Enforcement, Florida Sexual Offenders and Predators, *About Us*, available at: <http://offender.fdle.state.fl.us/offender/About.jsp> (last accessed January 22, 2018).

³ S. 775.21(10), F.S.

⁴ SS. 775.21 and 943.0435, F.S.

⁵ *Id.*

- "Transient residence" means a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has not specific street address.⁶

Sexual predators and sexual offenders who are in the custody or under the supervision of the Department of Corrections (DOC) or a local jail must register with the DOC or the jail, respectively.

Conviction of the following offenses require an offender to register as either a sexual offender or predator:

Sexual Predator - Qualifying Offenses

Section 775.21, F.S., provides that a person must be designated a sexual predator if convicted, on or after October 1, 1993, of:

1. A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
 - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian;⁷
 - Section 794.011, F.S. (sexual battery);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 847.0145, F.S. (selling or buying of minors); or
2. Any felony violation, or attempt thereof, of:
 - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
 - Section 394.4593(2), F.S. (sexual misconduct with a patient);
 - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian;
 - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
 - Section 794.05, F.S. (unlawful activity with certain minors);
 - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 810.145(8)(b), F.S. (relating to video voyeurism);
 - Section 825.1025, F.S. (lewd or lascivious battery upon or in the presence of an elderly person or disabled person);
 - Section 827.071, F.S. (sexual performance by a child);
 - Section 847.0135, F.S., excluding s. 847.0135(6), F.S. (computer pornography);
 - Section 847.0145, F.S. (selling or buying of minors);
 - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or

⁶ S. 775.21, F.S.

⁷ These convictions can only be used as a qualifying offense for designation as a sexual predator if there is a finding that the conviction has a sexual component. The Fourth District Court of Appeal has held that the sexual offender designation that resulted from a false imprisonment conviction that had no sexual motivation failed the "rationally related" test. The Court held the state has an interest in protecting the public from sexual offenders and designation of a person as a sexual offender is rationally related to that goal. However, if it is clear that the qualifying crime is totally devoid of a sexual component such rational basis is lost. *Raines v. State*, 805, So. 2d 999, 1003 (Fla. 4th DCA 2001); see also *Robinson v. State*, 804 So. 2d 451 (Fla. 4th DCA 2001).

- Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
 - The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

Sexual Offender - Qualifying Offenses

Section 943.0435, F.S., defines the term "sexual offender," in part, as a person who:

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
 - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
 - Section 394.4593(2), F.S. (sexual misconduct with a patient);
 - Sections 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian;
 - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
 - Section 794.05, F.S. (unlawful activity with certain minors);
 - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 810.145(8), F.S. (relating to video voyeurism);
 - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person);
 - Section 827.071, F.S. (sexual performance by a child);
 - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity);
 - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.;
 - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment);
 - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment);
 - Section 847.0145, F.S. (selling or buying of minors);
 - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described above.

A juvenile, 14 years of age or older, designated as a sexual offender is required to register in the same manner as an adult sexual offender. The offenses that qualify a juvenile as a sexual offender include:

- Section 794.011, F.S. (sexual battery), excluding s. 794.011(1), F.S.;
- Section 800.04(4)(a)2, F.S. (lewd or lascivious battery by specified sexual activity) where the victim is under 12 years of age or where court finds sexual activity by the use of force or coercion;
- Section 800.04(5)(c)1., F.S. (specified as lewd or lascivious molestation where the defendant is less than 18, the victim is less than 12 years of age and the Court finds molestation involved unclothed genitals); or

- Section 800.04(5)(d), F.S. (specified act of lewd or lascivious molestation where the defendant is less than 18 years of age, the victim is 12 years of age or older but less than 16 years and the Court finds the use of force or coercion and unclothed genitals.

Effect of Proposed Changes

HB 1301 reduces the aggregate and consecutive number of days to determine residency from 5 to 3 for sexual predator or sexual offender registration. Penalties for failure to timely register are increased after July 1, 2018 and carry a mandatory minimum sentence as follows:

- First offense -- 6 months of community control with electronic monitoring.
- Second offense -- 1 year of community control with electronic monitoring.
- Third or subsequent offense -- 2 years of community control with electronic monitoring.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

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

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

Section 3: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Corrections (DOC) states that officers who supervise sex offenders on community control with electronic monitoring have reduced caseloads due to the workload associated with this type of supervision and the monitoring required. The fiscal impact to DOC is indeterminate due to the unknown number of offenders who will be sentenced under the mandatory minimum sentence.

According to DOC, for FY 15-16 the average per diem for community supervision was \$5.52 and the current rate for electronic monitoring is \$4.50 per day. Any technological impact to DOC can be absorbed within existing resources.

The Florida Department of Law Enforcement (FDLE) states that the proposed changes in the bill will require updating sexual offender and sexual predator registration forms and e-forms, the Florida Sexual Offender/Predator Public Registry website, the CJNet website, and training materials. FDLE has determined the implementation costs can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to FDLE, eighteen sheriffs' offices have three or more consecutive days where sexual offender or sexual predator registration is unavailable and more than 15 percent (4,637) of the offenders/predators that have an active, permanent, temporary, or transient address in Florida list an active address in those 18 counties. The fiscal impact of the new registration requirements and enforcement provisions on these offices is indeterminate.

Seven sheriffs' offices have limited registration times and more than 16 percent (4,963) of offenders/predators that have an active permanent, temporary, or transient address in Florida list an active address in those counties. The fiscal impact of the new registration requirements and enforcement provisions on these offices is indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to sexual offenders and predators;
 3 amending s. 775.21, F.S.; reducing the aggregate and
 4 consecutive number of days used to determine residency
 5 for purposes of sexual predator or sexual offender
 6 registration; providing for a mandatory minimum
 7 sentence of community control with electronic
 8 monitoring for certain offenses committed by sexual
 9 predators; amending s. 943.0435, F.S.; providing for a
 10 mandatory minimum sentence of community control with
 11 electronic monitoring for certain offenses committed
 12 by sexual offenders; providing an effective date.

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

15
 16 Section 1. Paragraphs (k), (n), and (o) of subsection (2)
 17 and paragraph (a) of subsection (10) of section 775.21, Florida
 18 Statutes, are amended to read:

19 775.21 The Florida Sexual Predators Act.—

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

21 (k) "Permanent residence" means a place where the person
 22 abides, lodges, or resides for 3 ~~5~~ or more consecutive days.

23 (n) "Temporary residence" means a place where the person
 24 abides, lodges, or resides, including, but not limited to,
 25 vacation, business, or personal travel destinations in or out of

26 | this state, for a period of 3 ~~5~~ or more days in the aggregate
 27 | during any calendar year and which is not the person's permanent
 28 | address or, for a person whose permanent residence is not in
 29 | this state, a place where the person is employed, practices a
 30 | vocation, or is enrolled as a student for any period of time in
 31 | this state.

32 | (o) "Transient residence" means a county where a person
 33 | lives, remains, or is located for a period of 3 ~~5~~ or more days
 34 | in the aggregate during a calendar year and which is not the
 35 | person's permanent or temporary address. The term includes, but
 36 | is not limited to, a place where the person sleeps or seeks
 37 | shelter and a location that has no specific street address.

38 | (10) PENALTIES.—

39 | (a) Except as otherwise specifically provided, a sexual
 40 | predator who fails to register; who fails, after registration,
 41 | to maintain, acquire, or renew a driver license or an
 42 | identification card; who fails to provide required location
 43 | information; who fails to provide electronic mail addresses,
 44 | Internet identifiers, and each Internet identifier's
 45 | corresponding website homepage or application software name; who
 46 | fails to provide all home telephone numbers and cellular
 47 | telephone numbers, employment information, change in status at
 48 | an institution of higher education, or change-of-name
 49 | information; who fails to make a required report in connection
 50 | with vacating a permanent residence; who fails to reregister as

51 required; who fails to respond to any address verification
52 correspondence from the department within 3 weeks of the date of
53 the correspondence; who knowingly provides false registration
54 information by act or omission; or who otherwise fails, by act
55 or omission, to comply with the requirements of this section
56 commits a felony of the third degree, punishable as provided in
57 s. 775.082, s. 775.083, or s. 775.084 and, for offenses
58 committed after July 1, 2018, shall carry a mandatory minimum
59 sentence as follows:

60 1. For a first offense, a mandatory minimum sentence of 6
61 months of community control with electronic monitoring as
62 provided in chapter 948.

63 2. For a second offense, a mandatory minimum sentence of 1
64 year of community control with electronic monitoring as provided
65 in chapter 948.

66 3. For a third or subsequent offense, a mandatory minimum
67 sentence of 2 years of community control with electronic
68 monitoring as provided in chapter 948.

69 Section 2. Paragraph (a) of subsection (9) of section
70 943.0435, Florida Statutes, is amended to read:

71 943.0435 Sexual offenders required to register with the
72 department; penalty.—

73 (9) (a) Except as otherwise specifically provided, a sexual
74 offender who does not comply with the requirements of this
75 section commits a felony of the third degree, punishable as

76 | provided in s. 775.082, s. 775.083, or s. 775.084 and, for
 77 | offenses committed after July 1, 2018, shall carry a mandatory
 78 | minimum sentence as follows:

79 | 1. For an initial offense, a mandatory minimum sentence of
 80 | 6 months of community control with electronic monitoring as
 81 | provided in chapter 948.

82 | 2. For a second offense, a mandatory minimum sentence of 1
 83 | year of community control with electronic monitoring as provided
 84 | in chapter 948.

85 | 3. For a third or subsequent offense, a mandatory minimum
 86 | sentence of 2 years of community control with electronic
 87 | monitoring as provided in chapter 948.

88 | Section 3. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1391 Sexual Offenses Against Students

SPONSOR(S): Rodrigues

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Painter <i>JWP</i>	Sumner <i>TS</i>
2) Education Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 1391 makes it a second-degree felony for an authority figure to solicit or engage in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student enrolled at a school. The bill defines:

- "Authority figure" as a person 18 years of age or older who is employed by, volunteering at, or under contract with a school, including school resource officers.
- "School" as a private school, a voluntary prekindergarten education program, early learning program, a public school, the Florida School for the Deaf and the Blind, and the Florida Virtual School. Facilities dedicated exclusively to adult education are not included.

Florida law contains several provisions designed to protect students, maintain safe and ethical school environments, and hold school officials and employees accountable for misconduct. The bill further enhances student safety and increases accountability for school officials and employees by:

- Providing that a conviction offenses against students disqualifies a person from educator certification or employment in a position with a public school or certain private schools that involves direct contact with students;
- Providing that, for purposes of disciplining an educator's certificate, gross immorality or an act involving moral turpitude includes having a romantic relationship with or soliciting or engaging in sexual contact with a student or minor;
- Providing that an employee's resignation or termination of employment does not affect a school district's responsibility to report legally sufficient complaints of misconduct to the Florida Department of Education within 30 days;
- Requiring district school board policies to include mandatory reporting of alleged misconduct that involves gross immorality or moral turpitude and to require district school superintendents to report to law enforcement misconduct by school district personnel that would result in disqualification from certification or employment;
- Forfeiting a district school board member's salary for 1 year if he or she knowingly fails to adopt policies requiring the superintendent to report disqualifying misconduct to law enforcement;
- Forfeiting a district school superintendent's salary for 1 year if he or she knowingly fails to report disqualifying misconduct to law enforcement; and
- Requiring a district school superintendent to notify in writing the parent of a student whose health, safety, or welfare is affected by a legally sufficient complaint of misconduct and requiring the notification to include certain information.

