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# **Criminal Justice Subcommittee**

**Tuesday, March 21, 2017**

**12:30 PM – 3:30 PM**

**404 HOB**

**Meeting Packet**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Tuesday, March 21, 2017 12:30 pm  
**End Date and Time:** Tuesday, March 21, 2017 03:30 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

HB 343 Payment Card Offenses by Asencio  
HB 457 Terrorism and Terrorist Activities by Gonzalez  
CS/HB 807 Marketing Practices for Substance Abuse Services by Children, Families & Seniors Subcommittee,  
Hager, Harrell  
HB 1031 Marine Turtle Protection by Altman  
HB 1201 Department of Corrections by Gonzalez  
HB 1203 Pub. Rec./DOC/Health Information by Gonzalez  
HB 1385 Domestic Violence by Nuñez  
HB 1429 Child Predators by Harrison

**Consideration of the following proposed committee bill(s):**

PCB CRJ 17-05 -- Probation and Community Control

**NOTICE FINALIZED on 03/17/2017 4:13PM by Gilliam.Ann**





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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| WITHDRAWN             | ___   | (Y/N) |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

1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee

3 Representative Asencio offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 817.625, Florida Statutes, is amended  
 8 to read:

9 817.625 Use of scanning device, skimming device, or  
 10 reencoder to defraud; possession of skimming device; penalties.-

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

12 (a)~~(d)~~ "Merchant" means a person who receives from an  
 13 authorized user of a payment card, or someone the person  
 14 believes to be an authorized user, a payment card or information  
 15 from a payment card, or what the person believes to be a payment  
 16 card or information from a payment card, as the instrument for





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17 obtaining, purchasing, or receiving goods, services, money, or  
18 anything else of value from the person.

19 (b)~~(e)~~ "Payment card" means a credit card, charge card,  
20 debit card, or any other card that is issued to an authorized  
21 card user and that allows the user to obtain, purchase, or  
22 receive goods, services, money, or anything else of value from a  
23 merchant.

24 (c)~~(b)~~ "Reencoder" means an electronic device that places  
25 encoded information from the computer chip, magnetic strip or  
26 stripe, or other storage mechanism of a payment card onto the  
27 computer chip, magnetic strip or stripe, or other storage  
28 mechanism of a different payment card. The term does not include  
29 a skimming device.

30 (d)~~(a)~~ "Scanning device" means a scanner, reader, or any  
31 other electronic device that may be is used to access, read,  
32 scan, obtain, memorize, or store, temporarily or permanently,  
33 information encoded on the computer chip, magnetic strip or  
34 stripe, or other storage mechanism of a payment card or from  
35 another device that directly reads the information from a  
36 payment card. The term does not include a skimming device.

37 (e) "Skimming device" means a self-contained device that:  
38 1. Is designed to read and store in the device's internal  
39 memory information encoded on the computer chip, magnetic strip  
40 or stripe, or other storage mechanism of a payment card or from



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41 another device that directly reads the information from a  
42 payment card; and

43 2. Is incapable of processing the payment card information  
44 stored under subparagraph 1. for the purpose of obtaining,  
45 purchasing, or receiving goods, services, money, or anything  
46 else of value from a merchant.

47 (2)(a) It is a felony of the third degree, punishable as  
48 provided in s. 775.082, s. 775.083, or s. 775.084, for a person  
49 to use:

50 1. A scanning device or skimming device to access, read,  
51 obtain, memorize, or store, temporarily or permanently,  
52 information encoded on the computer chip, magnetic strip or  
53 stripe, or other storage mechanism of a payment card without the  
54 permission of the authorized user of the payment card and with  
55 the intent to defraud the authorized user, the issuer of the  
56 authorized user's payment card, or a merchant.

57 2. A reencoder to place information encoded on the  
58 computer chip, magnetic strip or stripe, or other storage  
59 mechanism of a payment card onto the computer chip, magnetic  
60 strip or stripe, or other storage mechanism of a different card  
61 without the permission of the authorized user of the card from  
62 which the information is being reencoded and with the intent to  
63 defraud the authorized user, the issuer of the authorized user's  
64 payment card, or a merchant.



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65 (b) A Any person who violates subparagraph (a)1. or  
66 subparagraph (a)2. a second or subsequent time commits a felony  
67 of the second degree, punishable as provided in s. 775.082, s.  
68 775.083, or s. 775.084.

69 (c) It is a felony of the third degree, punishable as  
70 provided in s. 775.082, s. 775.083, or s. 775.084, for a person  
71 to knowingly possess, sell, or deliver a skimming device. This  
72 paragraph does not apply to the following individuals while  
73 acting within the scope of his or her official duties:

74 1. An employee, officer, or agent of:

75 a. A law enforcement agency or criminal prosecuting  
76 authority for the state or the federal government;

77 b. The state courts system as defined in s. 25.382 or the  
78 federal court system; or

79 c. An executive branch agency in this state.

80 2. A financial or retail security investigator employed by  
81 a merchant.

82 (d)(e) A Any person who commits a violation of this  
83 subsection violates subparagraph (a)1. or subparagraph (a)2.  
84 shall also be subject to the provisions of ss. 932.701-932.7062.

85 Section 2. Paragraphs (d) and (e) of subsection (3) of  
86 section 921.0022, Florida Statutes, are amended to read:

87 921.0022 Criminal Punishment Code; offense severity  
88 ranking chart.-

89 (3) OFFENSE SEVERITY RANKING CHART

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| 90 | (d) LEVEL 4    |        |  |
|----|----------------|--------|--|
| 91 | Florida        | Felony |  |
|    | Statute        | Degree | Description  |
| 92 | 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. |
| 93 | 499.0051(1)    | 3rd    | Failure to maintain or deliver transaction history, transaction information, or transaction statements.  |
| 94 | 499.0051(5)    | 2nd    | Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.  |
| 95 | 517.07(1)      | 3rd    | Failure to register securities.  |
| 96 | 517.12(1)      | 3rd    | Failure of dealer, associated person, or issuer of securities  |

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to register.

97

784.07(2)(b) 3rd Battery of law enforcement  
officer, firefighter, etc.

98

784.074(1)(c) 3rd Battery of sexually violent  
predators facility staff.

99

784.075 3rd Battery on detention or  
commitment facility staff.

100

784.078 3rd Battery of facility employee by  
throwing, tossing, or expelling  
certain fluids or materials.

101

784.08(2)(c) 3rd Battery on a person 65 years of  
age or older.

102

784.081(3) 3rd Battery on specified official  
or employee.

103

784.082(3) 3rd Battery by detained person on  
visitor or other detainee.

104

784.083(3) 3rd Battery on code inspector.

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|     |            |     |  |
|-----|------------|-----|--|
| 105 | 784.085    | 3rd | Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.   |
| 106 | 787.03(1)  | 3rd | Interference with custody; wrongly takes minor from appointed guardian.  |
| 107 | 787.04(2)  | 3rd | Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.                                    |
| 108 | 787.04(3)  | 3rd | Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person. |
| 109 | 787.07     | 3rd | Human smuggling.   |
| 110 | 790.115(1) | 3rd | Exhibiting firearm or weapon within 1,000 feet of a school.  |

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|     |               |     |   |
|-----|---------------|-----|---|
| 111 | 790.115(2)(b) | 3rd | Possessing electric weapon or device, destructive device, or other weapon on school property. |
| 112 | 790.115(2)(c) | 3rd | Possessing firearm on school property.  |
| 113 | 800.04(7)(c)  | 3rd | Lewd or lascivious exhibition; offender less than 18 years.                                   |
| 114 | 810.02(4)(a)  | 3rd | Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.  |
| 115 | 810.02(4)(b)  | 3rd | Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery. |
| 116 | 810.06        | 3rd | Burglary; possession of tools.  |
| 117 | 810.08(2)(c)  | 3rd | Trespass on property, armed   |

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with firearm or dangerous  
weapon.

118

812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000  
or more but less than \$20,000.

119

812.014 3rd Grand theft, 3rd degree, a  
(2)(c)4.-10. will, firearm, motor vehicle,  
livestock, etc.

120

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

121

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

122

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

123

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





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|     |                      |            |   |
|-----|----------------------|------------|---|
| 124 | <u>817.625(2)(c)</u> | <u>3rd</u> | <u>Possess, sell, or deliver</u><br><u>skimming device.</u>   |
| 125 | 828.125(1)           | 2nd        | Kill, maim, or cause great<br>bodily harm or permanent<br>breeding disability to any<br>registered horse or cattle. |
| 126 | 837.02(1)            | 3rd        | Perjury in official<br>proceedings.   |
| 127 | 837.021(1)           | 3rd        | Make contradictory statements<br>in official proceedings.   |
| 128 | 838.022              | 3rd        | Official misconduct.  |
| 129 | 839.13(2)(a)         | 3rd        | Falsifying records of an<br>individual in the care and<br>custody of a state agency.                                |
| 130 | 839.13(2)(c)         | 3rd        | Falsifying records of the<br>Department of Children and<br>Families.  |
| 131 |                      |            |   |

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|     |                |     |   |
|-----|----------------|-----|---|
| 132 | 843.021        | 3rd | Possession of a concealed handcuff key by a person in custody.  |
| 133 | 843.025        | 3rd | Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication. |
| 134 | 843.15(1)(a)   | 3rd | Failure to appear while on bail for felony (bond estreature or bond jumping).                                     |
| 135 | 847.0135(5)(c) | 3rd | Lewd or lascivious exhibition using computer; offender less than 18 years.  |
| 136 | 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).                   |

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|-----|---------------|---------|---|
| 137 | 914.14(2)     | 3rd     | Witnesses accepting bribes.   |
| 138 | 914.22(1)     | 3rd     | Force, threaten, etc., witness, victim, or informant.   |
| 139 | 914.23(2)     | 3rd     | Retaliation against a witness, victim, or informant, no bodily injury.                                  |
| 140 | 918.12        | 3rd     | Tampering with jurors.  |
| 141 | 934.215       | 3rd     | Use of two-way communications device to facilitate commission of a crime.                               |
| 142 |               |         |   |
| 143 | (e)           | LEVEL 5 |   |
| 144 |               |         |   |
|     | Florida       | Felony  |   |
|     | Statute       | Degree  | Description   |
| 145 | 316.027(2)(a) | 3rd     | Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene. |



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|-----|-----------------|-----|---|
| 146 | 316.1935(4)(a)  | 2nd | Aggravated fleeing or eluding.  |
| 147 | 316.80(2)       | 2nd | Unlawful conveyance of fuel;<br>obtaining fuel fraudulently.  |
| 148 | 322.34(6)       | 3rd | Careless operation of motor<br>vehicle with suspended license,<br>resulting in death or serious<br>bodily injury.   |
| 149 | 327.30(5)       | 3rd | Vessel accidents involving<br>personal injury; leaving scene.   |
| 150 | 379.365(2)(c)1. | 3rd | Violation of rules relating to:<br>willful molestation of stone<br>crab traps, lines, or buoys;<br>illegal bartering, trading, or<br>sale, conspiring or aiding in<br>such barter, trade, or sale, or<br>supplying, agreeing to supply,<br>aiding in supplying, or giving<br>away stone crab trap tags or<br>certificates; making, altering,<br>forging, counterfeiting, or |



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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.

151

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

152

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

153

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

154

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

155

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

156



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|     |                 |     |   |
|-----|-----------------|-----|---|
| 157 | 440.381(2)      | 2nd | Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums. |
| 158 | 624.401(4)(b)2. | 2nd | Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.               |
| 159 | 626.902(1)(c)   | 2nd | Representing an unauthorized insurer; repeat offender.  |
| 160 | 790.01(2)       | 3rd | Carrying a concealed firearm.   |
| 161 | 790.162         | 2nd | Threat to throw or discharge destructive device.  |
| 162 | 790.163(1)      | 2nd | False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.                                  |
|     | 790.221(1)      | 2nd | Possession of short-barreled  |

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shotgun or machine gun.

163

790.23                    2nd    Felons in possession of  
firearms, ammunition, or  
electronic weapons or devices.

164

796.05(1)                2nd    Live on earnings of a  
prostitute; 1st offense.

165

800.04(6)(c)            3rd    Lewd or lascivious conduct;  
offender less than 18 years of  
age.

166

800.04(7)(b)            2nd    Lewd or lascivious exhibition;  
offender 18 years of age or  
older.

167

806.111(1)              3rd    Possess, manufacture, or  
dispense fire bomb with intent  
to damage any structure or  
property.

168

812.0145(2)(b)         2nd    Theft from person 65 years of  
age or older; \$10,000 or more  
but less than \$50,000.



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|     |                                 |     |  |
|-----|---------------------------------|-----|--|
| 169 | 812.015(8)                      | 3rd | Retail theft; property stolen is valued at \$300 or more and one or more specified acts.   |
| 170 | 812.019(1)                      | 2nd | Stolen property; dealing in or trafficking in.   |
| 171 | 812.131(2)(b)                   | 3rd | Robbery by sudden snatching.   |
| 172 | 812.16(2)                       | 3rd | Owning, operating, or conducting a chop shop.  |
| 173 | 817.034(4)(a)2.                 | 2nd | Communications fraud, value \$20,000 to \$50,000.  |
| 174 | 817.234(11)(b)                  | 2nd | Insurance fraud; property value \$20,000 or more but less than \$100,000.  |
| 175 | 817.2341(1),<br>(2)(a) & (3)(a) | 3rd | Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the |

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solvency of an insuring entity.

176

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.

177

817.611(2)(a)           2nd    Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

178

817.625(2)(b)           2nd    Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

179

825.1025(4)            3rd    Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

180

827.071(4)            2nd    Possess with intent to promote



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any photographic material,  
motion picture, etc., which  
includes sexual conduct by a  
child.

181

827.071(5)                    3rd    Possess, control, or  
intentionally view any  
photographic material, motion  
picture, etc., which includes  
sexual conduct by a child.

182

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.

183

843.01                        3rd    Resist officer with violence to  
person; resist arrest with  
violence.

184

847.0135(5)(b)            2nd    Lewd or lascivious exhibition  
using computer; offender 18  
years or older.

185

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|     |                       |     |  |
|-----|-----------------------|-----|--|
| 186 | 847.0137<br>(2) & (3) | 3rd | Transmission of pornography by<br>electronic device or equipment.  |
| 187 | 847.0138<br>(2) & (3) | 3rd | Transmission of material<br>harmful to minors to a minor by<br>electronic device or equipment.                                   |
| 188 | 874.05(1)(b)          | 2nd | Encouraging or recruiting<br>another to join a criminal<br>gang; second or subsequent<br>offense.                                |
| 189 | 874.05(2)(a)          | 2nd | Encouraging or recruiting<br>person under 13 years of age to<br>join a criminal gang.  |
| 190 | 893.13(1)(a)1.        | 2nd | Sell, manufacture, or deliver<br>cocaine (or other s.<br>893.03(1)(a), (1)(b), (1)(d),<br>(2)(a), (2)(b), or (2)(c)4.<br>drugs). |
|     | 893.13(1)(c)2.        | 2nd | Sell, manufacture, or deliver<br>cannabis (or other s.<br>893.03(1)(c), (2)(c)1.,  |

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(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.

191

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.

192

893.13(1)(e)2.            2nd    Sell, manufacture, or deliver  
cannabis or other drug  
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





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203 An act relating to payment card offenses; amending s.  
204 817.625, F.S.; revising definitions; revising  
205 terminology; revising the offenses of using a scanning  
206 device or reencoder with the intent to defraud;  
207 prohibiting the use of a skimming device with intent  
208 to defraud; prohibiting the possession, sale, or  
209 delivery of a skimming device; providing criminal  
210 penalties; amending s. 921.0022, F.S.; conforming  
211 provisions to changes made by the act; providing an  
212 effective date.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 343 Payment Card Offenses  
**SPONSOR(S):** Asencio  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 766

| REFERENCE                              | ACTION | ANALYST          | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|--------|------------------|--|
| 1) Criminal Justice Subcommittee       |        | Merlin <i>SM</i> | White <i>TW</i>                          |
| 2) Justice Appropriations Subcommittee |        |                  |  |
| 3) Judiciary Committee                 |        |                  |  |

### SUMMARY ANALYSIS

As in most states, Florida has laws to protect citizens from credit card or payment card "skimming," which involves obtaining private information from a card used in an otherwise normal transaction.

According to the National Conference of State Legislatures, more than half of the states have enacted some form of anti-skimming legislation aimed at fraudulent use of electronic scanning devices and reencoders which can be used to store encoded payment information or transfer the data to another card. No state, however, prevents outright ownership of such devices or creates any presumptions regarding their possession.

In Florida, section 817.625, F.S., provides that it is a felony of the third degree to use a scanning device or reencoder without the permission of the authorized card user, and with the intent to defraud the authorized user, the issuer of the authorized user's payment card, or a merchant. A second or subsequent violation of the statute is a felony of the second degree. Any person who violates the statute is subject to civil forfeiture.

At present, section 817.625, F.S., does not address payment cards with computer chips, nor does it address possession of a scanning device or create any presumptions regarding possession or intent to defraud.

The bill expands the current definitions of "reencoder" and "scanning device" to include a "computer chip" or other storage mechanism, or from another device that directly reads the information from the card. The bill also:

- Creates a new third degree felony offense that prohibits a person from possessing, selling, or delivering a scanning device knowingly and with the intent to defraud an authorized user of a payment card, the issuer of a payment card, or a merchant; and
- Provides that it is prima facie evidence of a person's knowledge and intent to defraud if the person possessing the scanning device is not a law enforcement officer or other similar individual specified in the bill.

The Criminal Justice Impact Conference ("CJIC") considered this bill on March 2, 2017, and determined that it will have a positive insignificant impact on prison beds, meaning an increase of ten or fewer prison beds. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Overview of Skimming: Use of Devices to Obtain Protected Payment Card Information**

As in most states, Florida has laws to protect citizens who use credit cards and other similar payment cards against fraudulent practices. A “payment card” is a “credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant.”<sup>1</sup>

In recent years, state and local law enforcement agencies (“LEA’s”) have reported on the practice of “skimming,” which involves obtaining private information from someone’s payment card used in an otherwise normal transaction such as at an ATM.<sup>2</sup> A criminal suspect can obtain a victim’s card number by photocopying receipts, copying a PIN code, or using an electronic scanning device<sup>3</sup> or reencoder<sup>4</sup> to swipe and store a victim’s payment card numbers or transfer the data or information to another card.<sup>5</sup> Skimming can occur at a restaurant or bar where the skimmer has possession of the victim’s card out of their immediate view.<sup>6</sup> Similarly, skimming can also occur at gas stations when a third-party card-reading device is installed either outside or inside a fuel dispenser<sup>7</sup> or other card-swiping terminal.<sup>8</sup>

In Florida, the Department of Agriculture and Consumer Services (“DACS”) is the state agency that is responsible for collecting samples and testing fuel quality at gas station pumps and dispensers and making sure that such dispensers are working properly.<sup>9</sup> The authority to investigate and enforce criminal laws regulating such businesses and the security of consumers is governed by the Office of Agricultural Law Enforcement (“AGLAW”).<sup>10</sup> DACS has reported that AGLAW typically comes across skimming devices during fuel theft or gas skimming investigations.<sup>11</sup>

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<sup>1</sup> s. 817.625(1)(c), F.S.; *see also* s. 817.615(1)(d), F.S. (defining a “merchant” as “a person who receives from an authorized user of a payment card, or someone the person believes to be an authorized user, a payment card or information from a payment card, or what the person believes to be a payment card or information from a payment card, as the instrument for obtaining, purchasing, or receiving goods, services, money, or anything else of value from the person.”).

<sup>2</sup> Article, “*Taking a Trip to the ATM? Beware of Skimmers*,” Federal Bureau of Investigation (“FBI”) (July 14, 2011), *available at* <https://www.fbi.gov/news/stories/atm-skimming> (last viewed Feb. 3, 2017); *see also* *Arnauta v. State*, 125 So. 3d 1028, 1029 (Fla. 4th DCA 2013) (noting, in part, that charges were filed against the defendant after police discovered that the defendant had used an ATM skimming device to withdraw money from customer accounts and after police searched the defendant’s residence, storage units and vehicle, discovering a multitude of ATM parts, molds, ATM keypads, circuit boards, blank bank credit cards, magnetic strips, and bank card readers/writers. At trial, Citibank employees testified 171 accounts had to be closed and re-opened as customers used their cards during the period when the ATM machines were compromised. Money was removed from thirty-one accounts, with the loss to Citibank totaling more than \$44,000 plus the cost of closing and re-opening the accounts.).

<sup>3</sup> s. 817.625(1)(a), F.S.

<sup>4</sup> s. 817.625(1)(b), F.S.

<sup>5</sup> Feinberg, Ashley, “*The Evolution of ATM Skimmers*,” Gizmodo (Aug. 27, 2014), *available at* <http://gizmodo.com/the-terrifying-evolution-of-atm-skimmers-1626794130> (last viewed Feb. 3, 2017).

<sup>6</sup> Denny, Dawn, “*Cashier Linked to Credit Card Skimming Scam, Police Say*,” KXAN (May 20, 2014), *available at* <http://kxan.com/2014/05/20/restaurant-cashier-linked-to-credit-card-skimming-scam-police-say/> (last viewed Feb. 3, 2017).

<sup>7</sup> Jacobson, Susan, “*State Finds 103 Credit-Card Skimmers in 3-month Inspection of Gas Pumps*,” ORLANDO SENTINEL (May 19, 2015), *available at* <http://www.orlandosentinel.com/business/os-gas-pump-skimmers-20150519-story.html> (last visited Feb. 4, 2017).

<sup>8</sup> Musil, Steven, “*13 Indicted in \$2M Gas Station Card-Skimming Scheme*,” CNET (Jan. 22, 2014), *available at* <https://www.cnet.com/news/13-indicted-in-2m-gas-station-card-skimming-scheme/> (last viewed Feb. 3, 2017).

<sup>9</sup> ss. 525.01-16, F.S.; *see also* website for the Florida Department of Agriculture and Consumer Services, *Petroleum Inspection FAQ*, *available at* <http://www.freshfromflorida.com/Business-Services/Petroleum-Inspection-FAQ2> (last visited Feb. 6, 2017).

<sup>10</sup> s. 570.65, F.S. (“Department of Agriculture and Consumer Services, law enforcement officers.”); *see also* Department of Agriculture and Consumer Services website, *available at* <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Law-Enforcement> (last viewed Feb. 4, 2017).

<sup>11</sup> Harless, Linda, Department of Agriculture and Consumer Services (“DACS”) Bill Analysis to HB 343 (Feb. 3, 2017) (on file with the Florida House of Representatives Criminal Justice Subcommittee).



In 2016, DACS found a total of 219 skimmers in Florida.<sup>12</sup> Preliminary findings for 2017 indicate that 25 skimmers were detected in January, and 9 skimmers were found in the first six days of February.<sup>13</sup>

### State Laws Regarding Skimming

Given concerns about skimming, many states have enacted legislation to protect consumers and merchants. In 2011, the National Conference of State Legislatures (“NCSL”) reported that “31 states and Puerto Rico<sup>14</sup> have enacted statutes that provide criminal penalties for using a credit card skimming device, also known as [a] credit card re-encoder or wedge, used to steal an individual's credit card number and data stored through the credit card's magnetic stripe.”<sup>15</sup> Since that time, six more states have enacted anti-skimming legislation.<sup>16</sup> Most state laws refer to information that is encoded on the magnetic strip or stripe of a payment card. However, at least eight states<sup>17</sup> have included definitions or penalties to account for data encoded on computer chips or circuits,<sup>18</sup> which are more difficult to replicate than the information on magnetic strips.<sup>19</sup> “With chip cards, account numbers and expiration dates aren’t actually transmitted between customer and merchant. The chips create a one-time code to fund transactions — information that would be useless to a thief trying to replicate cards.”<sup>20</sup>

In addition, at least 13 states have laws regarding possession of a scanning device or reencoder with intent to defraud or without permission from the authorized user of the card or merchant.<sup>21</sup> No state, however, prevents outright ownership of such devices or creates any presumptions regarding their possession.

Currently, ch. 817, F.S., governs fraudulent practices and credit card crimes. Section 817.625, F.S., addresses the use of a “scanning device” or “reencoder” to defraud, along with their definitions.<sup>22</sup> Specifically:

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<sup>12</sup> E-mail from Grace Lovett, Director, Office of Legislative Affairs, DACS (Feb. 6, 2017) (on file with the Florida House of Representatives Criminal Justice Subcommittee).

<sup>13</sup> 2017 Skimmer Deactivation List from DACS, Division of Consumer Services (Feb. 6, 2017) (on file with the Florida House of Representatives Criminal Justice Subcommittee).

<sup>14</sup> 33 Laws of Puerto Rico Ann. § 4863a

<sup>15</sup> Morton, Heather, *Credit Card Skimming Laws and Legislation, National Conference of State Legislatures* (“NCSL”), available at <http://www.ncsl.org/research/financial-services-and-commerce/credit-card-skimming-devices-laws-and-legislation.aspx> (last viewed Feb. 4, 2017).

