



Criminal Justice Subcommittee

Monday, January 29, 2018

3:00 PM – 6:00 PM

404 HOB

Meeting Packet

Richard Corcoran
Speaker

Ross Spano
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Monday, January 29, 2018 03:00 pm
End Date and Time: Monday, January 29, 2018 06:00 pm
Location: Sumner Hall (404 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 39 Weapons and Firearms by Eagle, White
HB 361 Persons Authorized to Visit State Juvenile Facilities by Richardson, Stafford
HB 515 Offenses Against Students by Authority Figures by White, Mariano
HB 653 Pub. Rec./Photographs or Video or Audio Recordings that Depict or Record Killing of a Person by Brown
HB 833 Retail Theft by Harrell
HB 957 Crime Stoppers Organizations by Gruters
CS/HB 1177 Joint Task Force on State Agency Law Enforcement Communications by Oversight, Transparency & Administration Subcommittee, Ingoglia
HB 1309 Fraudulently Obtaining or Retaining Personal Property or Equipment by Alexander
HB 1401 Judgments in Criminal Cases by Altman

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Friday, January 26, 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., Friday, January 26, 2018.

NOTICE FINALIZED on 01/25/2018 4:15PM by Kim.Breanna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 39 Weapons and Firearms
SPONSOR(S): Eagle and White
TIED BILLS: IDEN./SIM. **BILLS:** SB 148

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

SUMMARY ANALYSIS

Florida law generally prohibits openly carrying firearms and electric weapons. Violation of this prohibition is a second degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine. However, a person does not violate the open carry prohibition if he or she:

- Is licensed to carry a concealed firearm,
- Is lawfully carrying a firearm in a concealed manner,
- Displays the firearm briefly and openly, and
- Does not intentionally display the firearm in an angry or threatening manner, not in necessary self-defense.

HB 39 bill amends the penalties under s. 790.053, F.S., for violation of the open carry prohibition. The bill distinguishes between a violation by a person licensed to carry a concealed weapon (licensee) and a violation by an unlicensed person. Under the bill, a licensee who openly carries a firearm in violation of s. 790.053, F.S., commits:

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

Consistent with current law, non-licensees commit a second degree misdemeanor for any violation of the open carry prohibition.

The bill repeals the portion of the open carry prohibition in s. 790.053, F.S., that excepts a brief and open display of a firearm by a licensee to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense. The bill moves that general exception to the statute governing concealed carry licenses under s. 790.06(1), where it states:

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

Removal of current law's language relating to the intentional display of a firearm in an angry or threatening manner does not affect the ability to bring criminal charges for such behavior, as it falls under either criminal assault or improper exhibition of a firearm.

The bill may have an indeterminate positive fiscal impact on local government. The clerks of court may receive revenue from the fines created for the first two violations of the open carry prohibition by a licensee. The bill may also reduce the need for jail beds because it decriminalizes the first two violations of the open carry prohibition by a licensee.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Constitution guarantees the right of the people to keep and bear arms in self-defense.¹ Generally, Florida law authorizes a person to own, possess, and lawfully use firearms and other weapons² without a license if:

- The person is not statutorily prohibited from possession a firearm or weapon,³ and
- Such ownership, possession, or use occurs in a lawful manner and location.⁴

Concealed Carry

Unless exempted, a person may not carry a concealed firearm or weapon without a license issued by the Department of Agriculture and Consumer Services.⁵ The licensing scheme requires the Department issue a license to any applicant that meets objective statutory criteria.⁶ There are approximately 1.8 million licenses to carry a concealed firearm or weapon in Florida.⁷

Carrying a concealed firearm without a license or exemption is a third degree felony, punishable by up to five years in prison and a \$5,000 fine.⁸ Carrying any other concealed weapon without a license or exemption is a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.⁹

Open Carry

Florida law generally prohibits openly carrying firearms and electric weapons.¹⁰ Violation of this prohibition is a second degree misdemeanor, punishable by up to 60 days in jail and a \$500 fine.¹¹ However, a person does not violate the open carry prohibition if the person:

- Is licensed to carry a concealed firearm,
- Is lawfully carrying a firearm in a concealed manner,
- Displays the firearm briefly and openly, and
- Does not intentionally display the firearm in an angry or threatening manner, not in necessary self-defense.¹²

In 2017, the Florida Supreme Court (FSC) upheld the constitutionality of Florida's open carry prohibition in *Norman v. State*.¹³ The FSC reasoned that prohibiting openly carrying firearms only regulated one manner of bearing arms and therefore did not impair the exercise of the fundamental right to bear arms.¹⁴ The FSC noted that, because Florida's concealed carry licensing scheme requires the

¹ FLA. CONST. art. 1, s. 8.

² Section 790.001(13), F.S., defines "weapon" as "any dirk, knife, metallic knuckles, slugshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife."

³ See, e.g., S. 790.22 (prohibiting minors from possessing firearms); S. 793.23 (prohibiting convicted felons and juvenile delinquents from possessing a firearm).

⁴ S. 790.25, F.S.

⁵ S. 790.01, F.S.

⁶ S. 790.06, F.S.

⁷ Florida Department of Agriculture and Consumer Services, *Number of Licenses by Type As of November 30, 2017*, available at: http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last viewed January 24, 2018).

⁸ S. 790.01(2), F.S.; SS. 775.082 & 775.083, F.S.

⁹ S. 790.01(1), F.S.; SS. 775.072 & 775.083, F.S.

¹⁰ S. 790.053, F.S.

¹¹ *Id.*; SS. 775.082 & 775.083, F.S.

¹² S. 790.053(1), F.S.

¹³ 215 So.3d 18 (Fla. 2017).

¹⁴ *Id.* at 42.

Department of Agriculture and Consumer Services to issue a license to anyone meeting objective criteria, there were alternative channels for bearing arms and self-defense in public.¹⁵

Exemptions

Section 790.25, F.S., outlines sixteen circumstances in which neither the concealed carry licensure requirement nor the prohibition on openly carrying a firearm applies. This section exempts, among other circumstances, several professions involving use of a firearm; hunting, camping, and other recreational uses; and possession of firearms in one's home or business.¹⁶

Other sections address additional circumstances in which a person may carry a concealed weapon without a permit¹⁷ or openly carry a weapon.¹⁸ Additionally, the federal Law Enforcement Officer Safety Act grants a privilege to qualified law enforcement officers or qualified retired law enforcement officers, allowing them to carry a concealed firearm without a state-issued license to do so.¹⁹

Effect of Proposed Changes

HB 39 amends the penalties under s. 790.053, F.S., for violation of the open carry prohibition. The bill distinguishes between a violation by a person licensed to carry a concealed weapon (licensee) and a violation by an unlicensed person. Under the bill, a licensee who openly carries a firearm in violation of s. 790.053, F.S., commits:

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

Consistent with current law, non-licensees commit a second degree misdemeanor for any violation of the open carry prohibition.

The bill repeals the portion of the open carry prohibition in s. 790.053, F.S., that excepts a brief and open display of a firearm by a licensee to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not in necessary self-defense. The bill moves that general exception to the statute governing concealed carry licenses under s. 790.06(1), where it states:

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

Removal of current law's language relating to the intentional display of a firearm in an angry or threatening manner does not affect the ability to bring criminal charges for such behavior, as it falls under either criminal assault²⁰ or improper exhibition of a firearm.²¹

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

¹⁵ Id. at 37.

¹⁶ S. 790.25(3), F.S.

¹⁷ See, e.g., S. 790.01(3)(a), F.S. (allowing a person evacuating under a mandatory evacuation order to carry a concealed firearm); S. 790.052, F.S. (off-duty law enforcement officers have the right to carry a concealed firearm at the discretion of their supervisors).

¹⁸ A person may openly carry self-defense chemical spray, a nonlethal stun or dart-firing gun, or other nonlethal electric weapon or device that is designed solely for defensive purposes. S. 790.053(2), F.S.

¹⁹ 18 USC §§ 926B & 926C.

²⁰ SS. 784.011 & 784.021, F.S. (providing that assault is a first degree misdemeanor and assault with a deadly weapon is a third degree felony).

²¹ S. 790.10, F.S.

B. SECTION DIRECTORY:

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

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

Section 3: Reenacts s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

Section 4: Reenacting s. 985.11, F.S., relating to fingerprinting and photographing.

Section 5: 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The clerks of court may receive revenue from the fines created for the first two violations of the open carry prohibition by a licensee in s. 790.053, F.S.

2. Expenditures:

The bill may reduce the need for jail beds because it decriminalizes the first two violations of the open carry prohibition by a licensee in s. 790.053, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to weapons and firearms; amending s.
 3 790.053, F.S.; deleting a statement of applicability
 4 relating to a certain violation of carrying a
 5 concealed firearm; reducing the penalties applicable
 6 to a person licensed to carry a concealed weapon or
 7 firearm for a first or second violation of specified
 8 provisions relating to openly carrying weapons; making
 9 a fine payable to the clerk of the court; amending s.
 10 790.06, F.S.; providing that a person licensed to
 11 carry a concealed weapon or firearm does not violate
 12 certain provisions if the firearm is temporarily and
 13 openly displayed; reenacting ss. 943.051(3)(b) and
 14 985.11(1)(b), F.S., both relating to fingerprinting of
 15 a minor for violating specified provisions, to
 16 incorporate the amendment made to s. 790.053, F.S., in
 17 references thereto; providing an effective date.

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

20
 21 Section 1. Section 790.053, Florida Statutes, is amended
 22 to read:

23 790.053 Open carrying of weapons.—

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

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

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

35 (a) A self-defense chemical spray.

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

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

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

44 1. A noncriminal violation with a penalty of:

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

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

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

51 violation.

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

54 790.06 License to carry concealed weapon or firearm.—

55 (1) The Department of Agriculture and Consumer Services is
 56 authorized to issue licenses to carry concealed weapons or
 57 concealed firearms to persons qualified as provided in this
 58 section. Each such license must bear a color photograph of the
 59 licensee. For the purposes of this section, the term "concealed
 60 weapons or concealed firearms" means ~~are defined as~~ a handgun,
 61 electronic weapon or device, tear gas gun, knife, or billie, but
 62 the term does not include a machine gun as defined in s.
 63 790.001(9). Such licenses shall be valid throughout the state
 64 for a period of 7 years after ~~from~~ the date of issuance. Any
 65 person in compliance with the terms of such license may carry a
 66 concealed weapon or concealed firearm notwithstanding the
 67 provisions of s. 790.01. The licensee must carry the license,
 68 together with valid identification, at all times in which the
 69 licensee is in actual possession of a concealed weapon or
 70 firearm and must display both the license and proper
 71 identification upon demand by a law enforcement officer. A
 72 person licensed to carry a concealed firearm under this section
 73 whose firearm is temporarily and openly displayed to the
 74 ordinary sight of another person does not violate s. 790.053 and
 75 may not be arrested or charged with a noncriminal or criminal

76 violation of s. 790.053. Violations of the provisions of this
77 subsection shall constitute a noncriminal violation with a
78 penalty of \$25, payable to the clerk of the court.

79 Section 3. For the purpose of incorporating the amendment
80 made by this act to section 790.053, Florida Statutes, in a
81 reference thereto, paragraph (b) of subsection (3) of section
82 943.051, Florida Statutes, is reenacted to read:

83 943.051 Criminal justice information; collection and
84 storage; fingerprinting.-

85 (3)

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

91 1. Assault, as defined in s. 784.011.

92 2. Battery, as defined in s. 784.03.

93 3. Carrying a concealed weapon, as defined in s.
94 790.01(1).

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

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

98 6. Assault or battery on a law enforcement officer, a
99 firefighter, or other specified officers, as defined in s.
100 784.07(2)(a) and (b).

- 101 7. Open carrying of a weapon, as defined in s. 790.053.
- 102 8. Exposure of sexual organs, as defined in s. 800.03.
- 103 9. Unlawful possession of a firearm, as defined in s.
- 104 790.22(5).
- 105 10. Petit theft, as defined in s. 812.014(3).
- 106 11. Cruelty to animals, as defined in s. 828.12(1).
- 107 12. Arson, as defined in s. 806.031(1).
- 108 13. Unlawful possession or discharge of a weapon or
- 109 firearm at a school-sponsored event or on school property, as
- 110 provided in s. 790.115.

111 Section 4. For the purpose of incorporating the amendment
 112 made by this act to section 790.053, Florida Statutes, in a
 113 reference thereto, paragraph (b) of subsection (1) of section
 114 985.11, Florida Statutes, is reenacted to read:

115 985.11 Fingerprinting and photographing.—

116 (1)

117 (b) Unless the child is issued a civil citation or is
 118 participating in a similar diversion program pursuant to s.
 119 985.12, a child who is charged with or found to have committed
 120 one of the following offenses shall be fingerprinted, and the
 121 fingerprints shall be submitted to the Department of Law
 122 Enforcement as provided in s. 943.051(3)(b):

- 123 1. Assault, as defined in s. 784.011.
- 124 2. Battery, as defined in s. 784.03.
- 125 3. Carrying a concealed weapon, as defined in s.

126 790.01(1).

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

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

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

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

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

134 9. Unlawful possession of a firearm, as defined in s.
135 790.22(5).