The bill has an indeterminate fiscal impact on state government due to the criminalization of a new offense.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sexual Conduct by Authority Figures with Adult Students

Offenses against Sexual Conduct with Minors

There is no prohibition against consensual sexual conduct between a school authority figure and an adult student. However, there are several statutes in Florida law that prohibit adults from engaging or attempting to engage in sexual or lewd conduct with a minor. A "minor" is defined as any person under the age of 18 years.¹ These offenses include:

- It is a third degree felony to use a computer online service, internet service, or any other device capable of electronic data storage, such as a cell phone, to seduce, solicit, lure, or entice, or attempt to do these things, with someone believed to be a minor.²
- It is a third degree felony for any person to transmit material harmful to a minor.³ "Material harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:⁴
 - Predominately appeals to a prurient, shameful, or morbid interest;
 - Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
 - Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.
- It is a second degree felony for a person to travel any distance for the purpose of engaging in any illegal act or otherwise engage in other unlawful sexual conduct with a child, or with another person believed by the person to be a child.⁵
- It is a felony offense for an adult to commit any lewd or lascivious battery, molestation, conduct, or exhibition, upon a child.⁶

Reclassification of Sexual Offenses Committed by an Authority Figure on a Minor

Section 943.0435(1)(h)1, F.S., includes the following offenses involving minor victims:

- Kidnapping of child under age 13.⁷
- False imprisonment of child under age 13.⁸
- A person over 18 who intentionally lures or entices or attempts to lure or entice a child under the age of 12 into a structure, dwelling, or conveyance for other than lawful purposes.⁹
- Human trafficking of minors.¹⁰
- Sexual battery of a minor.¹¹
- Unlawful sexual activity with a minor.¹²
- Lewd or indecent exposure involving a minor.¹³

¹ S. 847.001(8), F.S.

² S. 847.0135(3), F.S.

³ S. 847.0138(2)-(3), F.S.

⁴ S. 847.001(6), F.S.

⁵ S. 847.0135(4), F.S.

⁶ S. 800.04, F.S.

⁷ S. 787.01, F.S.

⁸ S. 787.02, F.S.

⁹ S. 785.025(2)(c), where the victim is a minor.

¹⁰ S. 787.06(3)(b), (d), (f), or (g), F.S.

¹¹ S. 794.011, F.S.

¹² S. 794.05, F.S.

- Video voyeurism involving a minor.¹⁴
- Sexual performance by a child.¹⁵
- Distributing harmful material to a minor.¹⁶
- Possession or transmission of child pornography.¹⁷

Florida law enhances any felony offense under s. 943.0435(1)(h)1 if it is committed by an authority figure of a school upon a student.¹⁸ An authority figure is a person 18 years of age or older who is employed by, volunteering at, or under contract with a school.¹⁹ A student is a person younger than 18 years of age who is enrolled at a school.²⁰ The offense is reclassified as follows:

- A felony of the third-degree²¹ is reclassified to a second-degree felony.
- A felony of the second-degree²² is reclassified to a first-degree felony.
- A felony of the first-degree²³ is reclassified to a life felony.²⁴

Teacher-Adult Student Relationship Laws in Other States

Other states have enacted similar legislature to prohibit teachers from having relationships with adult students.

In Connecticut, it is sexual assault in the second degree when a school employee engages in sexual intercourse with a student enrolled in the school, regardless of that student's age.²⁵

North Carolina categorizes the offense level based on the age difference between the school personnel and the adult student.²⁶ If the defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, or other school personnel, is at least four years older than the student and engages in vaginal intercourse or a sexual act with the student, the defendant is guilty of a class G²⁷ felony. If the defendant is less than four years older than the student, then the defendant is guilty of a lesser degree class I²⁸ felony.²⁹

Georgia makes it sexual assault punishable by up to twenty-five years if a teacher, principal, assistant principal, or other administrator of any school who has supervisory or disciplinary authority over a student engages in sexual contact with the student and knew or should have known the student was enrolled at the same school.³⁰ This is regardless of age.³¹ This conduct is not prohibited if the student is married to the other individual.³²

A law passed in 2009 in Arkansas that stated it was sexual assault in the second degree for a teacher in a public school to engage in sexual contact with another person who was a student enrolled in the

¹³ S. 800.04, F.S.

¹⁴ S. 810.145(8), F.S.

¹⁵ S. 827.071, F.S.

¹⁶ S. 847.0133, F.S.

¹⁷ S. 847.0135, F.S.

¹⁸ S. 775.0862, F.S.

¹⁹ S. 775.0862(a), F.S.

²⁰ S. 775.0862(c), F.S.

²¹ A third-degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. SS. 775.082(3)(e) and 775.083(1)(c), F.S.

²² A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. SS. 775.082(3)(d) and 775.083(1)(b), F.S.

²³ A first-degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. SS. 775.082(3)(b)1 and 775.083(1)(b), F.S.

²⁴ A life felony is punishable by up to a term of imprisonment for life and a \$15,000 fine. SS. 775.082(3)(a)3 and 775.083(1)(a), F.S.

²⁵ CONN. GEN. STAT. § 53a-71.

²⁶ N.C. GEN. STAT. ANN. § 14-27.7.

²⁷ Class G felonies are considered mid-level felonies in North Carolina and punishable by potential prison time. See *North Carolina Structured Sentencing*, available at: http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/ssstrainingmanual_09.pdf (last visited January 22, 2018).

²⁸ Class I felonies are considered low-level felonies in North Carolina and punishable by probation. Supra, FN 27.

²⁹ Id.

³⁰ GA. CODE ANN. § 16-6-5.1.

³¹ Id.

³² Id.

public school and was less than 21 years of age.³³ In *Paschal v. State*, the defendant was a teacher and convicted of sexual assault for having a sexual relationship with an eighteen-year-old student.³⁴ Paschal appealed his conviction, arguing that the statute violated his fundamental privacy right to engage in private, consensual, noncommercial acts of sexual intimacy with an adult. The Arkansas Supreme Court agreed, and held that because the two were adults engaged in a consensual sexual relationship, the statute unconstitutionally infringed on a fundamental right. In reaching this decision, the state Supreme Court stated that the statute was not the least restrictive method available to carry out a state's legitimate interest and therefore it was unconstitutional.³⁵ Following the Arkansas Supreme Court Decision, state legislatures amended the statute. It currently states it is second degree sexual assault for person in a public or private school K-12, who is a teacher, principal, athletic coach, or counselor, in a position of trust or authority to use his or her position of trust or authority over a student enrolled in the school and less than twenty-one years of age to engage in sexual contact with that student.³⁶

Recent Events Involving Teacher and Adult Student Relationships in Florida

In Summer 2017, in Pasco County, a former school resource officer was fired for misconduct involving several high school female students.³⁷ An investigation revealed that Resource Officer Milton Arroyo, 50, shared his personal phone number and social media account with female students.³⁸ He specifically targeted students 18 years of age or older and asked one female student to send a picture of her bra and another if she'd like to see a picture of his genitals.³⁹ Investigations also showed Arroyo used law enforcement databases to look up information on the students, their parents and staff at the school.⁴⁰ Milton Arroyo joined the Pasco Sheriff's Office in January 2015 after 21 years as a law enforcement officer in New York.⁴¹ The Pasco County Sheriff's Office could not charge Arroyo with any criminal offense for sexual misconduct. However, he was charged with offenses against computer networks and systems for his unauthorized use of a law enforcement database.⁴²

Qualifications for Educator Certification and Employment

General Requirements

In order for a person to serve as an educator in a traditional public school, charter school, virtual school, or other publicly operated school, the person must hold a certificate issued by the Florida Department of Education (DOE).⁴³ Persons seeking employment at a public school as a school supervisor, principal, teacher, library media specialist, counselor, athletic coach, or in another instructional capacity must be certified.⁴⁴ The purpose of certification is to require school-based personnel to "possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in the public schools."⁴⁵

³³ ARK. CODE ANN. § 5-14-125(a)(6).

³⁴ *Paschal v. State*, 388 S.W. 3d 429 (2012 Ark. 127).

³⁵ *Id.*

³⁶ *Supra*, FN 30.

³⁷ WFLA Web Staff, *Former Pasco Co. school resource officer fired for misconduct*, WFLA News Channel 8 (July 8, 2017), available at: <http://wfla.com/2017/07/07/former-school-resource-officer-fired-in-pasco-co/>.

³⁸ *Id.*
³⁹ Chris Bowling, *Pasco school resource officer fired for inappropriate messages*, Tampa Bay Times (July 7, 2017), available at: <http://www.tampabay.com/news/publicsafety/crime/pasco-school-resource-officer-fired-for-inappropriate-messages/2329730>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² WFLA Web Staff, *Former Pasco Co. school resource officer fired for misconduct*, WFLA News Channel 8 (July 8, 2017), available at: <http://wfla.com/2017/07/07/former-school-resource-officer-fired-in-pasco-co/>.

⁴³ SS. 1012.55(1) and 1002.33(12)(f), F.S.

⁴⁴ SS. 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S. District school boards and charter school governing boards are authorized to hire non-certified individuals who possess expertise in a given field to serve in an instructional capacity. Rule 6A-1.0502, F.A.C.; ss. 1002.33(12)(f) and 1012.55(1)(c), F.S. Occupational therapists, physical therapists, audiologists, and speech therapists are not required to be certified educators. Rule 6A-1.0502(10) and (11), F.A.C.

⁴⁵ S. 1012.54, F.S.; see rule 6A-4.001(1), F.A.C.

To be eligible for an educator certificate, a person must, among other things, be of good moral character and submit to fingerprinting and background screening and not have a criminal history that requires the applicant's disqualification from certification or employment.⁴⁶

To be eligible for appointment in any position in any district school system, a person also must be of good moral character and not have a criminal history that requires the applicant's disqualification from certification or employment.⁴⁷ Instructional personnel and noninstructional personnel who are hired or contracted to fill positions that require direct contact with students must undergo background screening, as applicable.⁴⁸ To be employed in an instructional capacity, the person must be 18 years or older and hold a certificate or license issued by the SBE or the Department of Children and Families, except in specific circumstances.⁴⁹

Disqualifying Offenses

Under the law, a person is ineligible for educator certification, and employment as an instructional personnel or school administrator with direct student contact in a public school or a private school that accepts McKay or Florida Tax Credit scholarship students, if he or she is convicted of a number of specified criminal offenses.⁵⁰ The specified criminal offenses under s. 1012.315, F.S. are as follows:

- Sexual misconduct with certain developmentally disabled clients, mental health patients, forensic clients, or sexual misconduct in juvenile justice programs.
- Abuse, neglect, or exploitation of aged persons or disabled adults.
- Murder.
- Manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, or aggravated manslaughter of an officer, a firefighter, an emergency medical technician, or a paramedic.
- Aggravated assault.
- Aggravated battery.
- Battery on a detention or commitment facility staff member or a juvenile probation officer.
- Kidnapping.
- False imprisonment.
- Luring or enticing a child.
- Leading, taking, enticing, or removing a minor beyond the state limits, or concealing the location of a minor, with criminal intent pending custody or dependency proceedings.
- Exhibiting firearms or weapons at a school-sponsored event, on school property, or within 1,000 feet of school.
- Possessing an electric weapon or device, destructive device, or other weapon at a school-sponsored event or on school property.
- Sexual battery.
- Sexual activity with or solicitation of a child by a person in familial or custodial authority.
- Unlawful sexual activity with certain minors.
- Female genital mutilations.
- Prostitution.
- Lewdness and indecent exposure.
- Arson.
- Voyeurism.
- Coordinating the commission of theft in excess of \$3,000.
- Theft from persons 65 years or older.

⁴⁶ S. 1012.56(2)(a)-(f), F.S.

⁴⁷ S. 1012.32(1), F.S.

⁴⁸ S. 1012.32(2)(a), F.S.

⁴⁹ S. 1012.32(1), F.S.

⁵⁰ SS. 1001.42(7), 1012.315(1)-(2), and 1012.32(1), F.S.