<sup>16</sup> The NCSL data was last updated January 24, 2011. Since that time, an additional six states have enacted anti-skimming legislation: Alabama (Ala. Code § 13A-8-113); Georgia (Ga. Code Ann., § 10-15-4); Nebraska (Neb. Rev. St. § 28-6340); North Dakota (N.D. Cent. Code, § 12.1-23-17); Tennessee (Tenn. Code Ann. § 39-14-150); and Vermont.

<sup>17</sup> The eight states which include language about computer chips and circuits are Alabama (Ala. Code § 13A-8-113(a)(1) and (2)); Connecticut (Conn. Gen. Stat. § 53-388a); Delaware (Del. Code Ann. tit. 11, § 903A); Kansas (Kan. Stat. Ann. § 21-6108(a)(1)-(2) and (c)(1)-(2)); Maine (Me. Rev. Stat. Ann. tit. 17-A, § 905-B(2)(C)-(D)); Minnesota (Minn. Stat. § 609.527(1)(h)-(i)); Tennessee (Tenn. Code Ann. § 39-14-150(k)(1)(A)-(B)); and Vermont (13 Ver. Stat. Ann. § 1816(a), (b), and (e)(1)-(3)).

<sup>18</sup> The computer chips used in payment cards are called EMV (which stands for Europay, Mastercard, Visa) cards. EMV cards “store user data on integrated circuits, or chips, that must be physically inserted into a special reader in order to be accessed.” See Quimby, Tom, *FBI Warns New Chip Cards Insecure Among Growing Fraud*, THE WASHINGTON TIMES, Nov. 15, 2015, available at <http://www.washingtontimes.com/news/2015/nov/15/credit-card-chip-technology-not-more-secure-than-m/> (last viewed Feb. 6, 2017).

<sup>19</sup> Kossman, Sienna, *8 FAQs About EMV Credit Cards, Chip? PIN? Signature? Do Old Cards Work? Answers to Frequently Asked Questions*, available at <http://www.creditcards.com/credit-card-news/emv-faq-chip-cards-answers-1264.php> (last viewed Feb. 6, 2017).

<sup>20</sup> Hardy, Kevin and Johnson, Patt, *Many Retailers Haven't Met Deadline for Chip-Card Readers*, USA TODAY (Oct. 1, 2015), available at <http://www.usatoday.com/story/money/business/2015/10/01/chip-credit-debit-card-readers-october-1/73140516/> (last viewed Feb. 3, 2017).

<sup>21</sup> Ala. Code § 13A-8-113(a)(1) and (2); Ariz. Rev. Stat. Ann. § 13-2110(B); Cal. Penal Code § 502.6(a), (b), and (c); Conn. Gen. Stat. § 53-388a(f); Del. Code Ann. tit. 11, § 903A; Idaho Code § 18-2415(2); Ind. Code Ann. § 35-43-5-4.3(b)(1)-(4); Nev. Rev. Stat. § 205.606(1); N.J. Rev. Stat. § 2C:21-6.1(c); N.Y. Penal Law § 190.85; see also N.Y. Penal Law § 190.86 (providing that unlawful possession of a skimmer device in the first degree is a class E felony where the defendant has been previously convicted under s. 190.85 within the last five years); S.D. Cod. Laws § 22-40-14; Tenn. Code Ann. § 39-14-150(k)(2)(B); 13 Ver. State. Ann. § 1816(a)-(b).

<sup>22</sup> s. 817.625(1)(a) and (b), F.S.

- “Scanning device” means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card.
- “Reencoder” means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.

Section 817.625, F.S.,<sup>23</sup> provides that it is a third degree felony<sup>24</sup> to use:

- A scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card and with the intent to defraud the authorized user, the issuer of the authorized user’s payment card, or a merchant.
- A reencoder to place information encoded on the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the authorized user, the issuer of the authorized user’s payment card, or a merchant.

A second or subsequent violation of the statute<sup>25</sup> is a second degree felony.<sup>26</sup>

Further, any person who violates the statute is subject to Florida’s civil forfeiture law.<sup>27</sup>

At present, there is no language in s. 817.625, F.S., regarding payment cards which are encoded with computer chips. Further, the current statute does not address possession of a scanning device, or what level of knowledge or intent is required to prove a violation, nor are there any presumptions regarding possession or intent to defraud.

#### **EFFECT OF BILL**

The bill expands the current definitions of “reencoder” and “scanning device” to include the “computer chip” or “other storage mechanism” of a payment card. The bill further amends the definition of a “scanning device” so that it includes information encoded “from another device that directly reads the information from the payment card.” The bill incorporates the amended language into the current third degree felony prohibitions against the fraudulent use of a reencoder and scanning device.

The bill also creates a new third degree felony offense that prohibits a person from possessing, selling, or delivering a scanning device knowingly and with the intent to defraud an authorized user of a payment card, the issuer of a payment card, or a merchant. For this offense, the bill specifies that it is prima facie evidence of knowledge and intent to defraud if the person possessing the scanning device is not:

- A law enforcement officer;
- An authorized representative of a law enforcement officer;
- An officer of the Department of Agriculture and Consumer Services;
- A state attorney;
- A financial security investigator employed by a merchant or financial institution;
- An authorized vendor to any of the aforementioned authorized investigative agencies; or
- A person lawfully reporting the scanning device to one of the above-listed individuals or groups.

<sup>23</sup> s. 817.625(2)(a), F.S.

<sup>24</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

<sup>25</sup> s. 817.625(2)(b), F.S.

<sup>26</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

<sup>27</sup> s. 817.625(2)(c), F.S. (noting, “Any person who violates subparagraph (a)1. or subparagraph (a)2. shall also be subject to the provisions of ss. 932.701-932.7062.”).

The bill provides that once evidence of knowledge and intent is established, no additional identification of payment card data, payment card users, payment card issuers, or payment card merchants is required.

Finally, the bill amends the statute, incorporating the revised subsections to account for civil forfeiture.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 817.625, F.S., relating to use of scanning device or reencoder to defraud; possession of scanning devices; penalties.

Section 2. Provides an effective date of October 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The bill does not appear to have any impact on state revenues.
2. Expenditures: The Criminal Justice Impact Conference ("CJIC") considered this bill on March 2, 2017. The CJIC determined that the bill will have a positive insignificant impact on prison beds, meaning an increase of ten or fewer prison beds.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.
2. Other: None.

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

**C. DRAFTING ISSUES OR OTHER COMMENTS: As noted above, the bill provides that it is prima facie evidence of knowledge and intent to defraud for purposes of the newly created third degree felony**

offense, unless the person possessing the scanning device is a law enforcement officer or other similar official. A scanning device, however, may be legitimately possessed by more people than the bill excludes, e.g., retailers, common carriers, etcetera. It may desirable to remove or otherwise amend the prima facie standard in the bill to avoid the unintended possibility of a person in legitimate possession of the device being charged with a violation of the offense.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A

1                   A bill to be entitled  
 2           An act relating to payment card offenses; amending s.  
 3           817.625, F.S.; revising definitions; revising  
 4           terminology; prohibiting the possession of a scanning  
 5           device with intent to defraud; providing criminal  
 6           penalties; specifying prima facie evidence of intent  
 7           to defraud; providing an effective date.

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

10  
 11           Section 1. Section 817.625, Florida Statutes, is amended  
 12   to read:

13           817.625 Use of scanning device or reencoder to defraud;  
 14   possession of scanning device; penalties.-

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

16           (a)~~(d)~~ "Merchant" means a person who receives from an  
 17   authorized user of a payment card, or someone the person  
 18   believes to be an authorized user, a payment card or information  
 19   from a payment card, or what the person believes to be a payment  
 20   card or information from a payment card, as the instrument for  
 21   obtaining, purchasing, or receiving goods, services, money, or  
 22   anything else of value from the person.

23           (b)~~(e)~~ "Payment card" means a credit card, charge card,  
 24   debit card, or any other card that is issued to an authorized  
 25   card user and that allows the user to obtain, purchase, or

26 receive goods, services, money, or anything else of value from a  
 27 merchant.

28 ~~(c)(b)~~ "Reencoder" means an electronic device that places  
 29 encoded information from the computer chip, magnetic strip or  
 30 stripe, or other storage mechanism of a payment card onto the  
 31 computer chip, magnetic strip or stripe, or other storage  
 32 mechanism of a different payment card.

33 ~~(d)(a)~~ "Scanning device" means a scanner, reader, or any  
 34 other electronic device that may be ~~is~~ used to access, read,  
 35 scan, obtain, memorize, or store, temporarily or permanently,  
 36 information encoded on the computer chip, magnetic strip or  
 37 stripe, or other storage mechanism of a payment card or from  
 38 another device that directly reads the information from the  
 39 card.

40 (2)(a) It is a felony of the third degree, punishable as  
 41 provided in s. 775.082, s. 775.083, or s. 775.084, for a person  
 42 to use:

43 1. A scanning device to access, read, obtain, memorize, or  
 44 store, temporarily or permanently, information encoded on the  
 45 computer chip, magnetic strip or stripe, or other storage  
 46 mechanism of a payment card without the permission of the  
 47 authorized user of the payment card and with the intent to  
 48 defraud the authorized user, the issuer of the authorized user's  
 49 payment card, or a merchant.

50 2. A reencoder to place information encoded on the

51 computer chip, magnetic strip or stripe, or other storage  
 52 mechanism of a payment card onto the computer chip, magnetic  
 53 strip or stripe, or other storage mechanism of a different card  
 54 without the permission of the authorized user of the card from  
 55 which the information is being reencoded and with the intent to  
 56 defraud the authorized user, the issuer of the authorized user's  
 57 payment card, or a merchant.

58 (b) Any person who violates subparagraph (a)1. or  
 59 subparagraph (a)2. a second or subsequent time commits a felony  
 60 of the second degree, punishable as provided in s. 775.082, s.  
 61 775.083, or s. 775.084.

62 (3)(a) A person who possesses, sells, or delivers a  
 63 scanning device knowingly and with the intent to defraud an  
 64 authorized user of a payment card, the issuer of a payment card,  
 65 or a merchant commits a felony of the third degree, punishable  
 66 as provided in s. 775.082, s. 775.083, or s. 775.084.

67 (b)1. For the purposes of this subsection, it shall be  
 68 prima facie evidence of knowledge and intent to defraud if the  
 69 person possessing the scanning device is not:

70 a. A law enforcement officer, an authorized representative  
 71 of a law enforcement officer, an officer of the Department of  
 72 Agriculture and Consumer Services, a State Attorney, a financial  
 73 security investigator employed by a merchant or financial  
 74 institution, or an authorized vendor to any of the  
 75 aforementioned authorized investigative agencies.

76           b. A person lawfully reporting the scanning device to a  
 77 law enforcement officer, an officer of the Department of  
 78 Agriculture and Consumer Services, a State Attorney, a financial  
 79 security investigator employed by a merchant or financial  
 80 institution, or an authorized vendor to any of the  
 81 aforementioned authorized investigative agencies.

82           2. Once prima facie evidence of knowledge and the intent  
 83 to defraud has been established, no additional identification of  
 84 payment card data, payment card users, payment card issuers, or  
 85 payment card merchants is required.

86           (4)(e) Any person who violates subparagraph (2)(a)1.,  
 87 ~~(a)1. or~~ subparagraph (2)(a)2., or subsection (3) ~~(a)2.~~ shall  
 88 also be subject to ~~the provisions of~~ ss. 932.701-932.7062.

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







## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 457 Terrorism and Terrorist Activities

**SPONSOR(S):** Gonzalez

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

| REFERENCE                              | ACTION | ANALYST  | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF  |
|--|--------|--|---|
| 1) Criminal Justice Subcommittee       |        | Merlin  | White  |
| 2) Justice Appropriations Subcommittee |        |  |   |
| 3) Judiciary Committee                 |        |  |   |

### SUMMARY ANALYSIS

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

The bill creates new criminal offenses for:

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

The Criminal Justice Impact Conference (CJIC) has determined that the bill will have a positive indeterminate impact, meaning that the bill will have a positive impact on the number of prison beds, but the exact number is unquantifiable. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Counterterrorism Laws – Federal and Florida**

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

Congress has enacted counterterrorism laws to facilitate the prosecution and investigation of terrorism cases, including prohibited conduct and penalties. Such laws give the federal government broad power to conduct investigations and prosecutions in cases of national security and terrorism.<sup>5</sup> Currently, federal law prohibits a person from providing any material support or resources to a foreign terrorist organization (FTO) as designated by the Secretary of State.<sup>6</sup> Federal law also defines what it means to provide “material support or resources” to terrorist organizations, as well as “training,” “expert advice or assistance,” and “military-type training.”<sup>7</sup> Specifically:

- “Material support or resources” means any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications

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<sup>1</sup> 22 U.S.C. § 2656f(d).

<sup>2</sup> 28 C.F.R. § 0.85(l).

<sup>3</sup> Agencies with related definitions of terrorism include the Department of Defense and the Federal Emergency Management Agency (FEMA). See *Department of Defense Dictionary of Military and Associated Terms*, at 241, Nov. 8, 2010 (as amended through Feb. 15, 2016), available at [http://www.dtic.mil/doctrine/new\\_pubs/jp1\\_02.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf) (last viewed Mar. 15, 2017); FEMA Publication, *Terrorism*, July 26, 2013, available at <https://www.fema.gov/media-library-data/20130726-1549-20490-0802/terrorism.pdf> (last viewed Feb. 9, 2017); see also FEMA Guidebook, *Managing the Emergency Consequences of Terrorist Incidents*, at J-3, July 2002, available at <https://www.fema.gov/pdf/plan/managingemerconseq.pdf> (last viewed Mar. 15, 2017).

<sup>4</sup> 18 U.S.C. § 2331(1) and (5).

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

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

<sup>7</sup> 18 U.S.C. §§ 2339A, 2339B, and 2339D.

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

According to the National Conference of State Legislatures (NCSL), forty-four states and the District of Columbia have passed some form of legislation addressing terrorism, while the remaining states may have other laws regarding conspiracy to commit terrorism, threatening the government or an officer of the government, or threats of arson.<sup>12</sup>

In Florida, there are a limited number of terrorism and counterterrorism-related statutes. Chapter 943, F.S., indicates that the Florida Department of Law Enforcement (FDLE) serves as the lead or coordinating agency in statewide counterterrorism efforts and responses to terrorist events.<sup>13</sup> Section 775.30, F.S., defines the term “terrorism,”<sup>14</sup> and is modeled after the language used in Title 18 of the United States Code<sup>15</sup> regarding domestic and international terrorism. Section 775.31, F.S., utilizes this definition and provides for the enhancement or reclassification, to the next highest level, of a misdemeanor or felony that can be attributed to an act of terrorism,<sup>16</sup> while Chapter 782, lists an “act of terrorism” as a predicate for establishing that a homicide crime, such as felony murder, has been committed.<sup>17</sup>

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

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

<sup>9</sup> 18 U.S.C. §§ 2339A(b)(2).

<sup>10</sup> 18 U.S.C. §§ 2339A(b)(3).

<sup>11</sup> 18 U.S.C. § 2339D(c)(1).

<sup>12</sup> E-mail from Richard Williams, Criminal Justice Senior Policy Analyst, NCSL, Feb. 13, 2017, with attached 2014 NCSL Report on State Terrorism Statutes (E-mail Correspondence and Report on file with the Florida House of Representatives Subcommittee on Criminal Justice). An earlier version of the NCSL report from 2002 noted that in the weeks following the September 11, 2001, terrorist attacks, 33 states had passed anti-terrorism laws. See <http://www.ncsl.org/Portals/1/documents/cj/terrorismcrimes.pdf> (last viewed Feb. 13, 2017).

<sup>13</sup> s. 943.03(14), F.S.; see also ss. 943.0311-13, F.S.; s. 943.03101, F.S.; and s. 943.0321, F.S.

<sup>14</sup> s. 775.30, F.S. (which provides, “As used in the Florida Criminal Code, the term “terrorism” means an activity that:

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

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

(2) Is intended to:

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

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

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

<sup>15</sup> 18 U.S.C. § 2331(1) and (5). The definition in s. 775.30(1) and (2), F.S., is substantially similar to the definition in its federal counterpart but excludes any language relating to the boundaries or territorial jurisdiction of the United States.

<sup>16</sup> s. 775.31, F.S. (providing felony or misdemeanor reclassification of offenses).

<sup>17</sup> s. 782.04(1)(a)(2)(r); s. 782.04(3)(r); s. 782.04(4)(s); see also s. 782.04(5)(a)-(b), F.S. (providing the same definition for terrorism set forth in s. 775.30, F.S.).

## Effect of the Bill

### Offense of Terrorism

The bill amends s. 775.30, F.S., to criminalize an act of “terrorism.”<sup>18</sup> Under the bill, a person who commits a predicate offense when intending to influence or affect by intimidation or coercion, or to retaliate against, the conduct of government, commits the crime of terrorism, which is a first degree felony.<sup>19</sup> The predicate offenses are:

- Murder, premeditated;<sup>20</sup>
- Murder, imminently dangerous act and depraved mind;<sup>21</sup>
- Murder; law enforcement officer, correctional officer, correctional probation officer;<sup>22</sup>
- Manslaughter;<sup>23</sup>
- Killing of unborn child by injury to mother;<sup>24</sup>
- Aggravated battery;<sup>25</sup>
- Assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers;<sup>26</sup>
- Kidnapping; kidnapping of child under 13, aggravating circumstances;<sup>27</sup>
- False imprisonment; false imprisonment of child under 13, aggravating circumstances;<sup>28</sup>
- Human smuggling;<sup>29</sup>
- Possessing or discharging weapons or firearms at a school-sponsored event or on school property;<sup>30</sup>
- Discharging firearm in public or on residential property;<sup>31</sup>
- Discharging machine guns;<sup>32</sup>
- Making, possessing, throwing, projecting, placing, or discharging any destructive device;<sup>33</sup>
- Unlawful throwing, projecting, placing, discharging of destructive device or bomb that results in injury to another;<sup>34</sup>
- Planting of “hoax” bomb prohibited;<sup>35</sup>
- Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction prohibited;<sup>36</sup>
- Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad case, streetcars, or other vehicles;<sup>37</sup>
- Arson;<sup>38</sup>
- Arson resulting in injury to another;<sup>39</sup>

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<sup>18</sup> The bill also adds that the term “terrorist activity” has the same meaning as “terrorism” in s. 775.30, F.S.

<sup>19</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

<sup>20</sup> s. 782.04(1)(a)1., F.S.

<sup>21</sup> s. 782.04(2), F.S.

<sup>22</sup> s. 782.065, F.S.

<sup>23</sup> s. 782.07(1), F.S.

<sup>24</sup> s. 782.09, F.S.

<sup>25</sup> s. 784.045, F.S.

<sup>26</sup> s. 784.07, F.S.

<sup>27</sup> s. 787.01, F.S.

<sup>28</sup> s. 787.02, F.S.

<sup>29</sup> s. 787.07, F.S.

<sup>30</sup> s. 790.115, F.S.

<sup>31</sup> s. 790.15, F.S.

<sup>32</sup> s. 790.16, F.S.

<sup>33</sup> s. 790.161, F.S.

<sup>34</sup> s. 790.1615, F.S.

<sup>35</sup> s. 790.162, F.S.

<sup>36</sup> s. 790.166, F.S.

<sup>37</sup> s. 790.19, F.S.

<sup>38</sup> s. 806.01, F.S.

<sup>39</sup> s. 806.031, F.S.

- Fire bombs;<sup>40</sup>
- Offenses against users of computers, computer systems, networks, and devices;<sup>41</sup>
- Offenses against public utilities;<sup>42</sup>
- Poisoning of food or water;<sup>43</sup> and
- Combination to usurp government.<sup>44</sup>

The bill provides that a person who commits a predicate offense which results in death or serious bodily injury<sup>45</sup> commits a life felony.<sup>46</sup>

#### Offense of Use of Military-Type Training

The bill creates s. 775.32, F.S., to criminalize the use of, attempted use of, or conspiracy to use “military-type training” by a designated FTO<sup>47</sup> to harm another person or destroy, damage, or disrupt services to a critical infrastructure facility. A violation is:

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

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

#### Offense of Providing Material Support

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

- The bill’s newly created offenses in ss. 775.30, 775.32, 775.34, or 775.35, F.S.;
- Discharging machine guns;<sup>48</sup>
- Making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt so to do;<sup>49</sup>
- Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction;<sup>50</sup>
- Shooting into or throwing deadly missiles into dwellings, public or private buildings, occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles;<sup>51</sup>
- Offenses against users of computers, computer systems, computer networks, and electronic devices;<sup>52</sup>
- Poisoning food or water;<sup>53</sup>
- Crimes against railroad vehicles;<sup>54</sup>

<sup>40</sup> s. 806.111, F.S.

<sup>41</sup> s. 815.06, F.S.

<sup>42</sup> s. 815.061, F.S.

<sup>43</sup> s. 859.01, F.S.

<sup>44</sup> s. 876.34, F.S.

<sup>45</sup> The bill defines “serious bodily injury” as “an injury to a person which creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or an organ.” s. 775.30(3)

<sup>46</sup> The punishments for a life felony are set forth in s. 775.082, F.S. The fine for a life felony can go up to \$15,000. *See* s. 775.083, F.S.

<sup>47</sup> Like current federal legislation, the bill refers to “military-type training” from a designated FTO. This is distinguishable from those circumstances in which an American soldier with dual citizenship lawfully serves in another country’s military without voluntarily renouncing his or her citizenship or applying for foreign nationality. *See* Lauren Raab, *Q&A Why Would an American Join Israel’s Military? Answers to that and More*, LOS ANGELES TIMES, July 21, 2014, available at <http://www.latimes.com/nation/nationnow/la-fg-americans-israel-gaza-military-20140721-story.html> (last viewed Feb. 9, 2017).

<sup>48</sup> s. 790.16, F.S.

<sup>49</sup> s. 790.161(2)-(4), F.S.

<sup>50</sup> s. 790.166, F.S.

<sup>51</sup> s. 790.19, F.S.

<sup>52</sup> s. 815.06, F.S.

<sup>53</sup> s. 859.01, F.S.

- Aircraft piracy;<sup>55</sup>
- Treason,<sup>56</sup>
- Combination to usurp government,<sup>57</sup>
- Inciting insurrection.<sup>58</sup>

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

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

The bill also creates s. 775.33(3), F.S., which provides that a person who attempts to, conspires to, or knowingly provides MSR to a designated FTO commits a first degree felony, or if the violation results in death or serious bodily injury to a person, a life felony. To violate that subsection, a person must have knowledge that the organization is a designated FTO or that the organization has engaged in or engages in terrorism or terrorist activity.

The bill creates definitions which are modeled after current federal counterterrorism laws, including MSR,<sup>59</sup> "training,"<sup>60</sup> "expert advice or assistance,"<sup>61</sup> and designated FTOs.<sup>62</sup> The bill excludes medicine or religious materials from the definition of MSR.

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

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

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

#### Membership in a Designated FTO

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

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<sup>54</sup> s. 860.121, F.S.

<sup>55</sup> s. 860.16, F.S.

<sup>56</sup> s. 876.32, F.S.

<sup>57</sup> s. 876.34, F.S.

<sup>58</sup> s. 876.36, F.S.

<sup>59</sup> 18 U.S.C. § 2339A(b)(1) (providing a definition for "material support or resources").

<sup>60</sup> 18 U.S.C. § 2339A(b)(2) (defining "training" as "instruction or teaching designed to impart a specific skill, as opposed to general knowledge[.]").

<sup>61</sup> 18 U.S.C. § 2339A(b)(3) (defining "expert advice or assistance" as "advice or assistance derived from scientific, technical or other specialized knowledge.").

<sup>62</sup> 8 U.S.C. § 1189.

### Agroterrorism

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

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

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

### Miscellaneous

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

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

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

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

## B. SECTION DIRECTORY:

Section 1. Amends s. 775.30, F.S., relating to terrorism; defined; penalties.

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

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

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

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

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

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

Section 8. Reenacts s. 373.6055, F.S., relating to criminal history checks for certain water management district employees and others.

Section 9. Reenacts s. 381.95, F.S., relating to medical facility information maintained for terrorism response purposes; confidentiality.

Section 10. Reenacts s. 395.1056, F.S., relating to plan components addressing a hospital's response to terrorism; public records exemption; public meetings exemption.

Section 11. Reenacts s. 874.03, F.S., relating to definitions.

Section 12. Reenacts s. 907.041, F.S., relating to pretrial detention and release.



Section 13. Reacts s. 943.0312, F.S., relating to regional domestic security task forces.

Section 14. Reacts s. 943.0321, F.S., relating to the Florida Domestic Security and Counter-Terrorism Intelligence Center and the Florida Domestic Security and Counter-Terrorism Database.

Section 15. Reacts s. 27.401, F.S., relating to cross-circuit conflict representation pilot program.

Section 16. Reacts s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 17. Reacts s. 63.089, F.S., relating to proceedings to terminate parental rights pending adoption; hearings; grounds; dismissal of petition; judgment.

Section 18. Reacts s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 19. Reacts s. 435.04, F.S., relating to Level 2 screening standards.

Section 20. Reacts s. 435.07, F.S., relating to exemptions from disqualification.

Section 21. Reacts s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 22. Reacts s. 775.0823, F.S., relating to violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.

Section 23. Reacts s. 782.051, F.S., relating to attempted felony murder.