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

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

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

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

143

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

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



167 Section 5. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 361 Persons Authorized to Visit State Juvenile Facilities

SPONSOR(S): Richardson and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Tuszynski 	Sumner 
2) Judiciary Committee			

SUMMARY ANALYSIS

Juveniles within the Florida juvenile justice system may be housed in detention centers and/or residential facilities. The Department of Juvenile Justice (DJJ) operates 21 detention centers. DJJ also contracts with private providers that operate residential commitment programs throughout Florida, which provide behavioral health, mental health, substance abuse, and sex offender treatment services to juveniles.

HB 361 authorizes the following persons to visit, at their pleasure, all state facilities housing juveniles that are operated or overseen by DJJ:

- The Governor;
- All Cabinet members;
- Members of the Legislature;
- Judges of state courts;
- State attorneys;
- Public defenders; and
- Authorized representatives of the Florida Commission on Offender Review.

The bill prohibits any person not otherwise authorized by law from visiting a facility. The bill prohibits DJJ from unreasonably withholding permission to visit a state facility housing juveniles from a person who provides sufficient evidence that he or she is a bona fide reporter or writer.

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

Juvenile Detention Centers and Residential Facilities

Juveniles in the Florida juvenile justice system may be housed in detention centers and/or residential facilities.

Juvenile Detention Centers

The Department of Juvenile Justice (DJJ) operates 21 detention centers throughout Florida. Detention is the custody status for juveniles who are held pursuant to a court order or taken into custody for a violation of law. Detention centers provide custody, supervision, education, and mental health/substance abuse and medical services to juveniles.¹

Generally a juvenile cannot be held in detention care for longer than 24 hours.² Section 985.255, F.S., requires a juvenile to have a detention hearing to determine the existence of probable cause and the need for continued detention within 24 hours of being taken into custody and placed in detention.³ A juvenile cannot be held in detention for more than 21 days unless an adjudicatory hearing has been commenced.⁴ The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare for cases involving certain serious crimes.⁵ A prolific juvenile offender⁶ may also be held for 15 days after the order of adjudication.⁷

Juvenile Residential Commitment Programs

DJJ contracts with private providers that operate the residential commitment programs throughout Florida. Residential programs provide behavioral health, mental health, substance abuse, and sex offender treatment services to juveniles.⁸ Only a judge can place a juvenile into a DJJ residential commitment program for an adjudication. Commitment to a residential program is for an indeterminate period of time and may include periods of temporary release.⁹

Each residential program is monitored regularly and evaluated through the DJJ's Bureau of Monitoring and Quality Improvement (Bureau).¹⁰ The Bureau conducts reviews throughout the fiscal year to ensure that the programs are in compliance with contract terms and conditions, statutes, rules, and DJJ policies.¹¹

¹ Florida Department of Juvenile Justice, *Detention Services*, available at <http://www.djj.state.fl.us/services/detention> (last visited January 23, 2018).

² S. 985.26(1), F.S.

³ S. 985.255(3)(a), F.S.

⁴ SS. 985.26(2) and (3), F.S.

⁵ These serious crimes include capital felonies, life felonies, and first or second degree felonies. S. 985.26(2), F.S.

⁶ A juvenile is a prolific juvenile offender if the juvenile: 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 delinquent act that would be a felony if committed by an adult, before the current charge; and has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult: an arrest event for which a disposition has not been entered, an adjudication or an adjudication withheld. S. 985.255(1)(j), F.S.

⁷ S. 985.26(3), F.S.

⁸ Florida Department of Juvenile Justice, *Residential Services*, available at <http://www.djj.state.fl.us/services/residential> (last visited January 23, 2018).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Florida Department of Juvenile Justice, *Monitoring and Quality Improvement*, available at <http://www.djj.state.fl.us/partners/QI> (last visited January 23, 2018).

Investigation into State Facilities Housing Juveniles

A recent investigation conducted by the *Miami Herald* analyzed 10 years of DJJ incident reports, investigations and reviews, inspections, emails, and surveillance videos, revealing incidents of misconduct that have occurred at DJJ facilities.¹² The series of articles discussed some of the issues facing DJJ facilities over the years: inexperienced and underpaid staff, inadequate personnel screening and standards, tolerance for cover-ups, faulty security cameras, and legal impunity for staffers.¹³

In response to the article, DJJ issued a press release, stating that the stories published in the *Miami Herald* did not accurately define the juvenile justice system in Florida. DJJ's response addressed each claim asserted in the *Miami Herald* article and further stated that the article ignored the aggressive reforms that DJJ has implemented over the past six years.¹⁴

Visitation of State Juvenile Facilities

Currently, any member of the Legislature who wishes to tour any of the detention centers or residential programs may arrange a visit with the DJJ Legislative Affairs Office or may schedule a visit of any DJJ facilities on his or her own accord.¹⁵ In contrast, any member of the Legislature, including other specified persons, have unrestricted visitation privileges to state correctional facilities.¹⁶

On October 18, 2018, DJJ sent a letter to members of the Legislature concerning the visitation of the DJJ's facilities. The letter addressed unannounced visits to the DJJ's facilities and the differences between adult correctional facilities and the juvenile facilities. The letter noted that juveniles in the DJJ's programs are statutorily entitled to a degree of confidentiality while adult offenders are not entitled to such protections. Specifically, s. 985.04, F.S., requires a juvenile's information to be kept confidential. The letter further noted that many of the juveniles suffer from previous trauma and interruptions to their daily schedules can be problematic. The letter requested that members of the Legislature wishing to visit a DJJ facility consider these circumstances.¹⁷

Visitation of State Adult Correctional Institutions

Section 944.23, F.S., authorizes the following persons to visit at their pleasure all adult state correctional institutions:

- The Governor;
- All Cabinet members;
- Members of the Legislature;
- Judges of state courts;
- State attorneys;
- Public defenders; and
- Authorized representatives of the Florida Commission on Offender Review.¹⁸

Current law prohibits any person not otherwise authorized by law from entering a state correctional institution except pursuant to rules prescribed by the Department of Corrections (DOC). Additionally, permission to visit state prisons must not be unreasonably withheld from those who give sufficient evidence to the DOC that they are bona fide reporters or writers.¹⁹

¹² Audra D.S. Burch and Carol Marbin Miller, *Dark secrets of Florida juvenile justice: 'honey-bun hits,' illicit sex, cover-ups*, *Miami Herald*, October 10, 2017, available at <http://www.miamiherald.com/news/special-reports/florida-prisons/article177883676.html> (last accessed January 23, 2018).

¹³ *Id.*

¹⁴ Press Release, Florida Department of Juvenile Justice, *Setting the Record Straight: Miami Herald Omits Facts, Ignores Reforms in Series Targeting DJJ*, available at: <http://www.djj.state.fl.us/news/press-releases/press-release-detail/2017/10/10/setting-the-record-straight-miami-herald-omits-facts-ignores-reforms-in-series-targeting-djj> (last accessed January 23, 2018).

¹⁵ Email from Rachel Moscoso, Legislative Affairs Director, Florida Department of Juvenile Justice, Fwd: Letter to the Legislature (Jan. 23, 2018) (on file with Criminal Justice Subcommittee).

¹⁶ S. 944.23, F.S.

¹⁷ *Supra*, FN 8.

¹⁸ S. 944.23, F.S.

¹⁹ *Id.*

Effect of Proposed Changes

HB 361 creates s. 985.6885, F.S., authorizing the following persons to visit, at their pleasure, all state facilities housing juveniles that are operated or overseen by DJJ:

- The Governor;
- All Cabinet members;
- Members of the Legislature;
- Judges of state courts;
- State attorneys;
- Public defenders; and
- Authorized representatives of the Florida Commission on Offender Review.

Any person not otherwise authorized by law may not visit a facility except under regulations as DJJ may prescribe.

The bill prohibits DJJ from unreasonably withholding permission to visit a state facility housing juveniles from a person who provides sufficient evidence that he or she is a bona fide reporter or writer.

The bill is effective on July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Creates s. 985.6885, F.S., relating to persons authorized to visit state juvenile facilities.

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.

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

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A bill to be entitled
 An act relating to persons authorized to visit state
 juvenile facilities; creating s. 985.6885, F.S.;
 authorizing specified persons to visit juvenile
 facilities operated by the Department of Juvenile
 Justice; prohibiting other persons from visiting such
 facilities except according to department regulations;
 prohibiting the unreasonable withholding of permission
 for visits by certain persons; providing an effective
 date.

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

Section 1. Section 985.6885, Florida Statutes, is created
 to read:

985.6885 Persons authorized to visit state juvenile
 facilities.-

(1) The following persons shall be authorized to visit at
 their pleasure all state facilities housing juveniles that are
 operated by or under contract for the Department of Juvenile
 Justice:

- (a) The Governor.
- (b) All Cabinet members.
- (c) Members of the Legislature.
- (d) Judges of state courts.

26 (e) State attorneys.
 27 (f) Public defenders.
 28 (g) Authorized representatives of the commission.
 29 (2) No other person not otherwise authorized by law shall
 30 be permitted to enter a facility subject to this section except
 31 under such regulations as the department may prescribe.
 32 Permission shall not be unreasonably withheld from those who
 33 give sufficient evidence to the department that they are bona
 34 fide reporters or writers.
 35 Section 2. This act shall take effect July 1, 2018.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 361 (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 Richardson offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 985.6885, Florida Statutes, is created

8 to read:

9 985.6885 Persons authorized to visit juvenile facilities.-

10 (1) The following persons may visit at their pleasure
11 between the hours of 6 a.m. and 11 p.m. all facilities housing
12 juveniles which are operated or overseen by the department or a
13 county:

14 (a) The Governor.

15 (b) A Cabinet member.

16 (c) A member of the Legislature.

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Amendment No.

17 (d) A judge of a state court.

18 (e) A state attorney.

19 (f) A public defender.

20 (g) A person authorized by the secretary of the
21 department.

22 (2) A person specified in subsection (1) may visit a
23 facility subject to this section before 6 a.m. or after 11 p.m.
24 pursuant to rules adopted by the department.

25 (3) The department may not unreasonably withhold
26 permission to visit a facility subject to this section from a
27 person who gives sufficient evidence that he or she is a bona
28 fide reporter or writer.

29 (4) The department shall adopt rules to implement this
30 section.

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

32
33 -----
34 **T I T L E A M E N D M E N T**

35 Remove everything before the enacting clause and insert:
36 An act relating to persons authorized to visit juvenile
37 facilities; creating s. 985.6885, F.S.; authorizing specified
38 persons to visit, during certain hours, all facilities housing
39 juveniles which are operated or overseen by the Department of
40 Juvenile Justice or a county; authorizing such persons to visit
41 the juvenile facilities outside of certain hours pursuant to

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 361 (2018)

Amendment No.

42 department rules; prohibiting the department from unreasonably
43 withholding permission for visits to such facilities by certain
44 persons; requiring the department to adopt rules; providing an
45 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 515 Offenses Against Students by Authority Figures
SPONSOR(S): White, Mariano
TIED BILLS: **IDEN./SIM. BILLS:** SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Painter <i>JMP</i>	Sumner <i>[Signature]</i>
2) Education Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, there is no prohibition in Florida from students and authority figures at schools K-12 to engage in consensual romantic relationships with students eighteen years of age or older.

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, regardless of the student's age. 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, such as colleges and universities, are not included.

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, defined as person under the age of 18 years.¹ Offenses include:

- 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
- 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.
- 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
- A felony 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 Reclassification is 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 criminal 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 in prison 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 Such conduct is not prohibited if the student is married to the other individual.³²

A law passed in 2009 in Arkansas made it 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 public

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.

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 decision, the state legislature amended the statute to make it second degree sexual assault for a person in a public or private school in grades kindergarten through twelfth grade, who is a teacher, principal, athletic coach, or counselor, in a position of trust or authority, to use his or her position to engage in sexual contact with a student enrolled in the school and less than twenty-one years of age.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 female high school students.³⁷ An investigation revealed that 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 An investigation found that 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

Effect of Proposed Changes

Sexual Conduct by Authority Figures with Adult Students

HB 515 prohibits an authority figure from soliciting or engaging in sexual conduct, a relationship of a romantic nature, or lewd conduct with a student, regardless of the student's age and 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.

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 public school, a private school, a voluntary prekindergarten education program, early learning programs, 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, such as a college or university.

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/> (last visited January 24, 2018).

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> (last visited January 24, 2018).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Supra*, FN 37.

The bill does not define the term "sexual conduct," or "lewd conduct." However, other statutes and case law do define these terms. Section 847.001(16), F.S., defines "sexual conduct"⁴³ 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 licentiousness⁴⁴ and lasciviousness.⁴⁵
- Wicked, lustful, unchaste, licentious, or sensual design by the perpetrator of an act condemned by law as lewd.⁴⁶

Therefore, although the statute fails to include definitions for these terms, the terms have been established elsewhere in Florida statute and case law.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 800.101, F.S., relating to offenses against students by authority figures.

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:

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.

⁴³ A mother's breastfeeding of her baby does not constitute "sexual conduct."

⁴⁴ *Holton v. State*, 28 Fla. 303 (1891).

⁴⁵ *McGuire v. State*, 489 So. 2d 729 (Fla. 1986).

⁴⁶ *Chesebrough v. State*, 255 So. 2d 675 (Fla. 1971).