- Dealing in stolen property.
- Robbery.
- Robbery by sudden snatching.
- Carjacking.
- Home-invasion robbery.
- Fraudulent sale of controlled substance.
- Abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person.
- Incest.
- Child abuse, aggravated child abuse, or neglect of a child.
- Contributing to the delinquency or dependency of a child.
- Sexual performance by a child.
- Resisting arrest with violence.
- Obscenity.
- Causing, encouraging, soliciting, or recruiting another to join a criminal street gang.
- Any drug abuse charges under ch. 893, F.S., if offense was a second degree felony or higher.
- Introduction, removal, or possession of contraband at a correctional facility or juvenile detention facility or commitment program.
- Misdemeanor battery if the victim of the offense was a minor.

Any person who is found ineligible for employment or otherwise found through background screening to have been convicted of any crime involving moral turpitude⁵¹ may not be employed, engaged to provide services, or serve in any position that requires direct contact with students.⁵²

Education Practices Commission

The State Board of Education (SBE) has adopted in rule standards for educator conduct referred to as the Principles of Professional Conduct for the Education Profession.⁵³ The Education Practices Commission (EPC) is established in Florida law to interpret and apply the principles.⁵⁴ At least once each year, the EPC must report to and meet with the SBE.⁵⁵ The EPC is authorized to revoke or suspend an educator certificate or take other appropriate action as provided in law.⁵⁶

Specifically, the EPC may take revoke or suspend the educator certification if a person, among other things:⁵⁷

- has been guilty of gross immorality or an act involving moral turpitude as defined by SBE rule;
- has been convicted or found guilty of, or entered a plea of guilty to, regardless of adjudication of guilt, a misdemeanor, felony, or any other criminal charge, other than a minor traffic violation; or
- has been disqualified from educator certification based on a conviction for certain criminal offenses.

The law provides that the DOE may deny certification if the department possesses satisfactory evidence that an applicant has committed an act or acts, or that a situation exists, for which the EPC would be authorized to revoke a teaching certificate.⁵⁸ The decision of the DOE is subject to review by the EPC upon the filing of a written request from the applicant within 20 days after receipt of notice of denial.⁵⁹

⁵¹ Rule 6A-5.056(7), F.A.C., provides a list of offenses that are considered crimes involving moral turpitude, including the offenses listed in s. 1012.315, F.S.

⁵² S. 1012.32(2), F.S.

⁵³ S. 1012.795(1)(j), F.S.; rule 6A-10.081, F.A.C.

⁵⁴ S. 1012.79(7)(a), F.S.

⁵⁵ *Id.* at (c).

⁵⁶ S. 1012.79(7)(b), F.S.

⁵⁷ S. 1012.795(1), F.S.

⁵⁸ S. 1012.56(12)(a), F.S.

⁵⁹ *Id.* at (b).

Investigations of Alleged Misconduct

The DOE must expeditiously investigate any filed complaint or otherwise called to its attention which, if legally sufficient,⁶⁰ contains grounds for the revocation or suspension of a certificate or any other appropriate penalty.⁶¹ Legally sufficient complaints of misconduct that affect the health, safety, or welfare of a student must be given priority over other pending complaints.⁶² The DOE's Office of Professional Practice Services administers the state grievance process, investigates alleged misconduct by certified educators, and pursues disciplinary actions against the certificates of educators who are found to have committed acts of misconduct.⁶³

The law requires each school district to file with the DOE all legally sufficient complaints within 30 days after the date on which the subject matter comes to the attention of the school district.⁶⁴ The report must include all information relating to the complaint known to the school district. Each district school board must adopt policies and procedures for reporting legally sufficient complaints of misconduct to the DOE.⁶⁵

Complaints and materials relating to a school district's investigation of a complaint are confidential and exempt from public records laws until the conclusion of the preliminary investigation or until the investigation is considered inactive.⁶⁶ A preliminary investigation is active so long as it is continuing with a reasonable, good faith, anticipation that an administrative finding will be made in the foreseeable future. An investigation is presumed to be inactive if no finding relating to probable cause is made within 60 days after the complaint is made.⁶⁷

Standards of Ethical Conduct for Instructional Personnel and School Administrators

Florida law requires each district school board to adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.⁶⁸ Among other things, the policies must establish the duty of instructional personnel and school administrators to report, and procedures for reporting, alleged misconduct by other instructional personnel and school administrators which affects the health safety, or welfare of a student.⁶⁹

A school board member who knowingly fails to adopt policies that require instructional personnel and school administrators to report alleged misconduct by other instructional personnel and school administrators or that require the investigation of all reports of alleged misconduct that affect the health, safety, or welfare of a student forfeits his or her salary for 1 year.⁷⁰ Additionally, a district school superintendent who knowingly fails to investigate any allegation of misconduct by instructional personnel or school administrators that affects the health safety, or welfare of a student or who knowingly fails to report the misconduct to the DOE forfeits his or her salary for 1 year.⁷¹

⁶⁰ A complaint is legally sufficient if it contains "ultimate facts that show a violation has occurred" as provided in law and state board rule. S. 1012.796(1)(d), F.S.

⁶¹ S. 1012.796(1)(a), F.S.

⁶² S. 1012.796(1)(b), F.S.

⁶³ Florida Department of Education, *Professional Practices*, <http://www.fldoe.org/teaching/professional-practices/> (last visited Jan. 23, 2018).

⁶⁴ S. 1012.796(1)(d), F.S.

⁶⁵ *Id.*

⁶⁶ S. 1012.31(3)(a)1., F.S.

⁶⁷ *Id.*

⁶⁸ S. 1001.42(6), F.S. The terms "instructional personnel" and "school administrators" are defined under s. 1012.01(2) and (3)(c), F.S. See also s. 1012.796(1)(d), F.S. (requiring school district policies to include standards of ethical conduct for instructional personnel and school administrators).

⁶⁹ *Id.*

⁷⁰ S. 1001.42(7)(b), F.S.

⁷¹ S. 1001.51(12), F.S.

Effect of Proposed Changes

Sexual Conduct by Authority Figures with Adult Students

HB 1391 prohibits an authority figure from soliciting or engaging in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student. The bill criminalizes this conduct between an authority figure and a student, regardless of the student's age and regardless of whether or not the behavior was consensual. In addition, the bill does not require that the authority figure use his or her position of authority over the student in order to procure the sexual conduct. It is enough that the person is an authority figure and engages in such conduct with a student to violate the prohibition of this bill.

An authority figure is defined as a person 18 years of age or older who is employed by, volunteering at, or under contract with a school, including school resource officers. School is given the same meaning as provided in s. 1003.01, F.S. and includes a private school as defined in s. 1002.01, F.S., a voluntary prekindergarten education program as described in s. 1002.53(3), early learning programs, a public school as described in s. 402.3025(1), the Florida School for the Deaf and Blind, and the Florida Virtual School. The term school does not include a facility dedicated exclusively to adult education.

The bill does not define the terms, "sexual conduct," and "lewd conduct." However, other statutes and case law do define these terms. Section 847.001(16), F.S., defines "sexual conduct"⁷² to mean:

- Actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse;
- Actual lewd exhibition of the genitals;
- Actual physical contact with a person's clothed or unclothed genitals, public area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or
- Any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

The term "lewdness" is defined in case law as:

- The equivalent of both licentiousness⁷³ and lasciviousness.⁷⁴
- Wicked, lustful, unchaste, licentious, or sensual design by the perpetrator of an act condemned by law as lewd.⁷⁵

Disqualifications from Employment and Duty to Report

The bill revises the list of disqualifying criminal offenses to include the newly created prohibition on authority figures engaging or soliciting in sexual, romantic, or lewd conduct with a student. The bill specifies that any person is ineligible for employment in any position that requires direct contact with students if he or she has been convicted of a disqualifying offense. The current prohibition applies specifically to instructional personnel and school administrators.

The bill specifies that the act of having a romantic relationship with or soliciting or engaging in sexual contact with a student or minor is an act involving moral turpitude for purposes of certified educator discipline and expressly includes such behavior within the jurisdiction of the EPC to suspend or revoke an educator certificate.

The bill also specifies that misconduct affecting the health, safety, or welfare of a student includes misconduct that involves gross immorality or moral turpitude for purposes of district school board policies. In effect, this expressly provides that instructional personnel and school administrators have a

⁷² A mother's breastfeeding of her baby does not constitute "sexual conduct."

⁷³ *Holton v. State*, 28 Fla. 303 (1891).

⁷⁴ *McGuire v. State*, 489 So. 2d 729 (Fla. 1986).

⁷⁵ *Chesebrough v. State*, 255 So. 2d 675 (Fla. 1971).

duty to report inappropriate relationships between other instructional personnel and school administrators.

Under the bill, district school board policy must require district school superintendents to report to law enforcement any misconduct by school district personnel that would result in disqualification from educator certification or employment. Further, the bill provides that a school board member who knowingly fails to adopt a policy requiring the district school superintendent to report disqualifying misconduct forfeits his or her salary for 1 year. A district superintendent who fails to report disqualifying conduct to law enforcement also forfeits his or her salary for 1 year.

With respect to investigations of complaints of misconduct by a school district, the bill provides that the exemption from public records laws for active investigations does not absolve a school district from its duty to provide any legally sufficient complaint to the DOE within 30 days, regardless of the status of the complaint. Further, the bill specifies that a school district must file a legally sufficient complaint with the DOE within 30 days regardless of whether the subject of the complaint is still an employee of the school district.

B. SECTION DIRECTORY:

Section 1: Creating s. 800.101, F.S., relating to offenses against students by authority figures.

Section 2: Amending s. 1001.42, F.S., relating to powers and duties of district school boards.

Section 3: Amending s. 1001.51, F.S., relating to duties and responsibilities of district school superintendent.

Section 4: Amending s. 1012.31, F.S., relating to personnel files.

Section 5: Amending s. 1012.315, F.S., relating to disqualification from employment.

Section 6: Amending s. 1012.795, F.S., relating to education practices commission; authority to discipline.

Section 7: Amending s. 1012.796, F.S., relating to complaints against teachers and administrators; procedure; penalties.

Section 8: Providing an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an indeterminate fiscal impact on state government due to the criminalization of new offenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to sexual offenses against students;
 3 creating s. 800.101, F.S.; providing definitions;
 4 prohibiting certain conduct with students by authority
 5 figures; providing penalties; providing exceptions;
 6 amending s. 1001.42, F.S.; requiring school districts
 7 to adopt certain standards of ethical conduct;
 8 expanding the scope of persons subject to
 9 disqualification from employment by a school district;
 10 requiring the district school superintendent to report
 11 certain misconduct to law enforcement agencies;
 12 amending s. 1001.51, F.S.; providing for forfeiture of
 13 a district school superintendent's salary for a
 14 specified period for failure to report certain
 15 misconduct to law enforcement agencies; amending s.
 16 1012.31, F.S.; specifying that legally sufficient
 17 complaints of certain misconduct must be reported to
 18 law enforcement agencies even if the district finds no
 19 probable cause concerning the complaint; amending s.
 20 1012.315, F.S.; expanding the scope of provisions
 21 requiring the disqualification of persons convicted of
 22 certain offenses to apply to all school district
 23 personnel who are required to have contact with
 24 students; providing an additional offense that
 25 disqualifies such persons from employment; amending s.

26 | 1012.795, F.S.; specifying additional grounds for
 27 | discipline of a person holding an educator
 28 | certificate; amending s. 1012.796, F.S.; requiring a
 29 | school district to file certain complaints with the
 30 | Department of Education even if the subject of the
 31 | complaint is no longer employed by the district;
 32 | requiring that specified notice be provided to parents
 33 | of certain alleged misconduct by an educator;
 34 | providing an effective date.

35 |
 36 | Be It Enacted by the Legislature of the State of Florida:

37 |
 38 | Section 1. Section 800.101, Florida Statutes, is created
 39 | to read:

40 | 800.101 Offenses against students by authority figures.-

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

42 | (a) "Authority figure" means a person 18 years of age or
 43 | older who is employed by, volunteering at, or under contract
 44 | with a school, including school resource officers as provided in
 45 | s. 1006.12.