Section 24. Reacts s. 782.065, F.S., relating to murder; law enforcement officer, correctional officer, correctional probation officer.

Section 25. Reacts s. 903.133, F.S., relating to bail on appeal; prohibited for certain felony convictions.

Section 26. Reacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 27. Reacts s. 921.16, F.S., relating to when sentences to be concurrent and when consecutive.

Section 28. Reacts s. 947.146, F.S., relating to control release authority.

Section 29. Reacts s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

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

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

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

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

Section 34. Provides an effective date of October 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017. The CJIC determined that the bill's creation of new felony offenses will have a positive indeterminate impact on prison beds. This means that the bill will increase the need for prison beds, but the extent of the increase is unquantifiable.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

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

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

2. Other:

#### *Constitutionality of the MSR Statute:*

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

In Holder v. Humanitarian Law Project, the United States Supreme Court upheld the necessary mental state for a violation of 18 U.S.C. § 2339B.<sup>63</sup> The Court also rejected arguments that the MSR statute was vague or overbroad or that the statute encroached on freedom of speech.<sup>64</sup> Likewise, the Court rejected arguments that the MSR statute infringed on protected advocacy, freedom of expression, and freedom of association.<sup>65</sup>

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<sup>63</sup> *Holder v. Humanitarian Law Project*, 561 U.S. 1, 16-17 (2010); *see also* 18 U.S.C. § 2339B(a)(1).

<sup>64</sup> *Id.* at 20-25.

<sup>65</sup> *Id.* at 25-40.

In Holder, the plaintiffs (U.S. citizens and organizations) challenged the constitutionality of 18 U.S.C. § 2339B, which prohibits providing MSR to designated FTOs. The plaintiffs in that case argued that the Court should not reach any constitutional issues because they did not intend to further a “further a foreign terrorist organization’s illegal activities.”<sup>66</sup> The plaintiffs relied on the decision in Scales v. United States,<sup>67</sup> where a defendant (who was a member of the Communist Party) challenged his conviction under the membership clause of the Smith Act, making it a felony to knowingly be a member in any organization that advocated the overthrow of the United States by force or violence.

The Holder Court noted that under the facts of that case, “[s]ection 2339B does not criminalize mere membership in a designated foreign terrorist organization. It instead prohibits providing ‘material support’ to such a group.”<sup>68</sup> The Holder Court explained, “Nothing about Scales suggests the need for a specific intent requirement in such a case.”<sup>69</sup> As the decision in Holder was based on an analysis of the federal MSR statute, and as that statute was upheld by the Court, the same rationale should be applicable under the bill.

*Membership in a Designated FTO:*

Section 5. of the bill prohibits membership in a designated FTO with the intent to further the illegal acts of the organization. While there is no counterpart for this language in federal counterterrorism law, this section of the bill specifically appears to be based on the holding in Scales, which required knowledge of the group’s illegal advocacy and a specific intent to bring about violent overthrow of the government.<sup>70</sup> As the Court in Scales upheld a conviction under a statute criminalizing active membership and guilty knowledge and intent, the bill appears to meet these requirements.

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

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

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<sup>66</sup> *Holder*, 561 U.S. at 16.

<sup>67</sup> *Scales v. United States*, 367 U.S. 203, 224-30 (1961) (affirming defendant Communist Party member’s conviction under the membership clause of the Smith Act, and holding that it did not violate the right to freedom of association or the Due Process Clause).

<sup>68</sup> *Holder*, 561 U.S. at 18-19, 39-40.

<sup>69</sup> *Id.* at 18 (citing *Scales*, 367 U.S. at 221-22).

<sup>70</sup> *Scales*, 367 U.S. at 229-30.

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

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

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

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

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

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

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

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

94

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

96

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

99 775.30 Terrorism; defined; penalties.-

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

176 | s. 775.35.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

305 775.35 Agroterrorism; penalties.—

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

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

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

324 782.04 Murder.—

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



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

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

354 s. Human trafficking; or

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

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

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

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

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

- 401 any felony other than any:
- 402 (a) Trafficking offense prohibited by s. 893.135(1),
  - 403 (b) Arson,
  - 404 (c) Sexual battery,
  - 405 (d) Robbery,
  - 406 (e) Burglary,
  - 407 (f) Kidnapping,
  - 408 (g) Escape,
  - 409 (h) Aggravated child abuse,
  - 410 (i) Aggravated abuse of an elderly person or disabled
  - 411 adult,
  - 412 (j) Aircraft piracy,
  - 413 (k) Unlawful throwing, placing, or discharging of a
  - 414 destructive device or bomb,
  - 415 (l) Unlawful distribution of any substance controlled
  - 416 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
  - 417 or opium or any synthetic or natural salt, compound, derivative,
  - 418 or preparation of opium by a person 18 years of age or older,
  - 419 when such drug is proven to be the proximate cause of the death
  - 420 of the user,
  - 421 (m) Carjacking,
  - 422 (n) Home-invasion robbery,
  - 423 (o) Aggravated stalking,
  - 424 (p) Murder of another human being,
  - 425 (q) Aggravated fleeing or eluding with serious bodily

426 injury or death,

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

429 (s) Felony that is an act of terrorism or is in  
 430 furtherance of an act of terrorism, including a felony under s.  
 431 775.30, s. 775.32, s. 775.33, s. 775.34, or s. 775.35,  
 432

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

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

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

442 (3)

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

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

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

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

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

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

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

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

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

500 |             395.1056 Plan components addressing a hospital's response

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

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

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

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



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

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

534 874.03 Definitions.—As used in this chapter:

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

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

544 907.041 Pretrial detention and release.—

- 545 (4) PRETRIAL DETENTION.—

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

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

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

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

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

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

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

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

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

610 (2) The intelligence center shall:

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

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

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

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

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

628 (2) Notwithstanding ss. 27.40 and 27.5305:

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

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

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

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

661 39.806 Grounds for termination of parental rights.—

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

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

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

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

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

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

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

701 e. Any other factor the court deems relevant.

702 Section 17. For the purpose of incorporating the amendment  
 703 made by this act to section 782.04, Florida Statutes, in  
 704 references thereto, paragraph (b) of subsection (4) of section  
 705 63.089, Florida Statutes, is reenacted to read:

706 63.089 Proceeding to terminate parental rights pending  
 707 adoption; hearing; grounds; dismissal of petition; judgment.—

708 (4) FINDING OF ABANDONMENT.—A finding of abandonment  
 709 resulting in a termination of parental rights must be based upon  
 710 clear and convincing evidence that a parent or person having  
 711 legal custody has abandoned the child in accordance with the  
 712 definition contained in s. 63.032. A finding of abandonment may  
 713 also be based upon emotional abuse or a refusal to provide  
 714 reasonable financial support, when able, to a birth mother  
 715 during her pregnancy or on whether the person alleged to have  
 716 abandoned the child, while being able, failed to establish  
 717 contact with the child or accept responsibility for the child's  
 718 welfare.

719 (b) The child has been abandoned when the parent of a  
 720 child is incarcerated on or after October 1, 2001, in a federal,  
 721 state, or county correctional institution and:

722 1. The period of time for which the parent has been or is  
 723 expected to be incarcerated will constitute a significant  
 724 portion of the child's minority. In determining whether the  
 725 period of time is significant, the court shall consider the



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

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

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

750       Section 18. For the purpose of incorporating the amendment

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

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

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

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

771 |       435.04 Level 2 screening standards.—

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

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

781 (e) Section 782.04, relating to murder.

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

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

792 (4)

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

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

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

809 a. Chapter 741, relating to domestic violence.

810 b. Section 782.04, relating to murder.

811 c. Section 782.07, relating to manslaughter, aggravated  
 812 manslaughter of an elderly person or disabled adult, aggravated  
 813 manslaughter of a child, or aggravated manslaughter of an  
 814 officer, a firefighter, an emergency medical technician, or a  
 815 paramedic.

816 d. Section 784.021, relating to aggravated assault.

817 e. Section 784.045, relating to aggravated battery.

818 f. Section 787.01, relating to kidnapping.

819 g. Section 787.025, relating to luring or enticing a  
 820 child.

821 h. Section 787.04(2), relating to leading, taking,  
 822 enticing, or removing a minor beyond the state limits, or  
 823 concealing the location of a minor, with criminal intent pending  
 824 custody proceedings.

825 i. Section 787.04(3), relating to leading, taking,

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

830 |       j. Section 794.011, relating to sexual battery.

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

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

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

837 |       n. Section 806.01, relating to arson.

838 |       o. Section 826.04, relating to incest.

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

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

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

845 |       s. Chapter 847, relating to child pornography.

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

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

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

851 | the offense was a minor.

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

854 |       c. Chapter 847, relating to child pornography.

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

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

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

867 |       (1)

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

951 | exceeding life imprisonment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1038 782.051 Attempted felony murder.—

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

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

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

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

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

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

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

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

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

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

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

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

1107 (3) OFFENSE SEVERITY RANKING CHART

1108 (h) LEVEL 8

1109

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

1110

1111

1112

1113



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

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

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

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1127

787.06(3)(f)2.

1st Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.

1128

790.161(3)

1st Discharging a destructive device which results in bodily harm or property damage.

1129

794.011(5)(a)

1st Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.

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

|      |              |          |  |
|------|--------------|----------|--|
| 1133 |              |          | conviction for<br>specified sex offense.   |
| 1133 | 794.08(3)    | 2nd      | Female genital mutilation,<br>removal of a victim younger<br>than 18 years of age from<br>this state.                  |
| 1134 | 800.04(4)(b) | 2nd      | Lewd or lascivious<br>battery.   |
| 1135 | 800.04(4)(c) | 1st      | Lewd or lascivious<br>battery; offender 18<br>years of age or older;<br>prior conviction for<br>specified sex offense. |
| 1136 | 806.01(1)    | 1st      | Maliciously damage dwelling<br>or structure by fire or<br>explosive, believing person<br>in structure.                 |
| 1137 | 810.02(2)(a) | 1st, PBL | Burglary with<br>assault or<br>battery.  |

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

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



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

|      |                 |     |  |
|------|-----------------|-----|--|
|      |                 |     | felony.  |
| 1153 | 837.021 (2)     | 2nd | Making contradictory statements in official proceedings relating to prosecution of a capital felony. |
| 1154 | 860.121 (2) (c) | 1st | Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.       |
| 1155 | 860.16          | 1st | Aircraft piracy.   |
| 1156 | 893.13 (1) (b)  | 1st | Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).         |
| 1157 | 893.13 (2) (b)  | 1st | Purchase in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).                |

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

1235 896.104 (4) (a) 3. 1st Structuring transactions  
 1236 to evade reporting or  
 1237 registration  
 1238 requirements, financial  
 1239 transactions totaling or  
 1240 exceeding \$100,000.

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

1241 921.16 When sentences to be concurrent and when

1242 consecutive.—

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

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

1260 947.146 Control Release Authority.—

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

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

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

1290 |

1291 | In making control release eligibility determinations under this

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

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

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

1304 (8)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1417 (d) Section 782.04, relating to murder.

1418 Section 33. For the purpose of incorporating the  
 1419 amendments made by this act to sections 775.30 and 782.04,  
 1420 Florida Statutes, in a reference thereto, paragraph (g) of  
 1421 subsection (2) of section 1012.467, Florida Statutes, is  
 1422 reenacted to read:

1423 1012.467 Noninstructional contractors who are permitted  
 1424 access to school grounds when students are present; background  
 1425 screening requirements.-

1426 (2)

1427 (g) A noninstructional contractor for whom a criminal  
 1428 history check is required under this section may not have been  
 1429 convicted of any of the following offenses designated in the  
 1430 Florida Statutes, any similar offense in another jurisdiction,  
 1431 or any similar offense committed in this state which has been  
 1432 redesignated from a former provision of the Florida Statutes to  
 1433 one of the following offenses:

1434 1. Any offense listed in s. 943.0435(1)(h)1., relating to  
 1435 the registration of an individual as a sexual offender.

1436 2. Section 393.135, relating to sexual misconduct with  
 1437 certain developmentally disabled clients and the reporting of  
 1438 such sexual misconduct.

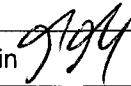

1439 3. Section 394.4593, relating to sexual misconduct with  
 1440 certain mental health patients and the reporting of such sexual  
 1441 misconduct.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 807 Marketing Practices for Substance Abuse Services  
**SPONSOR(S):** Children, Families & Seniors Subcommittee, Hager  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 788

| REFERENCE                                    | ACTION              | ANALYST  | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF  |
|--|---------------------|--|---|
| 1) Children, Families & Seniors Subcommittee | 13 Y, 0 N, As<br>CS | Langston   | Brazzell  |
| 2) Criminal Justice Subcommittee             |                     | Merlin  | White  |
| 3) Health & Human Services Committee         |                     |  |   |

### SUMMARY ANALYSIS

Substance abuse affects millions of people in the United States each year. Statewide, in 2015, heroin caused 733 deaths, fentanyl caused 705, oxycodone caused 565, and hydrocodone caused 236. Deaths caused by heroin and fentanyl increased more than 75% statewide compared to 2014.

The Florida Department of Children and Families (DCF) regulates substance abuse treatment through licensure. Licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services. Individuals in recovery from substance abuse may reside in recovery residences (alcohol- and drug-free living environments) while they receive treatment services on an outpatient basis. Florida does not license recovery residences but allows voluntary certification for recovery residences and recovery residence administrators, implemented by private credentialing entities.

The Legislature appropriated funds for FY 2016-17 to the State Attorney for the Fifteenth Judicial Circuit to conduct a study aimed to strengthen investigation and prosecution of criminal and regulatory violations within the substance abuse treatment industry and submit the study to the Governor and the Legislature by January 1, 2017. In its report, the Task Force identified patient brokering and fraudulent marketing as key problems in the substance abuse treatment industry.

CS/HB 807 implements several of the recommendations from the Task Force to address these and other abusive practices in the substance abuse treatment industry. The bill:

- Expands the current prohibitions on referrals between licensed treatment providers and recovery residences that do not obtain voluntary certification from DCF.
- Prohibits a service provider, an operator of a recovery residence, or a third party who provides any form of advertising or marketing services to a service provider or an operator of a recovery residence from engaging in deceptive marketing practices and provides criminal penalties for those who do.
- Makes it unlawful for any person to knowingly and willfully make a materially false or misleading statement or provide false or misleading information about the identity, products, goods, services, or geographical location of a licensed service provider, in marketing, advertising materials, or other media or on a website with the intent to induce another person to seek treatment with that service provider.
- Adds the term "benefit" to the list of items solicited or received that may not be used to induce the referral of a patient and adds patient brokering to the offenses that can be investigated and prosecuted by the Office of Statewide Prosecution and to the crimes that constitute "racketeering activities." Additionally, the bill creates enhanced penalties for higher volumes of patient brokering.
- Creates a new provision for applications for disclosure of patient records for individuals receiving substance abuse services in an active criminal investigation, permitting the court, at its discretion, to enter an order authorizing the disclosure of an individual's substance abuse treatment records without prior notice.
- Makes a number of changes to DCF's licensure of substance abuse treatment providers in chapter 397 to strengthen and improve the regulation of service providers.

The bill will have an indeterminate fiscal impact on state government.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0807b.CRJ.DOCX

DATE: 3/17/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### Substance Abuse

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.<sup>1</sup>

Substance use disorders occur when the chronic use of alcohol and/or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>2</sup> It is often mistakenly assumed that individuals with substance use disorders lack moral principles or willpower and that they could stop using drugs simply by choosing to change their behavior.<sup>3</sup> In reality, drug addiction is a complex disease, and quitting takes more than good intentions or a strong will. In fact, because drugs change the brain in ways that foster compulsive drug abuse, quitting is difficult, even for those who are ready to do so.<sup>4</sup>

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.<sup>5</sup> The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.<sup>6</sup>

##### *Opioid Epidemic*

Florida is in the midst of an opioid crisis.<sup>7</sup> Drug overdose is now the leading cause of injury-related death in the United States.<sup>8</sup> In 2015, Florida ranked fourth in the nation with 3,228 deaths from drug overdoses, and at least one opioid caused 2,566 of those deaths.<sup>9</sup> Statewide, in 2015, heroin caused 733 deaths, fentanyl caused 705, oxycodone caused 565, and hydrocodone caused 236; deaths caused by heroin and fentanyl increased more than 75% statewide when compared with 2014.<sup>10</sup>

Florida's prescription opioid overdose rate increased from 1.5 per 100,000 in 1999 to 5.8 per 100,000 in 2014.<sup>11</sup> The crackdown on pill mills dispensing prescription opioid drugs, such as oxycodone and hydrocodone, has contributed to the rise in heroin addiction.<sup>12</sup> With the introduction of synthetic opiates such as fentanyl, which is 100 times more potent than morphine, and carfentanil, which is 1,000 times more potent than morphine, Florida is on pace this year to double the number of overdose deaths from 2016.<sup>13</sup>

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<sup>1</sup> WORLD HEALTH ORGANIZATION. *Substance Abuse*, [http://www.who.int/topics/substance\\_abuse/en/](http://www.who.int/topics/substance_abuse/en/) (last visited March 10, 2017).

<sup>2</sup> Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited March 1, 2017).

<sup>3</sup> NATIONAL INSTITUTE ON DRUG ABUSE, *Understanding Drug Use and Addiction*, <http://www.drugabuse.gov/publications/drugfacts/understanding-drug-abuse-addiction> (last visited March 10, 2017).

<sup>4</sup> *Id.*

<sup>5</sup> *Supra*, note 2.

<sup>6</sup> *Id.*

<sup>7</sup> Palm Beach County Sober Homes Task Force Report 2017, Jan. 1, 2017, *available at* [http://www.sa15.state.fl.us/stateattorney/SoberHomes/\\_content/SHTFReport2017.pdf](http://www.sa15.state.fl.us/stateattorney/SoberHomes/_content/SHTFReport2017.pdf) (last visited March 10, 2017).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

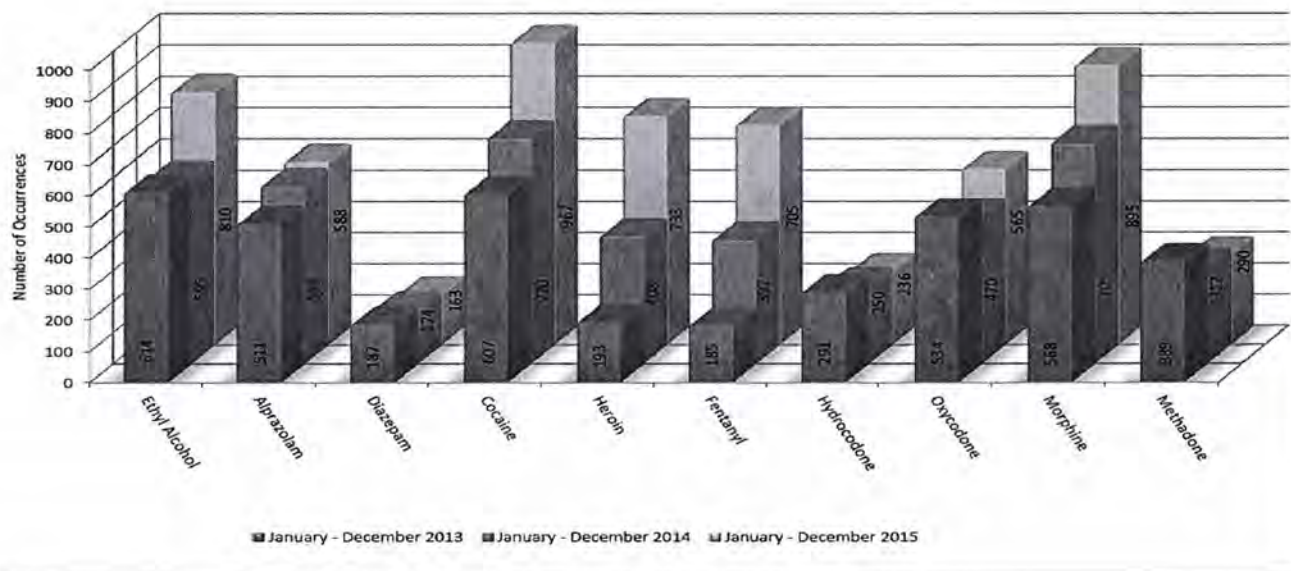
<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

## Comparison of Drug Caused Deaths in Florida 2013 – 2015<sup>14</sup>



### Substance Abuse Treatment

In the early 1970s, the federal government created formula grants for states to develop continuums of care for individuals and families affected by substance abuse.<sup>15</sup> These provided separate funding streams and requirements for alcoholism and drug abuse; in response, the Florida Legislature enacted Chapters 396, F.S., (alcohol) and 397, F.S. (drug abuse).<sup>16</sup> In 1993, legislation combined Chapters 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (“the Marchman Act”).<sup>17</sup> The Marchman Act supports the prevention and remediation of substance abuse through a comprehensive system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

The Florida Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services (such as individuals lacking Medicaid or private insurance and do not have the financial ability to self-pay). SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.<sup>18</sup> In addition to providing services, DCF regulates substance abuse treatment pursuant to Chapter 397, F.S., and Chapter 65D-30, F.A.C.

#### *Licensed Service Components*

DCF regulates substance abuse treatment through licensure. Licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services.<sup>19</sup> Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and

<sup>14</sup> *Id.* at 7.

<sup>15</sup> Department of Children and Families, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5.

<sup>16</sup> *Id.*

<sup>17</sup> Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

<sup>18</sup> These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance, and children at risk for initiating drug use.

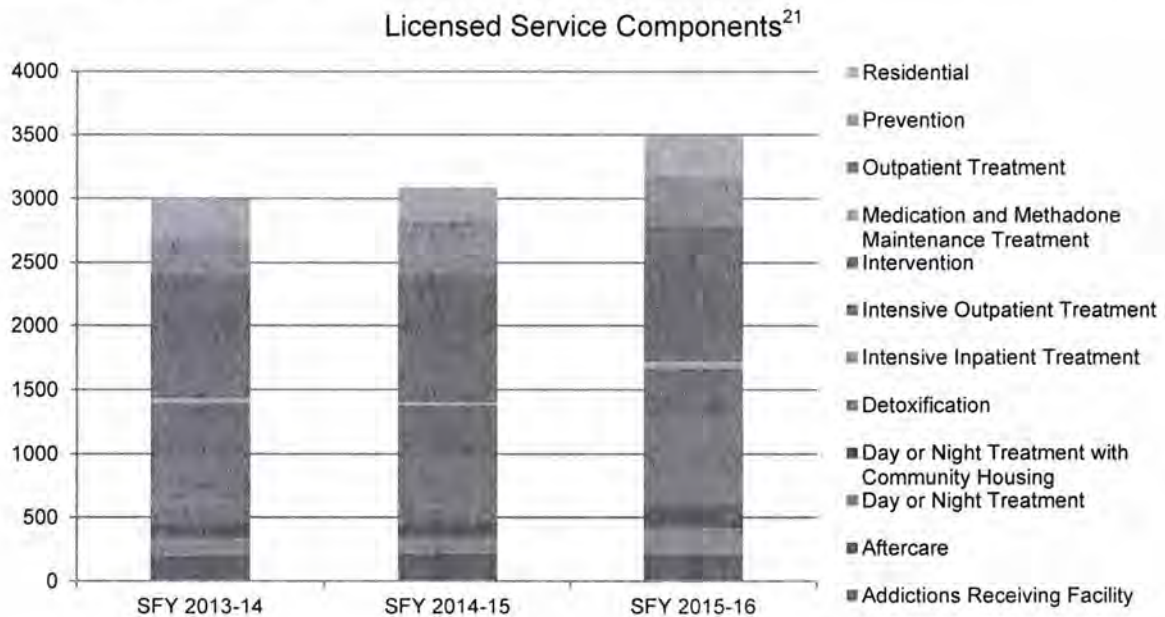
<sup>19</sup> s. 397.311(25), F.S.



alcohol and promote a healthy, drug-free lifestyle; “clinical treatment services” include, but are not limited to, the following licensable service components:

- Addictions receiving facility,
- Day or night treatment,
- Day or night treatment with community housing,
- Detoxification,
- Intensive inpatient treatment,
- Intensive outpatient treatment,
- Medication-assisted treatment for opiate addiction,
- Outpatient treatment, and
- Residential treatment.<sup>20</sup>

The most commonly licensed service components are outpatient treatment and intensive outpatient treatment. For FY 2015 – 2016, DCF issued 1,057 licenses for outpatient treatment and 529 licenses for intensive outpatient treatment.



All private and publicly-funded entities providing substance abuse services must be licensed, unless exempt. Exemptions are available for:

- Hospitals or hospital-based components licensed under Chapter 395, F.S.;
- Nursing home facilities as defined in s. 400.021, F.S.;
- Substance abuse education programs established pursuant to s. 1003.42, F.S.;
- Facilities or institutions operated by the federal government;
- Physicians or physician assistants licensed under Chapter 458 or Chapter 459, F.S.;
- Psychologists licensed under Chapter 490, F.S.;
- Social workers, marriage and family therapists, or mental health counselors licensed under Chapter 491, F.S.;
- Facilities licensed under Chapter 393, F.S., which, in addition to providing services to persons with developmental disabilities, also provide services to persons developmentally at risk as a consequence of exposure to alcohol or other legal or illegal drugs while in utero; and

<sup>20</sup> s. 397.311(25)(a), F.S.