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 appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

26 exclusively to the education of adults.

27 (c) "Student" means a person who is enrolled at a school.

28 (2) An authority figure shall not solicit or engage in:

29 (a) Sexual conduct;

30 (b) A relationship of a romantic nature; or

31 (c) Lewd conduct

32

33 with a student.

34 (3) A person who violates this section commits a felony of

35 the second degree, punishable as provided in s. 775.082, s.

36 775.083, or s. 775.084.

37 (4) This section does not apply to conduct constituting an

38 offense that is subject to reclassification under s. 775.0862.

39 Section 2. This act shall take effect October 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)
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Committee/Subcommittee hearing bill: Criminal Justice
 Subcommittee
 Representatives White and Mariano offered the following:

Amendment (with title amendment)

Between lines 38 and 39, insert:

Section 2. Subsection (5) of section 810.097, Florida Statutes, is amended to read:

810.097 Trespass upon grounds or facilities of a school; penalties; arrest.-

(5) As used in this section, the term "school" means the grounds or any facility, including school buses, of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.




Amendment No.

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

Remove everything before the enacting clause and insert:
An act relating to offenses against student safety;
amending s. 810.097, F.S.; adding school bus to the
definition of school for purposes of trespass upon
grounds or facilities of a school; creating s.
800.101, F.S.; providing definitions; prohibiting
certain conduct with students by authority figures;
providing penalties; providing exceptions; providing
an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 653 Pub. Rec./Photographs or Video or Audio Recordings that Depict or Record Killing of a Person
SPONSOR(S): Brown
TIED BILLS: IDEN./SIM. **BILLS:** SB 1178

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Moore	Harrington
2) Criminal Justice Subcommittee		MM MacNamara	Sumner 
3) Government Accountability Committee			

SUMMARY ANALYSIS

In 2011, the Legislature created a public record exemption for photographs and video and audio recordings held by an agency that depict or record the killing of a person. In 2016, the Legislature narrowed the exemption so that it applies only to photographs and video and audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.

These photographs and video and audio recordings are confidential and exempt from public record requirements, except that the exemption permits a surviving spouse to view, listen to, and copy these records. If there is no surviving spouse, the deceased's surviving parents may access the records, and if there are no surviving parents, an adult child of the deceased may access the records. Access to the confidential and exempt records is also permitted for a local governmental entity or a state or federal agency in furtherance of its official duties and to others who obtain a court order granting access.

HB 653 expands the exemption to apply to photographs and video and audio recordings that depict or record the killing of *any* person. Thus, it reverts back to the exemption that was in place from 2011 to 2016 before the Legislature narrowed it. However, the bill does provide that the term does not include the killing of a person in the care and custody of a state agency. The term "care and custody of a state agency" includes, but is not limited to, a child abuse protective investigation, protective supervision, foster care and related services, a protective investigation or protective supervision of a vulnerable adult, or correctional supervision.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments section.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³ Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record.

Open Government Sunset Review Act

The Open Government Sunset Review Act⁴ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁵

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁶

Exemption for Photographs and Recordings Depicting the Killing of a Person

In 2011, the Legislature created a public record exemption for photographs and video and audio recordings held by an agency⁷ that depict or record the killing of a person.⁸ Pursuant to the Open Government Sunset Review Act, the exemption was scheduled to repeal on October 2, 2016, unless reenacted by the Legislature.⁹ During the 2015 interim, staff of the House of Representatives and Senate conducted a review of the exemption and jointly sent a survey regarding interpretation and implementation of the public record exemption to state agencies, state universities and colleges,

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ Section 119.15, F.S.

⁵ Section 119.15(3), F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

⁸ Section 1, ch. 2011-115, L.O.F. "Killing of a person" was defined to mean "all acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death."

⁹ *Id.*

municipalities, and local law enforcement agencies that received or maintained the records protected by the exemption. Most of the entities that responded recommended reenacting the exemption.¹⁰

During the 2016 Regular Session, the Legislature narrowed the exemption so that it applies only to photographs and video and audio recordings that depict the killing of a law enforcement officer who was acting in accordance with his or her official duties.¹¹ These photographs and video and audio recordings are confidential and exempt¹² from public record requirements, except that the exemption permits a surviving spouse to view, listen to, and copy these records.¹³ If there is no surviving spouse, the deceased's surviving parents may access the confidential and exempt records, and if there are no surviving parents, an adult child of the deceased may access the records.¹⁴ The surviving relative who has the authority to access these records may designate in writing an agent to obtain them.¹⁵

In addition, a local governmental entity or a state or federal agency, upon written request, may view, listen to, or copy the confidential and exempt photographs and video and audio recordings in furtherance of its official duties. Unless otherwise required in the performance of the entity's or agency's duties, the identity of the deceased must remain confidential and exempt.¹⁶

Persons other than those covered by these exceptions may only have access to the confidential and exempt photographs and recordings if they obtain a court order. Upon a showing of good cause, a court may issue an order authorizing any person to view, listen to, or copy a confidential and exempt photograph or video or audio recording. The court is authorized to prescribe any restrictions or stipulations that the court deems appropriate. In determining good cause, the court must consider:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.¹⁷

If a petition is filed with the court to view, listen to, or copy the confidential and exempt photographs or recordings, a surviving spouse must be given reasonable notice that the petition has been filed, a copy of the petition, and reasonable notice of the opportunity to be present and heard at any hearing on the matter.¹⁸ If there is no surviving spouse, notice must be given to the parents of the deceased and, if the deceased has no living parent, then to the adult children of the deceased. If the court grants access to the confidential and exempt record, the access must be provided under the direct supervision of the custodian of the record or his or her designee.¹⁹

¹⁰ House of Representatives Final Bill Analysis for Senate Bill 7022 (2016), p. 4 (Apr. 13, 2016)(on file with the Oversight, Transparency & Administration Subcommittee).

¹¹ Chapter 2016-214, L.O.F. The term "killing of a law enforcement officer who was acting in accordance with his or her official duties" is defined to mean all acts or events that cause or otherwise relate to the death of a law enforcement officer who was acting in accordance with his or her official duties, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death. Section 406.136(1), F.S.

¹² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹³ Section 406.136(2), F.S.

¹⁴ *Id.*

¹⁵ Section 406.136(3)(a), F.S.

¹⁶ Section 406.136(3)(b), F.S.

¹⁷ Section 406.136(4), F.S.

¹⁸ Section 406.136(5), F.S.

¹⁹ Section 406.136(4)(c), F.S.

It is a third degree felony for any custodian of a photograph or video or audio recording to willfully and knowingly violate these provisions.²⁰ The same penalty applies to anyone who willfully and knowingly violates a court order issued under these provisions.²¹

The exemption does not apply to photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, nothing prohibits a court in such proceedings from restricting the disclosure of a killing, crime scene, or similar photograph or video or audio recording.²²

The exemption is retroactive, except that it is not intended to overturn, abrogate, or alter any court order in effect on July 1, 2011, that restricts or limits access to any such photograph or recording.²³

Effect of the Bill

HB 653 expands the public record exemption for photographs and video and audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties to apply the exemption to such records that depict or record the killing of *any* person. Thus, it reverts the exemption back to the exemption that was in place from 2011 to 2016 before the Legislature narrowed it. However, the bill does provide that the term does not include the killing of a person in the care and custody of a state agency. The term "care and custody of a state agency" includes, but is not limited to, a child abuse protective investigation, protective supervision, foster care and related services, a protective investigation or protective supervision of a vulnerable adult, or correctional supervision, as defined in chapters 39, 409, 415, or 945, F.S.

The bill provides a public necessity statement as required by the State Constitution, specifying that the photographs and video and audio recordings are highly sensitive representations of the deceased that, if heard, viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional injury to the immediate family of the deceased and detract from the memory of the deceased.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 406.136, F.S., relating to a photograph or video or audio recording that depicts or records the killing of a person.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

²⁰ Section 406.136(6)(a), F.S. A third degree felony is punishable by a term of imprisonment up to 5 years and a fine up to \$5,000. Sections 775.082(3)(d) and 775.083(1)(c), F.S.

²¹ Section 406.136(6)(b), F.S.

²² Section 406.136(c), F.S. In *State v. Schenecker*, No. 11-CF-001376A (Fla. 13th Cir.Ct. August 3, 2011), *cert. denied sub nom.*, *Media General Operations v. State*, 71 So. 3d 124 (Fla. 2d DCA 2011), the circuit court applied the exemption to crime scene photographs of homicide victims.

²³ Section 406.136(7), F.S.

2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
The bill does not appear to impact local government revenues.
2. Expenditures:
See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the public record exemption for photographs and video and audio recordings that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties to apply the exemption to such records that depict or record the killing of *any* person. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 406.136, F.S.; expanding an exemption from public
 4 records requirements for a photograph or video or
 5 audio recording held by an agency that depicts or
 6 records the killing of a law enforcement officer to
 7 include a photograph or video or audio recording held
 8 by an agency that depicts or records the killing of a
 9 person; providing for future legislative review and
 10 repeal of the exemption; providing a statement of
 11 public necessity; providing an effective date.

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

14
 15 Section 1. Section 406.136, Florida Statutes, is amended
 16 to read:

17 406.136 A photograph or video or audio recording that
 18 depicts or records the killing of a person ~~law enforcement~~
 19 ~~officer who was acting in accordance with his or her official~~
 20 ~~duties.~~-

21 (1) As used in this section, the term "killing of a
 22 person" ~~"killing of a law enforcement officer who was acting in~~
 23 ~~accordance with his or her official duties"~~ means all acts or
 24 events that cause or otherwise relate to the death of any human
 25 being ~~a law enforcement officer who was acting in accordance~~

26 | ~~with his or her official duties,~~ including any related acts or
 27 | events immediately preceding or subsequent to the acts or events
 28 | that were the proximate cause of death. The term does not
 29 | include the killing of a person in the care and custody of a
 30 | state agency. For purposes of this subsection, the term "care
 31 | and custody of a state agency" includes, but is not limited to,
 32 | a child abuse protective investigation, protective supervision,
 33 | foster care and related services, a protective investigation or
 34 | protective supervision of a vulnerable adult, or correctional
 35 | supervision, as defined in chapter 39, chapter 409, chapter 415,
 36 | or chapter 945.

37 | (2) A photograph or video or audio recording that depicts
 38 | or records the killing of a person ~~law enforcement officer who~~
 39 | ~~was acting in accordance with his or her official duties~~ is
 40 | confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 41 | of the State Constitution, except that a surviving spouse of the
 42 | decedent may view and copy any such photograph or video
 43 | recording or listen to or copy any such audio recording. If
 44 | there is no surviving spouse, ~~then~~ the surviving parents shall
 45 | have access to such records. If there is no surviving spouse or
 46 | parent, ~~the then an~~ adult children ~~child~~ shall have access to
 47 | such records.

48 | (3)(a) The deceased's surviving relative, with whom
 49 | authority rests to obtain such records, may designate in writing
 50 | an agent to obtain such records.

51 (b) A local governmental entity, or a state or federal
 52 agency, in furtherance of its official duties, pursuant to a
 53 written request, may view or copy a photograph or video
 54 recording or may listen to or copy an audio recording of the
 55 killing of a person ~~law enforcement officer who was acting in~~
 56 ~~accordance with his or her official duties~~ and, unless otherwise
 57 required in the performance of its ~~their~~ duties, the identity of
 58 the deceased shall remain confidential and exempt.

59 (c) The custodian of the record, or his or her designee,
 60 may not permit any other person to view or copy such photograph
 61 or video recording or listen to or copy such audio recording
 62 without a court order.

63 (4) (a) The court, upon a showing of good cause, may issue
 64 an order authorizing any person to view or copy a photograph or
 65 video recording that depicts or records the killing of a person
 66 ~~law enforcement officer who was acting in accordance with his or~~
 67 ~~her official duties~~ or to listen to or copy an audio recording
 68 that depicts or records the killing of a person ~~law enforcement~~
 69 ~~officer who was acting in accordance with his or her official~~
 70 ~~duties~~ and may prescribe any restrictions or stipulations that
 71 the court deems appropriate.

72 (b) In determining good cause, the court shall consider:

- 73 1. Whether such disclosure is necessary for the public
- 74 evaluation of governmental performance;
- 75 2. The seriousness of the intrusion into the family's

76 | right to privacy and whether such disclosure is the least
 77 | intrusive means available; and

78 | 3. The availability of similar information in other public
 79 | records, regardless of form.

80 | (c) In all cases, the viewing, copying, listening to, or
 81 | other handling of a photograph or video or audio recording that
 82 | depicts or records the killing of a person ~~law enforcement~~
 83 | ~~officer who was acting in accordance with his or her official~~
 84 | ~~duties~~ must be under the direct supervision of the custodian of
 85 | the record or his or her designee.

86 | (5) A surviving spouse shall be given reasonable notice of
 87 | a petition filed with the court to view or copy a photograph or
 88 | video recording that depicts or records the killing of a person
 89 | ~~law enforcement officer who was acting in accordance with his or~~
 90 | ~~her official duties~~ or to listen to or copy any such audio
 91 | recording, a copy of such petition, and reasonable notice of the
 92 | opportunity to be present and heard at any hearing on the
 93 | matter. If there is no surviving spouse, ~~then~~ such notice must
 94 | be given to the parents of the deceased and, if the deceased has
 95 | no surviving ~~living~~ parent, ~~then~~ to the adult children of the
 96 | deceased.