46 | (b) "School" has the same meaning as provided in s.
 47 | 1003.01 and includes a private school as defined in s. 1002.01,
 48 | a voluntary prekindergarten education program as described in s.
 49 | 1002.53(3), early learning programs, a public school as
 50 | described in s. 402.3025(1), the Florida School for the Deaf and

51 | the Blind, and the Florida Virtual School established under s.
 52 | 1002.37. The term does not include a facility dedicated
 53 | exclusively to the education of adults.

54 | (c) "Student" means a person who is enrolled at a school.

55 | (2) An authority figure shall not solicit or engage in:

56 | (a) Sexual conduct;

57 | (b) A relationship of a romantic nature; or

58 | (c) Lewd conduct

59 |
 60 | with a student.

61 | (3) A person who violates this section commits a felony of
 62 | the second degree, punishable as provided in s. 775.082, s.
 63 | 775.083, or s. 775.084.

64 | (4) This section does not apply to conduct constituting an
 65 | offense that is subject to reclassification under s. 775.0862.

66 | Section 2. Subsections (6) and (7) of section 1001.42,
 67 | Florida Statutes, are amended to read:

68 | 1001.42 Powers and duties of district school board.—The
 69 | district school board, acting as a board, shall exercise all
 70 | powers and perform all duties listed below:

71 | (6) STANDARDS OF ETHICAL CONDUCT FOR INSTRUCTIONAL
 72 | PERSONNEL AND SCHOOL ADMINISTRATORS.—Adopt policies establishing
 73 | standards of ethical conduct for instructional personnel and
 74 | school administrators. The policies must require all
 75 | instructional personnel and school administrators, as defined in

76 | s. 1012.01, to complete training on the standards; establish the
77 | duty of instructional personnel and school administrators to
78 | report, and procedures for reporting, alleged misconduct by
79 | other instructional personnel and school administrators which
80 | affects the health, safety, or welfare of a student, including
81 | misconduct that involves gross immorality or moral turpitude
82 | under s. 1012.795(1)(d); require district school superintendents
83 | to report to law enforcement misconduct by school district
84 | personnel that would result in disqualification from educator
85 | certification or employment as provided in s. 1012.315; and
86 | include an explanation of the liability protections provided
87 | under ss. 39.203 and 768.095. A district school board, or any of
88 | its employees, may not enter into a confidentiality agreement
89 | regarding terminated or dismissed instructional personnel or
90 | school administrators, or personnel or administrators who resign
91 | in lieu of termination, based in whole or in part on misconduct
92 | that affects the health, safety, or welfare of a student, and
93 | may not provide instructional personnel or school administrators
94 | with employment references or discuss the personnel's or
95 | administrators' performance with prospective employers in
96 | another educational setting, without disclosing the personnel's
97 | or administrators' misconduct. Any part of an agreement or
98 | contract that has the purpose or effect of concealing misconduct
99 | by instructional personnel or school administrators which
100 | affects the health, safety, or welfare of a student is void, is

101 | contrary to public policy, and may not be enforced.

102 | (7) DISQUALIFICATION FROM EMPLOYMENT.—Disqualify a school
 103 | district employee instructional personnel and school
 104 | ~~administrators, as defined in s. 1012.01,~~ from employment in any
 105 | position that requires direct contact with students if he or she
 106 | ~~is the personnel or administrators~~ are ineligible for such
 107 | employment under s. 1012.315. An elected or appointed school
 108 | board official forfeits his or her salary for 1 year if:

109 | (a) The school board official knowingly signs and
 110 | transmits to any state official a report of alleged misconduct
 111 | by instructional personnel or school administrators which
 112 | affects the health, safety, or welfare of a student and the
 113 | school board official knows the report to be false or incorrect;
 114 | or

115 | (b) The school board official knowingly fails to adopt
 116 | policies that require instructional personnel and school
 117 | administrators to report alleged misconduct by other
 118 | instructional personnel and school administrators; require the
 119 | district school superintendent to report misconduct by school
 120 | district personnel that would result in disqualification from
 121 | educator certification or employment as provided in s. 1012.315
 122 | to the law enforcement agencies with jurisdiction over the
 123 | conduct; ~~or that~~ require the investigation of all reports of
 124 | alleged misconduct by instructional personnel and school
 125 | administrators, if the misconduct affects the health, safety, or

126 welfare of a student.

127 Section 3. Subsection (12) of section 1001.51, Florida
128 Statutes, is amended to read:

129 1001.51 Duties and responsibilities of district school
130 superintendent.—The district school superintendent shall
131 exercise all powers and perform all duties listed below and
132 elsewhere in the law, provided that, in so doing, he or she
133 shall advise and counsel with the district school board. The
134 district school superintendent shall perform all tasks necessary
135 to make sound recommendations, nominations, proposals, and
136 reports required by law to be acted upon by the district school
137 board. All such recommendations, nominations, proposals, and
138 reports by the district school superintendent shall be either
139 recorded in the minutes or shall be made in writing, noted in
140 the minutes, and filed in the public records of the district
141 school board. It shall be presumed that, in the absence of the
142 record required in this section, the recommendations,
143 nominations, and proposals required of the district school
144 superintendent were not contrary to the action taken by the
145 district school board in such matters.

146 (12) RECORDS AND REPORTS.—Recommend such records as should
147 be kept in addition to those prescribed by rules of the State
148 Board of Education; prepare forms for keeping such records as
149 are approved by the district school board; ensure that such
150 records are properly kept; and make all reports that are needed

151 or required, as follows:

152 (a) Forms, blanks, and reports.—Require that all employees
 153 accurately keep all records and promptly make in proper form all
 154 reports required by the education code or by rules of the State
 155 Board of Education; recommend the keeping of such additional
 156 records and the making of such additional reports as may be
 157 deemed necessary to provide data essential for the operation of
 158 the school system; and prepare such forms and blanks as may be
 159 required and ensure that these records and reports are properly
 160 prepared.

161 (b) Reports to the department.—Prepare, for the approval
 162 of the district school board, all reports required by law or
 163 rules of the State Board of Education to be made to the
 164 department and transmit promptly all such reports, when
 165 approved, to the department, as required by law. If any reports
 166 are not transmitted at the time and in the manner prescribed by
 167 law or by State Board of Education rules, the salary of the
 168 district school superintendent must be withheld until the report
 169 has been properly submitted. Unless otherwise provided by rules
 170 of the State Board of Education, the annual report on attendance
 171 and personnel is due on or before July 1, and the annual school
 172 budget and the report on finance are due on the date prescribed
 173 by the commissioner.

174

175 Any district school superintendent who knowingly signs and

176 transmits to any state official a report that the superintendent
 177 knows to be false or incorrect; who knowingly fails to
 178 investigate any allegation of misconduct by instructional
 179 personnel or school administrators, as defined in s. 1012.01,
 180 which affects the health, safety, or welfare of a student; or
 181 who knowingly fails to report the alleged misconduct to the
 182 department as required in s. 1012.796; or who knowingly fails to
 183 report misconduct to the law enforcement agencies with
 184 jurisdiction over the conduct pursuant to district school board
 185 policy under s. 1001.42(6), forfeits his or her salary for 1
 186 year following the date of such act or failure to act.

187 Section 4. Paragraph (a) of subsection (3) of section
 188 1012.31, Florida Statutes, is amended to read:

189 1012.31 Personnel files.—Public school system employee
 190 personnel files shall be maintained according to the following
 191 provisions:

192 (3)(a) Public school system employee personnel files are
 193 subject to the provisions of s. 119.07(1), except as follows:

194 1. Any complaint and any material relating to the
 195 investigation of a complaint against an employee shall be
 196 confidential and exempt from the provisions of s. 119.07(1)
 197 until the conclusion of the preliminary investigation or until
 198 such time as the preliminary investigation ceases to be active.
 199 If the preliminary investigation is concluded with the finding
 200 that there is no probable cause to proceed further and with no

201 disciplinary action taken or charges filed, a statement to that
202 effect signed by the responsible investigating official shall be
203 attached to the complaint, and the complaint and all such
204 materials shall be open thereafter to inspection pursuant to s.
205 119.07(1). If the preliminary investigation is concluded with
206 the finding that there is probable cause to proceed further or
207 with disciplinary action taken or charges filed, the complaint
208 and all such materials shall be open thereafter to inspection
209 pursuant to s. 119.07(1). If the preliminary investigation
210 ceases to be active, the complaint and all such materials shall
211 be open thereafter to inspection pursuant to s. 119.07(1). For
212 the purpose of this subsection, a preliminary investigation
213 shall be considered active as long as it is continuing with a
214 reasonable, good faith anticipation that an administrative
215 finding will be made in the foreseeable future. An investigation
216 shall be presumed to be inactive if no finding relating to
217 probable cause is made within 60 days after the complaint is
218 made. This subparagraph does not absolve the school district of
219 its duty to provide any legally sufficient complaint to the
220 department within 30 days after the date on which the subject
221 matter of the complaint comes to the attention of the school
222 district pursuant to s. 1012.796(1)(d)1., regardless of the
223 status of the complaint.

224 2. An employee evaluation prepared pursuant to s. 1012.33,
225 s. 1012.34, or s. 1012.56 or rules adopted by the State Board of

226 Education or district school board under the authority of those
 227 sections shall be confidential and exempt from the provisions of
 228 s. 119.07(1) until the end of the school year immediately
 229 following the school year in which the evaluation was made. No
 230 evaluation prepared before July 1, 1983, shall be made public
 231 pursuant to this section.

232 3. No material derogatory to an employee shall be open to
 233 inspection until 10 days after the employee has been notified
 234 pursuant to paragraph (2)(c).

235 4. The payroll deduction records of an employee shall be
 236 confidential and exempt from the provisions of s. 119.07(1).

237 5. Employee medical records, including psychiatric and
 238 psychological records, shall be confidential and exempt from the
 239 provisions of s. 119.07(1); however, at any hearing relative to
 240 the competency or performance of an employee, the administrative
 241 law judge, hearing officer, or panel shall have access to such
 242 records.

243 Section 5. Section 1012.315, Florida Statutes, is amended
 244 to read:

245 1012.315 Disqualification from employment.—A person is
 246 ineligible for educator certification or, ~~and instructional~~
 247 ~~personnel and school administrators, as defined in s. 1012.01,~~
 248 ~~are ineligible for~~ employment in any position that requires
 249 direct contact with students in a district school system,
 250 charter school, or private school that accepts scholarship

251 | students under s. 1002.39 or s. 1002.395~~7~~ if the person~~7~~
 252 | ~~instructional personnel, or school administrator~~ has been
 253 | convicted of:

254 | (1) Any felony offense prohibited under any of the
 255 | following statutes:

256 | (a) Section 393.135, relating to sexual misconduct with
 257 | certain developmentally disabled clients and reporting of such
 258 | sexual misconduct.

259 | (b) Section 394.4593, relating to sexual misconduct with
 260 | certain mental health patients and reporting of such sexual
 261 | misconduct.

262 | (c) Section 415.111, relating to adult abuse, neglect, or
 263 | exploitation of aged persons or disabled adults.

264 | (d) Section 782.04, relating to murder.

265 | (e) Section 782.07, relating to manslaughter, aggravated
 266 | manslaughter of an elderly person or disabled adult, aggravated
 267 | manslaughter of a child, or aggravated manslaughter of an
 268 | officer, a firefighter, an emergency medical technician, or a
 269 | paramedic.

270 | (f) Section 784.021, relating to aggravated assault.

271 | (g) Section 784.045, relating to aggravated battery.

272 | (h) Section 784.075, relating to battery on a detention or
 273 | commitment facility staff member or a juvenile probation
 274 | officer.

275 | (i) Section 787.01, relating to kidnapping.