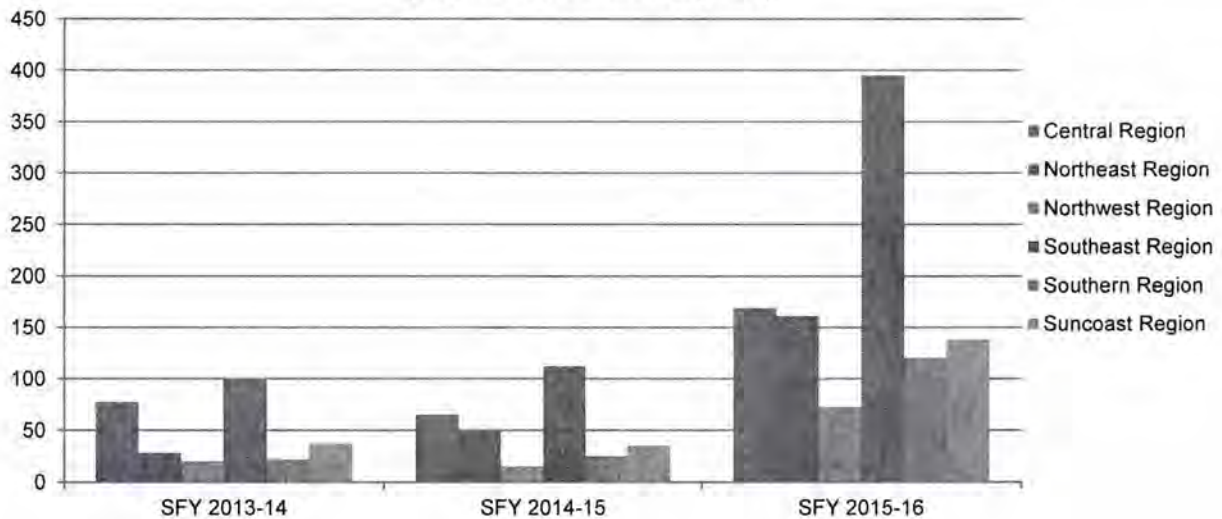
<sup>21</sup> Department of Children and Families, Licensure of Substance Abuse Services, PowerPoint Presentation to Children, Families, and Seniors Subcommittee on February 16, 2017 (PowerPoint on file with Children, Families, and Seniors Subcommittee staff).

- Facilities licensed under s. 394.875, F.S., as crisis stabilization units.<sup>22</sup>

Churches, nonprofit religious organizations, and denominations are also exempt from licensure, if their services are solely religious, spiritual, or ecclesiastical in nature.<sup>23</sup>

The number of substance abuse treatment providers providing treatment under those components has increased significantly over the last three years, particularly in Southeast Florida.

Number of Licensed Providers, By DCF Region  
(Duplicated Across Regions)



### Recovery Residences

Commonly, recovery residences (also known as “sober homes” or “sober living homes”) are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.<sup>24</sup> These residences offer no formal treatment but perhaps mandate or strongly encourage attendance at 12-step groups; and are self-funded through resident fees.<sup>25</sup>

Section 397.311(36), F.S., defines a “recovery residence” as a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

### *Benefits of Recovery Residences*

Multiple studies have found that individuals benefit in their recovery by residing in a recovery residence. Specifically, individuals in recovery residing in an Oxford House (OH), a very specific type of recovery residence, had significantly lower substance use, significantly higher income, and significantly lower incarceration rates than those individuals who participate in usual group care.<sup>26</sup>

<sup>22</sup> s. 397.405, F.S.

<sup>23</sup> s. 397.405(8), F.S.

<sup>24</sup> *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses*, J Psychoactive Drugs, Jun 2008; 40(2): 153–159, Douglas L. Polcin, Ed.D., MFT and Diane Henderson, B.A.

<sup>25</sup> *Id.*

<sup>26</sup> An Illinois study found that those in the OHs had lower substance use (31.3% vs. 64.8%), higher monthly income (\$989.40 vs. \$440.00), and lower incarceration rates (3% vs. 9%). OH participants, by month 24, earned roughly \$550 more per month than participants in the usual-care group. In a single year, the income difference for the entire OH sample corresponds to approximately \$494,000 in additional production. In 2002, the state of Illinois spent an average of \$23,812 per year to incarcerate each drug offender. The lower rate of incarceration among OH versus usual-care participants at 24 months (3% vs. 9%) corresponds to an annual saving of



A cost-benefit analysis regarding residing in Oxford Houses found variation in cost and benefits compared to other residences. The result suggests that the additional costs associated with OH treatment, roughly \$3,000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and substance use as well as increases in earning from employment.<sup>27</sup> Additionally, another study found that residents of a recovery residence were more likely to report abstaining from substance use at a much higher rate:

- Residents at six months were 16 times more likely to report being abstinent;
- Residents at 12 months were 15 times more likely to report being abstinent; and
- Residents at 18 months were six times more likely to report being abstinent.<sup>28</sup>

#### *Federal Law Applicable to Recovery Residences*

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities.<sup>29</sup> The ADA requires broad interpretation of the term “disability” so as to include as many individuals as possible under the definition.<sup>30</sup> The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities.<sup>31</sup> Disability also includes individuals who have a record of such impairment, or are regarded as having such impairment.<sup>32</sup> The phrase “physical or mental impairment” includes, among others<sup>33</sup>, drug addiction and alcoholism.<sup>34</sup> However, this only applies to individuals in recovery: ADA protections are not extended to individuals who are actively abusing substances.<sup>35</sup>

Additionally, the Fair Housing Amendment Acts of 1988 (FHA) prohibits housing discrimination based upon an individual’s handicap.<sup>36</sup> A person is considered to have a handicap if he or she has a physical or mental impairment which substantially limits one or more of his or her major life activities.<sup>37</sup> This includes individuals who have a record of such impairment, or are regarded

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roughly \$119,000 for Illinois. Together, the productivity and incarceration benefits yield an estimated \$613,000 in savings per year, or an average of \$8,173 per OH member. L. Jason, B. Olson, J. Ferrari, and A. Lo Sasso, *Communal Housing Settings Enhance Substance Abuse Recovery*, 96 AM. J. OF PUB. HEALTH 10, (2006), at 1727-1729.

<sup>27</sup> “While treatment costs were roughly \$3,000 higher for the OH group, benefits differed substantially between groups. Relative to usual care, OH enrollees exhibited a mean net benefit of \$29,022 per person. The result suggests that the additional costs associated with OH treatment, roughly \$3000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and drug and alcohol use as well as increases in earning from employment... even under the most conservative assumption, we find a statistically significant and economically meaningful net benefit to OH of \$17,800 per enrollee over two years.” A. Lo Sasso, E. Byro, L. Jason, J. Ferrari, and B. Olson, *Benefits and Costs Associated with Mutual-Help Community-Based Recovery Homes: The Oxford House Model*, 35 EVALUATION AND PROGRAM PLANNING (1), (2012).

<sup>28</sup> D. Polcin, R. Korcha, J. Bond, and G. Galloway, *Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcome*, 38 Journal of Substance Abuse Treatment, 356-365 (2010).

<sup>29</sup> 42 U.S.C. § 12101. This includes prohibition against discrimination in employment, State and local government services, public accommodations, commercial facilities, and transportation. U.S. Department of Justice, *Information and Technical Assistance on the Americans with Disabilities Act*, available at [http://www.ada.gov/2010\\_regs.htm](http://www.ada.gov/2010_regs.htm) (last visited March 10, 2017).

<sup>30</sup> 42 U.S.C. § 12102.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 28 C.F.R. § 35.104(4)(1)(B)(ii). The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV (whether symptomatic or asymptomatic), and tuberculosis.

<sup>34</sup> 28 C.F.R. § 35.104(4)(1)(B)(ii).

<sup>35</sup> 28 C.F.R. § 35.131.

<sup>36</sup> 42 U.S.C. § 3604. Similar protections are also afforded under the Florida Fair Housing Act, s. 760.23, F.S., which provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available. The statute provides that “discrimination” is defined to include a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

<sup>37</sup> 42 U.S.C. § 3602(h).

as having such impairment.<sup>38</sup> Drug and alcohol addictions are considered to be handicaps under the FHA.<sup>39</sup> However, current users of illegal controlled substances and persons convicted for illegal manufacture or distribution of a controlled substance are not considered handicapped under the FHA.

An individual in recovery from a drug addiction or alcoholism is protected from discrimination under the ADA and FHA. Based on this protected class status, federal courts have held that mandatory conditions placed on housing for people in recovery from either state or sub-state entities, such as ordinances, licenses, or conditional use permits, are overbroad in application and result in violations of the FHA and ADA.<sup>40</sup> Additionally, federal courts have invalidated regulations that require registry of housing for protected classes, including recovery residences.<sup>41</sup> Further, federal courts have enjoined state action that is predicated on discriminatory local government decisions.<sup>42</sup>

State and local governments have the authority to enact regulations, including housing restrictions, which serve to protect the health and safety of the community.<sup>43</sup> However, this authority may not be used as a guise to impose additional restrictions on protected classes under the FHA.<sup>44</sup> Further, these regulations must not single out housing for disabled individuals and place requirements that are different and unique from the requirements for housing for the general population.<sup>45</sup> Instead, the FHA and ADA require state and local governments to make reasonable accommodations necessary to allow a person with a qualifying disability equal opportunity to use and enjoy a dwelling.<sup>46</sup> The governmental entity bears the burden of proving through objective evidence that a regulation serves to protect the health and safety of the community and is not based upon stereotypes or unsubstantiated inferences.<sup>47</sup>

#### *Voluntary Certification of Recovery Residences in Florida*

Florida does not license recovery residences. Instead, in 2015 the Legislature enacted sections 397.487 – 397.4872, F.S., which establish voluntary certification programs for recovery residences and

<sup>38</sup> *Id.*

<sup>39</sup> *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993).

<sup>40</sup> DEPARTMENT OF CHILDREN AND FAMILIES, *Recovery Residence Report*, Oct. 1, 2013, available at <http://www.dcf.state.fl.us/programs/samh/docs/SoberHomesPR/DCFProvisoRpt-SoberHomes.pdf> (last visited March 10, 2017). *See, e.g., Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007); *Oxford House, Inc.*, 819 F. Supp. 1179; *Marbrunak v. City of Stow, OH.*, 947 F.2d 43 (6th Cir. 1992); *United States v. City of Baltimore, MD*, 845 F. Supp. 2d. 640 (D. Md. 2012); *Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491 (W.D. Wash. 1997); *Oxford House-Evergreen v. Plainfield*, 769 F. Supp. 1329 (D.N.J. 1991); *Potomac Group Home, Inc.*, 823 F. Supp. 1285 (D. Md. 1993).

<sup>41</sup> *Recovery Residence Report*, *supra* note 40. *See, e.g., Nevada Fair Housing Center, Inc., v. Clark County, et. al.*, 565 F. Supp. 2d 1178 (D. Nev. 2008); *See, Human Resource Research and Management Group*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010); *Community Housing Trust et. al., v. Dep't of Consumer and Regulatory Affairs et. al.*, 257 F. Supp. 2d 208 (D.C. Cir. 2003); *City of Edmonds v. Oxford House et. al.*, 574 U.S. 725 (1995); *Safe Haven Sober Houses, LLC, et. al., v. City of Boston, et. al.*, 517 F. Supp. 2d 557 (D. Mass. 2007); *United States v. City of Chicago Heights*, 161 F. Supp. 2d 819 (N.D. Ill. 2001).

<sup>42</sup> *Recovery Residence Report*, *supra*, note 40. *See, e.g., Larkin v. State of Mich.* 883 F. Supp. 172 (E.D. Mich. 1994), judgment *aff'd* 89 F.3d 285 (6th Cir. 1996); *Arc of New Jersey, Inc., v. State of N.J.*, 950 F. Supp. 637, D.N.J. 1996); *North Shore-Chicago Rehab., Inc. v. Village of Skokie*, 827 F. Supp. 497 (N.D. Ill. 1993); *Easter Seal Soc. of New Jersey, Inc. v. Township of North Bergen*, 798 F. Supp. 228 (D.N.J. 1992); *Ardmore, Inc. v. City of Akron, Ohio*, 1990 WL 385236 (N.D. Ohio 1990).

<sup>43</sup> 42 U.S.C. § 3604(f)(9).

<sup>44</sup> *Recovery Residence Report*, *supra*, note 40. *See, e.g., Bangerter v. Orem City Corp.*, 46 F.3d 1491, (10th Cir. 1995); *Ass'n for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth*, 876 F. Supp. 614 (D.N.J. 1994); *Pulcinella v. Ridley Tp.*, 822 F. Supp. 204 (E.D. Pa. 1993).

<sup>45</sup> *Bangerter v. Orem City Corp.*, 46 F.3d 1491 (10th Cir. 1995); *Human Res. Research and Mgmt. Grp, Inc. v. County of Suffolk*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010); *Potomac Grp. Home Corp. v. Montgomery Cnty., Md.*, 823 F. Supp. 1285 (D. Md. 1993).

<sup>46</sup> *Recovery Residence Report*, *supra*, note 40. 42 U.S.C. § 3604(f)(3)(B); 42 U.S.C. § 12131, *et. seq.*, 28 C.F.R. § 35.130(b)(7). To comply with the reasonable accommodation provisions of the ADA, regulations have been promulgated for public entities (defined by 28 C.F.R. § 35.104). This includes a self-evaluation plan of current policies and procedures and modify as needed (28 C.F.R. § 35.105). This is subject to the exclusions of 28 C.F.R. § 35.150. For judicial interpretation, *see, Jeffrey O.*, 511 F. Supp. 2d 1339; *Oxford House Inc., v. Township of Cherry Hill*, 799 F. Supp. 450 (D.N.J. 1992).

<sup>47</sup> *Oconomowoc Residential Programs, Inc., v. City of Milwaukee*, 300 F. 3d 775 (7th Cir. 2002); *Oxford House- Evergreen*, 769 F. Supp. 1329; *Cason v. Rochester Housing Auth.*, 748 F. Supp. 1002 (W.D.N.Y. 1990).

recovery residence administrators, implemented by private credentialing entities. Under the voluntary certification program, DCF approved two credentialing entities to design the certification programs and issue certificates: The Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board certifies recovery residence administrators.

Sections 397.487, and 397.4871, F.S., set criteria for certification, including a requirement that the certified recovery residences be actively managed by a certified recovery residence administrator. Level 2 background screening is required for all recovery residence owners, directors and chief financial officers and for administrators seeking certification. Section 397.4872, F.S., allows DCF to exempt an individual from the disqualifying offenses of a Level 2 background screening if the individual meets certain criteria and the recovery residence attests that it is in the best interest of the program. Under s. 397.487, F.S., the credentialing entities must deny, suspend or revoke certification if a recovery residence or a recovery residence administrator fails to meet and maintain certain criteria. The credentialing entity must inspect recovery residences prior to the initial certification and during every subsequent renewal period, and must automatically terminate certification if it is not renewed within one year of the issuance date. It is a first degree misdemeanor<sup>48</sup> for any entity or person who advertises as a “certified recovery residence” or “certified recovery residence administrator”, respectively, unless the entity or person has obtained certification under this section.<sup>49</sup>

While certification is voluntary, Florida law incentivizes certification. Since July 1, 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator or is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary.<sup>50</sup>

DCF publishes a list of all certified recovery residences and recovery residences administrators on its website.<sup>51</sup> As of March 1, 2017, there were 257 certified recovery residences in Florida.<sup>52</sup>

#### *Issues Regarding Recovery Residences and the Substance Abuse Treatment Industry*

In 2016, the Circuit Court of the Fifteenth Judicial Circuit, in Palm Beach, empaneled a Grand Jury and convened a task force focusing on issues with recovery residences and the substance abuse treatment industry.

#### Palm Beach County Grand Jury Findings

The Grand Jury found fraud and abuse occurring between recovery residences and certain providers within the substance abuse treatment industry<sup>53</sup> and that unregulated recovery residences harm their residences and the community.<sup>54</sup>

One of the main problems the Grand Jury focused on was deceptive marketing.<sup>55</sup> The Grand Jury heard testimony on how online marketers representing disreputable treatment providers use harmful practices, including using internet search terms to hijack the name and reputation

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<sup>48</sup> A first degree misdemeanor is punishable by not more than one year imprisonment and not more than a \$1,000 fine. ss. 775.082, 775.083, F.S.

<sup>49</sup> ss. 397.487 and 397.4871, F.S.

<sup>50</sup> s. 397.407, F.S.

<sup>51</sup> s. 397.4872, F.S.

<sup>52</sup> FLORIDA ASSOCIATION OF RECOVERY RESIDENCES, *Certified Residences*, <http://farronline.org/certification/certified-residences/> (last visited March 1, 2017).

<sup>53</sup> PRESENTMENT OF THE PALM BEACH COUNTY GRAND JURY, *Report on the Proliferation and Abuse in Florida's Addiction Treatment Industry*, (Dec. 8, 2016), available at, [http://www.sa15.state.fl.us/stateattorney/SoberHomes/\\_content/GrandJuryReport2.pdf](http://www.sa15.state.fl.us/stateattorney/SoberHomes/_content/GrandJuryReport2.pdf) (last visited March 10, 2017).

<sup>54</sup> *Id.* at 5.

<sup>55</sup> *Id.* at 11, 16.

of prominent respected treatment providers to route the person seeking treatment to an unrelated referral agency.<sup>56</sup> Marketers also encourage individuals to seek the most intensive treatment possible, rather than the treatment in their best interest, in order to generate a larger fee.<sup>57</sup>

Another issue of focus was the illegal rent subsidies that some treatment providers paid to recovery residences for patient referrals.<sup>58</sup> The Grand Jury heard testimony that many residents in recovery residences are in need of financial assistance for housing when they leave a residential treatment setting and move to outpatient; many of these individuals are from out-of-state and do not have jobs.<sup>59</sup> In many instances, this leads to the treatment provider paying the resident's rent at a recovery residence in exchange for the recovery residence having referred the resident to the treatment provider for treatment.<sup>60</sup>

Additionally, some recovery residences and treatment providers offer incentives to keep an individual at a particular provider or recovery residence; these incentives include gym memberships, scooters, cigarettes, clothes, and gift cards.<sup>61</sup> Brokers frequently approach individuals offering incentives to get them to move to another treatment provider or recovery residence for the broker's benefit without regard to the needs of the individual.<sup>62</sup>

The Grand Jury also heard testimony about other problems in some recovery residences, including residents being given drugs so that they would fail drug tests and be able to re-engage in services generating insurance payments to providers, residents being sexually abused, and residents being forced to work in labor pools.<sup>63</sup>

#### Fifteenth Circuit Task Force

The Legislature appropriated \$275,000 in nonrecurring general revenue funds for FY 2016-17 to the State Attorney for the Fifteenth Judicial Circuit to conduct a study regarding strengthening investigation and prosecution of criminal and regulatory violations within the substance abuse treatment industry. With the appropriation, the State Attorney established three groups: a Law Enforcement Task Force to investigate and arrest the rogue players in the treatment and recovery residence industries, using current laws; a Proviso Task Force, including members of organizations named in the legislative proviso, to study the issues and make specific recommendations for positive change through legislation and regulatory enhancements; and a third, larger and more inclusive group, to further study the problem and recommend solutions (the Task Force).<sup>64</sup>

Like the Grand Jury, the Task Force, in its report, identified patient brokering and fraudulent marketing as key problems with some providers within the substance abuse treatment industry.<sup>65</sup> The Task Force found that the economic environment of the substance abuse treatment industry in Florida serving patients from out-of-state with private insurance creates

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<sup>56</sup> *Id.* at 13.

<sup>57</sup> *Id.* at 14.

<sup>58</sup> *Id.* at 6, 8. The Grand Jury heard testimony that the average referral fee to a recovery residence from a treatment provider is \$500 per week per patient and that the more a provider bills, the more the provider can pay in kickbacks to recovery residences to obtain more patients.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 18.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 17.

<sup>64</sup> *Supra*, note 7 at 2.

<sup>65</sup> *Id.*

the opportunity for abuses such as overbilling for services, deceptive marketing, patient brokering, and incentives to relapse.<sup>66</sup>

With respect to patient brokering, the Task Force found that it was common practice for certain substance abuse treatment providers to pay a weekly fee or kickback to their patients' recovery residences, with the understanding that the recovery residences will allow the patients to live at the residence for free or at a greatly reduced rent while attending the provider's outpatient treatment program.<sup>67</sup> The Task Force found that patient brokering, by providing kickbacks to the recovery residence in exchange for the delivery of a patient, is commonplace among certain treatment providers. Some treatment providers and recovery residences were also offering incentives such as gym memberships, scooters, weekly massages, chiropractic services, cigarettes, clothes, gift cards and more.<sup>68</sup> As a result of patient brokering, there exists an economic incentive for the patient, the substance abuse treatment provider, and the recovery residence for the patient to continually cycle through treatment and relapse.<sup>69</sup> The task force found that this cycle at times ends in the patient's overdose and death.<sup>70</sup>

### Patient Brokering

Florida's patient brokering statute, s. 817.505, F.S., makes it unlawful for any person to engage in patient brokering. Patient brokering is paying to induce, or make a payment in return for, a referral of a patient to or from a health care provider or health care facility. Such payments include commissions, bonuses, rebates, kickbacks, bribes, split-fee arrangements, in cash or in kind, provided directly or indirectly.<sup>71</sup> A violation of the patient brokering statute is a third degree felony<sup>72</sup>, and may also be remedied by an injunction or any other enforcement process. Private entities bringing an action under the patient brokering statute may recover reasonable expenses, including attorney fees.<sup>73</sup>

The patient brokering statute applies to any person regulated, or statutorily exempt from regulation, by the Agency for Health Care Administration or the Department of Health, who has a Medicaid provider contract, or who has a contract with DCF to provide substance abuse or mental health services under part IV of chapter 394. It expressly applies to "substance abuse providers" licensed under chapter 397.

The patient brokering statute has been used in cases involving split-fee arrangements; for example, an assignment of benefits scenario in which a non-provider suggested a patient go to a particular MRI facility, paid the facility for the MRI and billed the insurer a greater amount.<sup>74</sup> It has also been used in self-referral arrangements; for example, an arrangement by which a series of shell companies, nominee owners and independent contractors were used to conceal relationships that generated a high-volume of Personal Injury Protection patients to a particular provider through a toll-free referral number.<sup>75</sup>

### *Arrests of Substance Abuse Treatment Provider and Recovery Residence Personnel*

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 10.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* Often insurers are required to cover each relapse as a separate event; as a result, there is an economic incentive for bad actors in the industry to encourage relapse.

<sup>70</sup> *Id.*

<sup>71</sup> s. 817.505(1), F.S.

<sup>72</sup> A third degree felony is punishable by not more than five years of imprisonment and not more than a \$5,000 fine. ss. 775.082, 775.083, F.S.

<sup>73</sup> s. 817.505(4), (6), F.S.

<sup>74</sup> *Medical Management Group of Orlando, Inc. v. State Farm Mut. Auto. Ins. Co.*, 811 So. 2d 705 (Fla. 5th DCA 2002).

<sup>75</sup> *State Farm Mut. Auto. Ins. Co. v. Physicians Group of Sarasota, L.L.C.*, 9 F. Supp. 3d 1303 (M.D. Fla. Mar. 25, 2014) (denying motion to dismiss).

Since Fall 2016, law enforcement has arrested sixteen individuals for patient brokering in Palm Beach County.<sup>76</sup> The first arrest was the CEO of Whole Life Recovery, which provided intensive outpatient treatment.<sup>77</sup> By November 23, five more individuals had been arrested for patient brokering under s. 817.505, F.S.<sup>78</sup> In December 2016, six individuals were charged in a federal complaint that included patient brokering, insurance fraud, and allegations of human trafficking.<sup>79</sup> Most recently, the owner of Chapters Recovery, which provides outpatient treatment and intensive outpatient treatment, was arrested on 93 counts of patient brokering.<sup>80</sup> According to the arrest report, he paid \$325,000 to three sober home operators who enrolled residents living in their sober homes in treatment programs at Chapters Recovery.<sup>81</sup>

### Recommendations to Address Abuses in the Substance Abuse Treatment Industry

Based on the testimony it heard, the Grand Jury made the following recommendations:

- Prohibit deceptive advertising;
- Provide disclaimers and other useful information to patients;
- Require marketing entities, marketers, and admissions personnel to be licensed;
- Require licensure and certification of commercial<sup>82</sup> recovery residences;
- Eliminate the statutory provision allowing patient referrals to an uncertified recovery residence owned by a substance abuse treatment provider;
- Prohibit patient referrals from an uncertified recovery residence to a substance abuse treatment provider;
- Treat substance abuse licensure as a privilege rather than a right;
- Provide better resources by raising license and service fees;
- Prohibit the solicitation or receipt of any “benefit” under the patient brokering statute;
- Increase criminal penalties and minimum fines for patient brokering;
- Create penalty enhancements for large-scale patient brokering;
- Add patient brokering to the Statewide Prosecutor’s jurisdiction;
- Permit disclosure of patient records, for the purpose of an ongoing criminal investigation, without prior notice; and
- Promote education and interagency collaboration with respect to investigations into the substance abuse treatment industry.<sup>83</sup>

The Task Force made several in-depth recommendations, including:

- *Imposing greater penalties and other enhancements to the patient brokering statute:* The Task Force identified statutory changes to address patient brokering. It recommends that a licensed substance abuse treatment provider not be allowed to refer a “prospective, current or

<sup>76</sup> Christine Stapleton, *Drug treatment CEO arrested on 93 counts of patient brokering*, PALM BEACH POST, Feb. 23, 2017, available at, <http://www.palmbeachpost.com/news/breaking-news/drug-treatment-ceo-arrested-counts-patient-brokering/xHgSIIZINiJZxjqox57KP/> (last visited March 3, 2017).