97 | (6)(a) Any custodian of a photograph or video or audio
 98 | recording that depicts or records the killing of a person ~~law~~
 99 | ~~enforcement officer who was acting in accordance with his or her~~
 100 | ~~official duties~~ who willfully and knowingly violates this

101 section commits a felony of the third degree, punishable as
 102 provided in s. 775.082, s. 775.083, or s. 775.084.

103 (b) Any person who willfully and knowingly violates a
 104 court order issued pursuant to this section commits a felony of
 105 the third degree, punishable as provided in s. 775.082, s.
 106 775.083, or s. 775.084.

107 (c) A criminal or administrative proceeding is exempt from
 108 this section but, unless otherwise exempted, is subject to all
 109 other provisions of chapter 119; provided, however, ~~that~~ this
 110 section does not prohibit a court in a criminal or
 111 administrative proceeding upon good cause shown from restricting
 112 or otherwise controlling the disclosure of a killing, crime
 113 scene, or similar photograph or video or audio recording
 114 ~~recordings~~ in the manner prescribed in this section herein.

115 (7) The ~~This~~ exemption in this section shall be given
 116 retroactive application and shall apply to all photographs or
 117 video or audio recordings that depict or record the killing of a
 118 person law enforcement officer who was acting in accordance with
 119 ~~his or her official duties~~, regardless of whether the killing of
 120 the person occurred before, on, or after July 1, 2015 ~~2011~~.
 121 However, nothing in this section herein is intended to, nor may
 122 be construed to, overturn or abrogate or alter any existing
 123 orders duly entered into by any court of this state, as of the
 124 effective date of this act, which restrict or limit access to
 125 any photographs or video or audio recordings that depict or

126 record the killing of a person ~~law enforcement officer who was~~
 127 ~~acting in accordance with his or her official duties.~~

128 (8) This section only applies to such photographs and
 129 video and audio recordings held by an agency as defined in s.
 130 119.011.

131 (9) This section is subject to the Open Government Sunset
 132 Review Act in accordance with s. 119.15 and shall stand repealed
 133 on October 2, 2023, unless reviewed and saved from repeal
 134 through reenactment by the Legislature.

135 Section 2. (1) The Legislature finds that it is a public
 136 necessity that photographs and video and audio recordings that
 137 depict or record the killing of a person be made confidential
 138 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 139 Art. I of the State Constitution. The Legislature finds that
 140 photographs and video and audio recordings that depict or record
 141 the killing of a person render a graphic and often disturbing
 142 visual or aural representation of the deceased. Such photographs
 143 and video and audio recordings provide a view of the deceased in
 144 the final moments of life, often bruised, bloodied, broken, with
 145 bullet wounds or other wounds, cut open, dismembered, or
 146 decapitated. As such, photographs and video and audio recordings
 147 that depict or record the killing of a person are highly
 148 sensitive representations of the deceased which, if heard,
 149 viewed, copied, or publicized, could result in trauma, sorrow,
 150 humiliation, or emotional injury to the immediate family of the

151 deceased and detract from the memory of the deceased. The
152 Legislature recognizes that the existence of the Internet and
153 the proliferation of personal computers and cellular telephones
154 throughout the world encourages and promotes the wide
155 dissemination of such photographs and video and audio recordings
156 24 hours a day and that widespread unauthorized dissemination of
157 such photographs and video and audio recordings would subject
158 the immediate family of the deceased to continuous injury.

159 (2) In addition to the emotional and mental injury that
160 these photographs and recordings may cause family members, the
161 Legislature is also concerned that dissemination of photographs
162 and video and audio recordings that depict or record the killing
163 of a person is harmful to the public. The Legislature is gravely
164 concerned and saddened by the horrific mass killings perpetrated
165 at the Pulse nightclub in Orlando and the Fort Lauderdale-
166 Hollywood International Airport. The Legislature is concerned
167 that, if these photographs and recordings are released,
168 terrorists will use them to attract followers, bring attention
169 to their causes, and inspire others to kill. The Legislature
170 also finds that dissemination of these photographs and
171 recordings may also educe violent acts by the mentally ill or
172 morally corrupt.

173 (3) The Legislature further recognizes that there
174 continues to be other types of available information, such as
175 crime scene reports, which are less intrusive and injurious to

176 the immediate family of the deceased and which continue to
177 provide for public oversight. The Legislature further finds that
178 the exemption provided in this act should be given retroactive
179 application because it is remedial in nature.

180 Section 3. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 833 Retail Theft
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1040

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

SUMMARY ANALYSIS

Florida law defines retail theft as:

- The taking, possession of, or carrying away of merchandise, property, money or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

Retail theft is a third degree felony under s. 812.015(8)(b), F.S., if the theft involves property valued at \$300 or more and the person commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen.

Organized retail theft ("ORT") is the large-scale theft of retail merchandise with the intent to resell the merchandise for financial gain. ORT typically involves a criminal enterprise using a group of individuals who steal large quantities of merchandise from a number of stores, and fencing operations that then convert the stolen merchandise into cash. According to the National Retail Federation ("NRF"), ORT costs retailers nearly \$30 billion a year. Two crime rings in Florida were discovered in December of 2017, accounting for over half a million dollars in total retail theft throughout the state.

Dealing in stolen property is a second degree felony under s. 812.019, F.S., if the person traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen. It is a first degree felony if a person initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in that stolen property.

HB 833 amends s. 812.015(8)(b), F.S., to make retail theft a third degree felony if the person, individually or with others, steals merchandise from one or more locations over a 90-day period, instead of a 48 hour period in current law, and the aggregate value of all the thefts during that period exceeds \$1,000. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine.

The bill also amends s. 812.019, F.S., to include any person who receives, possesses, or purchases any merchandise or stored value card obtained from a fraudulent return with the knowledge that the value card was obtained in violation of s. 812.015, F.S, commits a third degree felony.

The bill has an indeterminate fiscal impact on state government due to the criminalization of new offenses.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Retail Theft

Under Florida law, retail theft is defined as:

- The taking possession of or carrying away of merchandise, property, money or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value¹.

Retail theft is punishable under s. 812.014, F.S., and, like any other type of theft, must meet the elements of the applicable theft offense under the statute. However, s. 812.015, F.S., also provides that retail theft is a third degree felony if the theft involves property valued at \$300 or more and the person commits the offense in one of the following ways:²

- Individually, or with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;
- Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

Retail theft is enhanced to a second degree felony if the person has previously been convicted of third degree felony retail theft or individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of \$3,000.³

As of January 22, 2018, there are 55 inmates in Florida prisons for retail theft of over \$300 and 195 individuals currently on probation with the department for retail theft of over \$300.⁴

Organized Retail Theft

Organized retail theft (or "ORT") refers to large-scale retail theft and fraud by organized groups of professional shoplifters, or "boosters,"⁵ and includes a variety of retail crimes, including theft, gift card fraud, receipt fraud, ticket switching,⁶ and cargo theft. A "booster" is someone who steals merchandise

¹ S. 812.015(1)(d), F.S.

² S. 812.015(8), F.S.

³ S. 812.015(9), F.S.

⁴ Email from Florida Department of Corrections, January 22, 2018 (on file with Criminal Justice Subcommittee).

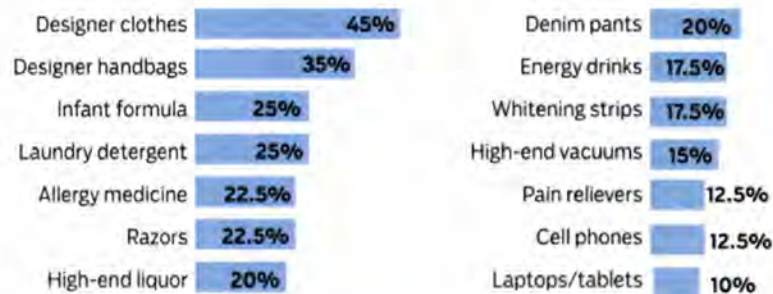
⁵ Kristin M. Finklea, *Congressional Research Service, Organized Retail Crime* (December 11, 2012), available at: <https://fas.org/sqp/crs/misc/R41118.pdf> (last visited January 21, 2018).

⁶ *Id.* at FN 1. Ticket switching involves thieves utilizing devices that create fake barcodes that they adhere to packages, covering the original barcodes. When scanned, these new barcodes ring up items at lower prices than their retail values.

and then sells it to a fence for a profit.⁷ A "fence" is someone who knowingly buys illegally obtained goods and then sells the goods for a profit.⁸ ORT groups resell illegally acquired merchandise through a variety of "fencing" operations, such as flea markets, swap meets, pawn shops, and online marketplaces.⁹ Popular goods for "boosters" to steal include baby formula, allergy medicine, and pregnancy tests.¹⁰ According to the National Retail Federation ("NRF"), the most popular items stolen in organized retail theft are as follows:¹¹

Most popular items stolen in organized retail crimes

Organized retail crime rings target both high-end goods and common household items. These are the top items stolen by organized rings, according to retailers surveyed by the National Retail Federation. The percentages show the share of respondents who said the item was frequently stolen.



SOURCE: National Retail Federation

ORT costs the retail industry approximately \$30 billion nationally each year.¹² ORT affected 97 percent of the 67 American retailers surveyed by the NRF in 2015, and four out of five of those retailers said the problem is getting worse.¹³

ORT is a threat to retail workers, with a number of retailers reporting incidents such as smash-and-grab robberies or the use of pepper spray.¹⁴ Losses from ORT increase costs for retailers and, in turn, increase prices for consumers. Also, the theft and re-sale of items like non-prescription drugs or baby formula, which might be stored improperly, sold after expiration or "cut" into larger quantities, create health risks to the public.¹⁵

Florida has seen several instances of ORT. In December 2017, five suspects were arrested for an organized felony theft ring.¹⁶ Members of the theft ring are believed to be responsible for the theft of about \$10,000 a month from stores throughout Central Florida and a combined theft of \$360,000 from retail stores including Walmart, Target and Publix in Volusia and Seminole counties and a sports retail

⁷ Supra, FN 1, Finklea.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Email from Florida Retail Federation, December 18, 2017, (on file with Criminal Justice Subcommittee). See also Loss Prevention Media Insider, *2017 Survey Reveals Organized Retail Crime's Top Stolen Items*, available at: <http://losspreventionmedia.com/insider/shoplifting-organized-retail-crime/2017-survey-reveals-organized-retail-crimes-top-stolen-items/> (last visited January 21, 2018).

¹² According to the National Retail Federation, available at: <https://nrf.com/advocacy/policy-agenda/organized-retail-crime> (last visited January 25, 2018).

¹³ Shannon Stapleton, *Sophisticated shoplifting gangs are costing US retailers \$30 billion a year*, Quartz (February 8, 2017), available at: <https://qz.com/905169/sophisticated-shoplifting-gangs-are-costing-us-retailers-30-billion-a-year/>.

¹⁴ National Retail Federation, *Organized Retail Crime*, available at: <https://nrf.com/advocacy/policy-agenda/organized-retail-crime> (last visited January 18, 2018).

¹⁵ Id.

¹⁶ Observer Staff, *Volusia County Sheriff's Office aids in the arrest of five suspects linked to retail ring theft*, Port Orange Observer (December 14, 2017), available at: <https://www.portorangeobserver.com/article/volusia-county-sheriffs-office-aids-in-the-arrests-of-five-suspects-linked-to-retail-ring-theft> (last visited January 18, 2018).

store in Lake Mary.¹⁷ It is believed the theft ring has been in operation since 2013.¹⁸ Also in December 2017, two individuals were arrested and two more wanted in connection with the theft of almost \$222,000 of merchandise from Home Depot stores in Polk, Hillsborough, Lake, Orange, Osceola, and Seminole counties over a year-long period.¹⁹

Gift Card Crime

Gift card crime is a subset of ORT. In this scenario, thieves will steal items from stores and then return them at another store without a receipt.²⁰ They will typically receive a gift card for the stolen goods and then sell it to a pawn shop or secondary store at a discount.²¹ A 2017 survey by the National Retail Federation ("NRF") found 57 percent of companies reported fraudulent gift cards or store credit in at least one location.²² NRF estimates that retail return fraud losses cost retailers \$9 billion to \$15 billion a year.²³

Dealing in Stolen Property

Section 812.019, F.S., addresses two types of dealing in stolen property - fencing and organizing. Section 812.019(1), F.S., states that any person who traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen commits a second degree felony.²⁴ Section 812.019(2), F.S., states it is a first degree felony²⁵ dealing in stolen property if a person initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in that stolen property.

Property is defined to mean anything of value, and includes:

- Real property, including things growing on, affixed to and found in land;
- Tangible or intangible personal property, including rights, privileges, interests, and claims; and
- Services.

Proof of possession of recently stolen property, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen.²⁶

Proof that a dealer who regularly deals in used property possesses stolen property, upon which a name and phone number of a person other than the offeror of the property are conspicuously displayed, gives rise to an inference that the dealer possessing the property knew or should have known that the property was stolen.²⁷

¹⁷ Id.

¹⁸ Id.