- 276 (j) Section 787.02, relating to false imprisonment.
- 277 (k) Section 787.025, relating to luring or enticing a
- 278 child.
- 279 (l) Section 787.04(2), relating to leading, taking,
- 280 enticing, or removing a minor beyond the state limits, or
- 281 concealing the location of a minor, with criminal intent pending
- 282 custody proceedings.
- 283 (m) Section 787.04(3), relating to leading, taking,
- 284 enticing, or removing a minor beyond the state limits, or
- 285 concealing the location of a minor, with criminal intent pending
- 286 dependency proceedings or proceedings concerning alleged abuse
- 287 or neglect of a minor.
- 288 (n) Section 790.115(1), relating to exhibiting firearms or
- 289 weapons at a school-sponsored event, on school property, or
- 290 within 1,000 feet of a school.
- 291 (o) Section 790.115(2)(b), relating to possessing an
- 292 electric weapon or device, destructive device, or other weapon
- 293 at a school-sponsored event or on school property.
- 294 (p) Section 794.011, relating to sexual battery.
- 295 (q) Former s. 794.041, relating to sexual activity with or
- 296 solicitation of a child by a person in familial or custodial
- 297 authority.
- 298 (r) Section 794.05, relating to unlawful sexual activity
- 299 with certain minors.
- 300 (s) Section 794.08, relating to female genital mutilation.

- 301 (t) Chapter 796, relating to prostitution.
- 302 (u) Chapter 800, relating to lewdness and indecent
- 303 exposure.
- 304 (v) Section 800.101, relating to offenses against students
- 305 by authority figures.
- 306 (w)~~(v)~~ Section 806.01, relating to arson.
- 307 (x)~~(w)~~ Section 810.14, relating to voyeurism.
- 308 (y)~~(x)~~ Section 810.145, relating to video voyeurism.
- 309 (z)~~(y)~~ Section 812.014(6), relating to coordinating the
- 310 commission of theft in excess of \$3,000.
- 311 (aa)~~(z)~~ Section 812.0145, relating to theft from persons
- 312 65 years of age or older.
- 313 (bb)~~(aa)~~ Section 812.019, relating to dealing in stolen
- 314 property.
- 315 (cc)~~(bb)~~ Section 812.13, relating to robbery.
- 316 (dd)~~(cc)~~ Section 812.131, relating to robbery by sudden
- 317 snatching.
- 318 (ee)~~(dd)~~ Section 812.133, relating to carjacking.
- 319 (ff)~~(ee)~~ Section 812.135, relating to home-invasion
- 320 robbery.
- 321 (gg)~~(ff)~~ Section 817.563, relating to fraudulent sale of
- 322 controlled substances.
- 323 (hh)~~(gg)~~ Section 825.102, relating to abuse, aggravated
- 324 abuse, or neglect of an elderly person or disabled adult.
- 325 (ii)~~(hh)~~ Section 825.103, relating to exploitation of an

326 elderly person or disabled adult.

327 ~~(jj)~~~~(ii)~~ Section 825.1025, relating to lewd or lascivious
328 offenses committed upon or in the presence of an elderly person
329 or disabled person.

330 ~~(kk)~~~~(jj)~~ Section 826.04, relating to incest.

331 ~~(ll)~~~~(kk)~~ Section 827.03, relating to child abuse,
332 aggravated child abuse, or neglect of a child.

333 ~~(mm)~~~~(ll)~~ Section 827.04, relating to contributing to the
334 delinquency or dependency of a child.

335 ~~(nn)~~~~(mm)~~ Section 827.071, relating to sexual performance
336 by a child.

337 ~~(oo)~~~~(nn)~~ Section 843.01, relating to resisting arrest with
338 violence.

339 ~~(pp)~~~~(oo)~~ Chapter 847, relating to obscenity.

340 ~~(qq)~~~~(pp)~~ Section 874.05, relating to causing, encouraging,
341 soliciting, or recruiting another to join a criminal street
342 gang.

343 ~~(rr)~~~~(qq)~~ Chapter 893, relating to drug abuse prevention
344 and control, if the offense was a felony of the second degree or
345 greater severity.

346 ~~(ss)~~~~(rr)~~ Section 916.1075, relating to sexual misconduct
347 with certain forensic clients and reporting of such sexual
348 misconduct.

349 ~~(tt)~~~~(ss)~~ Section 944.47, relating to introduction,
350 removal, or possession of contraband at a correctional facility.

351 (uu)~~(tt)~~ Section 985.701, relating to sexual misconduct in
 352 juvenile justice programs.

353 (vv)~~(uu)~~ Section 985.711, relating to introduction,
 354 removal, or possession of contraband at a juvenile detention
 355 facility or commitment program.

356 (2) Any misdemeanor offense prohibited under any of the
 357 following statutes:

358 (a) Section 784.03, relating to battery, if the victim of
 359 the offense was a minor.

360 (b) Section 787.025, relating to luring or enticing a
 361 child.

362 (3) Any criminal act committed in another state or under
 363 federal law which, if committed in this state, constitutes an
 364 offense prohibited under any statute listed in subsection (1) or
 365 subsection (2).

366 (4) Any delinquent act committed in this state or any
 367 delinquent or criminal act committed in another state or under
 368 federal law which, if committed in this state, qualifies an
 369 individual for inclusion on the Registered Juvenile Sex Offender
 370 List under s. 943.0435(1)(h)1.d.

371 Section 6. Paragraph (d) of subsection (1) of section
 372 1012.795, Florida Statutes, is amended to read

373 1012.795 Education Practices Commission; authority to
 374 discipline.—

375 (1) The Education Practices Commission may suspend the

376 educator certificate of any person as defined in s. 1012.01(2)
377 or (3) for up to 5 years, thereby denying that person the right
378 to teach or otherwise be employed by a district school board or
379 public school in any capacity requiring direct contact with
380 students for that period of time, after which the holder may
381 return to teaching as provided in subsection (4); may revoke the
382 educator certificate of any person, thereby denying that person
383 the right to teach or otherwise be employed by a district school
384 board or public school in any capacity requiring direct contact
385 with students for up to 10 years, with reinstatement subject to
386 the provisions of subsection (4); may revoke permanently the
387 educator certificate of any person thereby denying that person
388 the right to teach or otherwise be employed by a district school
389 board or public school in any capacity requiring direct contact
390 with students; may suspend the educator certificate, upon an
391 order of the court or notice by the Department of Revenue
392 relating to the payment of child support; or may impose any
393 other penalty provided by law, if the person:

394 (d) Has been guilty of gross immorality or an act
395 involving moral turpitude as defined by rule of the State Board
396 of Education, including having a romantic relationship with or
397 soliciting or engaging in sexual contact with a student or
398 minor.

399 Section 7. Paragraphs (d) and (e) of subsection (1) of
400 section 1012.796, Florida Statutes, are amended to read:

401 1012.796 Complaints against teachers and administrators;
 402 procedure; penalties.—

403 (1)

404 (d)1.a. Each school district shall file in writing with
 405 the department all legally sufficient complaints within 30 days
 406 after the date on which subject matter of the complaint comes to
 407 the attention of the school district, regardless of whether the
 408 subject of the complaint is still an employee of the school
 409 district. A complaint is legally sufficient if it contains
 410 ultimate facts that show a violation has occurred as provided in
 411 s. 1012.795 and defined by rule of the State Board of Education.
 412 The school district shall include all information relating to
 413 the complaint which is known to the school district at the time
 414 of filing.

415 b. The district school superintendent must notify the
 416 parent of a student whose health, safety, or welfare is affected
 417 by the misconduct of certificated personnel as alleged in a
 418 legally sufficient complaint within 30 days after the date on
 419 which the subject matter of the complaint comes to the attention
 420 of the school district. The notification must inform the parent
 421 of:

422 (I) The allegations made in the complaint.

423 (II) Whether the district submitted the report to the
 424 department as required by this paragraph.

425 (III) The sanctions imposed against the instructional

426 personnel or school administrator as a result of the
427 investigation, if any.

428 (IV) The support the school district will make available to
429 the student in response to the misconduct.

430 2. Each district school board shall develop and adopt
431 policies and procedures to comply with this reporting
432 requirement. School board policies and procedures must include
433 standards for screening, hiring, and terminating instructional
434 personnel and school administrators, as defined in s. 1012.01;
435 standards of ethical conduct for instructional personnel and
436 school administrators; the duties of instructional personnel and
437 school administrators for upholding the standards; detailed
438 procedures for reporting alleged misconduct by instructional
439 personnel and school administrators which affects the health,
440 safety, or welfare of a student; requirements for the
441 reassignment of instructional personnel or school administrators
442 pending the outcome of a misconduct investigation; and penalties
443 for failing to comply with s. 1001.51 or s. 1012.795. The
444 district school board policies and procedures shall include
445 appropriate penalties for all personnel of the district school
446 board for nonreporting and procedures for promptly informing the
447 district school superintendent of each legally sufficient
448 complaint. The district school superintendent is charged with
449 knowledge of these policies and procedures and is accountable
450 for the training of all instructional personnel and school

451 administrators of the school district on the standards of
452 ethical conduct, policies, and procedures.

453 3. If the district school superintendent has knowledge of
454 a legally sufficient complaint and does not report the complaint
455 as required by law, or fails to enforce the policies and
456 procedures of the district school board, and fails to comply
457 with the requirements of this subsection, in addition to other
458 actions against certificateholders authorized by law, the
459 district school superintendent is subject to penalties as
460 specified in s. 1001.51(12).

461 4. If the superintendent determines that misconduct by
462 instructional personnel or school administrators who hold an
463 educator certificate affects the health, safety, or welfare of a
464 student and the misconduct warrants termination, the
465 instructional personnel or school administrators may resign or
466 be terminated, and the superintendent must report the misconduct
467 to the department in the format prescribed by the department.
468 The department shall maintain each report of misconduct as a
469 public record in the instructional personnel's or school
470 administrators' certification files. This paragraph does not
471 limit or restrict the power and duty of the department to
472 investigate complaints, regardless of the school district's
473 untimely filing, or failure to file, complaints and followup
474 reports.



475 (e) If allegations arise against an employee who is

476 certified under s. 1012.56 and employed in an educator-
477 certificated position in any public school, charter school or
478 governing board thereof, or private school that accepts
479 scholarship students under s. 1002.39 or s. 1002.395, the school
480 shall file in writing with the department a legally sufficient
481 complaint within 30 days after the date on which the subject
482 matter of the complaint came to the attention of the school,
483 regardless of whether the subject of the allegations is still an
484 employee of the school. A complaint is legally sufficient if it
485 contains ultimate facts that show a violation has occurred as
486 provided in s. 1012.795 and defined by rule of the State Board
487 of Education. The school shall include all known information
488 relating to the complaint with the filing of the complaint. This
489 paragraph does not limit or restrict the power and duty of the
490 department to investigate complaints, regardless of the school's
491 untimely filing, or failure to file, complaints and followup
492 reports.