<sup>77</sup> Lawrence Mower, *Boynton Beach addiction treatment center’s CEO, operator arrested*, PALM BEACH POST, Oct. 25, 2016, available at, <http://www.mypalmbeachpost.com/news/boynton-beach-addiction-treatment-center-ceo-operator-arrested/LIVfJDqWo4GXsyjEDTA4TK/> (last visited March 3, 2017).

<sup>78</sup> Ryan Van Velzer, *More arrests made in crackdown on illegal sober home activities*, SUNSENTINEL, Nov. 23, 2016, available at <http://www.sun-sentinel.com/local/palm-beach/fl-more-arrests-sober-homes-bust-20161123-story.html> (last visited March 3, 2017).

<sup>79</sup> John Pacenti, Christine Stapleton, Mike Stucka, PALM BEACH POST, Dec. 21, 2016, available at, <http://www.palmbeachpost.com/news/crime--law/subject-post-investigation-arrested-sober-home-fraud/794mQ13ejXytKUgpdhoHOI/> (last visited March 3, 2017).

<sup>80</sup> *Supra*, note 76.

<sup>81</sup> *Id.*

<sup>82</sup> The Grand Jury differentiated between an OH recovery residence model and a “commercial” recovery residence that is a for-profit business operated by a third party; however, federal law applies to both models. See the discussion of Federal Law Applicable to Recovery Residences on pages 6-7, *infra*, for more detail.

<sup>83</sup> *Supra*, note 53, *passim*.

discharged patient to, or accept a referral from” a recovery residence unless the recovery residence is certified and actively managed by a certified recovery residence administrator.<sup>84</sup> It also recommends that the term “benefit” should be added to the prohibited items solicited or received in the patient brokering statute and that there should be enhanced penalties for multiple patient brokering offenses.<sup>85</sup> Additionally, for the prosecution of patient brokering, the Task Force recommends adding patient brokering to the enumerates list of offenses the Office of Statewide Prosecution, within the Office of the Attorney General, may prosecute and adding patient brokering to the predicate offenses constituting “racketeering activities.”<sup>86</sup>

- *Enacting a fraud statute specific to intentional and knowing material misrepresentations by marketers:* It recommends creating a statutory prohibition of unethical marketing practices within Chapter 397, F.S., and creating criminal penalties for fraudulent marketing practices.<sup>87</sup>
- *Requiring greater restrictions on any recovery residence referral:* It recommends expanding the individuals subject to referral provisions and addressing referrals from recovery residences to treatment providers.
- *Increasing DCF’s authority to effectively regulate<sup>88</sup> substance abuse treatment providers:* This includes increasing the fees charged by the department and the number of staff it has for licensure inspection.<sup>89</sup>
- *Modify privacy requirements for patient records relating to criminal investigations:* It recommends that, for criminal investigations, the court, at its discretion, be able to enter an order authorizing the disclosure of an individual’s substance abuse treatment records without prior notice, so that providers and recover residence operators are not tipped off to an undercover criminal investigation.<sup>90</sup> Federal law requires adequate notice, but state law requires prior notice; at least one judge has rejected the state’s argument that adequate notice does not require prior notice.<sup>91</sup>

### Florida Law on Deceptive Marketing and Unfair Practices

The Florida Deceptive and Unfair Trade Practices Act<sup>92</sup> (FDUTPA) makes unlawful unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. Violations of FDUTPA are investigated and prosecuted by state attorneys, or the Department of Legal Affairs in the Office of the Attorney General if the violations affect more than one judicial circuit.<sup>93</sup> Violations may be remedied by declaratory judgment, injunction, or an action for actual damages; in addition, a court may order other legal or equitable relief.<sup>94</sup> In addition, a court may assess civil penalties of up to \$10,000 per violation.<sup>95</sup> FDUTPA imposes larger penalties for willful violations against senior citizens (age 60 or older), persons with disabilities, and military service members and their families. In this context, a person with a disability is one who has a mental or educational impairment. The civil penalty for a violation of this sort is not more than \$15,000.<sup>96</sup>

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<sup>84</sup> *Id.* at 12.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 14.

<sup>87</sup> *Id.* at 13-14

<sup>88</sup> The Task Force found that DCF lacks resources, including adequate staffing, and faces statutory limitations that undermine its ability to regulate substance abuse treatment providers.

<sup>89</sup> *Supra*, note 7 at 5-7.

<sup>90</sup> *Id.* at 15.

<sup>91</sup> *Supra*, note 53.

<sup>92</sup> ss. 501.201-501.213, F.S.

<sup>93</sup> s. 501.203, F.S.

<sup>94</sup> s. 501.207, F.S.

<sup>95</sup> s. 501.2075, F.S.

<sup>96</sup> s. 501.2077, F.S.

Courts have defined an “unfair practice” as “one that offends established public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.”<sup>97</sup> Similarly, courts have defined a “deceptive act” as one in which there is a “representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.”<sup>98</sup>

FDUTPA has been used in cases involving similarly-named companies, which could lead consumers to believe them to be the same<sup>99</sup>; in “bait-and-switch” cases<sup>100</sup>; and instances of unreasonable pricing<sup>101</sup>, among many other types of activities. FDUTPA applies broadly, to any person who engages in this conduct, and would apply to this conduct by substance abuse treatment providers and recovery residences.

## **Effect of the Bill**

CS/HB 807 implements several of the recommendations from the Task Force to address the problems within the substance abuse treatment industry.

### Recovery Residence Referrals

The bill expands the prohibitions on referrals to and from recovery residences that do not obtain voluntary certification from DCF. Licensed service providers may now only accept referrals from certified recovery residences. Current law is only limited in *where* providers could refer patients to; the bill expands this and limits *from whom* they may accept referrals. The bill also includes prospective patients in these referral prohibitions. After June 30, 2019, violators are subject to a \$1,000 fine per occurrence.

The bill removes the exemption for referrals to a recovery residence that is owned and operated by a licensed service provider or its wholly owned subsidiary.

### Patient Records

The bill creates a new provision for applications for disclosure of patient records for individuals receiving substance abuse services in an active criminal investigation. For criminal investigations, the court, at its discretion, will be able to enter an order authorizing the disclosure of an individual's substance abuse treatment records without prior notice. Existing law would continue to apply to applications filed alone or as part of a pending civil investigation.

### Marketing Prohibitions

#### *Deceptive Marketing*

The bill expands the types of deceptive actions prohibited beyond those covered under FDUTPA, and provides criminal penalties. It provides a legislative finding that consumers of substance abuse treatment have disabling conditions and that such consumers and their families are vulnerable and at risk of being easily victimized by fraudulent marketing practices that adversely impact the delivery of health care.

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<sup>97</sup> *PNR, Inc. v. Beacon Prop. Mgmt.*, 842 So. 2d 773, 777 (Fla. 2003) (quoting *Samuels v. King Motor Co.*, 782 So. 2d 489, 499 (Fla. 4th DCA 2001)).

<sup>98</sup> *Id.* at 777 (quoting *Millennium Communs. & Fulfillment, Inc. v. Office of the AG, Dep't of Legal Affairs*, 761 So. 2d 1256, 1263 (Fla. 3d DCA 2000)).

<sup>99</sup> *See, e.g., Rain Bird Corp. v. Taylor*, 665 F. Supp. 2d 1258 (N.D. Fla. Sept. 10, 2009).

<sup>100</sup> *See, e.g., Fendrich v. RBF, L.L.C.*, 842 So. 2d 1076 (Fla. 4th DCA 2003).

<sup>101</sup> *See, e.g., Colomar v. Mercy Hosp., Inc.*, 461 F. Supp. 2d 1265 (S.D. Fla. Nov. 17, 2006).



Based on this finding, the bill prohibits a service provider, an operator of a recovery residence, or a third party who provides any form of advertising or marketing services to a service provider or an operator of a recovery residence from engaging in any of the following marketing practices:

- Making a false or misleading statement or providing false or misleading information about the provider's, operator's, or third party's products, goods, services, or geographical locations in its marketing, advertising materials, or media or on its website. This is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.
- Including on its website false information or electronic links, coding, or activation that provides false information or that surreptitiously directs the reader to another website. This is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.
- Conduct prohibited by the patient brokering statute, s. 817.505, F.S.
- Entering into a contract with a marketing provider who agrees to generate referrals or leads for the placement of patients with a service provider or in a recovery residence through a call center or a web-based presence, unless the service provider or the operator of the recovery residence discloses specified information to the prospective patient.<sup>102</sup> This is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

### *Fraudulent Marketing*

The bill makes it unlawful for any person to knowingly and willfully make a materially false or misleading statement or provide false or misleading information about the identity, products, goods, services, or geographical location of a licensed service provider, as defined in chapter 397, F.S., in marketing, advertising materials, or other media or on a website with the intent to induce another person to seek treatment with that service provider. Such fraudulent marketing is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

### Patient Brokering

The bill adds the term “benefit” to the list of items solicited or received that may not be used to induce the referral of a patient. The bill also adds patient brokering to the offenses that can be investigated and prosecuted by the Office of Statewide Prosecution and to the crimes that constitute “racketeering activities.”

The bill creates a \$50,000 fine for patient brokering. Additionally, the bill creates enhanced penalties for higher volumes of patient brokering. For brokering of 10 to 19 patients, the crime is a second-degree felony punishable as provided in ss. 775.082 or 775.084, F.S., and includes a \$100,000 fine. For brokering of 20 or more patients, the crime is a first-degree felony punishable as provided in ss. 775.082 or 775.084, F.S., and includes a \$500,000 fine. The bill also adds patient brokering into the offense severity ranking chart; this will dictate the number of points that will be added to an offender's scoresheet for sentencing purposes.

### Substance Abuse Licensure

The bill makes a number of changes to DCF's licensure of substance abuse treatment providers in chapter 397 to strengthen and improve the regulation of such providers, which are generally based on AHCA's statutory approach to licensure. The bill also addresses licensure issues identified by DCF.

The bill revises the licensure application requirements and process, requiring providers as part of the application to provide proof that they have obtained accreditation by the 2nd renewal. Providers must

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<sup>102</sup> If the marketing provider provides instructions that allow the prospective patient to easily (1) determine whether the marketing provider represents specific licensed service providers or recovery residences that pay a fee to the marketing provider and the identity of such service providers or recovery residences and (2) access lists of licensed service providers and recovery residences on the department website, it is exempt from this prohibition.

also provide detail in the application about the clinical services they will provide. DCF must set licensure fees to be sufficient to cover the cost of regulation. The bill limits DCF to issuing only one probationary license per provider and only when doing so would not place the health, safety, or welfare of individuals at risk. DCF is also prohibited from issuing a license if staff do not pass background screenings and subsequently fail to obtain exemptions.

The bill increases penalties for operating without a license, making it a third-degree felony.

The bill addresses the quality of substance abuse treatment by specifying that clinical treatment may only be provided by a licensed or certified nurse, qualified professional, a recovery support specialist, or another professional pursuant to rule. The bill creates a definition for "recovery support specialist" as well as for "clinical supervisor" and requires the former to be certified by a credentialing entity and the latter to be background screened.

The bill creates s. 397.410, F.S., which requires DCF to have drafted rules for minimum standards for licensure by January 1, 2018, that address:

- Administrative management;
- Standards for clinical and treatment best practices;
- Qualifications of all personnel, including staffing ratios; and
- Service provider facility standards.

The new section also requires DCF to classify violations by scope and nature.

The bill authorizes DCF to inspect providers on announced or unannounced basis to see if minimum requirements are met and grants DCF more flexibility in scheduling inspections.

The bill also expands DCF's authority to take action against a service provider. It requires DCF to use a tier-based system of classifying violations and issuing fines or requiring other action. It allows for each day a violation occurs to be considered a separate violation. The bill authorizes use of corrective action plans; allows moratoria or immediate license suspensions for client health, safety or welfare; requires visible posting of notice of a moratorium or suspension; and allows DCF to deny, suspend, or revoke a license due to:

- False representation;
- An act affecting client health or safety;
- A violation of statute or rule;
- A demonstrated pattern of deficient performance; or
- Failure to remove personnel failing background screening.

The bill also reorganizes Part II of chapter 397 by renumbering several sections. It also repeals s. 397.471, F.S., as its provisions are incorporated into new section s. 397.410, F.S. The bill also conforms cross-references.

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

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 16.56, F.S, relating to Office of Statewide Prosecution.

**Section 2:** Amends s. 397.311, F.S., relating to definitions.

**Section 3:** Amends s. 397.321, F.S., relating to duties of the department.

**Section 4:** Amends s. 397.401, F.S., relating to license required; penalty; injunction; rules waivers.

**Section 5:** Renumbers s. 397.405, F.S., relating to exemptions from licensure.

**Section 6:** Renumbers s. 397.406, F.S.

**Section 7:** Amends s. 397.403, F.S., relating to license application.

**Section 8:** Amends s. 397.407, F.S., relating to licensure process; fees.

**Section 9:** Renumbers and amends s. 397.451, F.S., relating to background checks of service provider personnel.

**Section 10:** Renumbers s. 397.461, F.S., relating to unlawful activities relating to personnel; penalties.

**Section 11:** Creates s. 397.410, F.S., relating to rules; licensure requirements; minimum standards.

**Section 12:** Renumbers s. 397.419, F.S., relating to quality improvement programs.

**Section 13:** Amends s. 397.411., F.S., relating to inspection; right of entry; classification of violations; records.

**Section 14:** Amends s. 397.415, F.S., relating to denial, suspension, and revocation; other remedies.

**Section 15:** Repeals s. 397.471, F.S., relating to service provider facility standards.

**Section 16:** Creates s. 397.4873, F.S., relating to referrals to or from recovery residences; prohibitions; penalties.

**Section 17:** Amends s. 397.501, F.S., relating to rights of individuals.

**Section 18:** Creates s. 397.55, F.S., relating to prohibition of deceptive marketing practices.

**Section 19:** Creates s. 817.0345, F.S., relating to prohibition of fraudulent marketing practices.

**Section 20:** Amends s. 817.505, F.S., relating to patient brokering prohibited; exceptions; penalties.

**Section 21:** Amends s. 895.02, F.S., relating to definitions.

**Section 22:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

**Section 23:** Amends s. 212.055, F.S., relating to discretionary sales surtaxes; legislative intent; authorization and use of proceeds.

**Section 24:** Amends s. 394.4573, F.S., relating to Coordinated system of care; annual assessment; essential elements; measures of performance; system improvement grants; reports.

**Section 25:** Amends s. 394.9085, F.S., relating to behavioral provider liability.

**Section 26:** Amends s. 397.416, F.S., relating to substance abuse treatment services; qualified professional.

**Section 27:** Amends s. 397.753, F.S., relating to definitions.

**Section 28:** Amends s. 409.1757, F.S., relating to persons not required to be refingerprinted or rescreened.

**Section 29:** Amends s. 440.102, F.S., relating to drug-free workplace program requirements.

**Section 30:** Amends s. 985.045, F.S., relating to court records.

**Section 31:** Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Indeterminate. The bill requires that fees cover the cost of regulation; it also requires DCF to create a new tiered system of violations, some of which would be subject to the assessment of fines. The amount of additional revenue from licensure fees and fines depends on the amounts set by rule and the number of licensees paying them.

#### 2. Expenditures:

Indeterminate. This depends on the amount of licensure fee revenue received (see Revenues, above). Additionally, the bill requires clinical supervisors to be background screened; however, the number of clinical supervisors who would need to be background screened is unknown. The number of background screens impacts the department's costs of conducting screenings and fees for participation in the Background Screening Clearinghouse administered by the Agency for Health Care Administration.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the changes to patient brokering statutes deter treatment providers and recovery residence operators from giving persons in recovery from substance abuse inducements such as gym memberships, scooters, cigarettes, clothes, and gift cards, these individuals will receive fewer such inducements.

Substance abuse treatment providers and recovery residence operators who are engaging in practices that would be made illegal under this bill may be subject to new monetary fines and criminal penalties unless they adapt their business practices.

Marketing businesses will need to obtain a license from DBPR. Such businesses will need to open an office in Florida if they have no presence in the state but market substance abuse treatment services on behalf of providers located in Florida.

Licensed service providers will need to pay for background screenings for clinical supervisors, unless these individuals are exempt, such as due to having already been screened within five years.

Licensed service providers of clinical services who are not already accredited will need to obtain accreditation by the second renewal.

Licensed service providers who commit certain violations will be subject to fines and other licensure actions such as moratoria, license suspension, revocation, and denial, which could have an economic impact on such providers.

D. FISCAL COMMENTS:

The volume and complexity of patient brokering cases that the Office of Statewide Prosecution may choose to prosecute is unknown. The Office of Statewide Prosecution can absorb these prosecutions within existing resources; however, without increased funding, if it elects to prosecute a large number of patient brokering cases, then it would need to divert employees from prosecuting other offenses.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 8, 2017, the Children, Families, and Seniors Subcommittee adopted four amendments that:

- Removes the requirement that substance abuse marketers obtain a license from DBPR;
- Made a technical change to clarify a reference to patient brokering;
- Removed reference to an inapplicable section of the criminal code;
- Added patient brokering into the offense severity ranking chart for sentencing purposes; and
- Strengthened DCF's licensure of substance abuse service providers in ch. 397, F.S.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

1                                   A bill to be entitled  
 2           An act relating to marketing practices for substance  
 3           abuse services; amending s. 16.56, F.S.; authorizing  
 4           the Office of Statewide Prosecution in the Department  
 5           of Legal Affairs to investigate and prosecute patient  
 6           brokering offenses; amending s. 397.311, F.S.;  
 7           revising the term "clinical treatment"; defining the  
 8           terms "clinical supervisor" and "recovery support  
 9           specialist"; conforming a cross-reference; amending s.  
 10          397.321, F.S.; requiring the Department of Children  
 11          and Families to recognize a certification process for  
 12          recovery support specialists; amending s. 397.401,  
 13          F.S.; increasing penalties for operating without a  
 14          license; renumbering and amending s. 397.405, F.S.;  
 15          conforming a cross-reference; amending s. 397.403,  
 16          F.S.; requiring additional information to be provided  
 17          in a licensure application; requiring accreditation  
 18          for certain licensure renewals; conforming a cross-  
 19          reference; amending s. 397.407, F.S.; requiring  
 20          licensure fees to cover the cost of regulation;  
 21          requiring background screening for owners, directors,  
 22          chief financial officers, and clinical supervisors;  
 23          limiting the instances in which the department may  
 24          issue a probationary license; revising limitations on  
 25          referrals to recovery residences; renumbering and

26 amending s. 397.451, F.S.; requiring clinical  
 27 supervisors to undergo background screening; creating  
 28 s. 397.410, F.S.; requiring the department to  
 29 establish minimum standards for licensure of substance  
 30 abuse service components; specifying standards,  
 31 procedures, and staffing requirements; directing the  
 32 department to establish the scope of deficiency by  
 33 rule; requiring the department to complete certain  
 34 steps in the rulemaking process by specific dates;  
 35 amending s. 397.411, F.S.; authorizing the department  
 36 to conduct announced and unannounced inspections;  
 37 establishing classes of violations for substance abuse  
 38 service providers; amending s. 397.415, F.S.;

39 providing criteria for the department to impose a  
 40 fine, corrective action plan, immediate moratorium, or  
 41 emergency suspension; providing criteria for the  
 42 department to deny, suspend, or revoke a license;  
 43 repealing s. 397.471, F.S., relating to service  
 44 provider facility standards; creating s. 397.4873,  
 45 F.S.; limiting referrals to and from recovery  
 46 residences; defining the term "refer"; requiring a  
 47 service provider to maintain certain referral records;  
 48 providing penalties; amending s. 397.501, F.S.;

49 providing that an application for the disclosure of an  
 50 individual's records may be filed as part of an active

51 | criminal investigation; authorizing a court to approve  
 52 | an application for the disclosure of an individual's  
 53 | substance abuse treatment records without providing  
 54 | express notice of the application to the individual or  
 55 | identified parties with an interest in the records if  
 56 | the application is filed as part of an active criminal  
 57 | investigation; providing that upon implementation of  
 58 | the order granting such application, the individual  
 59 | and identified parties with an interest in the records  
 60 | must be afforded an opportunity to seek revocation or  
 61 | amendment of that order; creating s. 397.55, F.S.;  
 62 | providing legislative findings; prohibiting service  
 63 | providers, operators of recovery residences, and  
 64 | certain third parties from engaging in specified  
 65 | marketing practices; providing penalties; creating s.  
 66 | 817.0345, F.S.; prohibiting a person from knowingly  
 67 | and willfully making specified false or misleading  
 68 | statements or providing specified false or misleading  
 69 | information under certain circumstances; providing  
 70 | penalties; amending s. 817.505, F.S.; providing that  
 71 | it is unlawful for a person to offer or pay, or  
 72 | solicit or receive, benefits under certain  
 73 | circumstances; providing fines and penalties; amending  
 74 | s. 895.02, F.S.; revising the definition of the term  
 75 | "racketeering activity"; amending s. 921.0022, F.S.;



76 reclassifying the offense of patient brokering on the  
 77 offense severity ranking chart of the Criminal  
 78 Punishment Code; amending ss. 212.055, 394.4573,  
 79 394.9085, 397.416, 397.753, 409.1757, 440.102, and  
 80 985.045, F.S.; conforming cross-references; providing  
 81 an effective date.

82

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

84

85 Section 1. Paragraph (a) of subsection (1) of section  
 86 16.56, Florida Statutes, is amended to read:

87 16.56 Office of Statewide Prosecution.—

88 (1) There is created in the Department of Legal Affairs an  
 89 Office of Statewide Prosecution. The office shall be a separate  
 90 "budget entity" as that term is defined in chapter 216. The  
 91 office may:

92 (a) Investigate and prosecute the offenses of:

93 1. Bribery, burglary, criminal usury, extortion, gambling,  
 94 kidnapping, larceny, murder, prostitution, perjury, robbery,  
 95 carjacking, ~~and~~ home-invasion robbery, and patient brokering;

96 2. Any crime involving narcotic or other dangerous drugs;

97 3. Any violation of the Florida RICO (Racketeer Influenced  
 98 and Corrupt Organization) Act, including any offense listed in  
 99 the definition of racketeering activity in s. 895.02(8)(a),

100 providing such listed offense is investigated in connection with

101 a violation of s. 895.03 and is charged in a separate count of  
 102 an information or indictment containing a count charging a  
 103 violation of s. 895.03, the prosecution of which listed offense  
 104 may continue independently if the prosecution of the violation  
 105 of s. 895.03 is terminated for any reason;

106 4. Any violation of the Florida Anti-Fencing Act;

107 5. Any violation of the Florida Antitrust Act of 1980, as  
 108 amended;

109 6. Any crime involving, or resulting in, fraud or deceit  
 110 upon any person;

111 7. Any violation of s. 847.0135, relating to computer  
 112 pornography and child exploitation prevention, or any offense  
 113 related to a violation of s. 847.0135 or any violation of  
 114 chapter 827 where the crime is facilitated by or connected to  
 115 the use of the Internet or any device capable of electronic data  
 116 storage or transmission;

117 8. Any violation of chapter 815;

118 9. Any criminal violation of part I of chapter 499;

119 10. Any violation of the Florida Motor Fuel Tax Relief Act  
 120 of 2004;

121 11. Any criminal violation of s. 409.920 or s. 409.9201;

122 12. Any crime involving voter registration, voting, or  
 123 candidate or issue petition activities;

124 13. Any criminal violation of the Florida Money Laundering  
 125 Act;

126           14. Any criminal violation of the Florida Securities and  
127 Investor Protection Act; or

128           15. Any violation of chapter 787, as well as any and all  
129 offenses related to a violation of chapter 787;

130  
131 or any attempt, solicitation, or conspiracy to commit any of the  
132 crimes specifically enumerated above. The office shall have such  
133 power only when any such offense is occurring, or has occurred,  
134 in two or more judicial circuits as part of a related  
135 transaction, or when any such offense is connected with an  
136 organized criminal conspiracy affecting two or more judicial  
137 circuits. Informations or indictments charging such offenses  
138 shall contain general allegations stating the judicial circuits  
139 and counties in which crimes are alleged to have occurred or the  
140 judicial circuits and counties in which crimes affecting such  
141 circuits or counties are alleged to have been connected with an  
142 organized criminal conspiracy.