¹⁹ Staff writer, *2 arrested, 2 wanted in \$222,000 Home Depot theft ring, deputies say*, Polk County News Channel 6 (December 21, 2017), available at: <https://www.clickorlando.com/news/florida/polk-county/2-arrested-2-wanted-in-222-000-home-depot-theft-ring-deputies-say> (last visited January 18, 2018).

²⁰ Contessa Brewer and Scott Zamost, *Gift card crime fueling opioid addiction across the US*, CNBC (December 7, 2017), available at: <https://www.cnbc.com/2017/12/07/gift-card-crime-fueling-opioid-addiction-across-the-us.html> (last visited January 18, 2018).

²¹ Id.

²² Id.

²³ Id.

²⁴ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine pursuant to S. 775.082, F.S., and S. 775.083, F.S.

²⁵ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine pursuant to S. 775.082, F.S., and S. 775.083, F.S.

²⁶ S. 812.022(2), F.S.

²⁷ S. 812.022(5), F.S.

Effect of Proposed Changes

Retail Theft

HB 833 amends s. 812.015(8)(b), F.S., to make retail theft a third degree felony if the person, individually or with others, steals merchandise from one or more stores over a 90-day period and the aggregate value of all the thefts during that period exceeds \$1,000. The bill broadens the scope of the statute by:

- Expanding the time frame for aggregating the total value of stolen property from 48-hours to 90 days.
- Increasing the threshold aggregate amount from \$300 to \$1,000.

Dealing in Stolen Property

The bill also amends s. 812.019, F.S., by making dealing in stolen property a third degree felony if any person receives, possesses, or purchases any merchandise or stored value card obtained from a fraudulent return with the knowledge that the merchandise or stored value care was obtained in violation of s. 812.015, F.S., retail theft. The purpose of the amendment is to potentially deter many pawnshops and other markets from purchasing store gift cards if there is suspicion the gift cards were fraudulently obtained. If there is less market for the purchase of discounted gift cards, then it could ultimately lead to less motivation for thieves to commit gift card fraud.

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

B. SECTION DIRECTORY:

Section 1: Amending 812.015 F.S., relating to retail theft and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; and penalties.

Section 2: Amending 812.019 F.S., relating to dealing in stolen property.

Section 3: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments, infra.

2. Expenditures:

See Fiscal Comments, infra.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate impact on state government. Revising criminal offenses for organized retail theft and fencing may result in greater fines collected and a need for additional prison beds.

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

A bill to be entitled

An act relating to retail theft; amending s. 812.015, F.S.; revising requirements for aggregation of retail thefts that constitute a higher degree of offense; amending s. 812.019, F.S.; prohibiting specified acts involving merchandise or a stored value card obtained from a fraudulent return; providing penalties; providing an effective date.

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

Section 1. Paragraph (b) of subsection (8) of section 812.015, Florida Statutes, is amended, and subsection (9) of that section is republished, to read:

812.015 Retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.—

(8) Except as provided in subsection (9), a person who commits retail theft commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at \$300 or more, and the person:

(b) Individually, or in concert with one or more other persons, commits theft of any merchandise from one or more

26 | locations over a 90-day period the aggregate value of which
 27 | exceeds \$1,000 ~~Commits theft from more than one location within~~
 28 | ~~a 48-hour period, in which case the amount of each individual~~
 29 | ~~theft is aggregated to determine the value of the property~~
 30 | ~~stolen;~~

31 | (9) A person commits a felony of the second degree,
 32 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 33 | if the person:

34 | (a) Violates subsection (8) and has previously been
 35 | convicted of a violation of subsection (8); or

36 | (b) Individually, or in concert with one or more other
 37 | persons, coordinates the activities of one or more persons in
 38 | committing the offense of retail theft where the stolen property
 39 | has a value in excess of \$3,000.

40 | Section 2. Subsection (3) is added to section 812.019,
 41 | Florida Statutes, to read:

42 | 812.019 Dealing in stolen property.—

43 | (3) Any person who receives, possesses, or purchases any
 44 | merchandise or stored value card obtained from a fraudulent
 45 | return with the knowledge that the merchandise or stored value
 46 | card was obtained in violation of s. 812.015 commits a felony of
 47 | the third degree, punishable as provided in ss. 775.082,
 48 | 775.083, and 775.084.

49 | Section 3. 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 Harrell offered the following:

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

6 Remove everything after the enacting clause and insert:

7
 8 Section 1. Paragraphs (a), (c), (d), (e), and (f) of
 9 subsection (3) of section 921.0022, Florida Statutes, are
 10 amended to read:

11 921.0022 Criminal Punishment Code; offense severity
 12 ranking chart.-

13 (3) OFFENSE SEVERITY RANKING CHART

14 (a) LEVEL 1

15



Amendment No.

	Florida Statute	Felony Degree	Description
16	24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
17	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
18	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
19	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
20	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
21	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
22			



Amendment No.

23	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
24	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
25	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
26	322.212(5)(a)	3rd	False application for driver license or identification card.
27	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
	443.071(1)	3rd	False statement or representation to obtain or



Amendment No.

28			increase reemployment assistance benefits.
509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.	
29			
517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.	
30			
562.27(1)	3rd	Possess still or still apparatus.	
31			
713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.	
32			
812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).	
33			
812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.	



Amendment No.

34	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
35	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
36	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
37	826.01	3rd	Bigamy.
38	828.122(3)	3rd	Fighting or baiting animals.
39	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
40	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled

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Amendment No.

			substances, all but s. 893.03(5) drugs.
41	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
42	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
43	838.15(2)	3rd	Commercial bribe receiving.
44	838.16	3rd	Commercial bribery.
45	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
46	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
47	849.01	3rd	Keeping gambling house.
48			

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Amendment No.

49	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
50	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
51	849.25(2)	3rd	Engaging in bookmaking.
52	860.08	3rd	Interfere with a railroad signal.
53	860.13(1)(a)	3rd	Operate aircraft while under the influence.
54	893.13(2)(a)2.	3rd	Purchase of cannabis.
55	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).



Amendment No.

56	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
57	(c) LEVEL 3		
58	Florida	Felony	
59	Statute	Degree	Description
60	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
61	316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
62	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
63	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.



Amendment No.

64	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
65	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
66	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
67	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
68	327.35(2)(b)	3rd	Felony BUI.
69	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.



Amendment No.

70	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
71	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
72	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
73	379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.



Amendment No.

74	379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
75	400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
76	400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
77	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
78	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.



Amendment No.

79	624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
	624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
80			
	626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
81			
	697.08	3rd	Equity skimming.
82			
	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
83			
	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
84			
	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
85			



Amendment No.

86	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
87	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
88	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
89	815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
90	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
91	817.233	3rd	Burning to defraud insurer.
	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.



Amendment No.

92	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
93	817.236	3rd	Filing a false motor vehicle insurance application.
94	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
95	817.413(2)	3rd	Sale of used goods as new.
96	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
97	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
98			



Amendment No.

831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
99		
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
100		
843.19	3rd	Injure, disable, or kill police dog or horse.
101		
860.15(3)	3rd	Overcharging for repairs and parts.
102		
870.01(2)	3rd	Riot; inciting or encouraging.
103		
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
104		
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,



Amendment No.

			(2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
105	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
106	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
107	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
108	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.



Amendment No.

109

893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

110

893.13(7)(a)10. 3rd Affix false or forged label to package of controlled substance.

111

893.13(7)(a)11. 3rd Furnish false or fraudulent material information on any document or record required by chapter 893.

112

893.13(8)(a)1. 3rd Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.

113



Amendment No.

114 893.13(8)(a)2. 3rd Employ a trick or scheme in the
practitioner's practice to
assist a patient, other person,
or owner of an animal in
obtaining a controlled
substance.

115 893.13(8)(a)3. 3rd Knowingly write a prescription
for a controlled substance for
a fictitious person.

116 893.13(8)(a)4. 3rd Write a prescription for a
controlled substance for a
patient, other person, or an
animal if the sole purpose of
writing the prescription is a
monetary benefit for the
practitioner.

117 918.13(1)(a) 3rd Alter, destroy, or conceal
investigation evidence.

118 944.47 3rd Introduce contraband to
(1)(a)1. & 2. correctional facility.



Amendment No.

119

944.47(1)(c) 2nd Possess contraband while upon the grounds of a correctional institution.

120

985.721 3rd Escapes from a juvenile facility (secure detention or residential commitment facility).

121

(d) LEVEL 4

122

Florida	Felony	
Statute	Degree	Description

123

316.1935(3)(a) 2nd Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

124

499.0051(1) 3rd Failure to maintain or deliver transaction history, transaction information, or transaction statements.



Amendment No.

125	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
126	517.07(1)	3rd	Failure to register securities.
127	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
128	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
129	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
130	784.075	3rd	Battery on detention or commitment facility staff.
131	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
132			



Amendment No.

133	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
134	784.081(3)	3rd	Battery on specified official or employee.
135	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
136	784.083(3)	3rd	Battery on code inspector.
137	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
138	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
139	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.



Amendment No.

140	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
141	787.07	3rd	Human smuggling.
142	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
143	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
144	790.115(2)(c)	3rd	Possessing firearm on school property.
145	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied



Amendment No.

146			structure; unarmed; no assault or battery.
147	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
148	810.06	3rd	Burglary; possession of tools.
149	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
150	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
151	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
152	<u>812.014(3)(c)</u>	<u>3rd</u>	<u>Petit theft (3rd conviction); theft of any property not specified in subsection (2).</u>



Amendment No.

153 812.0195(2) 3rd Dealing in stolen property by
use of the Internet; property
stolen \$300 or more.

154 817.034(4)(a)3. 3rd Engages in scheme to defraud
(Florida Communications Fraud
Act), property valued at less
than \$20,000.

155 817.505(4)(a) 3rd Patient brokering.

156 817.563(1) 3rd Sell or deliver substance other
than controlled substance
agreed upon, excluding s.
893.03(5) drugs.

157 817.568(2)(a) 3rd Fraudulent use of personal
identification information.

158 817.625(2)(a) 3rd Fraudulent use of scanning
device, skimming device, or
reencoder.

159



Amendment No.

160	817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
161	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
162	837.02(1)	3rd	Perjury in official proceedings.
163	837.021(1)	3rd	Make contradictory statements in official proceedings.
164	838.022	3rd	Official misconduct.
165	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
166	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.



Amendment No.

167	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
168	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
169	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
170	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
171	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
	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).



Amendment No.

172

914.14(2) 3rd Witnesses accepting bribes.

173

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

174

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

175

918.12 3rd Tampering with jurors.

176

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

177

178 (e) LEVEL 5

179

Florida	Felony	
Statute	Degree	Description

180

316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
---------------	-----	---



Amendment No.

181	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
182	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
183	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
184	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
185	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or



Amendment No.

reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

186

379.367(4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

187

379.407(5)(b)3. 3rd Possession of 100 or more undersized spiny lobsters.

188

381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.

189

440.10(1)(g) 2nd Failure to obtain workers' compensation coverage.

190

440.105(5) 2nd Unlawful solicitation for the purpose of making workers' compensation claims.

191



Amendment No.

192	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
193	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
194	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
195	790.01(2)	3rd	Carrying a concealed firearm.
196	790.162	2nd	Threat to throw or discharge destructive device.
197	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.



Amendment No.

198	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
199	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
200	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
201	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
202	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
203	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.



Amendment No.

204	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
205	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
206	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
207	812.131(2)(b)	3rd	Robbery by sudden snatching.
208	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
209	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
210	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false



Amendment No.

entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.

211

817.568(2)(b)

2nd

Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.

212

817.611(2)(a)

2nd

Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

213

817.625(2)(b)

2nd

Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

214



Amendment No.

215	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
216	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
217	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
218	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
	843.01	3rd	Resist officer with violence to person; resist arrest with violence.



Amendment No.

219	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
220	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
221	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
222	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
223	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
224	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d),



Amendment No.

			(2) (a), (2) (b), or (2) (c) 4. drugs).
225	893.13 (1) (c) 2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
226	893.13 (1) (d) 1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03 (1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs) within 1,000 feet of university.
227	893.13 (1) (e) 2.	2nd	Sell, manufacture, or deliver cannabis or other drug



Amendment No.

prohibited under s.
 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., (2)(c)5.,
 (2)(c)6., (2)(c)7., (2)(c)8.,
 (2)(c)9., (3), or (4) within
 1,000 feet of property used for
 religious services or a
 specified business site.

228

893.13(1)(f)1. 1st Sell, manufacture, or deliver
 cocaine (or other s.
 893.03(1)(a), (1)(b), (1)(d),
 or (2)(a), (2)(b), or (2)(c)4.
 drugs) within 1,000 feet of
 public housing facility.

229

893.13(4)(b) 2nd Use or hire of minor; deliver
 to minor other controlled
 substance.

230

893.1351(1) 3rd Ownership, lease, or rental for
 trafficking in or manufacturing
 of controlled substance.

231

232 (f) LEVEL 6



Amendment No.

233	Florida	Felony	
	Statute	Degree	Description
234	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
235	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
236	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
237	499.0051(2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
238	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
239			



Amendment No.