493 Section 8. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1417 Juvenile Justice
SPONSOR(S): McClure
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Painter 	Sumner 
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 1417 addresses several provisions relating to juvenile justice:

- "Invest in Children" license plates: Currently, s. 320.08058(11), F.S., requires the annual use fee proceeds from the license plates go into the Juvenile Crime Prevention and Early Intervention Trust Fund within the Department of Juvenile Justice (DJJ). DJJ then funds programs and services on a county level based on each county's proportionate share of the license plate annual use fee collected in that county. The bill deletes the requirement that the funds be used by the county based on each county's proportionate share and provides that DJJ distribute the proceeds on a statewide basis to direct funding for programs and services in counties that have a need.
- Secure detention for PJOs pending a detention hearing: When a youth violates the conditions of nonsecure release, s. 985.26, F.S., is silent as to whether a prolific juvenile offender (PJO) should be placed in secure or nonsecure detention pending a detention hearing. As a result, the department uses a risk assessment instrument (RAI) to determine if the child should remain in secure or nonsecure detention pending the hearing. A subset of youth who meet the criteria of a PJO will not necessarily score for secure detention based on the RAI and will be released until the detention hearing. The bill amends s. 985.26, F.S., to require that a PJO who is taken into custody for a violation of nonsecure detention be held in secure detention until the detention hearing.
- Predisposition reports: A predisposition report is completed by a DJJ probation officer in preparation for a judicial disposition of a youth's case. The report is a multidisciplinary assessment of the youth's priority needs, an individualized plan for treatment of those needs, and a recommendation of the most appropriate placement to meet the youth's needs in a setting that provides a level of security sufficient to ensure public safety. The bill amends s. 985.433, F.S., to require the court receive and consider the report prior to committing the child to DJJ. Currently, s. 985.433, F.S., does not require a court to consider a predisposition report prior to committing a child.
- Florida Juvenile Justice Foundation: The bill amends s. 985.672, F.S., to delete the scheduled repeal of the department's direct-support organization, the Florida Juvenile Justice Foundation. In addition, the bill amends the section of the statute addressing the board of directors to allow the board of directors to be appointed by the secretary in accordance with the foundation's by laws.

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

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

"Invest in Children" License Plates

Section 320.08058(11), F.S., requires the Department of Highway Safety and Motor Vehicles to develop an Invest in Children license plate. The proceeds from the license plate annual use fee are deposited into the Juvenile Crime Prevention and Early Intervention Trust Fund ("the Fund") within the Department of Juvenile Justice ("DJJ").¹ DJJ then uses the fees to fund programming and services recommended by the county's juvenile justice council², designed to prevent juvenile delinquency.³ Funding is allocated on a county level based on each county's proportionate share of the license plate annual use fee collected by each individual county.

Below is a chart of the amount of annual use fees collected each fiscal year, for the past three years, among the 67 counties⁴:

FY 2014-2015	\$247,474.67
FY 2015-2016	\$230,422.31
FY 2016-2017	\$217,738.00
FY 2017-2018 (July 2017- Sept. 2017)	\$75,554.83

Due to the requirement that funding be allocated based proportionally on the fees collected by each county, DJJ is unable to fund prevention services in many counties that do not sell many license plates. In FY 2015-16, license plate sales in 27 counties throughout the state resulted in revenue of less than \$500 per county.⁵ As a result, many low revenue-producing counties do not respond to grant offerings by DJJ. The Fund has a current balance of over \$1.2 million.⁶

Prolific Juvenile Offender Violations of Nonsecure Detention

Secure or Nonsecure Detention Pending Detention Hearings

When a child is taken into custody, DJJ first determines whether the child should be placed in secure⁷ or nonsecure⁸ detention pending a detention hearing. The detention hearing must be held within 24 hours of the child's arrest.⁹ A risk assessment instrument (RAI) is used to assist in making the

¹ S. 320.08058(11)(b), F.S.

² Members of a juvenile justice council must include representative(s) of: the state attorney, the public defender, the chief judge, the Department of Children and Family Services, local enforcement agencies, a county commissioner, the superintendent of each school district within the county, a workforce organization, the business community, the faith community, a youth who has experience within the juvenile justice system, a healthcare service person specializing in mental-health care, victim-service programs and victims of crime, and the parent or family member of a youth who has been involved in the juvenile justice system. S. 985.664(4), F.S.

³ S. 320.08058(11)(b), F.S.

⁴ Email from Department of Juvenile Justice, October 26, 2017 (on file with Criminal Justice Subcommittee).

⁵ Id.

⁶ Id.

⁷ S. 985.03(18)(b), F.S., defines "secure detention" to mean "temporary care of a child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement."

⁸ S. 984.03, F.S., defines "nonsecure detention" to mean "temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of the department staff pending adjudication, disposition, or placement. Forms of nonsecure detention include, but are not limited to, home detention, electronic monitoring, day reporting centers, evening reporting centers, and nonsecure shelters. Nonsecure detention may include other requirements imposed by the courts."

⁹ S. 985.255(1), F.S.

determination of where to place the child. However, regardless of the RAI results, s. 985.25, F.S., requires secure detention of a child until the detention hearing in three circumstances:

- The child meets the criteria of PJO under s. 985.255(1)(j), F.S.¹⁰
- The child is charged with possessing or discharging a firearm on school property.¹¹
- The child has been taken into custody on three or more separate occasions within a 60-day period.¹²

The purpose of a detention hearing is for the judge to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she has been charged with and to determine the need for continued detention. Generally, the court makes this determination by using the RAI. The RAI contains information regarding a child's history of prior offenses, including, but not limited to, unlawful firearm possession, theft of a motor vehicle, or possession of a stolen vehicle; prior failures to appear; offenses committed pending adjudication; the probation status of the child at the time they are taken into custody; and other appropriate aggravating or mitigating circumstances.¹³

The RAI uses points that determine whether and what type of detention care should be imposed:

- Zero to six points - the child should be released.
- Seven to eleven points - the child should be placed in nonsecure detention.
- Twelve or more points - the child should be placed in secure detention.¹⁴

Once a detention hearing has been held and the state has filed a petition alleging a child committed a delinquent act or a violation of law, an adjudicatory hearing must be held as soon as practicable.¹⁵ If the child is a PJO, then the adjudicatory hearing must be held within 45 days after the child is taken into custody unless a delay is requested by the child.¹⁶ A child who is held in secure detention before his or her adjudicatory hearing may not be held in such detention for more than 21 days,¹⁷ except that the state or defense, in order to prepare its case, may seek up to a nine-day extension of detention care for a child charged with certain serious offenses.¹⁸

At the adjudicatory hearing, the judge must determine whether the state's evidence establishes beyond a reasonable doubt that the child committed the delinquent act alleged. The court may enter an order dismissing the case¹⁹ or may enter an order stating the facts upon which it finds the child committed the delinquent act and either withhold adjudication²⁰ or enter an adjudication of delinquency.²¹

If the child is found to have committed a delinquent act, the disposition of the case is typically entered at the same hearing; however, if the disposition is continued to a later date, statute provides that a child may not be held in secure detention care for more than 15 days following the entry of an order of adjudication.²² This 15-day period does not include periods of delay that result from continuances granted by the court for cause.²³

¹⁰ S. 985.25(1)(b), F.S.

¹¹ Id.

¹² Id.

¹³ S. 985.245(1)(b), F.S.

¹⁴ Rule 63D-8, F.A.C. (Department of Juvenile Justice Detention Risk Assessment Instrument).

¹⁵ S. 985.35(1), F.S.

¹⁶ S. 985.35(1)(b), F.S.

¹⁷ S. 985.26(2), F.S.

¹⁸ These offenses include any offense, which if committed by an adult, would be a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual.

¹⁹ S. 985.35(3), F.S.

²⁰ S. 985.35(4), F.S.

²¹ S. 985.35(5), F.S.

²² S. 985.26(3)

²³ If such a continuance is granted the court must conduct a hearing at the end of each 72-hour period, to determine the need for continued detention of the child and the need for further continuance of the proceedings. See s. 985.26(4), F.S.

Prolific Juvenile Offender and s. 985.25, F.S.

Section 985.255(1)(j), F.S., establishes the designation of a prolific juvenile offender ("PJO"). A child is classified as a PJO if he or she:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or had adjudication withheld for a felony offense, or a delinquent act that would be a felony if committed by an adult, prior to the charge for which they are currently appearing; and
- Has five or more of any of the following:²⁴
 - An arrest event²⁵ for which a disposition²⁶ has not been entered;
 - An adjudication; or
 - An adjudication withheld.

When a child is taken into custody and qualifies as a PJO, that child must remain in secure detention pending the detention hearing.²⁷ At the detention hearing, a PJO must be placed in either secure detention or nonsecure detention with electronic monitoring until the disposition of the case.²⁸ The term "disposition" means the state declines to file charges;²⁹ the state enters a nolle prosequi for the charges; an indictment³⁰ or information³¹ is filed; the case is dismissed; or there is a final order of disposition by the court. If the PJO is placed in secure detention, such detention may not exceed:

- 21 days, unless an adjudicatory hearing begins or is extended by nine days under current law; or
- 15 days after the entry order of adjudication.

Section 985.25, F.S., states that a PJO must remain in secure detention pending a detention hearing whenever DJJ receives custody of a PJO who has been taken into custody from a law enforcement agency.³² Despite the plain language of the statute, DJJ says s. 985.25, F.S., only applies when a child is taken into custody based on new law offenses and not technical violations of nonsecure detention release.³³

As a result, when a PJO violates nonsecure detention and is taken into custody, DJJ uses a RAI to determine if the child should remain in secure or nonsecure detention pending the detention hearing. A subset of youth who meet the criteria of PJO will not necessarily score for secure detention based on the RAI and will be released pending the detention hearing.

DJJ Predisposition Report

Sections 985.43, F.S., and 985.433, F.S., address disposition hearings in delinquency cases and predisposition reports. When a child is found to have committed a delinquent act, a court must first determine the suitability or unsuitability for adjudication and commitment of the child to DJJ.³⁴ The court may order DJJ to prepare a predisposition report regarding the child's eligibility for adjudication, commitment, and, if appropriate, assignment to residential commitment.³⁵

²⁴ Three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult.

²⁵ S. 985.255(1)(j)3, F.S., defines an "arrest event" as an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction.

²⁶ S. 985.26, F.S., defines "disposition" to mean a declination to file under s. 985.15(1)(h), the entry of nolle prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

²⁷ S. 985.25(1)(b), F.S.

²⁸ S. 985.26, F.S.

²⁹ Pursuant to s. 985.15(1)(h), F.S.

³⁰ Pursuant to s. 985.56, F.S., this may occur if the child is charged with a violation of law punishable by death or by life imprisonment.

³¹ Pursuant to s. 985.577, F.S., the state attorney may direct file, or in certain cases must direct file, an information for juvenile offenders of a certain age charged with committing certain serious offenses if the state intends to seek adult sanctions.

³² *Supra*, FN 27.

³³ Phone call between Criminal Justice Subcommittee staff and Department of Juvenile Justice on November 16, 2017.

³⁴ S. 985.433, F.S.

³⁵ S. 985.43, F.S.

Section 985.43, F.S.

The predisposition report is prepared by a DJJ probation officer and reports the result of a multidisciplinary assessment of the youth's priority needs, an individualized plan for treatment of those needs, and a recommendation of the most appropriate placement to meet the youth's needs in a setting that provides a level of security sufficient to ensure public safety.³⁶

Section 985.43, F.S., discusses predisposition reports and other evaluations to be used by a judge in sentencing a juvenile. If it is anticipated that the child will be recommended for residential commitment, then s. 985.43, F.S., requires the court to order a predisposition report.³⁷ The court must consider the child's entire assessment and predisposition report and shall review the records of earlier judicial proceedings prior to making a final disposition.³⁸

The predisposition report evaluates the following criteria³⁹:

- The seriousness of the offense.
- Whether the protection of the community requires adjudication and commitment.
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.
- Whether the offense was against person or against property, with greater weight being given to an offense against a person.
- The child's sophistication and maturity.
- The child's record and previous criminal history.
- The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child if committed to a community services program or facility.
- The child's educational status.

If the court determines that the child should be adjudicated and committed to DJJ, such determination shall be in writing or on the record.⁴⁰ The determination must include a specific finding of the reasons for the decision, including any determination that the child is a member of a criminal gang.⁴¹

Section 985.433, F.S.

Section 985.433, F.S., discusses the procedures a court must follow at the disposition of a case where a child has been found to commit a delinquent act. This statute does not discuss any requirement that a court must order and consider a predisposition report if the child is being recommended for commitment.