143           Section 2. Subsections (8) through (38) and (39) through  
144 (48) of section 397.311, Florida Statutes, are renumbered as  
145 subsections (9) through (39) and (41) through (50),  
146 respectively, paragraph (a) of present subsection (25) and  
147 present subsection (41) are amended, and new subsections (8) and  
148 (40) are added to that section, to read:

149           397.311 Definitions.—As used in this chapter, except part  
150 VIII, the term:

151           (8) "Clinical supervisor" means a person who manages  
 152 personnel who provide direct clinical treatment.

153           ~~(26)~~~~(25)~~ Licensed service components include a  
 154 comprehensive continuum of accessible and quality substance  
 155 abuse prevention, intervention, and clinical treatment services,  
 156 including the following services:

157           (a) "Clinical treatment" means a professionally directed,  
 158 deliberate, and planned regimen of services and interventions  
 159 that are designed to reduce or eliminate the misuse of drugs and  
 160 alcohol and promote a healthy, drug-free lifestyle, which may  
 161 only be provided by an individual licensed or certified under  
 162 chapter 464, a qualified professional, a recovery support  
 163 specialist, or other professional as provided by rule. As  
 164 defined by rule, "clinical treatment services" include, but are  
 165 not limited to, the following licensable service components:

166           1. "Addictions receiving facility" is a secure, acute care  
 167 facility that provides, at a minimum, detoxification and  
 168 stabilization services; is operated 24 hours per day, 7 days per  
 169 week; and is designated by the department to serve individuals  
 170 found to be substance use impaired as described in s. 397.675  
 171 who meet the placement criteria for this component.

172           2. "Day or night treatment" is a service provided in a  
 173 nonresidential environment, with a structured schedule of  
 174 treatment and rehabilitative services.

175           3. "Day or night treatment with community housing" means a

176 program intended for individuals who can benefit from living  
177 independently in peer community housing while participating in  
178 treatment services for a minimum of 5 hours a day for a minimum  
179 of 25 hours per week.

180 4. "Detoxification" is a service involving subacute care  
181 that is provided on an inpatient or an outpatient basis to  
182 assist individuals to withdraw from the physiological and  
183 psychological effects of substance abuse and who meet the  
184 placement criteria for this component.

185 5. "Intensive inpatient treatment" includes a planned  
186 regimen of evaluation, observation, medical monitoring, and  
187 clinical protocols delivered through an interdisciplinary team  
188 approach provided 24 hours per day, 7 days per week, in a highly  
189 structured, live-in environment.

190 6. "Intensive outpatient treatment" is a service that  
191 provides individual or group counseling in a more structured  
192 environment, is of higher intensity and duration than outpatient  
193 treatment, and is provided to individuals who meet the placement  
194 criteria for this component.

195 7. "Medication-assisted treatment for opiate addiction" is  
196 a service that uses methadone or other medication as authorized  
197 by state and federal law, in combination with medical,  
198 rehabilitative, and counseling services in the treatment of  
199 individuals who are dependent on opioid drugs.

200 8. "Outpatient treatment" is a service that provides

201 individual, group, or family counseling by appointment during  
 202 scheduled operating hours for individuals who meet the placement  
 203 criteria for this component.

204 9. "Residential treatment" is a service provided in a  
 205 structured live-in environment within a nonhospital setting on a  
 206 24-hours-per-day, 7-days-per-week basis, and is intended for  
 207 individuals who meet the placement criteria for this component.

208 (40) "Recovery support specialist" means a person who is  
 209 in stable recovery from substance abuse, whose life experiences  
 210 and recovery allow him or her to provide peer-to-peer recovery  
 211 support, and who is certified by an organization that is  
 212 approved by the department pursuant to s. 397.321(15).

213 (42)~~(41)~~ "Service component" or "component" means a  
 214 discrete operational entity within a service provider which is  
 215 subject to licensing as defined by rule. Service components  
 216 include prevention, intervention, and clinical treatment  
 217 described in subsection (26) ~~(25)~~.

218 Section 3. Subsection (15) of section 397.321, Florida  
 219 Statutes, is amended to read:

220 397.321 Duties of the department.—The department shall:

221 (15) Recognize a statewide certification process for  
 222 addiction professionals and recovery support specialists and  
 223 identify and endorse one or more agencies responsible for such  
 224 certification of service provider personnel.

225 Section 4. Subsection (2) of section 397.401, Florida

226 Statutes, is amended to read:

227 397.401 License required; penalty; injunction; rules  
 228 waivers.—

229 (2) A violation of subsection (1) is a felony ~~misdemeanor~~  
 230 of the third ~~first~~ degree, punishable as provided in s. 775.082,  
 231 ~~or~~ s. 775.083, or s. 775.084.

232 Section 5. Section 397.405, Florida Statutes, is  
 233 renumbered as 397.4012, Florida Statutes, and amended to read:

234 397.4012 ~~397.405~~ Exemptions from licensure.—The following  
 235 are exempt from the licensing provisions of this chapter:

236 (1) A hospital or hospital-based component licensed under  
 237 chapter 395.

238 (2) A nursing home facility as defined in s. 400.021.

239 (3) A substance abuse education program established  
 240 pursuant to s. 1003.42.

241 (4) A facility or institution operated by the Federal  
 242 Government.

243 (5) A physician or physician assistant licensed under  
 244 chapter 458 or chapter 459.

245 (6) A psychologist licensed under chapter 490.

246 (7) A social worker, marriage and family therapist, or  
 247 mental health counselor licensed under chapter 491.

248 (8) A legally cognizable church or nonprofit religious  
 249 organization or denomination providing substance abuse services,  
 250 including prevention services, which are solely religious,

251 spiritual, or ecclesiastical in nature. A church or nonprofit  
 252 religious organization or denomination providing any of the  
 253 licensed service components itemized under s. 397.311(26)  
 254 ~~397.311(25)~~ is not exempt from substance abuse licensure but  
 255 retains its exemption with respect to all services which are  
 256 solely religious, spiritual, or ecclesiastical in nature.

257 (9) Facilities licensed under chapter 393 which, in  
 258 addition to providing services to persons with developmental  
 259 disabilities, also provide services to persons developmentally  
 260 at risk as a consequence of exposure to alcohol or other legal  
 261 or illegal drugs while in utero.

262 (10) DUI education and screening services provided  
 263 pursuant to ss. 316.192, 316.193, 322.095, 322.271, and 322.291.  
 264 Persons or entities providing treatment services must be  
 265 licensed under this chapter unless exempted from licensing as  
 266 provided in this section.

267 (11) A facility licensed under s. 394.875 as a crisis  
 268 stabilization unit.

269  
 270 The exemptions from licensure in this section do not apply to  
 271 any service provider that receives an appropriation, grant, or  
 272 contract from the state to operate as a service provider as  
 273 defined in this chapter or to any substance abuse program  
 274 regulated pursuant to s. 397.4014 ~~397.406~~. Furthermore, this  
 275 chapter may not be construed to limit the practice of a



276 physician or physician assistant licensed under chapter 458 or  
 277 chapter 459, a psychologist licensed under chapter 490, a  
 278 psychotherapist licensed under chapter 491, or an advanced  
 279 registered nurse practitioner licensed under part I of chapter  
 280 464, who provides substance abuse treatment, so long as the  
 281 physician, physician assistant, psychologist, psychotherapist,  
 282 or advanced registered nurse practitioner does not represent to  
 283 the public that he or she is a licensed service provider and  
 284 does not provide services to individuals pursuant to part V of  
 285 this chapter. Failure to comply with any requirement necessary  
 286 to maintain an exempt status under this section is a misdemeanor  
 287 of the first degree, punishable as provided in s. 775.082 or s.  
 288 775.083.

289 Section 6. Section 397.406, Florida Statutes, is  
 290 renumbered as section 397.4014, Florida Statutes.

291 Section 7. Section 397.403, Florida Statutes, is amended  
 292 to read:

293 397.403 License application.—

294 (1) Applicants for a license under this chapter must apply  
 295 to the department on forms provided by the department and in  
 296 accordance with rules adopted by the department. Applications  
 297 must include at a minimum:

298 (a) Information establishing the name and address of the  
 299 applicant service provider and its director, and also of each  
 300 member, owner, officer, and shareholder, if any.

301 (b) Information establishing the competency and ability of  
 302 the applicant service provider and its director to carry out the  
 303 requirements of this chapter.

304 (c) Proof satisfactory to the department of the applicant  
 305 service provider's financial ability and organizational  
 306 capability to operate in accordance with this chapter.

307 (d) Proof of liability insurance coverage in amounts set  
 308 by the department by rule.

309 (e) Sufficient information to conduct background screening  
 310 for all owners, directors, chief financial officers, and  
 311 clinical supervisors as provided in s. 397.4073 ~~397.451~~.

312 ~~1. If the results of the background screening indicate~~  
 313 ~~that any owner, director, or chief financial officer has been~~  
 314 ~~found guilty of, regardless of adjudication, or has entered a~~  
 315 ~~plea of nolo contendere or guilty to any offense prohibited~~  
 316 ~~under the screening standard, a license may not be issued to the~~  
 317 ~~applicant service provider unless an exemption from~~  
 318 ~~disqualification has been granted by the department as set forth~~  
 319 ~~in chapter 435. The owner, director, or chief financial officer~~  
 320 ~~has 90 days within which to obtain the required exemption,~~  
 321 ~~during which time the applicant's license remains in effect.~~

322 ~~2. If any owner, director, or chief financial officer is~~  
 323 ~~arrested or found guilty of, regardless of adjudication, or has~~  
 324 ~~entered a plea of nolo contendere or guilty to any offense~~  
 325 ~~prohibited under the screening standard while acting in that~~

326 ~~capacity, the provider shall immediately remove the person from~~  
 327 ~~that position and shall notify the department within 2 days~~  
 328 ~~after such removal, excluding weekends and holidays. Failure to~~  
 329 ~~remove the owner, director, or chief financial officer will~~  
 330 ~~result in revocation of the provider's license.~~

331 (f) Proof of satisfactory fire, safety, and health  
 332 inspections, and compliance with local zoning ordinances.  
 333 Service providers operating under a regular annual license shall  
 334 have 18 months from the expiration date of their regular license  
 335 within which to meet local zoning requirements. Applicants for a  
 336 new license must demonstrate proof of compliance with zoning  
 337 requirements prior to the department issuing a probationary  
 338 license.

339 (g) A comprehensive outline of the proposed services,  
 340 including sufficient detail to evaluate compliance with clinical  
 341 and treatment best practices, for:

- 342 1. Any new applicant; or
- 343 2. Any licensed service provider adding a new licensable  
 344 service component.

345 (h) Proof of the ability to provide services in accordance  
 346 with department rules.

347 (i) Any other information that the department finds  
 348 necessary to determine the applicant's ability to carry out its  
 349 duties under this chapter and applicable rules.

350 (2)(3) The department shall accept proof of accreditation

351 by an accrediting organization whose standards incorporate  
 352 comparable licensure regulations required by this state, or  
 353 through another nationally recognized certification process that  
 354 is acceptable to the department and meets the minimum licensure  
 355 requirements under this chapter, in lieu of requiring the  
 356 applicant to submit the information required by paragraphs  
 357 (1)(a)-(c).

358 (3) Applications for licensure renewal must include proof  
 359 of application for accreditation for each licensed service  
 360 component providing clinical treatment by an accrediting  
 361 organization that is acceptable to the department for the first  
 362 renewal, and proof of accreditation for any subsequent renewals.

363 (4)(2) The burden of proof with respect to any requirement  
 364 for application for licensure as a service provider under this  
 365 chapter is on the applicant.

366 Section 8. Subsections (5) through (10) of section  
 367 397.407, Florida Statutes, are renumbered as subsections (6)  
 368 through (11), respectively, present subsections (1), (5), (6),  
 369 and (11) are amended, and a new subsection (5) is added to that  
 370 section, to read:

371 397.407 Licensure process; fees.—

372 (1) The department shall establish the licensure process  
 373 to include fees and categories of licenses and must prescribe a  
 374 fee range that is based, at least in part, on the number and  
 375 complexity of programs listed in s. 397.311(26) ~~397.311(25)~~

376 which are operated by a licensee. The fees from the licensure of  
 377 service components are sufficient to cover ~~at least 50 percent~~  
 378 ~~of~~ the costs of regulating the service components. The  
 379 department shall specify a fee range for public and privately  
 380 funded licensed service providers. Fees for privately funded  
 381 licensed service providers must exceed the fees for publicly  
 382 funded licensed service providers.

383 (5) The department shall conduct background screening, as  
 384 provided in s. 397.4073, as part of the licensure application  
 385 for all owners, directors, chief financial officers, and  
 386 clinical supervisors. If the results of the background screening  
 387 indicate that the individual has been found guilty of,  
 388 regardless of adjudication, or has entered a plea of nolo  
 389 contendere or guilty to any offense prohibited under the  
 390 screening standard, a license may not be issued to the applicant  
 391 service provider unless an exemption from disqualification has  
 392 been granted by the department as set forth in chapter 435. The  
 393 individual has 90 days within which to obtain the required  
 394 exemption, during which time the applicant's license remains in  
 395 effect.

396 (6) ~~(5)~~ The department may issue probationary, regular, and  
 397 interim licenses. The department shall issue one license for  
 398 each service component that is operated by a service provider  
 399 and defined pursuant to s. 397.311(26) ~~397.311(25)~~. The license  
 400 is valid only for the specific service components listed for

401 each specific location identified on the license. The licensed  
 402 service provider shall apply for a new license at least 60 days  
 403 before the addition of any service components or 30 days before  
 404 the relocation of any of its service sites. Provision of service  
 405 components or delivery of services at a location not identified  
 406 on the license may be considered an unlicensed operation that  
 407 authorizes the department to seek an injunction against  
 408 operation as provided in s. 397.401, in addition to other  
 409 sanctions authorized by s. 397.415. Probationary and regular  
 410 licenses may be issued only after all required information has  
 411 been submitted. A license may not be transferred. As used in  
 412 this subsection, the term "transfer" includes, but is not  
 413 limited to, the transfer of a majority of the ownership interest  
 414 in the licensed entity or transfer of responsibilities under the  
 415 license to another entity by contractual arrangement.

416 (7)(6) Upon receipt of a complete application, payment of  
 417 applicable fees, and a demonstration of substantial compliance  
 418 with all applicable statutory and regulatory requirements, the  
 419 department may issue a probationary license ~~may be issued~~ to a  
 420 service provider applicant ~~with in the initial stages of~~  
 421 ~~developing~~ services that are not yet fully operational. The  
 422 department may not issue a probationary license when doing so  
 423 would place the health, safety, or welfare of individuals at  
 424 risk ~~upon completion of all application requirements itemized in~~  
 425 ~~s. 397.403(1) and upon demonstration of the applicant's ability~~

426 ~~to comply with all applicable statutory and regulatory~~  
 427 ~~requirements.~~ A probationary license expires 90 days after  
 428 issuance and may not be reissued ~~once for an additional 90-day~~  
 429 ~~period if the applicant has substantially complied with all~~  
 430 ~~requirements for regular licensure or has initiated action to~~  
 431 ~~satisfy all requirements.~~ During the probationary period the  
 432 department shall monitor the delivery of services.  
 433 Notwithstanding s. 120.60(5), the department may order a  
 434 probationary licensee to cease and desist operations at any time  
 435 it is found to be substantially out of compliance with licensure  
 436 standards. This cease-and-desist order is exempt from the  
 437 requirements of s. 120.60(6).

438 ~~(11) Effective July 1, 2016, a service provider licensed~~  
 439 ~~under this part may not refer a current or discharged patient to~~  
 440 ~~a recovery residence unless the recovery residence holds a valid~~  
 441 ~~certificate of compliance as provided in s. 397.487 and is~~  
 442 ~~actively managed by a certified recovery residence administrator~~  
 443 ~~as provided in s. 397.4871 or the recovery residence is owned~~  
 444 ~~and operated by a licensed service provider or a licensed~~  
 445 ~~service provider's wholly owned subsidiary. For purposes of this~~  
 446 ~~subsection, the term "refer" means to inform a patient by any~~  
 447 ~~means about the name, address, or other details of the recovery~~  
 448 ~~residence. However, this subsection does not require a licensed~~  
 449 ~~service provider to refer any patient to a recovery residence.~~

450 Section 9. Section 397.451, Florida Statutes, is

451 | renumbered as section 397.4073, Florida Statutes, and paragraph  
 452 | (a) of subsection (1), subsection (2), and paragraph (b) of  
 453 | subsection (3) of that section are amended to read:

454 |       397.4073 ~~397.451~~ Background checks of service provider  
 455 | personnel.—

456 |           (1) PERSONNEL BACKGROUND CHECKS; REQUIREMENTS AND  
 457 | EXCEPTIONS.—

458 |           (a) Background checks shall apply as follows:

459 |           1. All owners, directors, ~~and~~ chief financial officers,  
 460 | and clinical supervisors of service providers are subject to  
 461 | level 2 background screening as provided under chapter 435.  
 462 | Inmate substance abuse programs operated directly or under  
 463 | contract with the Department of Corrections are exempt from this  
 464 | requirement.

465 |           2. All service provider personnel who have direct contact  
 466 | with children receiving services or with adults who are  
 467 | developmentally disabled receiving services are subject to level  
 468 | 2 background screening as provided under chapter 435.

469 |           (2) EMPLOYMENT HISTORY CHECKS; CHECKS OF REFERENCES.—The  
 470 | department shall assess employment history checks and checks of  
 471 | references for all owners, directors, and chief financial  
 472 | officers, and the directors and clinical supervisors shall  
 473 | assess employment history checks and checks of references for  
 474 | each employee who has direct contact with children receiving  
 475 | services or adults who are developmentally disabled receiving



476 services.

477 (3) PERSONNEL EXEMPT FROM BEING REFINGERPRINTED OR  
 478 RECHECKED.—

479 (b) Service provider owners, directors, ~~or~~ chief financial  
 480 officers, or clinical supervisors who are not covered by  
 481 paragraph (a) who provide proof of compliance with the level 2  
 482 background screening requirements which has been submitted  
 483 within the previous 5 years in compliance with any other state  
 484 health care licensure requirements are not required to be  
 485 refingerprinted or rechecked.

486 Section 10. Section 397.461, Florida Statutes, is  
 487 renumbered as section 397.4075, Florida Statutes.

488 Section 11. Section 397.410, Florida Statutes, is created  
 489 to read:

490 397.410 Licensure requirements; minimum standards; rules.—

491 (1) The department shall establish minimum requirements  
 492 for licensure of each licensed service component, as defined in  
 493 s. 397.311(26), including, but not limited to:

494 (a) Standards and procedures for the administrative  
 495 management of the licensed service component, including  
 496 procedures for recordkeeping, referrals, and financial  
 497 management.

498 (b) Standards consistent with clinical and treatment best  
 499 practices that ensure the provision of quality treatment for  
 500 individuals receiving substance abuse treatment services.

501 (c) The number and qualifications of all personnel,  
 502 including, but not limited to, management, nursing, and  
 503 qualified professionals, having responsibility for any part of  
 504 an individual's clinical treatment. These requirements must  
 505 include, but are not limited to:

506 1. Minimum staffing ratios to provide adequate safety,  
 507 care, and treatment.

508 2. Hours of staff coverage.

509 3. The maximum number of individuals who may receive  
 510 clinical services together in a group setting.

511 4. The maximum number of licensed service providers for  
 512 which a physician may serve as medical director and the total  
 513 number of individuals he or she may treat in that capacity.

514 (d) Service provider facility standards, including, but  
 515 not limited to:

516 1. Safety and adequacy of the facility and grounds.

517 2. Space, furnishings, and equipment for each individual  
 518 served.

519 3. Infection control, housekeeping, sanitation, and  
 520 facility maintenance.

521 4. Meals and snacks.

522 (e) Disaster planning policies and procedures.

523 (2) The department shall adopt rules to provide that, if  
 524 the criteria established under subsection (1) are not met, such  
 525 deficiencies shall be classified according to the nature and the

526 scope of the deficiency. The scope shall be cited as isolated,  
 527 patterned, or widespread. The department shall indicate the  
 528 classification on the face of the notice of deficiencies in  
 529 accordance with s. 397.411.

530 (a) An isolated deficiency is a deficiency affecting one  
 531 or a very limited number of individuals or involving one or a  
 532 very limited number of staff, or a situation that occurred only  
 533 occasionally or in a very limited number of locations.

534 (b) A patterned deficiency is a deficiency where more than  
 535 a very limited number of individuals are affected or more than a  
 536 very limited number of staff are involved, the situation has  
 537 occurred in several locations, or the same individual or  
 538 individuals have been affected by repeated occurrences of the  
 539 same deficient practice but the effect of the deficient practice  
 540 is not found to be pervasive throughout the facility.

541 (c) A widespread deficiency is a deficiency in which the  
 542 problems causing the deficiency are pervasive throughout the  
 543 facility or represent systemic failure that has affected or has  
 544 the potential to affect a large portion of individuals.

545 (3) By October 1, 2017, the department shall publish a  
 546 notice of development of rulemaking, and by January 1, 2018, the  
 547 department shall publish a notice of proposed rule pursuant to s  
 548 120.54(3)(a) to implement the provisions of this section.

549 Section 12. Section 397.419, Florida Statutes, is  
 550 renumbered as section 397.4103, Florida Statutes.

551 Section 13. Paragraph (a) of subsection (1) and subsection  
 552 (4) of section 397.411, Florida Statutes, are amended, and  
 553 subsection (7) is added to that section, to read:

554 397.411 Inspection; right of entry; classification of  
 555 violations; records.—

556 (1)(a) An authorized agent of the department may conduct  
 557 announced or unannounced inspections, ~~enter and inspect~~ at any  
 558 time, of a licensed service provider to determine whether it is  
 559 in compliance with statutory and regulatory requirements,  
 560 including, but not limited to, the minimum requirements for  
 561 licensure in s. 397.410.

562 (4) The authorized agents of the department may ~~shall~~  
 563 schedule periodic inspections of licensed service providers in  
 564 order to minimize costs and the disruption of services; however,  
 565 such authorized agents may inspect the facilities of any  
 566 licensed service provider at any time.

567 (7) Violations of this part or applicable rules shall be  
 568 classified according to the nature of the violation and the  
 569 gravity of its probable effect on an individual receiving  
 570 substance abuse treatment. Violations shall be classified on the  
 571 written notice as follows:

572 (a) Class "I" violations are those conditions or  
 573 occurrences related to the operation and maintenance of a  
 574 service component or to the treatment of an individual which the  
 575 department determines present an imminent danger or a

576 substantial probability that death or serious physical or  
 577 emotional harm would result therefrom. The condition or practice  
 578 constituting a class I violation shall be abated or eliminated  
 579 within 24 hours, unless a fixed period, as determined by the  
 580 department, is required for correction. The department shall  
 581 impose an administrative fine as provided by law for a cited  
 582 class I violation. A fine shall be levied notwithstanding the  
 583 correction of the violation.

584 (b) Class "II" violations are those conditions or  
 585 occurrences related to the operation and maintenance of a  
 586 service component or to the treatment of an individual which the  
 587 department determines directly threaten the physical or  
 588 emotional health, safety, or security of the individual, other  
 589 than class I violations. The department shall impose an  
 590 administrative fine as provided by law for a cited class II  
 591 violation. A fine shall be levied notwithstanding the correction  
 592 of the violation.

593 (c) Class "III" violations are those conditions or  
 594 occurrences related to the operation and maintenance of a  
 595 service component or to the treatment of an individual which the  
 596 department determines indirectly or potentially threaten the  
 597 physical or emotional health, safety, or security of the  
 598 individual, other than class I or class II violations. The  
 599 department shall impose an administrative fine as provided in  
 600 this section for a cited class III violation. A citation for a

601 class III violation must specify the time within which the  
 602 violation is required to be corrected. If a class III violation  
 603 is corrected within the time specified, a fine may not be  
 604 imposed.

605 (d) Class "IV" violations are those conditions or  
 606 occurrences related to the operation and maintenance of a  
 607 service component or to required reports, forms, or documents  
 608 that do not have the potential of negatively affecting an  
 609 individual. These violations are of a type that the department  
 610 determines do not threaten the health, safety, or security of an  
 611 individual. The department shall impose an administrative fine  
 612 as provided in this section for a cited class IV violation. A  
 613 citation for a class IV violation must specify the time within  
 614 which the violation is required to be corrected. If a class IV  
 615 violation is corrected within the time specified, a fine may not  
 616 be imposed.

617 Section 14. Subsection (1) of section 397.415, Florida  
 618 Statutes, is amended to read:

619 397.415 Denial, suspension, and revocation; other  
 620 remedies.—

621 (1) If the department determines that an applicant or  
 622 licensed service provider or licensed service component thereof  
 623 is not in compliance with all statutory and regulatory  
 624 requirements, the department may deny, suspend, revoke, or  
 625 impose reasonable restrictions or penalties on the license or

626 any portion of the license. In such case, ~~the department:~~

627 (a) The department may:

628 1. Impose an administrative fine for a violation that is  
 629 designated as a class I, class II, class III, or class IV  
 630 violation pursuant to s. 397.411.