240	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
241	775.0875(1)	3rd	Taking firearm from law enforcement officer.
242	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
243	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
244	784.041	3rd	Felony battery; domestic battery by strangulation.
245	784.048(3)	3rd	Aggravated stalking; credible threat.
246	784.048(5)	3rd	Aggravated stalking of person under 16.
247	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.



Amendment No.

248	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
249	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
250	784.081(2)	2nd	Aggravated assault on specified official or employee.
251	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
252	784.083(2)	2nd	Aggravated assault on code inspector.
253	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
254	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.



Amendment No.

255	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
256	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.
257	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
258	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
259	794.05(1)	2nd	Unlawful sexual activity with specified minor.
	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older



Amendment No.

			but less than 16 years of age; offender less than 18 years.
260	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
261	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
262	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
263	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
264	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
265	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.



Amendment No.

266	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
267	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
268	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
269	<u>817.034(4)(a)2.</u>	<u>2nd</u>	<u>Communications fraud, value \$20,000 to \$50,000.</u>
270			
271	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
272	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
273	825.102(1)	3rd	Abuse of an elderly person or disabled adult.



Amendment No.

274	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
275	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
276	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
277	827.03(2)(c)	3rd	Abuse of a child.
278	827.03(2)(d)	3rd	Neglect of a child.
279	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
280	836.05	2nd	Threats; extortion.
281	836.10	2nd	Written threats to kill or do bodily injury.
282			



Amendment No.

283	843.12	3rd	Aids or assists person to escape.
284	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
285	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
286	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
287	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community



Amendment No.

supervision, resulting in great
bodily harm.

288

944.40 2nd Escapes.

289

944.46 3rd Harboring, concealing, aiding
escaped prisoners.

290

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

291

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

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293 Section 2. This act shall take effect July 1, 2019.

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

298

Remove everything before the enacting clause and insert:

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An act relating to retail theft; amending s. 921.0022,

300

F.S.; increasing the offense level for petit theft third or

301

subsequent offense from level one to level three;

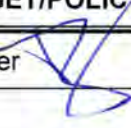


Amendment No.

302 increasing the offense level for third-degree felony
303 organized scheme to defraud from level four to level five;
304 increased the offense level for second degree felony
305 organized scheme to defraud from level five to level 6;
306 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 957 Crime Stoppers Organizations
SPONSOR(S): Gruters and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 706

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>(WJJ)</i>	Sumner 
2) Oversight, Transparency & Administration Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court. In part, the Code makes certain communications privileged, meaning their disclosure cannot be compelled, even in legal proceedings.

Crime Stoppers organizations are nonprofit entities that partner with law enforcement and the community to fight crime. Crime Stoppers organizations receive information about alleged criminal activity through a designated hotline or through electronic means and then forward the information to appropriate law enforcement.

HB 957 adds a new category of privileged communication to the Code. The bill provides that when a person reports alleged criminal activity to a Crime Stoppers organization, that communication and the reporting person's identity are privileged and cannot be disclosed, except on a limited basis in criminal proceedings where the information is constitutionally required to be disclosed.

The bill makes it a third-degree felony for any person to disclose privileged or protected information relating to a communication made to a Crime Stoppers organization.

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 October 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Crime Stoppers Organizations

Crime Stoppers organizations are nonprofit entities that partner with law enforcement and the community to fight crime.¹ Crime Stoppers organizations receive information about alleged criminal activity through a designated hotline or through electronic means and then forward the information to appropriate law enforcement.² Such organizations often create incentives to report crimes by providing monetary rewards or by allowing the person reporting the crime to remain anonymous.³

Florida Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁴ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings. Examples of generally privileged communications include communications between a lawyer and client,⁵ communications between a husband and wife,⁶ and communications between a psychotherapist and a patient.⁷

Effect of Proposed Changes

HB 957 adds a new category of privileged communication to the Code. Specifically, the bill provides that when a person reports alleged criminal activity to a Crime Stoppers organization, that communication and the reporting person's identity are privileged and cannot be disclosed, except on a limited basis in criminal proceedings where the information is constitutionally required to be disclosed.

Definitions

The bill defines:

- "Crime stoppers organization" as a private, not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity and forwards that information to appropriate law enforcement agencies.
- "Privileged communication" as the act of providing information to a Crime Stoppers organization for the purpose of reporting alleged criminal activity.
- "Protected information" as the identity of a person who engages in privileged communication with a Crime Stoppers program and any records, recordings, oral or written statements, papers, documents, or other tangible things provided to or collected by:
 - A Crime Stoppers organization,
 - A law enforcement Crime Stoppers coordinator or his or her staff, or
 - A law enforcement agency in connection with such privileged communication.

¹ <http://www.leoncounttyso.com/crime-stoppers> (last visited Jan. 26, 2018).

² Id.; <http://www.facsflorida.org/what-we-do/how-they-do-it/> (last visited Jan. 26, 2018).

³ Id.

⁴ Chapter 90, F.S.

⁵ S. 90.502, F.S.

⁶ S. 90.504, F.S.

⁷ S. 90.503, F.S.

Protection of Privileged Communication in Legal Proceedings

Under the bill, any person who engages in privileged communication—as well as any law enforcement officer or staff thereof, or any member of a Crime Stoppers organization's board of directors—cannot be compelled to:

- Disclose, by way of testimony or any other means, privileged communication or protected information unless failure to do so would infringe on the constitutional rights of an accused person.
- Produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to privileged communication or protected information, whether in connection with a criminal case, criminal proceeding, or any administrative hearing; or by way of any discovery procedure.

In a criminal proceeding, upon the defendant's petition, a court may order the production and disclosure of all or a part of protected information if it finds that the privileged or protected information:

- May provide favorable evidence for the defendant,
- Is specifically related to the determination of the innocence or guilt of the defendant, and
- Is such that, if not disclosed, would deprive the defendant's constitutional rights.

In such a case, the court must, to the fullest extent possible, protect the identity of the persons who engaged in the privileged communication.

Criminal Penalty for Disclosure of Privileged Communication

The bill makes it a third-degree felony for any person to disclose any information related to privileged communication or protected information. This means that when a person reports information about alleged criminal activity to a Crime Stoppers organization, any person who discloses the identity of the reporter or the reported information commits a crime. This provision may make it a crime for the reporter, after he or she reports the information to a Crime Stoppers organization, to disclose the reported information to another person.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 90.595, F.S., relating to privileged communication with and the provision of protected information to Crime Stoppers organizations.

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, *infra*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill creates a new felony offense, which may have an indeterminate impact on state government by potentially increasing the number of prisoners.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

The bill could implicate the First Amendment right to free speech, since it makes it a crime for a person to disclose any information related to privileged communication between a person reporting a crime and a Crime Stoppers organization. Since the criminal provision relates to "any person," it could include the reporter himself or herself or anyone who overhears the information being reported to the Crime Stoppers organization.

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 crime stoppers organizations;
 creating s. 90.595, F.S.; defining terms; prohibiting
 a person who engages in privileged communication, a
 law enforcement crime stoppers coordinator or his or
 her staff, or a member of a crime stoppers
 organization's board of directors from being required
 to disclose privileged communications or produce
 protected information; providing an exception;
 authorizing a person charged with a criminal offense
 to petition the court to inspect the protected
 information under certain circumstances; authorizing a
 court to disclose all or a portion of the protected
 information; providing criminal penalties; providing
 an effective date.

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

Section 1. Section 90.595, Florida Statutes, is created to read:

90.595 Privileged communication with and the provision of protected information to crime stoppers organizations.-

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

(a) "Crime stoppers organization" means a private not-for-profit organization that collects and expends donations for

26 rewards to persons who report to the organization information
 27 concerning criminal activity and forwards that information to
 28 appropriate law enforcement agencies.

29 (b) "Privileged communication" means the act of providing
 30 information to a crime stoppers organization for the purpose of
 31 reporting alleged criminal activity.

32 (c) "Protected information" includes the identity of a
 33 person who engages in privileged communication with a crime
 34 stoppers program and any records, recordings, oral or written
 35 statements, papers, documents, or other tangible things provided
 36 to or collected by a crime stoppers organization, a law
 37 enforcement crime stoppers coordinator or his or her staff, or a
 38 law enforcement agency in connection with such privileged
 39 communication.

40 (2) A person who engages in privileged communication under
 41 this section, a law enforcement crime stoppers coordinator or
 42 his or her staff, or a member of a crime stoppers organization's
 43 board of directors may not be required:

44 (a) To disclose, by way of testimony or any other means, a
 45 privileged communication or protected information unless such
 46 failure to disclose would infringe on the constitutional rights
 47 of an accused person.

48 (b) To produce, under subpoena, any records, documentary
 49 evidence, opinions, or decisions relating to such privileged
 50 communication or protected information:

51 1. In connection with a criminal case, criminal
 52 proceeding, or any administrative hearing; or
 53 2. By way of any discovery procedure.
 54 (3) (a) A person charged with a criminal offense may
 55 petition the court for inspection in camera of the protected
 56 information. The petition must allege that the protected
 57 information meets all of the following criteria:
 58 1. Provides evidence favorable to the defendant.
 59 2. Is specifically related to the determination of the
 60 innocence or guilt of the petitioner.
 61 3. Is such that, if it is not disclosed, will cause a
 62 deprivation of a constitutional right of the petitioner.
 63 (b) If the court determines that all of the criteria
 64 specified in paragraph (a) are satisfied, the court may order
 65 the production and disclosure of all or any part of the
 66 protected information, while, to the fullest extent possible,
 67 protecting the identity of the persons who engaged in privileged
 68 communication.
 69 (4) A person who discloses any information related to
 70 privileged communication or protected information commits a
 71 felony of the third degree, punishable as provided in s.
 72 775.082, s. 775.083, or s. 775.083.
 73 Section 2. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1177 Joint Task Force on State Agency Law Enforcement Communications
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Ingoglia
TIED BILLS: IDEN./SIM. **BILLS:** SB 1460

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N, As CS	Moore	Harrington
2) Criminal Justice Subcommittee		Jones <i>WJJ</i>	Sumner <i>D</i>
3) Government Accountability Committee			

SUMMARY ANALYSIS

Florida's Statewide Law Enforcement Radio System (SLERS) is a single, unified digital radio network that meets the radio voice communications needs of state law enforcement officers and other participating agencies throughout the state. The Joint Task Force on State Agency Law Enforcement Communications (task force) is created in law to advise DMS of member-agency needs relating to the planning, designing, and establishment of SLERS. The task force consists of the following members:

- A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation who is appointed by the secretary of the department.
- A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles who is appointed by the executive director of the department.
- A representative of the Department of Law Enforcement who is appointed by the executive director of the department.
- A representative of the Fish and Wildlife Conservation Commission who is appointed by the executive director of the commission.
- A representative of the Department of Corrections who is appointed by the secretary of the department.
- A representative of the Department of Financial Services who is appointed by the Chief Financial Officer.
- A representative of the Department of Agriculture and Consumer Services who is appointed by the Commissioner of Agriculture.

The task force is required to meet as necessary, but at least quarterly, at the call of the chair.

The bill adds a representative of the Florida Sheriffs Association to the task force, who must be appointed by the president of the Florida Sheriffs Association. The bill requires the per diem and travel expenses related to the task force that are incurred by the representative to be paid by the sheriff's office that employs the representative.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Statewide Law Enforcement Radio System (SLERS) is a single, unified digital radio network that meets the radio voice communications needs of state law enforcement officers and other participating agencies throughout the state. SLERS is a 800/700 (aircraft) MHz system consisting of 200 microwave sites, RF multi-sites, and RF simulcast sites. The SLERS all-digital radio network covers over 60,000 square miles (including 25 miles offshore) with 98 percent mobile coverage and portable coverage in selected areas. The Department of Management Services (DMS) was tasked with implementing SLERS and is responsible for ensuring the proper operation and maintenance of all common system equipment.¹

The Joint Task Force on State Agency Law Enforcement Communications (task force) is created in law to advise DMS of member-agency needs relating to the planning, designing, and establishment of SLERS. The task force consists of the following members:

- A representative of the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation who is appointed by the secretary of the department.
- A representative of the Division of Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles who is appointed by the executive director of the department.
- A representative of the Department of Law Enforcement who is appointed by the executive director of the department.
- A representative of the Fish and Wildlife Conservation Commission who is appointed by the executive director of the commission.
- A representative of the Department of Corrections who is appointed by the secretary of the department.
- A representative of the Department of Financial Services who is appointed by the Chief Financial Officer.
- A representative of the Department of Agriculture and Consumer Services who is appointed by the Commissioner of Agriculture.²

Each appointed member of the task force serves at the pleasure of the appointing official. Any vacancy on the task force is to be filled in the same manner as the original appointment. A task force member may, upon notification to the chair before the beginning of any scheduled meeting, appoint an alternative to represent the member on the task force and vote on task force business in his or her absence.³

The task force must elect a chair from among its members to serve a one-year term. A vacancy in the chair of the joint task force must be filled for the remainder of the unexpired term by an election of the joint task force members.⁴

The task force is required to meet as necessary, but at least quarterly, at the call of the chair and at the time and place designated by him or her. The per diem and travel expenses incurred by a member of

¹ SLERS, Department of Management Services, https://www.dms.myflorida.com/business_operations/telecommunications/radio_communications_services/statewide_law_enforcement_radio_system_slers (last visited Jan. 26, 2018).