Bench Commitments

Juvenile arrests in Florida have continued to decline over the past decade, with juvenile arrests at the lowest point in more than 40 years.⁴² The use of residential commitment has also declined significantly, as residential placement is reserved for youth with a higher risk of reoffending. After several years of decline in residential commitment, dispositions to residential commitment began to increase during FY 2015-16 to FY 2016-17.⁴³ According to DJJ, this has been driven primarily by two factors⁴⁴:

- A significant reduction in transfer to adult court (direct file); and

³⁶ S. 985.43(1)(a), F.S.

³⁷ Id.

³⁸ S. 985.43(2), F.S.

³⁹ S. 985.433(6), F.S.

⁴⁰ S. 985.433, F.S.

⁴¹ Id.

⁴² Email from Department of Juvenile Justice, October 26, 2017, citing Florida Department of Juvenile Justice's Office of Research and Data Integrity (on file with Criminal Justice Subcommittee).

⁴³ Florida Department of Juvenile Justice FY 2016-17 Delinquency Profile (online publication pending) (on file with Criminal Justice Subcommittee).

⁴⁴ Email from Department of Juvenile Justice, November 09, 2017 (on file with Criminal Justice Subcommittee).

- An increase in bench commitments.

DJJ defines "bench commitments" to mean when the court fails to consider the department's recommendations in a predisposition report before committing the youth.⁴⁵ Below is a chart compiled from information received from the department regarding bench commitments.⁴⁶

	FY 06-07	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15	FY 15-16	FY 16-17
Commitments	8,422	7,593	7,319	6,122	5,317	4,097	3,481	3,278	3,072	3,181	3,499
Bench	975	924	1,137	1,050	1,121	981	989	970	838	989	960
	12%	12%	16%	17%	21%	24%	28%	30%	27%	31%	27%

Agency Direct Support Organizations

Direct Support Organizations (DSOs)

A direct-support organization (DSO) is a non-profit organization⁴⁷ authorized by statute to carry out specific tasks in support of a public entity or public cause. The function and purpose of a DSO is detailed in its enacting statute and the written contract with the agency the DSO was created to support.⁴⁸

DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing transparency and reporting requirements for DSOs.⁴⁹ Specifically, the law requires each DSO to submit annually the following information to the agency it was created to support by August 1st:⁵⁰

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁵¹

Additionally, the information submitted annually by a DSO must be available on the respective agency's website along with a link to the DSO's website, if one exists.⁵² Any contract between an agency and a DSO must be contingent upon the DSO submitting the required information to the agency and posting the information on the agency's website.⁵³ The contract must include a provision for ending operations and returning state-issued funds if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.⁵⁴ If a DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the DSO.⁵⁵

⁴⁵ Email from Department of Juvenile Justice, November 22, 2017 (on file with Criminal Justice Subcommittee).

⁴⁶ Id.

⁴⁷ Ch. 617, F.S.

⁴⁸ SS. 14.29(9)(a), 16.616(1), and 258.015(1), F.S.; see also Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2017), Rule 10.720(1)(b) and (d), available at: https://flauditor.gov/pages/pdf_files/10_700/pdf (last accessed January 11, 2018).

⁴⁹ S. 3, Ch. 2014-96, L.O.F.

⁵⁰ S. 20.058(1), F.S.

⁵¹ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501. 26 C.F.R. 1.6033-2.

⁵² S. 20.058(2), F.S.

⁵³ S. 20.058(4), F.S.

⁵⁴ Ch. 2017-75, L.O.F.

⁵⁵ S. 20.058(4), F.S.

By August 15th of each year, each agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information submitted by the DSO, along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the DSO.⁵⁶

Any law creating, or authorizing the creation of a DSO must repeal its authorization on October 1st of the 5th year after enactment, unless reviewed and reenacted by the Legislature. A list of DSOs in existence prior to July 1, 2014 are scheduled for repeal in 2018, and 2019 is below:

DSOs Scheduled for Repeal ⁵⁷	
October 1, 2018	October 1, 2019
<ul style="list-style-type: none"> • Guardian ad Litem Program Foundation (s. 39.8298(8), F.S.) • Florida Department of Law Enforcement for Florida Missing Children's Day (s. 683.231(8), F.S.) • Department of Corrections (s. 944.802(4), F.S.) • Executive Office of the Governor to assist victims of adult and juvenile crime. (s. 960.002(6), F.S.) • Department of Juvenile Justice (s. 985.672(7), F.S.) 	<ul style="list-style-type: none"> • Department of Environmental Protection (s. 20.2551(6), F.S.) • Division of Library and Information Services (s. 257.43(4), F.S.) • Division of Recreation and Parks (s. 258.015(4), F.S.) • Babcock Ranch Preserve (s. 259.10521(4), F.S.) • Division of Cultural Affairs (s. 265.703(4), F.S.) • Division of Historical Resources (s. 267.17(4), F.S.) • Florida Tourism Industry Marketing Corporation (ss. 288.1226(9) and 288.923(6), F.S.) • Florida Intergovernmental Relations Foundation (s. 288.809(5), F.S.) • Fish and Wildlife Conservation Commission (s. 379.223(4), F.S.) • Department of Agriculture and Consumer Services (s. 570.691(10), F.S.) • Florida Beef Council (s. 570.83(14), F.S.)

Current law requires all DSOs in existence prior to July 1, 2014 must be reviewed by the Legislature by July 1, 2019.⁵⁸

⁵⁶ S. 20.058(3), F.S.

⁵⁷ Supra, FN 3.

⁵⁸ S. 20.058(5), F.S.

DSO Audit Requirements

Section 215.981, F.S., requires each DSO with annual expenditures in excess of \$100,000 to annually audit its accounts and records.⁵⁹ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the DSO. The audit report must be submitted within nine months of the fiscal year to the Auditor General and to the state agency the DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of DSO accounts and records.⁶⁰

Florida Juvenile Justice Foundation

In 1999, the Legislature created the direct support organization for DJJ under s. 985.672, F.S. The Business Partners became that organization through non-profit incorporation on January 28, 2000, as a 501(c)(3) education organization named Florida Business Partners for Juvenile Justice, Inc.⁶¹ In 2005, the Board of Directors voted to change the name of the organization from Florida Business Partners for Juvenile Justice to Florida Juvenile Justice Foundation (Foundation).

The Foundation's purpose is to raise funds that enhance, promote, and support initiatives of DJJ. The Foundation funds the You Investment Award program, which provides financial assistance designed to further the education and employability of juvenile justice-involved youth. The Foundation also funds back-to-school drives, Youth Success Week, the Human Trafficking Summit, the National Faith-Based Symposium, and provides support and recognition for the DJJ Teacher of the Year Award.⁶²

Under s. 985.672(3), F.S., the board of directors for the Foundation must include representatives from businesses, representatives from each of the juvenile justice service districts, and one representative appointed at large. While DJJ used to divide the state out into "districts," that system changed in the late 1990s.⁶³ The current system under DJJ breaks the state into "circuits." This involves a substantial geographical change from the old "district" system. Where there used to be 15 districts, there are now 20 circuits.⁶⁴ The statutory language of s. 985.672(3), F.S., was never updated to reflect the transition from "districts" to "circuits."

The by-laws of the Foundation state that the Secretary shall appoint the members and that shall include a diverse group of individuals with broad based representation from communities and business leaders with ethnic, age, gender and geographic diversity.⁶⁵ The language of the statute is not in keeping with the current bylaws of the Foundation.

Currently, the authorizing statute for the Foundation is scheduled for repeal October 1, 2018.

Effect of Proposed Changes

Invest in Children License Plates

HB 1417 amends s. 320.08058, F.S., to remove the requirement that DJJ use the proceeds from license plates to fund programs and services on a county level based on each county's proportionate share of the license plate annual use fee collected in that county. The amendment will allow DJJ to

⁵⁹ The independent audit requirement does not apply to a DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

⁶⁰ S. 11.45(3), F.S.

⁶¹ Id.

⁶² Email from Department of Justice, November 20, 2017 (on file with Criminal Justice Subcommittee).

⁶³ Supra, FN. 4.

⁶⁴ Id.

⁶⁵ Florida Juvenile Justice Foundation, Inc. By-laws, Art. V (on file with Criminal Justice Subcommittee).

distribute the proceeds from the license plate fund on a statewide basis to direct funding for programs and services in counties that have a need.

Prolific Juvenile Offender Violations of Nonsecure Detention

The bill requires PJOs taken into custody for a violation of nonsecure detention to be held in secure detention until the detention hearing is held. The risk assessment instrument will no longer apply in determining if a PJO youth who violates the conditions of nonsecure release will be held pending the detention hearing.

Consideration of DJJ Predisposition Report

The bill amends s. 985.433, F.S., to require the court to receive and consider the predisposition report prior to committing the child to the department. This will ensure a sentencing judge is considering the opinions of DJJ concerning the suitability of the youth's placement prior to commitment.

DJJ Direct Support Organizations

HB 1417 removes the scheduled repeal date for the Foundation, the DSO for DJJ. As a result, the DSO will remain in existence unless the legislature determines that another review is necessary. The bill also amends the statutory language of the board of directors to allow the secretary to appoint members in accordance with the Foundation's bylaws.

B. SECTION DIRECTORY:

Section 1: Amending 320.08058, F.S., relating to specialty license plates.

Section 2: Amending 985.26, F.S., relating to length of detention.

Section 3: Amending 985.43, F.S., relating to predisposition reports; other evaluations.

Section 4: Amending 985.672, F.S., relating to direct-support organizations; definitions; use of property board of directors; audit.

Section 5: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminable impact on the cost of secure detention of PJOs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the juvenile justice; amending s.
 3 320.08058, F.S.; allowing the department to distribute
 4 proceeds from the Invest in Children license plate
 5 annual use fee on a statewide basis; amending s.
 6 985.26, F.S.; requiring the department to hold a
 7 prolific juvenile offender in secure detention pending
 8 a detention hearing following a violation of nonsecure
 9 detention; amending s. 985.433, F.S.; requiring the
 10 court to consider a predisposition report from the
 11 department before committing a child; amending s.
 12 985.672, F.S.; requiring the board of directors of the
 13 department's direct-support organization to be
 14 appointed according to the organization's bylaws;
 15 deleting the scheduled repeal of provisions governing
 16 a direct-support organization established by the
 17 department; providing an effective date.

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

20
 21 Section 1. Paragraph (b) of subsection (11) of section
 22 320.08058, Florida Statutes, is amended to read:
 23 320.08058 Specialty license plates.—
 24 (11) INVEST IN CHILDREN LICENSE PLATES.—
 25 (b) The proceeds of the Invest in Children license plate

26 | annual use fee must be deposited into the Juvenile Crime
 27 | Prevention and Early Intervention Trust Fund within the
 28 | Department of Juvenile Justice. Based on the recommendations of
 29 | the juvenile justice councils, the department shall use the
 30 | proceeds of the fee to fund programs and services that are
 31 | designed to prevent juvenile delinquency. ~~The department shall~~
 32 | ~~allocate moneys for programs and services within each county~~
 33 | ~~based on that county's proportionate share of the license plate~~
 34 | ~~annual use fee collected by the county.~~

35 | Section 2. Paragraph (d) is added to subsection (2) of
 36 | section 985.26, Florida Statutes, to read:

37 | 985.26 Length of detention.—

38 | (2)

39 | (d) A prolific juvenile offender under s. 985.255(1)(j)
 40 | who is taken into custody for a violation of the conditions of
 41 | his or her nonsecure detention must be held in secure detention
 42 | until a detention hearing is held.

43 | Section 3. Subsections (7) through (10) of section
 44 | 985.433, Florida Statutes, are renumbered as subsections (8)
 45 | through (11), respectively, paragraph (c) of present subsection
 46 | (7) is amended, and a new subsection (7) is added to that
 47 | section, to read:

48 | 985.433 Disposition hearings in delinquency cases.—When a
 49 | child has been found to have committed a delinquent act, the
 50 | following procedures shall be applicable to the disposition of

51 the case:

52 (7) The court must receive and consider the department's
 53 predisposition report, which shall include the department's
 54 recommendations, before committing a child to the department.
 55 The predisposition report cannot be waived by any party or by
 56 agreement of the parties.