631 2. Impose an administrative fine for a violation that is  
 632 not designated as a class I, class II, class III, or class IV  
 633 violation pursuant to s. 397.411. Unless otherwise specified by  
 634 law, the amount of the fine may not exceed \$500 for each  
 635 violation. Unclassified violations may include:

636 a. Violating any term or condition of a license.

637 b. Violating any provision of this chapter or applicable  
 638 rules.

639 c. Providing services beyond the scope of the license.

640 d. Violating a moratorium imposed pursuant to s. 397.415.

641 3. Establish criteria by rule for the amount or aggregate  
 642 limitation of administrative fines applicable to this chapter  
 643 and applicable rules, unless the amount or aggregate limitation  
 644 of the fine is prescribed by statute. Each day of violation  
 645 constitutes a separate violation and is subject to a separate  
 646 fine. For fines imposed by final order of the department and not  
 647 subject to further appeal, the violator shall pay the fine plus  
 648 interest at the rate specified in s. 55.03 for each day beyond  
 649 the date set by the department for payment of the fine.

650 (b) The department may require a corrective action plan

651 approved by the department for any violation of this part or  
 652 applicable rules.

653 (c) The department may impose an immediate moratorium or  
 654 emergency suspension as defined in s. 120.60 a moratorium on  
 655 admissions to any service component of a licensed service  
 656 provider if the department determines that conditions present  
 657 are a threat to the public health, or safety, or welfare of an  
 658 individual or the public. Notice of the moratorium or emergency  
 659 suspension shall be posted and visible to the public at the  
 660 location of the provider until the action is lifted.

661 ~~(b) May impose an administrative penalty of up to \$500 per~~  
 662 ~~day against a licensed service provider operating in violation~~  
 663 ~~of any fire-related, safety-related, or health-related statutory~~  
 664 ~~or regulatory requirement. Fines collected under this paragraph~~  
 665 ~~must be deposited in the Operations and Maintenance Trust Fund.~~

666 (d)(e) The department may deny, suspend, or revoke the  
 667 license of a service provider or may suspend or revoke the  
 668 license as to the operation of any service component or location  
 669 identified on the license for:

670 1. False representation of a material fact in the license  
 671 application or omission of any material fact from the  
 672 application.

673 2. An intentional or negligent act materially affecting  
 674 the health or safety of an individual receiving services from  
 675 the provider.



- 676           3. A violation of this chapter or applicable rules.  
 677           4. A demonstrated pattern of deficient performance.  
 678           5. Failure to immediately remove service provider  
 679 personnel subject to background screening pursuant to s.  
 680 397.4073 who are arrested or found guilty of, regardless of  
 681 adjudication, or have entered a plea of nolo contendere or  
 682 guilty to any offense prohibited under the screening standard  
 683 and notify the department within 2 days after such removal,  
 684 excluding weekends and holidays if, after notice, the department  
 685 determines that a service provider has failed to correct the  
 686 substantial or chronic violation of any statutory or regulatory  
 687 requirement that impacts the quality of care.

688           Section 15. Section 397.471, Florida Statutes, is  
 689 repealed.

690           Section 16. Section 397.4873, Florida Statutes, is created  
 691 to read:

692           397.4873 Referrals to or from recovery residences;  
 693 prohibitions; penalties.-

694           (1) A service provider licensed under this part may not  
 695 refer a prospective, current, or discharged patient to, or  
 696 accept a referral from, a recovery residence unless the recovery  
 697 residence holds a valid certificate of compliance as provided in  
 698 s. 397.487 and is actively managed by a certified recovery  
 699 residence administrator as provided in s. 397.4871.

700        (2) For purposes of this section, the term "refer" means  
 701 to inform a patient by any means about the name, address, or  
 702 other details of the recovery residence.

703        (3) A service provider shall maintain records of referrals  
 704 to or from recovery residences as may be prescribed by the  
 705 department in rule.

706        (4) After June 30, 2019, a violation of this section is  
 707 subject to an administrative fine of \$1,000 per occurrence.  
 708 Repeat violations of this section may subject a provider to  
 709 license suspension or revocation pursuant to s. 397.415.

710        (5) Nothing in this section requires a licensed service  
 711 provider to refer any patient to a recovery residence.

712        Section 17. Paragraphs (g) and (h) of subsection (7) of  
 713 section 397.501, Florida Statutes, are amended to read:

714        397.501 Rights of individuals.—Individuals receiving  
 715 substance abuse services from any service provider are  
 716 guaranteed protection of the rights specified in this section,  
 717 unless otherwise expressly provided, and service providers must  
 718 ensure the protection of such rights.

719        (7) RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.—

720        (g) An order authorizing the disclosure of an individual's  
 721 records may be applied for by any person having a legally  
 722 recognized interest in the disclosure which is sought. The  
 723 application may be filed alone ~~separately~~ or as part of a  
 724 pending civil action or an active criminal investigation in

725 | which it appears that the individual's records are needed to  
 726 | provide evidence. An application must use a fictitious name,  
 727 | such as John Doe or Jane Doe, to refer to any individual and may  
 728 | not contain or otherwise disclose any identifying information  
 729 | unless the individual is the applicant or has given a written  
 730 | consent to disclosure or the court has ordered the record of the  
 731 | proceeding sealed from public scrutiny.

732 |       (h) 1. For applications filed alone or as part of a pending  
 733 | civil action, the individual and the person holding the records  
 734 | from whom disclosure is sought must be given adequate notice in  
 735 | a manner which will not disclose identifying information to  
 736 | other persons, and an opportunity to file a written response to  
 737 | the application, or to appear in person, for the limited purpose  
 738 | of providing evidence on the statutory and regulatory criteria  
 739 | for the issuance of the court order.

740 |       2. Applications filed as part of an active criminal  
 741 | investigation may, in the discretion of the court, be granted  
 742 | without notice. Although no express notice is required to the  
 743 | agents, owners, and employees of the treatment provider or to  
 744 | any individual whose records are to be disclosed, upon  
 745 | implementation of an order so granted, any of these persons must  
 746 | be afforded an opportunity to seek revocation or amendment of  
 747 | the order, limited to the presentation of evidence on the  
 748 | statutory and regulatory criteria for the issuance of the order.

749 |       Section 18. Section 397.55, Florida Statutes, is created

750 to read:

751 397.55 Prohibition of deceptive marketing practices.-

752 (1) The Legislature recognizes that consumers of substance  
 753 abuse treatment have disabling conditions and that such  
 754 consumers and their families are vulnerable and at risk of being  
 755 easily victimized by fraudulent marketing practices that  
 756 adversely impact the delivery of health care. To protect the  
 757 health, safety, and welfare of this vulnerable population, a  
 758 service provider, an operator of a recovery residence, or a  
 759 third party who provides any form of advertising or marketing  
 760 services to a service provider or an operator of a recovery  
 761 residence may not engage in any of the following marketing  
 762 practices:

763 (a) Making a false or misleading statement or providing  
 764 false or misleading information about the provider's or  
 765 operator's or third party's products, goods, services, or  
 766 geographical locations in its marketing, advertising materials,  
 767 or media or on its website.

768 (b) Including on its website false information or  
 769 electronic links, coding, or activation that provides false  
 770 information or that surreptitiously directs the reader to  
 771 another website.

772 (c) Conduct prohibited by s. 817.505.

773 (d) Entering into a contract with a marketing provider who  
 774 agrees to generate referrals or leads for the placement of

775 patients with a service provider or in a recovery residence  
 776 through a call center or a web-based presence, unless the  
 777 service provider or the operator of the recovery residence  
 778 discloses the following to the prospective patient so that the  
 779 patient can make an informed health care decision:

780 1. Information about the specific licensed service  
 781 providers or recovery residences that are represented by the  
 782 marketing provider and pay a fee to the marketing provider,  
 783 including the identity of such service providers or recovery  
 784 residences; and

785 2. Clear and concise instructions that allow the  
 786 prospective patient to easily access lists of licensed service  
 787 providers and recovery residences on the department website.

788 (2) In addition to any other punishment authorized by law,  
 789 a person or entity that knowingly and willfully violates  
 790 paragraph (1)(a), paragraph (1)(b), or paragraph (1)(d) commits  
 791 a misdemeanor of the first degree, punishable as provided in s.  
 792 775.082 or s. 775.083. A violation of paragraph (1)(c) is a  
 793 violation of the prohibition on patient brokering and may  
 794 subject the party committing the violation to criminal penalties  
 795 under s. 817.505.

796 Section 19. Section 817.0345, Florida Statutes, is created  
 797 to read:

798 817.0345 Prohibition of fraudulent marketing practices.—It  
 799 is unlawful for any person to knowingly and willfully make a

800 materially false or misleading statement or provide false or  
 801 misleading information about the identity, products, goods,  
 802 services, or geographical location of a licensed service  
 803 provider, as defined in chapter 397, in marketing, advertising  
 804 materials, or other media or on a website with the intent to  
 805 induce another person to seek treatment with that service  
 806 provider. A person who violates this section commits a felony of  
 807 the third degree, punishable as provided in s. 775.082, s.  
 808 775.083, or s. 775.084.

809 Section 20. Subsections (1) and (4) of section 817.505,  
 810 Florida Statutes, are amended to read:

811 817.505 Patient brokering prohibited; exceptions;  
 812 penalties.—

813 (1) It is unlawful for any person, including any health  
 814 care provider or health care facility, to:

815 (a) Offer or pay a any commission, benefit, bonus, rebate,  
 816 kickback, or bribe, directly or indirectly, in cash or in kind,  
 817 or engage in any split-fee arrangement, in any form whatsoever,  
 818 to induce the referral of a patient ~~patients~~ or patronage to or  
 819 from a health care provider or health care facility;

820 (b) Solicit or receive a any commission, benefit, bonus,  
 821 rebate, kickback, or bribe, directly or indirectly, in cash or  
 822 in kind, or engage in any split-fee arrangement, in any form  
 823 whatsoever, in return for referring a patient ~~patients~~ or  
 824 patronage to or from a health care provider or health care

825 facility;

826 (c) Solicit or receive a ~~any~~ benefit, commission, benefit, bonus,  
 827 rebate, kickback, or bribe, directly or indirectly, in cash or  
 828 in kind, or engage in any split-fee arrangement, in any form  
 829 whatsoever, in return for the acceptance or acknowledgment of  
 830 treatment from a health care provider or health care facility;  
 831 or

832 (d) Aid, abet, advise, or otherwise participate in the  
 833 conduct prohibited under paragraph (a), paragraph (b), or  
 834 paragraph (c).

835 (4) (a) Any person, including an officer, partner, agent,  
 836 attorney, or other representative of a firm, joint venture,  
 837 partnership, business trust, syndicate, corporation, or other  
 838 business entity, who violates any provision of this section  
 839 commits a felony of the third degree, punishable as provided in  
 840 s. 775.082, ~~s. 775.083~~, or s. 775.084, and shall be ordered to  
 841 pay a fine of \$50,000.

842 (b) Any person, including an officer, partner, agent,  
 843 attorney, or other representative of a firm, joint venture,  
 844 partnership, business trust, syndicate, corporation, or other  
 845 business entity, who violates any provision of this section,  
 846 where the prohibited conduct involves 10 or more patients but  
 847 fewer than 20 patients, commits a felony of the second degree,  
 848 punishable as provided in s. 775.082 or s. 775.084, and shall be  
 849 ordered to pay a fine of \$100,000.

850        (c) Any person, including an officer, partner, agent,  
 851 attorney, or other representative of a firm, joint venture,  
 852 partnership, business trust, syndicate, corporation, or other  
 853 business entity, who violates any provision of this section,  
 854 where the prohibited conduct involves 20 or more patients,  
 855 commits a felony of the first degree, punishable as provided in  
 856 s. 775.082 or s. 775.084, and shall be ordered to pay a fine of  
 857 \$500,000.

858        Section 21. Paragraph (a) of subsection (8) of section  
 859 895.02, Florida Statutes, is amended to read:

860        895.02 Definitions.—As used in ss. 895.01-895.08, the  
 861 term:

862        (8) "Racketeering activity" means to commit, to attempt to  
 863 commit, to conspire to commit, or to solicit, coerce, or  
 864 intimidate another person to commit:

865        (a) Any crime that is chargeable by petition, indictment,  
 866 or information under the following provisions of the Florida  
 867 Statutes:

868        1. Section 210.18, relating to evasion of payment of  
 869 cigarette taxes.

870        2. Section 316.1935, relating to fleeing or attempting to  
 871 elude a law enforcement officer and aggravated fleeing or  
 872 eluding.

873        3. Section 403.727(3)(b), relating to environmental  
 874 control.



- 875           4. Section 409.920 or s. 409.9201, relating to Medicaid  
 876 fraud.
- 877           5. Section 414.39, relating to public assistance fraud.
- 878           6. Section 440.105 or s. 440.106, relating to workers'  
 879 compensation.
- 880           7. Section 443.071(4), relating to creation of a  
 881 fictitious employer scheme to commit reemployment assistance  
 882 fraud.
- 883           8. Section 465.0161, relating to distribution of medicinal  
 884 drugs without a permit as an Internet pharmacy.
- 885           9. Section 499.0051, relating to crimes involving  
 886 contraband, adulterated, or misbranded drugs.
- 887           10. Part IV of chapter 501, relating to telemarketing.
- 888           11. Chapter 517, relating to sale of securities and  
 889 investor protection.
- 890           12. Section 550.235 or s. 550.3551, relating to dogracing  
 891 and horseracing.
- 892           13. Chapter 550, relating to jai alai frontons.
- 893           14. Section 551.109, relating to slot machine gaming.
- 894           15. Chapter 552, relating to the manufacture,  
 895 distribution, and use of explosives.
- 896           16. Chapter 560, relating to money transmitters, if the  
 897 violation is punishable as a felony.
- 898           17. Chapter 562, relating to beverage law enforcement.
- 899           18. Section 624.401, relating to transacting insurance

900 without a certificate of authority, s. 624.437(4)(c)1., relating  
 901 to operating an unauthorized multiple-employer welfare  
 902 arrangement, or s. 626.902(1)(b), relating to representing or  
 903 aiding an unauthorized insurer.

904 19. Section 655.50, relating to reports of currency  
 905 transactions, when such violation is punishable as a felony.

906 20. Chapter 687, relating to interest and usurious  
 907 practices.

908 21. Section 721.08, s. 721.09, or s. 721.13, relating to  
 909 real estate timeshare plans.

910 22. Section 775.13(5)(b), relating to registration of  
 911 persons found to have committed any offense for the purpose of  
 912 benefiting, promoting, or furthering the interests of a criminal  
 913 gang.

914 23. Section 777.03, relating to commission of crimes by  
 915 accessories after the fact.

916 24. Chapter 782, relating to homicide.

917 25. Chapter 784, relating to assault and battery.

918 26. Chapter 787, relating to kidnapping or human  
 919 trafficking.

920 27. Chapter 790, relating to weapons and firearms.

921 28. Chapter 794, relating to sexual battery, but only if  
 922 such crime was committed with the intent to benefit, promote, or  
 923 further the interests of a criminal gang, or for the purpose of  
 924 increasing a criminal gang member's own standing or position

- 925 within a criminal gang.
- 926 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
- 927 796.05, or s. 796.07, relating to prostitution.
- 928 30. Chapter 806, relating to arson and criminal mischief.
- 929 31. Chapter 810, relating to burglary and trespass.
- 930 32. Chapter 812, relating to theft, robbery, and related
- 931 crimes.
- 932 33. Chapter 815, relating to computer-related crimes.
- 933 34. Chapter 817, relating to fraudulent practices, false
- 934 pretenses, fraud generally, ~~and~~ credit card crimes, and patient
- 935 brokering.
- 936 35. Chapter 825, relating to abuse, neglect, or
- 937 exploitation of an elderly person or disabled adult.
- 938 36. Section 827.071, relating to commercial sexual
- 939 exploitation of children.
- 940 37. Section 828.122, relating to fighting or baiting
- 941 animals.
- 942 38. Chapter 831, relating to forgery and counterfeiting.
- 943 39. Chapter 832, relating to issuance of worthless checks
- 944 and drafts.
- 945 40. Section 836.05, relating to extortion.
- 946 41. Chapter 837, relating to perjury.
- 947 42. Chapter 838, relating to bribery and misuse of public
- 948 office.
- 949 43. Chapter 843, relating to obstruction of justice.

950 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or  
 951 s. 847.07, relating to obscene literature and profanity.

952 45. Chapter 849, relating to gambling, lottery, gambling  
 953 or gaming devices, slot machines, or any of the provisions  
 954 within that chapter.

955 46. Chapter 874, relating to criminal gangs.

956 47. Chapter 893, relating to drug abuse prevention and  
 957 control.

958 48. Chapter 896, relating to offenses related to financial  
 959 transactions.

960 49. Sections 914.22 and 914.23, relating to tampering with  
 961 or harassing a witness, victim, or informant, and retaliation  
 962 against a witness, victim, or informant.

963 50. Sections 918.12 and 918.13, relating to tampering with  
 964 jurors and evidence.

965 Section 22. Paragraphs (c), (d), (f), and (h) of  
 966 subsection (3) of section 921.0022, Florida Statutes, are  
 967 amended to read:

968 921.0022 Criminal Punishment Code; offense severity  
 969 ranking chart.—

970 (3) OFFENSE SEVERITY RANKING CHART

971 (c) LEVEL 3

972

|         |        |             |
|---------|--------|-------------|
| Florida | Felony |             |
| Statute | Degree | Description |

|     |                          |     |   |
|-----|--------------------------|-----|---|
| 973 | 119.10 (2) (b)           | 3rd | Unlawful use of confidential information from police reports.   |
| 974 | 316.066<br>(3) (b) - (d) | 3rd | Unlawfully obtaining or using confidential crash reports.   |
| 975 | 316.193 (2) (b)          | 3rd | Felony DUI, 3rd conviction.   |
| 976 | 316.1935 (2)             | 3rd | Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated. |
| 977 | 319.30 (4)               | 3rd | Possession by junkyard of motor vehicle with identification number plate removed.                         |
| 978 | 319.33 (1) (a)           | 3rd | Alter or forge any certificate of title to a motor vehicle or mobile home.                                |
| 979 | 319.33 (1) (c)           | 3rd | Procure or pass title on stolen vehicle.  |

980

319.33 (4) 3rd With intent to defraud,  
possess, sell, etc., a blank,  
forged, or unlawfully obtained  
title or registration.

981

327.35 (2) (b) 3rd Felony BUI.

982

328.05 (2) 3rd Possess, sell, or counterfeit  
fictitious, stolen, or  
fraudulent titles or bills of  
sale of vessels.

983

328.07 (4) 3rd Manufacture, exchange, or  
possess vessel with counterfeit  
or wrong ID number.

984

376.302 (5) 3rd Fraud related to reimbursement  
for cleanup expenses under the  
Inland Protection Trust Fund.

985

379.2431 3rd Taking, disturbing, mutilating,  
(1) (e) 5. destroying, causing to be  
destroyed, transferring,  
selling, offering to sell,

|     |                            |     |  |
|-----|----------------------------|-----|--|
| 986 | 379.2431<br>(1) (e) 6.     | 3rd | molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act. |
| 987 | 400.9935 (4) (a)<br>or (b) | 3rd | Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.  |
| 988 | 400.9935 (4) (e)           | 3rd | Operating a clinic, or offering services requiring licensure, without a license.   |
| 989 | 440.1051 (3)               | 3rd | Filing a false license application or other required information or failing to report information.                                   |
| 990 |                            |     | False report of workers' compensation fraud or retaliation for making such a report.   |

|     |                       |     |   |
|-----|-----------------------|-----|---|
| 991 | 501.001 (2) (b)       | 2nd | Tampers with a consumer product or the container using materially false/misleading information. |
| 992 | 624.401 (4) (a)       | 3rd | Transacting insurance without a certificate of authority.                                       |
| 993 | 624.401 (4) (b) 1.    | 3rd | Transacting insurance without a certificate of authority; premium collected less than \$20,000. |
| 994 | 626.902 (1) (a) & (b) | 3rd | Representing an unauthorized insurer.   |
| 995 | 697.08                | 3rd | Equity skimming.  |
| 996 | 790.15 (3)            | 3rd | Person directs another to discharge firearm from a vehicle.                                     |
|     | 806.10 (1)            | 3rd | Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.      |



|      |                    |     |   |
|------|--------------------|-----|---|
| 997  | 806.10 (2)         | 3rd | Interferes with or assaults firefighter in performance of duty.   |
| 998  | 810.09 (2) (c)     | 3rd | Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.         |
| 999  | 812.014 (2) (c) 2. | 3rd | Grand theft; \$5,000 or more but less than \$10,000.  |
| 1000 | 812.0145 (2) (c)   | 3rd | Theft from person 65 years of age or older; \$300 or more but less than \$10,000.                       |
| 1001 | 815.04 (5) (b)     | 2nd | Computer offense devised to defraud or obtain property.   |
| 1002 | 817.034 (4) (a) 3. | 3rd | Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000. |
| 1003 |                    |     |   |

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|------|--------------------------|----------------|---|
| 1004 | 817.233                  | 3rd            | Burning to defraud insurer.   |
|      | 817.234<br>(8) (b) & (c) | 3rd            | Unlawful solicitation of persons involved in motor vehicle accidents.                       |
| 1005 |                          |                |   |
|      | 817.234(11) (a)          | 3rd            | Insurance fraud; property value less than \$20,000.   |
| 1006 |                          |                |   |
|      | 817.236                  | 3rd            | Filing a false motor vehicle insurance application.   |
| 1007 |                          |                |   |
|      | 817.2361                 | 3rd            | Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.      |
| 1008 |                          |                |   |
|      | 817.413(2)               | 3rd            | Sale of used goods as new.  |
| 1009 |                          |                |   |
|      | <del>817.505(4)</del>    | <del>3rd</del> | <del>Patient brokering.</del>   |
| 1010 |                          |                |   |
|      | 828.12(2)                | 3rd            | Tortures any animal with intent to inflict intense pain, serious physical injury, or death. |

|      |                   |     |   |
|------|-------------------|-----|---|
| 1011 | 831.28 (2) (a)    | 3rd | Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.                |
| 1012 | 831.29            | 2nd | Possession of instruments for counterfeiting driver licenses or identification cards.                                     |
| 1013 | 838.021 (3) (b)   | 3rd | Threatens unlawful harm to public servant.  |
| 1014 | 843.19            | 3rd | Injure, disable, or kill police dog or horse.   |
| 1015 | 860.15 (3)        | 3rd | Overcharging for repairs and parts.   |
| 1016 | 870.01 (2)        | 3rd | Riot; inciting or encouraging.  |
| 1017 | 893.13 (1) (a) 2. | 3rd | Sell, manufacture, or deliver cannabis (or other s.<br>893.03 (1) (c), (2) (c) 1.,<br>(2) (c) 2., (2) (c) 3., (2) (c) 5., |

|      |                |     |   |
|------|----------------|-----|---|
| 1018 | 893.13(1)(d)2. | 2nd | (2)(c)6., (2)(c)7., (2)(c)8.,<br>(2)(c)9., (3), or (4) drugs).<br><br>Sell, manufacture, or deliver<br>s. 893.03(1)(c), (2)(c)1.,<br>(2)(c)2., (2)(c)3., (2)(c)5.,<br>(2)(c)6., (2)(c)7., (2)(c)8.,<br>(2)(c)9., (3), or (4) drugs<br>within 1,000 feet of<br>university. |
| 1019 | 893.13(1)(f)2. | 2nd | Sell, manufacture, or deliver<br>s. 893.03(1)(c), (2)(c)1.,<br>(2)(c)2., (2)(c)3., (2)(c)5.,<br>(2)(c)6., (2)(c)7., (2)(c)8.,<br>(2)(c)9., (3), or (4) drugs<br>within 1,000 feet of public<br>housing facility.  |
| 1020 | 893.13(4)(c)   | 3rd | Use or hire of minor; deliver<br>to minor other controlled<br>substances.   |
| 1021 | 893.13(6)(a)   | 3rd | Possession of any controlled<br>substance other than felony   |

|      |                 |     |   |
|------|-----------------|-----|---|
| 1022 | 893.13(7)(a)8.  | 3rd | possession of cannabis.<br>Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance. |
| 1023 | 893.13(7)(a)9.  | 3rd | Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.   |
| 1024 | 893.13(7)(a)10. | 3rd | Affix false or forged label to package of controlled substance.   |
| 1025 | 893.13(7)(a)11. | 3rd | Furnish false or fraudulent material information on any document or record required by chapter 893.   |
| 1026 | 893.13(8)(a)1.  | 3rd | Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through                                 |

|      |                |     |   |
|------|----------------|-----|---|
| 1027 | 893.13(8)(a)2. | 3rd | deceptive, untrue, or<br>fraudulent representations in<br>or related to the<br>practitioner's practice.   |
| 1028 | 893.13(8)(a)3. | 3rd | Employ a trick or scheme in the<br>practitioner's practice to<br>assist a patient, other person,<br>or owner of an animal in<br>obtaining a controlled<br>substance.                                    |
| 1029 | 893.13(8)(a)3. | 3rd | Knowingly write a prescription<br>for a controlled substance for<br>a fictitious person.  |
| 1030 | 893.13(8)(a)4. | 3rd | Write a prescription for a<br>controlled substance for a<br>patient, other person, or an<br>animal if the sole purpose of<br>writing the prescription is a<br>monetary benefit for the<br>practitioner. |
|      | 918.13(1)(a)   | 3rd | Alter, destroy, or conceal  |