² Section 282.709(2)(a), F.S.

³ Section 282.709(2)(b), F.S.

⁴ Section 282.709(2)(c), F.S.

the task force in attending its meetings and in attending to its affairs must be paid from funds budgeted to the state agency that the member represents.⁵

Effect of Proposed Changes

CS/HB 1177 adds to the task force a representative of the Florida Sheriffs Association, who must be appointed by the president of the Florida Sheriffs Association. Currently, there are 20 sheriffs' offices using SLERS.⁶

The bill requires the per diem and travel expenses incurred by the representative of the Florida Sheriffs Association in attending task force meetings and attending to task force affairs to be paid by the sheriff's office that employs the representative.

B. SECTION DIRECTORY:

Section 1: Amends s. 282.709, F.S., relating to a state agency law enforcement radio system and interoperability network.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

The bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill may have a negative fiscal impact on local governments because it requires the sheriff's office that employs the task force member who represents the Florida Sheriffs Association to pay that member's per diem and travel expenses. However, according to the Florida Sheriffs Association, the impact will be minimal and can be absorbed by the sheriffs' offices.⁷

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁵ Section 282.709(2), F.S.

⁶ Email from Department of Management Services staff, Jan. 11, 2018 (on file with Oversight, Transparency & Administration Subcommittee).

⁷ Telephone call with Tabitha Krol, Government Affairs Coordinator of the Florida Sheriffs Association (Jan. 26, 2018).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires the per diem and travel expenses incurred by a task force member that represents the Florida Sheriffs Association to be paid by the sheriff's office that employs that member; however, an exemption may apply because the fiscal impact would likely be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2018, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment required any per diem or travel expenses related to the task force that are incurred by the representative of the Florida Sheriffs Association to be paid by the sheriff's office that employs the representative.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.

1 A bill to be entitled
 2 An act relating to the Joint Task Force on State
 3 Agency Law Enforcement Communications; amending s.
 4 282.709, F.S.; providing that a representative of the
 5 Florida Sheriffs Association shall be an appointed
 6 member of the Joint Task Force on State Agency Law
 7 Enforcement Communications; providing that the
 8 sheriff's office that employs the representative must
 9 pay the per diem and travel expenses incurred by the
 10 representative; providing an effective date.

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

13
 14 Section 1. Paragraphs (a) and (e) of subsection (2) of
 15 section 282.709, Florida Statutes, are amended to read:

16 282.709 State agency law enforcement radio system and
 17 interoperability network.—

18 (2) The Joint Task Force on State Agency Law Enforcement
 19 Communications is created adjunct to the department to advise
 20 the department of member-agency needs relating to the planning,
 21 designing, and establishment of the statewide communication
 22 system.

23 (a) The Joint Task Force on State Agency Law Enforcement
 24 Communications shall consist of the following members:

25 1. A representative of the Division of Alcoholic Beverages

26 and Tobacco of the Department of Business and Professional
 27 Regulation who shall be appointed by the secretary of the
 28 department.

29 2. A representative of the Division of Florida Highway
 30 Patrol of the Department of Highway Safety and Motor Vehicles
 31 who shall be appointed by the executive director of the
 32 department.

33 3. A representative of the Department of Law Enforcement
 34 who shall be appointed by the executive director of the
 35 department.

36 4. A representative of the Fish and Wildlife Conservation
 37 Commission who shall be appointed by the executive director of
 38 the commission.

39 5. A representative of the Department of Corrections who
 40 shall be appointed by the secretary of the department.

41 6. A representative of the Department of Financial
 42 Services who shall be appointed by the Chief Financial Officer.

43 7. A representative of the Department of Agriculture and
 44 Consumer Services who shall be appointed by the Commissioner of
 45 Agriculture.

46 8. A representative of the Florida Sheriffs Association
 47 who shall be appointed by the president of the Florida Sheriffs
 48 Association.

49 (e) The per diem and travel expenses incurred by a member
 50 of the joint task force who represents a state agency in

51 attending task force ~~its~~ meetings and in attending to task force
 52 ~~its~~ affairs shall be paid pursuant to s. 112.061, from funds
 53 budgeted to the state agency that the member represents. The per
 54 diem and travel expenses incurred by the member of the task
 55 force who represents the Florida Sheriffs Association in
 56 attending task force meetings and in attending to task force
 57 affairs shall be paid pursuant to s. 112.061, by the sheriff's
 58 office that employs the representative.



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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1309 Fraudulently Obtaining or Retaining Personal Property or Equipment

SPONSOR(S): Alexander

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

Florida law prohibits the taking, leasing, hiring, or obtaining by fraudulent means the property of another person. The statute establishes three ways in which an individual can commit this offense:

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

Depending on the property value taken, the offense is either a second degree misdemeanor or a third degree felony. It is a second degree misdemeanor if the value of the property taken is less than \$300. It is a third degree felony if the property taken is valued at \$300 or more. The \$300 thresholds were added in 1992 and have not been amended since that time.

HB 1309 increases the threshold amounts for the felony offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud from \$300 to \$750.

The bill may have an indeterminate negative impact on state government by reducing the need for prison beds. It may have an indeterminate positive impact on local government by increasing the need for jail beds.

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

FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Property Crimes and Dollar Thresholds

Since 2000, 37 states have increased the threshold dollar amounts for felony theft crimes.¹ The majority of states (30) and the District of Columbia set a \$1,000-or-greater property value threshold for felony grand theft. Fifteen states have thresholds between \$500 and \$950, and five states, including Florida, have thresholds below \$500.²

Opponents of raising the felony theft threshold argue that increasing the threshold will incentivize offenders to steal higher value amounts.³ A study by the Pew Charitable Trusts evaluated 23 states that changed felony theft thresholds between 2001 and 2011 and found:

- Raising the felony theft threshold had no impact on the states' overall property crime or larceny rates.
- States that increased thresholds reported roughly the same average decrease in crime as the 27 states that did not.
- The amount of a state's felony theft threshold was not correlated with the state's property crime and larceny rates.⁴

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

Section 812.155, F.S., establishes criminal offenses related to individuals obtaining property by fraudulent means. The statute specifies three ways in which the offense can be committed:

- Obtaining any personal property or equipment by trick, deceit, or fraudulent or willful false representation;⁵
- Hiring or leasing personal property or equipment with intent to defraud;⁶ and
- Knowingly abandoning or refusing to return hired or leased personal property or equipment at the conclusion of the rental period where the failure to return such property or equipment is done without the consent of the person leasing such property or equipment.⁷

Depending on the property value taken, the offense is either a second degree misdemeanor or a third degree felony. If the value of the property is under \$300, the offense is a second degree misdemeanor.⁸ If the property is valued at \$300 or more, then the offense is a third degree felony.⁹

There are approximately 15 people in prison in the state for violations of offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud.¹⁰ There are

¹ Pew Charitable Trusts, *The Effects of Changing State Theft Penalties* (February 2016), available at http://www.pewtrusts.org/~media/assets/2016/02/the_effects_of_changing_state_theft_penalties.pdf?la=en (last visited January 26, 2018).

² *Id.*

³ Lauren Krisai, *Stuck in the 80s: Time for Reform of Florida's Felony Theft Threshold*, *The Journal of the James Madison Institute*, Spring 2017, http://reason.org/files/florida_theft_threshold_stuck_in_1980s.pdf (last visited January 26, 2018).

⁴ *Supra*, FN 20.

⁵ S. 812.155(1), F.S.

⁶ S. 812.155(2), F.S.

⁷ S. 812.155(3), F.S.

⁸ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. SS. 775.082(4)(b) and 775.083(1)(e), F.S.

⁹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. SS. 775.082(3)(e) and 775.083(1)(c), F.S.

¹⁰ Email from Department of Corrections for inmate populations as of 01/19/2018, January 23, 2018 (on file with House Criminal Justice Subcommittee).

approximately 662 people on probation with the Department of Corrections for offenses related to hiring, leasing, or obtaining personal property or equipment with the intent to defraud.¹¹

Effect of Proposed Changes

HB 1309 increases the threshold amounts from \$300 to \$750 for felony offenses related to the hiring, leasing or obtaining personal property or equipment. Any violation of s. 812.155, F.S., in which the property is valued at less than \$750, will be a second-degree misdemeanor punishable by up to sixty days in jail. If the property is valued at \$750 or more, the offense is a third degree felony punishable by up to five years in prison.

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

B. SECTION DIRECTORY:

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

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:

The bill may have an indeterminate negative impact by reducing the need for prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill raises the thresholds for felonies and misdemeanors. Penalties that would carry prison time, may now only carry potential jail time. Therefore, the bill may have an indeterminate positive impact on jails by increasing the need for jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

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

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

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

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

(1) OBTAINING BY TRICK, FALSE REPRESENTATION, ETC.—

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

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

27 (2) HIRING OR LEASING WITH THE INTENT TO DEFRAUD.—Whoever,
 28 with intent to defraud the owner or any person lawfully
 29 possessing personal property or equipment of the rental thereof,
 30 hires or leases the personal property or equipment from the
 31 owner or the owner's agents or any person in lawful possession
 32 thereof commits a misdemeanor of the second degree, punishable
 33 as provided in s. 775.082 or s. 775.083, unless the value of the
 34 personal property or equipment is of a value of \$750 ~~\$300~~ or
 35 more; in that case the person commits a felony of the third
 36 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 37 775.084.

38 (3) FAILURE TO RETURN HIRED OR LEASED PERSONAL PROPERTY.—
 39 Whoever, after hiring or leasing personal property or equipment
 40 under an agreement to return the personal property to the person
 41 letting the personal property or equipment or his or her agent
 42 at the termination of the period for which it was let, shall,
 43 without the consent of the person or persons knowingly abandon
 44 or refuse to return the personal property or equipment as
 45 agreed, commits a misdemeanor of the second degree, punishable
 46 as provided in s. 775.082 or s. 775.083, unless the value of the
 47 personal property or equipment is of a value of \$750 ~~\$300~~ or
 48 more; in that case the person commits a felony of the third
 49 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 50 775.084.

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2018

51 Section 2. 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 Alexander offered the following:

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

6 Between lines 50 and 51, insert:

7 Section 2. Subsections (7) and (8) of section 812.155,
8 Florida Statutes, are renumbered as subsections (8) and (9),
9 respectively, and subsection (7) is added to that section, to
10 read:

11 812.155 Hiring, leasing, or obtaining personal property or
12 equipment with the intent to defraud; failing to return hired or
13 leased personal property or equipment; rules of evidence.--

14 (7) EXCLUSION OF RENTAL PURCHASE AGREEMENTS.-- This
15 section does not apply to personal property or equipment that is
16 the subject of a rental purchase agreement that permits the



Amendment No.

17 lessee to acquire ownership of the personal property or
18 equipment.

19

20

21

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

22

Remove line 8 and insert:

23


property or equipment; providing an exclusion of rental purchase

24

agreements; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1401 Judgments in Criminal Cases
SPONSOR(S): Altman
TIED BILLS: IDEN./SIM. **BILLS:** SB 1230

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones (WJS)	Sumner 
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Every criminal judgment of guilty or not guilty is required to be in writing, signed by the judge, and recorded by the clerk of court. When a defendant is convicted of a felony or any offense under chapter 796, F.S. (relating to prostitution), the defendant's fingerprints are required to be taken in open court and affixed to the judgment, along with the defendant's social security number. The judgment is then admissible in court as prima facie evidence that the fingerprints on the judgment are the fingerprints of the defendant who was convicted of the crime.

HB 1401 amends s. 921.241, F.S., to require that upon conviction of any crime, including a misdemeanor, the defendant's fingerprints are required to be taken and attached to the judgment with the defendant's social security number. The judgment is admissible in court as prima facie evidence that the fingerprints on the judgment are the fingerprints of the defendant who was convicted of the crime.

The bill also allows a criminal judgment to be recorded either in writing or electronically. The bill allows the judge to take the defendant's fingerprints electronically and sign the judgment and accompanying certificate electronically.

The bill repeals s. 921.242, F.S., which is made superfluous by the change to s. 921.241, F.S.

The bill may have a minimal 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 July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Felony Judgments

Every judgment adjudicating a person guilty or not guilty of a felony must be in writing, signed by the judge, and recorded by the clerk of court.¹ When a defendant is convicted of a felony, the defendant's fingerprints must be taken in open court and affixed to the judgment, along with the defendant's social security number.² If the defendant is unable or unwilling to provide a social security number, the reason for its absence must be indicated on the judgment.³ The judgment is admissible in court as prima facie evidence that the fingerprints on the judgment are the fingerprints of the defendant who was convicted of the felony.⁴

Misdemeanor Judgments Under Chapter 796, F.S.

Chapter 796, F.S., governs prostitution and similar crimes. Under s. 921.242, F.S., every judgment of guilt with respect to any offense under chapter 796—including misdemeanors—must be in writing, signed by the judge, recorded by the clerk of court, and accompanied by the defendant's fingerprints and social security number, just like a felony judgment.⁵

Effect of Proposed Changes

HB 1401 amends s. 921.241, F.S., to require all defendants convicted of any crime, including misdemeanors, to have their fingerprints taken and to have their social security number attached to the judgment, which must be signed by the judge. If the defendant is unable or unwilling to provide a social security number, then the reason for the social security number's absence must be indicated on the judgment.⁶ The judgment and fingerprints of the convicted defendant are admissible in subsequent proceedings as prima facie evidence that the fingerprints are the fingerprints of the defendant against whom the judgment of guilt was rendered.