57 (8)~~(7)~~ If the court determines that the child should be
 58 adjudicated as having committed a delinquent act and should be
 59 committed to the department, such determination shall be in
 60 writing or on the record of the hearing. The determination shall
 61 include a specific finding of the reasons for the decision to
 62 adjudicate and to commit the child to the department, including
 63 any determination that the child was a member of a criminal
 64 gang.

65 (c) The court may also require that the child be placed in
 66 a probation program following the child's discharge from
 67 commitment. Community-based sanctions under subsection (9)~~(8)~~
 68 may be imposed by the court at the disposition hearing or at any
 69 time prior to the child's release from commitment.

70 Section 4. Subsections (3) and (7) of section 985.672,
 71 Florida Statutes, are amended to read:

72 985.672 Direct-support organization; definition; use of
 73 property; board of directors; audit.—

74 (3) BOARD OF DIRECTORS.—The Secretary of Juvenile Justice
 75 shall appoint a board of directors of the direct-support

76 organization. The board members shall be appointed according to
77 the organization's bylaws ~~Members of the organization must~~
78 ~~include representatives from businesses, representatives from~~
79 ~~each of the juvenile justice service districts, and one~~
80 ~~representative appointed at large.~~

81 ~~(7) REPEAL. This section is repealed October 1, 2018,~~
82 ~~unless reviewed and saved from repeal by the Legislature.~~

83 Section 5. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1419 Firearms
SPONSOR(S): McClure
TIED BILLS: IDEN./SIM. **BILLS:** SB 1048

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Bruno <i>RB</i>	Sumner <i>TS</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Unless exempted, a person may not carry a concealed firearm or weapon in public without a license issued by the Department of Agriculture and Consumer Services. However, licensees may not carry a concealed firearm in certain locations, including schools and colleges. Florida law criminalizes possession of a firearm on school property as a third degree felony, punishable by up to 5 years of incarceration and a \$5,000 fine.

Florida law does not generally prohibit a licensee from carrying a concealed firearm or weapon in a church, synagogue, and other religious institution. However, because many places of worship are on or attached to a school – often a preschool – or college, carrying a firearm or weapon on the premises is a crime.

HB 1419 enables a church, synagogue, or other religious institution to authorize a licensed person to carry a concealed firearm on property owned, rented, leased, borrowed, or lawfully used by the institution. The authorization must be made for lawful purposes, including safety, security, and personal protection. Because the bill permits this authorization notwithstanding any other law, carrying a firearm with authorization at a school owned, rented, leased, borrowed, or lawfully used by a religious institution would not violate Florida's ban on possessing firearms on school property.

The bill does not limit the property or contractual rights of any property owner to exclude an armed person from his or her property. Religious institutions and owners of property borrowed or used by a religious institution may continue to prohibit firearms as they choose. These property owners may ask a person carrying a firearm to leave the premises, and a person who refuses to leave after warning commits armed trespass, a third degree felony.

The bill does not appear to fiscally impact state or local governments.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Concealed Carry

Unless exempted, a person may not carry a concealed firearm or weapon in public without a license issued by the Department of Agriculture and Consumer Services.¹ The licensing scheme requires the department to issue a license to any applicant that meets statutory criteria, which includes that the person:²

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, or is an eligible consular security official;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance;
- Has not been found guilty of a crime relating to a controlled substance within a 3-year waiting period immediately preceding the application date;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires the legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;
- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- Has not had had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect and restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of law.
 - For example, federal law prohibits a person convicted of misdemeanor domestic violence from purchasing a firearm,³ so a person convicted of misdemeanor domestic violence is ineligible for a license to carry a concealed firearm or weapon in Florida.

Firearms on School Property

Despite being licensed, a licensee may not carry a concealed firearm or weapon into several enumerated locations, including schools and colleges.⁴ Both Florida and federal laws criminalize possession of a firearm on school property.⁵

¹ S. 790.01, F.S.

² S. 790.06(2), F.S.

³ 18 USC § 922(g)(9).

⁴ S. 790.06(12)(1), F.S.

⁵ S. 790.115(2)(a); 18 USC § 922(q)(2).

Florida law

Under Florida law, possessing a firearm or weapon at a school-sponsored event or on the property of any school, school bus, or school bus stop is a third degree felony,⁶ punishable by up to 5 years of incarceration and a \$5,000 fine.⁷ Under this law, a school is any public or private preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school.⁸ Exceptions to the prohibition on possessing a firearm on school property include when a person carries a firearm:

- In a case to a firearms program, class, or function approved by the principal or chief administrative officer of the school;
- In a case to a firearms training range at a career center; or
- In a vehicle under certain circumstances, except that school districts may adopt written and published policies that waive the exception for purposes of student and campus parking privileges.⁹

Federal law

Federal law prohibits possession of a firearm that has moved in or otherwise affects interstate or foreign commerce in a school zone.¹⁰ A person who unlawfully possesses a firearm in a school zone faces up to 5 years in federal prison.¹¹ The federal prohibition does not apply to possession of a firearm:

- On private property not part of school grounds;
- By a person licensed to possess a firearm by the state in which the school zone is located;
- That is:
 - Not loaded; and
 - Locked in a container, or a locked firearms rack that is on a motor vehicle.
- By an individual for use in a program approved by a school in the school zone;
- By an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- By a law enforcement officer acting in his or her official capacity; or
- That is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if entry on school premises is authorized by school authorities.¹²

Firearms in Churches, Synagogues, and Religious Institutions

Florida law does not generally prohibit a licensee from carrying a concealed firearm or weapon in a church, synagogue, and other religious institution. However, because many places of worship are on or attached to a school – often a preschool – or college, carrying a firearm or weapon on the premises is a third degree felony, regardless of a person's licensure status.

Those churches, synagogues, or religious institutions not on or attached to a school campus may choose whether to ban firearms and weapons from the premises.¹³ A religious institution generally has

⁶ S. 790.115(2)(c), F.S.

⁷ SS. 775.082 & 775.083, F.S.

⁸ S. 790.115(2)(a), F.S.

⁹ *Id.*

¹⁰ 18 USC § 922(q)(2)(A).

¹¹ 18 USC §§ 924(1)(1)(B) & 924(4).

¹² 18 USC § 922(q)(2)(B).

¹³ See, e.g., The Church of Jesus Christ of Latter Day Saints, *Handbook 2: Administering the Church*, policy 21.2.4, available at: <https://www.lds.org/handbook/handbook-2-administering-the-church/selected-church-policies/21.2?lang=eng#21.2.4> (last viewed January 18, 2018); Michael Boulter, *After mass shootings, should legal guns be welcomed into church?*, PBS Newshour, available at: <https://www.pbs.org/newshour/politics/after-mass-shootings-should-legal-guns-be-welcomed-into-church> (last viewed January 18, 2018).

the right to exclude unwanted individuals and items from its property.¹⁴ Thus, a religious institution with a weapons ban could ask a person carrying a firearm to leave, and law enforcement could arrest a person who refused to leave for trespass. Trespass while armed is a third degree felony,¹⁵ punishable by up to 5 years of incarceration and a \$5,000 fine.¹⁶

Effect of Proposed Changes

HB 1419 enables a church, synagogue, or other religious institution to authorize a licensed person to carry a concealed firearm on property owned, rented, borrowed, leased, borrowed, or lawfully used by the institution. The authorization must be made for lawful purposes, including safety, security, and personal protection. Because the bill permits this authorization notwithstanding any other law, carrying a firearm at a school owned, rented, leased, borrowed, or lawfully used by a religious institution, as authorized by the institution, would not violate Florida's ban on possessing firearms on school property. The bill is also consistent with federal requirements, which except persons appropriately licensed by the state from the prohibition on possessing firearms in a school zone, by requiring licensure.

The bill does place time limits on the permissible authorization. Nothing in the bill would prohibit authorized person from carrying a firearm at the church, synagogue, or religious institution on or attached to school property during school hours or at times other than when the congregation is meeting.

The bill does not limit the property or contractual rights of any property owner to exclude a person carrying a firearm from his or her property. Religious institutions and owners of property borrowed or used by a religious institution may continue to prohibit firearms as they choose.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 790.06, relating to license to carry concealed weapon or firearm.
Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

¹⁴ FLA. CONST. Art. 1, s. 2 (a person has the right to acquire, possess, and protect property); *Nollan v. California Coastal Com'n*, 483 U.S. 825 (1987) (the right to exclude others is one of the most essential sticks in the bundle of rights that are commonly characterized as property).

¹⁵ S. 810.08(2)(C), F.S.

¹⁶ SS. 775.082 & 775.083, F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect municipal or county governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to firearms; amending s. 790.06, F.S.;
 3 authorizing a church, a synagogue, or other religious
 4 institution to allow a concealed weapons or concealed
 5 firearms licensee to carry a firearm on the property
 6 of the church, synagogue, or religious institution for
 7 certain purposes; providing an effective date.

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

10
 11 Section 1. Subsection (12) of section 790.06, Florida
 12 Statutes, is amended to read:

13 790.06 License to carry concealed weapon or firearm.—

14 (12)(a) A license issued under this section does not
 15 authorize any person to openly carry a handgun or carry a
 16 concealed weapon or firearm into:

- 17 1. Any place of nuisance as defined in s. 823.05;
- 18 2. Any police, sheriff, or highway patrol station;
- 19 3. Any detention facility, prison, or jail;
- 20 4. Any courthouse;
- 21 5. Any courtroom, except that nothing in this section
 22 would preclude a judge from carrying a concealed weapon or
 23 determining who will carry a concealed weapon in his or her
 24 courtroom;
- 25 6. Any polling place;

- 26 | 7. Any meeting of the governing body of a county, public
- 27 | school district, municipality, or special district;
- 28 | 8. Any meeting of the Legislature or a committee thereof;
- 29 | 9. Any school, college, or professional athletic event not
- 30 | related to firearms;
- 31 | 10. Any elementary or secondary school facility or
- 32 | administration building;
- 33 | 11. Any career center;
- 34 | 12. Any portion of an establishment licensed to dispense
- 35 | alcoholic beverages for consumption on the premises, which
- 36 | portion of the establishment is primarily devoted to such
- 37 | purpose;
- 38 | 13. Any college or university facility unless the licensee
- 39 | is a registered student, employee, or faculty member of such
- 40 | college or university and the weapon is a stun gun or nonlethal
- 41 | electric weapon or device designed solely for defensive purposes
- 42 | and the weapon does not fire a dart or projectile;
- 43 | 14. The inside of the passenger terminal and sterile area
- 44 | of any airport, provided that no person shall be prohibited from
- 45 | carrying any legal firearm into the terminal, which firearm is
- 46 | encased for shipment for purposes of checking such firearm as
- 47 | baggage to be lawfully transported on any aircraft; or
- 48 | 15. Any place where the carrying of firearms is prohibited
- 49 | by federal law.
- 50 | (b) A person licensed under this section may ~~shall~~ not be

51 prohibited from carrying or storing a firearm in a vehicle for
 52 lawful purposes.

53 (c) Notwithstanding any other law, for the purposes of
 54 safety, security, personal protection, or other lawful purposes,
 55 a church, a synagogue, or any other religious institution may
 56 authorize a person licensed under this section to carry a
 57 firearm on property owned, rented, leased, borrowed, or lawfully
 58 used by the church, synagogue, or religious institution.

59 ~~(d)(e)~~ This section does not modify the terms or
 60 conditions of s. 790.251(7).

61 ~~(e)(d)~~ Any person who knowingly and willfully violates any
 62 provision of this subsection commits a misdemeanor of the second
 63 degree, punishable as provided in s. 775.082 or s. 775.083.

64 Section 2. This act shall take effect July 1, 2018.