The bill permits a criminal judgment to be recorded electronically and allows the judge to take the defendant's fingerprints electronically. The bill allows the judge to electronically sign an electronic judgment if the judge determines, after examination of the electronic record, that the electronic record accurately reflects the judgment entered by the court. The bill allows the judge to electronically sign the certificate accompanying the judgment if the judge witnesses the electronic taking of the defendant's fingerprints and certifies that such fingerprints have been attached to the judgment by reliable electronic means. The bill defines "electronic signature," consistent with s. 933.40(1), F.S., as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.⁷

Finally, the bill repeals s. 921.242, F.S., which applies to felonies and misdemeanors under chapter 796, as superfluous based on the changes made by the bill.

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

¹ S. 921.241, F.S.

² *Id.*

³ S. 921.241(4), F.S.

⁴ S. 921.241(3), F.S.

⁵ S. 921.242, F.S.

⁶ The requirement that a misdemeanor judgment be in writing is found in the rules of criminal procedure. See Fla. R. Crim. P. 3.670.

⁷ S. 933.40(1)(d), F.S.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 921.241, F.S., relating to felony judgments; fingerprints and social security number required in record.
- Section 2:** Repeals s. 921.242, F.S., relating to subsequent offense under chapter 796; method of proof applicable.
- 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:
See Fiscal Comments, *infra*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a negative fiscal impact on trial courts, because it requires the courts to fingerprint both misdemeanants and felons. The bill allows courts the option of recording judgments and taking fingerprints electronically; thus, for courts opting to use an electronic system of taking fingerprints and keeping records, there could be initial costs to implement the electronic system. Courts opting for electronic fingerprinting and electronic recordkeeping may save money over time by reducing their need to keep paper records.

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 judgments in criminal cases;
 3 amending s. 921.241, F.S.; requiring fingerprints of
 4 defendants found guilty of misdemeanors to be attached
 5 to the judgment; requiring a convicted defendant's
 6 social security number or an explanation for its
 7 absence to be attached to a judgment; providing for
 8 electronic records of judgments; authorizing judges to
 9 sign specified documents electronically; providing a
 10 definition; repealing s. 921.242, F.S., relating to
 11 judgments for subsequent offenses under chapter 796,
 12 F.S.; providing an effective date.

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

15
 16 Section 1. Section 921.241, Florida Statutes, is amended
 17 to read:

18 921.241 Criminal ~~Felony~~ judgments; fingerprints and social
 19 security number required in record.—

20 ~~(1) At the time a defendant is found guilty of a felony,~~
 21 ~~the judge shall cause the defendant's fingerprints to be taken.~~

22 (1)(2) Each ~~Every~~ judgment of guilty or not guilty of a
 23 felony or misdemeanor shall be in a written or electronic record
 24 ~~writing~~, signed by the judge, and recorded by the clerk of the
 25 court.

26 (2) At the time a defendant is found guilty of a felony or
 27 misdemeanor, the judge shall cause the following to occur ~~to be~~
 28 ~~affixed to every written judgment of guilty of a felony,~~ in open
 29 court, in the presence of such judge, and at the time the
 30 judgment is rendered:

31 (a) The fingerprints of the defendant shall be taken
 32 manually or electronically ~~against whom such judgment is~~
 33 ~~rendered.~~ The ~~Such~~ fingerprints shall be attached ~~affixed~~
 34 beneath the judge's signature on the ~~to such~~ judgment. Beneath
 35 such fingerprints shall be attached ~~appended~~ a certificate to
 36 the following effect:

37 "I hereby certify that the above and foregoing fingerprints
 38 on this judgment are the fingerprints of the defendant, ,
 39 and that they were placed thereon by said defendant in my
 40 presence, in open court, this the day of ,
 41 . . . (year)"

42 Such certificate shall be signed by the judge, whose signature
 43 thereto shall be followed by the word "Judge."

44 (b) The social security number of the defendant shall be
 45 taken and indicated on the judgment. If the defendant is unable
 46 or unwilling to provide his or her social security number, the
 47 reason for its absence shall be indicated on the judgment.

48 (3) A ~~Any such written judgment of guilty of a felony,~~ or
 49 a certified copy thereof, shall be admissible in evidence in the
 50 several courts of this state as prima facie evidence that the

51 fingerprints appearing thereon and certified by the judge as
 52 aforesaid are the fingerprints of the defendant against whom
 53 such judgment of guilty ~~of a felony~~ was rendered.

54 (4) A judge may electronically sign:

55 (a) An electronic judgment of guilty or not guilty under
 56 subsection (1) if the judge determines, after examination of the
 57 electronic record, that the electronic record accurately
 58 reflects the judgment entered by the court.

59 (b) The certificate required under paragraph (2) (a) if the
 60 judge witnesses the electronic taking of the defendant's
 61 fingerprints and certifies that such fingerprints have been
 62 attached to the judgment by reliable electronic means.

63 (5) As used in this section, the term "electronic
 64 signature" has the same meaning provided in s. 933.40(1).

65 ~~(4) At the time the defendant's fingerprints are taken,~~
 66 ~~the judge shall also cause the defendant's social security~~
 67 ~~number to be taken. The defendant's social security number shall~~
 68 ~~be affixed to every written judgment of guilty of a felony, in~~
 69 ~~open court, in the presence of such judge, and at the time the~~
 70 ~~judgment is rendered. If the defendant is unable or unwilling to~~
 71 ~~provide his or her social security number, the reason for its~~
 72 ~~absence shall be indicated on the written judgment.~~

73 Section 2. Section 921.242, Florida Statutes, is repealed.

74 Section 3. 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 Altman offered the following:
4

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7
8 Section 1. Paragraph (d) of subsection (3) of section
9 812.014, Florida Statutes, is amended to read:

10 (d)1. A ~~Every~~ judgment of guilty or not guilty of a petit
11 theft shall be in:

12 a. A written record that is ~~writing,~~ signed by the judge,
13 ~~and recorded by the clerk of the circuit court; or~~

14 b. An electronic record that contains the judge's
15 electronic signature, as defined in s. 933.40, and is recorded
16 by the clerk of circuit court.



Amendment No.

17 2. At the time a defendant is found guilty of petit theft,
18 the judge shall cause the following to occur to be affixed
19 to every such written judgment of guilty of petit theft, in open
20 court and in the presence of such judge:

21 a. For a written judgment of guilty, the fingerprints of
22 the defendant against whom such judgment is rendered shall be
23 manually taken. Such fingerprints shall be affixed beneath the
24 judge's signature on the ~~to such~~ judgment. Beneath such
25 fingerprints shall be appended a certificate to the following
26 effect:

27 "I hereby certify that the above and foregoing fingerprints
28 on this judgment are the fingerprints of the defendant, , and
29 that they were placed thereon by said defendant in my presence,
30 in open court, this the day of , _____ (year)."

31
32 Such certificate shall be signed by the judge, whose signature
33 thereto shall be followed by the word "Judge."

34 b. For an electronic judgment of guilty, s. 921.241(3)(b)
35 applies.

36 3.2. A Any such written or an electronic judgment of
37 guilty of a petit theft, or a certified copy thereof, is
38 admissible in evidence in the courts of this state as provided
39 in s. 921.241(4) prima facie evidence that the fingerprints
40 appearing thereon and certified by the judge are the



Amendment No.

41 ~~fingerprints of the defendant against whom such judgment of~~
42 ~~guilty of a petit theft was rendered.~~

43 Section 2. Section 921.241, Florida Statutes, is amended
44 to read:

45 921.241 Felony judgments; fingerprints and social security
46 number required in record.—

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

48 (a) "Electronic signature" has the same meaning as in s.
49 933.40.

50 (b) "Transaction control number" means the unique
51 identifier comprised of numbers, letters, or other symbols for a
52 digital fingerprint record which is generated by the device used
53 to electronically capture the fingerprints ~~At the time a~~
54 ~~defendant is found guilty of a felony, the judge shall cause the~~
55 ~~defendant's fingerprints to be taken.~~

56 (2) A ~~Every~~ judgment of guilty or not guilty of a felony
57 shall be in:

58 (a) A written record that is writing, signed by the judge,
59 and recorded by the clerk of the court; or

60 (b) An electronic record that contains the judge's
61 electronic signature and is recorded by the clerk of court.

62 (3) At the time a defendant is found guilty of a felony,
63 the ~~The~~ judge shall cause the following to occur ~~to be affixed~~
64 ~~to every written judgment of guilty of a felony,~~ in open court
65 and, in the presence of such judge:

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Amendment No.

66 (a) For a written judgment of guilty, and at the time the
67 judgment is rendered, the fingerprints of the defendant shall be
68 manually taken and against whom such judgment is rendered. Such
69 fingerprints shall be affixed beneath the judge's signature on
70 the ~~to such~~ judgment. Beneath such fingerprints shall be
71 appended a certificate to the following effect:

72 "I hereby certify that the above and foregoing fingerprints
73 on this judgment are the fingerprints of the defendant,,
74 and that they were placed thereon by said defendant in my
75 presence, in open court, this the day of,
76 ...(year)...."

77
78 Such certificate shall be signed by the judge, whose signature
79 thereto shall be followed by the word "Judge."

80 (b) For an electronic judgment of guilty, the fingerprints
81 of the defendant shall be electronically captured and the
82 following certificate shall be included in the electronic
83 judgment:

84 "I hereby certify that the digital fingerprint record
85 associated with Transaction Control Number contains the
86 fingerprints of the defendant,, which were electronically
87 captured from the defendant in my presence, in open court, this
88 the day of, ...(year)...."

89



Amendment No.

90 The judge shall place his or her electronic signature, which
91 shall be followed by the word "Judge," on the certificate.

92 ~~(4)(3)~~ A written or electronic ~~Any such written~~ judgment
93 of guilty ~~of a felony~~, or a certified copy thereof, shall be
94 admissible in evidence in the several courts of this state as
95 prima facie evidence that the:

96 (a) Manual fingerprints appearing thereon and certified by
97 the judge as aforesaid are the fingerprints of the defendant
98 against whom the ~~such~~ judgment of guilty ~~of a felony~~ was
99 rendered.

100 (b) Digital fingerprint record associated with the
101 transaction control number specified in the judge's certificate
102 contains the fingerprints of the defendant against whom the
103 judgment of guilty was rendered.

104 ~~(5)(4)~~ At the time the defendant's fingerprints are
105 manually taken or electronically captured, the judge shall also
106 cause the defendant's social security number to be taken. The
107 defendant's social security number shall be specified in each
108 ~~affixed to every written or electronic~~ judgment of guilty of a
109 felony, in open court, in the presence of such judge, and at the
110 time the judgment is rendered. If the defendant is unable or
111 unwilling to provide his or her social security number, the
112 reason for its absence shall be specified in ~~indicated on the~~
113 written or electronic judgment.



Amendment No.

114 Section 3. Section 921.242, Florida Statutes, is amended to
115 read:

116 Section 921.242 Subsequent offenses under chapter 796;
117 method of proof applicable.-

118 (1) A Every judgment of guilty with respect to any offense
119 governed by the provisions of chapter 796 shall be in:

120 (a) A written record that is ~~writing~~, signed by the judge,
121 and recorded by the clerk of the circuit court; or

122 (b) An electronic record that contains the judge's
123 electronic signature, as defined in s. 933.40, and is recorded
124 by the clerk of circuit court.

125 (2) At the time a defendant is found guilty, the ~~The~~ judge
126 shall cause the following to occur ~~to be affixed to every such~~
127 ~~written judgment of guilty~~, in open court and in the presence of
128 such judge:

129 (a) For a written judgment of guilty, the fingerprints of
130 the defendant against whom such judgment is rendered shall be
131 manually taken. Such fingerprints shall be affixed beneath the
132 judge's signature ~~on the to any such~~ judgment. Beneath such
133 fingerprints shall be appended a certificate to the following
134 effect:

135 "I hereby certify that the above and foregoing fingerprints
136 are of the defendant, (name) , and that they were placed
137 thereon by said defendant in my presence, in open court, this
138 the day of , (year) ."

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Amendment No.

139 Such certificate shall be signed by the judge, whose
140 signature thereto shall be followed by the word "Judge."

141 (b) For an electronic judgment of guilty, s. 921.241(3)(b)
142 applies.

143 ~~(2)(3) A Any such written or an electronic judgment of guilty,~~
144 ~~or a certified copy thereof, shall be admissible in evidence in~~
145 ~~the several courts of this state as provided in s. 921.241(4)~~
146 ~~prima facie evidence that the fingerprints appearing thereon and~~
147 ~~certified by the judge as aforesaid are the fingerprints of the~~
148 ~~defendant against whom such judgment of guilty was rendered.~~

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150

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

152 Remove everything before the enacting clause and insert:

153 An act relating to judgments in criminal cases; amending s.
154 812.014, F.S.; providing for electronic records of
155 judgments; amending s. 921.241, F.S.; providing for
156 electronic records of judgments; amending s. 921.242, F.S.;
157 providing for electronic records of judgments; providing an
158 effective date.

159

160