|      |                |        |                                 |
|------|----------------|--------|---------------------------------|
| 1031 |                |        | investigation evidence.         |
|      | 944.47         | 3rd    | Introduce contraband to         |
|      | (1)(a)1. & 2.  |        | correctional facility.          |
| 1032 |                |        |                                 |
|      | 944.47(1)(c)   | 2nd    | Possess contraband while upon   |
|      |                |        | the grounds of a correctional   |
|      |                |        | institution.                    |
| 1033 |                |        |                                 |
|      | 985.721        | 3rd    | Escapes from a juvenile         |
|      |                |        | facility (secure detention or   |
|      |                |        | residential commitment          |
|      |                |        | facility).                      |
| 1034 |                |        |                                 |
| 1035 | (d) LEVEL 4    |        |                                 |
| 1036 |                |        |                                 |
|      | Florida        | Felony |                                 |
|      | Statute        | Degree | Description                     |
| 1037 |                |        |                                 |
|      | 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.     |

|      |               |     |   |
|------|---------------|-----|---|
| 1038 | 499.0051(1)   | 3rd | Failure to maintain or deliver transaction history, transaction information, or transaction statements. |
| 1039 | 499.0051(5)   | 2nd | Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.             |
| 1040 | 517.07(1)     | 3rd | Failure to register securities.   |
| 1041 | 517.12(1)     | 3rd | Failure of dealer, associated person, or issuer of securities to register.                              |
| 1042 | 784.07(2)(b)  | 3rd | Battery of law enforcement officer, firefighter, etc.   |
| 1043 | 784.074(1)(c) | 3rd | Battery of sexually violent predators facility staff.   |
| 1044 | 784.075       | 3rd | Battery on detention or commitment facility staff.  |
| 1045 |               |     |   |



|      |                |     |  |
|------|----------------|-----|--|
| 1046 | 784.078        | 3rd | Battery of facility employee by throwing, tossing, or expelling certain fluids or materials. |
| 1047 | 784.08 (2) (c) | 3rd | Battery on a person 65 years of age or older.  |
| 1048 | 784.081 (3)    | 3rd | Battery on specified official or employee.   |
| 1049 | 784.082 (3)    | 3rd | Battery by detained person on visitor or other detainee.                                     |
| 1050 | 784.083 (3)    | 3rd | Battery on code inspector.   |
| 1051 | 784.085        | 3rd | Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials. |
| 1052 | 787.03 (1)     | 3rd | Interference with custody; wrongly takes minor from appointed guardian.                      |
|      | 787.04 (2)     | 3rd | Take, entice, or remove child  |

|      |                 |     |  |
|------|-----------------|-----|--|
|      |                 |     | beyond state limits with criminal intent pending custody proceedings.  |
| 1053 | 787.04 (3)      | 3rd | Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person. |
| 1054 | 787.07          | 3rd | Human smuggling.   |
| 1055 | 790.115 (1)     | 3rd | Exhibiting firearm or weapon within 1,000 feet of a school.  |
| 1056 | 790.115 (2) (b) | 3rd | Possessing electric weapon or device, destructive device, or other weapon on school property.  |
| 1057 | 790.115 (2) (c) | 3rd | Possessing firearm on school property.   |
| 1058 | 800.04 (7) (c)  | 3rd | Lewd or lascivious exhibition; offender less than 18 years.  |

|      |                           |     |   |
|------|---------------------------|-----|---|
| 1059 | 810.02 (4) (a)            | 3rd | Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.  |
| 1060 | 810.02 (4) (b)            | 3rd | Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery. |
| 1061 | 810.06                    | 3rd | Burglary; possession of tools.  |
| 1062 | 810.08 (2) (c)            | 3rd | Trespass on property, armed with firearm or dangerous weapon.                                 |
| 1063 | 812.014 (2) (c) 3.        | 3rd | Grand theft, 3rd degree \$10,000 or more but less than \$20,000.                              |
| 1064 | 812.014<br>(2) (c) 4.-10. | 3rd | Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.                      |
| 1065 | 812.0195 (2)              | 3rd | Dealing in stolen property by   |

|      |                      |            |  |
|------|----------------------|------------|--|
|      |                      |            | use of the Internet; property stolen \$300 or more.  |
| 1066 | <u>817.505(4)(a)</u> | <u>3rd</u> | <u>Patient brokering.</u>  |
| 1067 | 817.563(1)           | 3rd        | Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.       |
| 1068 | 817.568(2)(a)        | 3rd        | Fraudulent use of personal identification information.   |
| 1069 | 817.625(2)(a)        | 3rd        | Fraudulent use of scanning device or reencoder.  |
| 1070 | 828.125(1)           | 2nd        | Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle. |
| 1071 | 837.02(1)            | 3rd        | Perjury in official proceedings.   |
| 1072 | 837.021(1)           | 3rd        | Make contradictory statements  |

|      |              |     |   |
|------|--------------|-----|---|
|      |              |     | in official proceedings.  |
| 1073 | 838.022      | 3rd | Official misconduct.  |
| 1074 | 839.13(2)(a) | 3rd | Falsifying records of an individual in the care and custody of a state agency.                                    |
| 1075 | 839.13(2)(c) | 3rd | Falsifying records of the Department of Children and Families.  |
| 1076 | 843.021      | 3rd | Possession of a concealed handcuff key by a person in custody.  |
| 1077 | 843.025      | 3rd | Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication. |
| 1078 | 843.15(1)(a) | 3rd | Failure to appear while on bail for felony (bond estreature or bond jumping).                                     |
| 1079 |              |     |   |

|      |                |     |   |
|------|----------------|-----|---|
| 1080 | 847.0135(5)(c) | 3rd | Lewd or lascivious exhibition using computer; offender less than 18 years.                      |
| 1081 | 874.05(1)(a)   | 3rd | Encouraging or recruiting another to join a criminal gang.                                      |
| 1082 | 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). |
| 1083 | 914.14(2)      | 3rd | Witnesses accepting bribes.   |
| 1084 | 914.22(1)      | 3rd | Force, threaten, etc., witness, victim, or informant.   |
| 1085 | 914.23(2)      | 3rd | Retaliation against a witness, victim, or informant, no bodily injury.                          |
| 1086 | 918.12         | 3rd | Tampering with jurors.  |
|      | 934.215        | 3rd | Use of two-way communications   |

device to facilitate commission  
of a crime.

1087

1088

(f) LEVEL 6

1089

Florida

Felony

Statute

Degree

Description

1090

316.027 (2) (b)

2nd

Leaving the scene of a crash  
involving serious bodily  
injury.

1091

316.193 (2) (b)

3rd

Felony DUI, 4th or subsequent  
conviction.

1092

400.9935 (4) (c)

2nd

Operating a clinic, or offering  
services requiring licensure,  
without a license.

1093

499.0051 (2)

2nd

Knowing forgery of transaction  
history, transaction  
information, or transaction  
statement.

1094

499.0051 (3)

2nd

Knowing purchase or receipt of

|      |               |     |   |
|------|---------------|-----|---|
| 1095 |               |     | prescription drug from<br>unauthorized person.                              |
|      | 499.0051(4)   | 2nd | Knowing sale or transfer of<br>prescription drug to<br>unauthorized person. |
| 1096 |               |     |   |
|      | 775.0875(1)   | 3rd | Taking firearm from law<br>enforcement officer.                             |
| 1097 |               |     |   |
|      | 784.021(1)(a) | 3rd | Aggravated assault; deadly<br>weapon without intent to kill.                |
| 1098 |               |     |   |
|      | 784.021(1)(b) | 3rd | Aggravated assault; intent to<br>commit felony.                             |
| 1099 |               |     |   |
|      | 784.041       | 3rd | Felony battery; domestic<br>battery by strangulation.                       |
| 1100 |               |     |   |
|      | 784.048(3)    | 3rd | Aggravated stalking; credible<br>threat.                                    |
| 1101 |               |     |   |
|      | 784.048(5)    | 3rd | Aggravated stalking of person<br>under 16.                                  |
| 1102 |               |     |   |



|      |               |     |   |
|------|---------------|-----|---|
| 1103 | 784.07(2)(c)  | 2nd | Aggravated assault on law enforcement officer.                              |
| 1104 | 784.074(1)(b) | 2nd | Aggravated assault on sexually violent predators facility staff.            |
| 1105 | 784.08(2)(b)  | 2nd | Aggravated assault on a person 65 years of age or older.                    |
| 1106 | 784.081(2)    | 2nd | Aggravated assault on specified official or employee.                       |
| 1107 | 784.082(2)    | 2nd | Aggravated assault by detained person on visitor or other detainee.         |
| 1108 | 784.083(2)    | 2nd | Aggravated assault on code inspector.                                       |
| 1109 | 787.02(2)     | 3rd | False imprisonment; restraining with purpose other than those in s. 787.01. |
|      | 790.115(2)(d) | 2nd | Discharging firearm or weapon   |

|      |               |     |  |
|------|---------------|-----|--|
| 1110 |               |     | on school property.  |
|      | 790.161(2)    | 2nd | Make, possess, or throw destructive device with intent to do bodily harm or damage property.   |
| 1111 |               |     |  |
|      | 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. |
| 1112 |               |     |  |
|      | 790.19        | 2nd | Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.   |
| 1113 |               |     |  |
|      | 794.011(8)(a) | 3rd | Solicitation of minor to participate in sexual activity by custodial adult.  |
| 1114 |               |     |  |
|      | 794.05(1)     | 2nd | Unlawful sexual activity with specified minor.   |
| 1115 |               |     |  |

|      |                    |     |   |
|------|--------------------|-----|---|
| 1116 | 800.04 (5) (d)     | 3rd | Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years. |
| 1117 | 800.04 (6) (b)     | 2nd | Lewd or lascivious conduct; offender 18 years of age or older.  |
| 1118 | 806.031 (2)        | 2nd | Arson resulting in great bodily harm to firefighter or any other person.  |
| 1119 | 810.02 (3) (c)     | 2nd | Burglary of occupied structure; unarmed; no assault or battery.   |
| 1120 | 810.145 (8) (b)    | 2nd | Video voyeurism; certain minor victims; 2nd or subsequent offense.  |
| 1121 | 812.014 (2) (b) 1. | 2nd | Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.                                       |
|      | 812.014 (6)        | 2nd | Theft; property stolen \$3,000  |

|      |                      |            |   |
|------|----------------------|------------|---|
|      |                      |            | or more; coordination of others.  |
| 1122 | 812.015(9)(a)        | 2nd        | Retail theft; property stolen \$300 or more; second or subsequent conviction.   |
| 1123 | 812.015(9)(b)        | 2nd        | Retail theft; property stolen \$3,000 or more; coordination of others.          |
| 1124 | 812.13(2)(c)         | 2nd        | Robbery, no firearm or other weapon (strong-arm robbery).                       |
| 1125 | 817.4821(5)          | 2nd        | Possess cloning paraphernalia with intent to create cloned cellular telephones. |
| 1126 | <u>817.505(4)(b)</u> | <u>2nd</u> | <u>Patient brokering; 10 or more patients.</u>                                  |
| 1127 | 825.102(1)           | 3rd        | Abuse of an elderly person or disabled adult.                                   |
| 1128 | 825.102(3)(c)        | 3rd        | Neglect of an elderly person or   |

|      |                  |     |  |
|------|------------------|-----|--|
| 1129 |                  |     | disabled adult.  |
|      | 825.1025(3)      | 3rd | Lewd or lascivious molestation of an elderly person or disabled adult.                       |
| 1130 |                  |     |  |
|      | 825.103(3)(c)    | 3rd | Exploiting an elderly person or disabled adult and property is valued at less than \$10,000. |
| 1131 |                  |     |  |
|      | 827.03(2)(c)     | 3rd | Abuse of a child.  |
| 1132 |                  |     |  |
|      | 827.03(2)(d)     | 3rd | Neglect of a child.  |
| 1133 |                  |     |  |
|      | 827.071(2) & (3) | 2nd | Use or induce a child in a sexual performance, or promote or direct such performance.        |
| 1134 |                  |     |  |
|      | 836.05           | 2nd | Threats; extortion.  |
| 1135 |                  |     |  |
|      | 836.10           | 2nd | Written threats to kill or do bodily injury.   |
| 1136 |                  |     |  |
|      | 843.12           | 3rd | Aids or assists person to escape.  |



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|      |                       |        |  |
|------|-----------------------|--------|--|
| 1143 | 944.40                | 2nd    | Escapes.   |
| 1144 | 944.46                | 3rd    | Harboring, concealing, aiding<br>escaped prisoners.  |
| 1145 | 944.47(1)(a)5.        | 2nd    | Introduction of contraband<br>(firearm, weapon, or explosive)<br>into correctional facility. |
| 1146 | 951.22(1)             | 3rd    | Intoxicating drug, firearm, or<br>weapon introduced into county<br>facility.                 |
| 1147 | (h) LEVEL 8           |        |  |
| 1148 | Florida               | Felony |  |
| 1149 | Statute               | Degree | Description  |
| 1150 | 316.193<br>(3)(c)3.a. | 2nd    | DUI manslaughter.  |
| 1151 | 316.1935(4)(b)        | 1st    | Aggravated fleeing or attempted<br>eluding with serious bodily<br>injury or death.           |

|      |                    |     |   |
|------|--------------------|-----|---|
| 1152 | 327.35 (3) (c) 3.  | 2nd | Vessel BUI manslaughter.  |
| 1153 | 499.0051 (7)       | 1st | Knowing trafficking in<br>contraband prescription drugs.  |
| 1154 | 499.0051 (8)       | 1st | Knowing forgery of prescription<br>labels or prescription drug<br>labels.   |
| 1155 | 560.123 (8) (b) 2. | 2nd | Failure to report currency or<br>payment instruments totaling or<br>exceeding \$20,000, but less<br>than \$100,000 by money<br>transmitter.             |
| 1156 | 560.125 (5) (b)    | 2nd | Money transmitter business by<br>unauthorized person, currency<br>or payment instruments totaling<br>or exceeding \$20,000, but less<br>than \$100,000. |
|      | 655.50 (10) (b) 2. | 2nd | Failure to report financial<br>transactions totaling or<br>exceeding \$20,000, but less<br>than \$100,000 by financial                                  |



|      |               |     |   |
|------|---------------|-----|---|
|      |               |     | institutions.   |
| 1157 | 777.03(2)(a)  | 1st | Accessory after the fact,<br>capital felony.  |
| 1158 | 782.04(4)     | 2nd | Killing of human without design<br>when engaged in act or attempt<br>of any felony other than arson,<br>sexual battery, robbery,<br>burglary, kidnapping,<br>aggravated fleeing or eluding<br>with serious bodily injury or<br>death, aircraft piracy, or<br>unlawfully discharging bomb. |
| 1159 | 782.051(2)    | 1st | Attempted felony murder while<br>perpetrating or attempting to<br>perpetrate a felony not<br>enumerated in s. 782.04(3).  |
| 1160 | 782.071(1)(b) | 1st | Committing vehicular homicide<br>and failing to render aid or<br>give information.  |
| 1161 | 782.072(2)    | 1st | Committing vessel homicide and  |

|      |                |     |  |
|------|----------------|-----|--|
|      |                |     | failing to render aid or give information.   |
| 1162 | 787.06(3)(a)1. | 1st | Human trafficking for labor and services of a child.   |
| 1163 | 787.06(3)(b)   | 1st | Human trafficking using coercion for commercial sexual activity of an adult.   |
| 1164 | 787.06(3)(c)2. | 1st | Human trafficking using coercion for labor and services of an unauthorized alien adult.  |
| 1165 | 787.06(3)(e)1. | 1st | Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.                   |
| 1166 | 787.06(3)(f)2. | 1st | Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the |

|      |               |     |   |
|------|---------------|-----|---|
| 1167 |               |     | state.  |
|      | 790.161(3)    | 1st | Discharging a destructive device which results in bodily harm or property damage.   |
| 1168 |               |     |   |
|      | 794.011(5)(a) | 1st | Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury. |
| 1169 |               |     |   |
|      | 794.011(5)(b) | 2nd | Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.  |
| 1170 |               |     |   |
|      | 794.011(5)(c) | 2nd | Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.                               |
| 1171 |               |     |   |

|      |               |          |   |
|------|---------------|----------|---|
| 1172 | 794.011(5)(d) | 1st      | Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense. |
| 1173 | 794.08(3)     | 2nd      | Female genital mutilation, removal of a victim younger than 18 years of age from this state.  |
| 1174 | 800.04(4)(b)  | 2nd      | Lewd or lascivious battery.   |
| 1175 | 800.04(4)(c)  | 1st      | Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.  |
| 1176 | 806.01(1)     | 1st      | Maliciously damage dwelling or structure by fire or explosive, believing person in structure.   |
|      | 810.02(2)(a)  | 1st, PBL | Burglary with assault or battery.   |

|      |                        |            |   |
|------|------------------------|------------|---|
| 1177 | 810.02 (2) (b)         | 1st, PBL   | Burglary; armed with explosives or dangerous weapon.  |
| 1178 | 810.02 (2) (c)         | 1st        | Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage. |
| 1179 | 812.014 (2) (a) 2.     | 1st        | Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.                     |
| 1180 | 812.13 (2) (b)         | 1st        | Robbery with a weapon.  |
| 1181 | 812.135 (2) (c)        | 1st        | Home-invasion robbery, no firearm, deadly weapon, or other weapon.                                |
| 1182 | <u>817.505 (4) (c)</u> | <u>1st</u> | <u>Patient brokering; 20 or more patients.</u>  |
| 1183 | 817.535 (2) (b)        | 2nd        | Filing false lien or other unauthorized document; second or subsequent offense.                   |

1184

817.535(3)(a) 2nd Filing false lien or other  
unauthorized document; property  
owner is a public officer or  
employee.

1185

817.535(4)(a)1. 2nd Filing false lien or other  
unauthorized document;  
defendant is incarcerated or  
under supervision.

1186

817.535(5)(a) 2nd Filing false lien or other  
unauthorized document; owner of  
the property incurs financial  
loss as a result of the false  
instrument.

1187

817.568(6) 2nd Fraudulent use of personal  
identification information of  
an individual under the age of  
18.

1188

817.611(2)(c) 1st Traffic in or possess 50 or  
more counterfeit credit cards  
or related documents.

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|      |               |     |  |
|------|---------------|-----|--|
| 1189 | 825.102(2)    | 1st | Aggravated abuse of an elderly person or disabled adult.   |
| 1190 | 825.1025(2)   | 2nd | Lewd or lascivious battery upon an elderly person or disabled adult.                                 |
| 1191 | 825.103(3)(a) | 1st | Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.           |
| 1192 | 837.02(2)     | 2nd | Perjury in official proceedings relating to prosecution of a capital felony.                         |
| 1193 | 837.021(2)    | 2nd | Making contradictory statements in official proceedings relating to prosecution of a capital felony. |
| 1194 | 860.121(2)(c) | 1st | Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.       |

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|      |                       |     |   |
|------|-----------------------|-----|---|
| 1195 | 860.16                | 1st | Aircraft piracy.  |
| 1196 | 893.13(1)(b)          | 1st | Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b). |
| 1197 | 893.13(2)(b)          | 1st | Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).        |
| 1198 | 893.13(6)(c)          | 1st | Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).         |
| 1199 | 893.135(1)(a)2.       | 1st | Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.                        |
| 1200 | 893.135<br>(1)(b)1.b. | 1st | Trafficking in cocaine, more than 200 grams, less than 400 grams.                           |
| 1201 | 893.135               | 1st | Trafficking in illegal drugs,   |



|      |                         |     |   |
|------|-------------------------|-----|---|
| 1202 | (1) (c) 1.b.            | 1st | more than 14 grams, less than 28 grams.                                     |
| 1203 | 893.135<br>(1) (c) 2.c. | 1st | Trafficking in hydrocodone, 50 grams or more, less than 200 grams.          |
| 1204 | 893.135<br>(1) (c) 3.c. | 1st | Trafficking in oxycodone, 25 grams or more, less than 100 grams.            |
| 1205 | 893.135<br>(1) (d) 1.b. | 1st | Trafficking in phencyclidine, more than 200 grams, less than 400 grams.     |
| 1206 | 893.135<br>(1) (e) 1.b. | 1st | Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms. |
| 1207 | 893.135<br>(1) (f) 1.b. | 1st | Trafficking in amphetamine, more than 28 grams, less than 200 grams.        |
|      | 893.135<br>(1) (g) 1.b. | 1st | Trafficking in flunitrazepam, 14 grams or more, less than 28                |

|      |                       |     |  |
|------|-----------------------|-----|--|
|      |                       |     | grams.   |
| 1208 | 893.135<br>(1)(h)1.b. | 1st | Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.           |
| 1209 | 893.135<br>(1)(j)1.b. | 1st | Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.                            |
| 1210 | 893.135<br>(1)(k)2.b. | 1st | Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.                                |
| 1211 | 893.1351(3)           | 1st | Possession of a place used to manufacture controlled substance when minor is present or resides there. |
| 1212 | 895.03(1)             | 1st | Use or invest proceeds derived from pattern of racketeering activity.                                  |
| 1213 | 895.03(2)             | 1st | Acquire or maintain through  |

|      |   |     |  |
|------|---|-----|--|
| 1214 |   |     | racketeering activity any interest in or control of any enterprise or real property.   |
|      | 895.03(3)   | 1st | Conduct or participate in any enterprise through pattern of racketeering activity.   |
| 1215 |   |     |  |
|      | 896.101(5)(b)   | 2nd | Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.  |
| 1216 |   |     |  |
|      | 896.104(4)(a)2.   | 2nd | Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000. |
| 1217 |   |     |  |
| 1218 | Section 23. Paragraph (e) of subsection (5) of section          |     |  |
| 1219 | 212.055, Florida Statutes, is amended to read:                  |     |  |
| 1220 | 212.055 Discretionary sales surtaxes; legislative intent;       |     |  |
| 1221 | authorization and use of proceeds.—It is the legislative intent |     |  |
| 1222 | that any authorization for imposition of a discretionary sales  |     |  |

1223 | surtax shall be published in the Florida Statutes as a  
 1224 | subsection of this section, irrespective of the duration of the  
 1225 | levy. Each enactment shall specify the types of counties  
 1226 | authorized to levy; the rate or rates which may be imposed; the  
 1227 | maximum length of time the surtax may be imposed, if any; the  
 1228 | procedure which must be followed to secure voter approval, if  
 1229 | required; the purpose for which the proceeds may be expended;  
 1230 | and such other requirements as the Legislature may provide.  
 1231 | Taxable transactions and administrative procedures shall be as  
 1232 | provided in s. 212.054.

1233 |         (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined  
 1234 | in s. 125.011(1) may levy the surtax authorized in this  
 1235 | subsection pursuant to an ordinance either approved by  
 1236 | extraordinary vote of the county commission or conditioned to  
 1237 | take effect only upon approval by a majority vote of the  
 1238 | electors of the county voting in a referendum. In a county as  
 1239 | defined in s. 125.011(1), for the purposes of this subsection,  
 1240 | "county public general hospital" means a general hospital as  
 1241 | defined in s. 395.002 which is owned, operated, maintained, or  
 1242 | governed by the county or its agency, authority, or public  
 1243 | health trust.

1244 |         (e) A governing board, agency, or authority shall be  
 1245 | chartered by the county commission upon this act becoming law.  
 1246 | The governing board, agency, or authority shall adopt and  
 1247 | implement a health care plan for indigent health care services.

1248 The governing board, agency, or authority shall consist of no  
 1249 more than seven and no fewer than five members appointed by the  
 1250 county commission. The members of the governing board, agency,  
 1251 or authority shall be at least 18 years of age and residents of  
 1252 the county. No member may be employed by or affiliated with a  
 1253 health care provider or the public health trust, agency, or  
 1254 authority responsible for the county public general hospital.  
 1255 The following community organizations shall each appoint a  
 1256 representative to a nominating committee: the South Florida  
 1257 Hospital and Healthcare Association, the Miami-Dade County  
 1258 Public Health Trust, the Dade County Medical Association, the  
 1259 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade  
 1260 County. This committee shall nominate between 10 and 14 county  
 1261 citizens for the governing board, agency, or authority. The  
 1262 slate shall be presented to the county commission and the county  
 1263 commission shall confirm the top five to seven nominees,  
 1264 depending on the size of the governing board. Until such time as  
 1265 the governing board, agency, or authority is created, the funds  
 1266 provided for in subparagraph (d)2. shall be placed in a  
 1267 restricted account set aside from other county funds and not  
 1268 disbursed by the county for any other purpose.

1269 1. The plan shall divide the county into a minimum of four  
 1270 and maximum of six service areas, with no more than one  
 1271 participant hospital per service area. The county public general  
 1272 hospital shall be designated as the provider for one of the

1273 service areas. Services shall be provided through participants'  
 1274 primary acute care facilities.

1275 2. The plan and subsequent amendments to it shall fund a  
 1276 defined range of health care services for both indigent persons  
 1277 and the medically poor, including primary care, preventive care,  
 1278 hospital emergency room care, and hospital care necessary to  
 1279 stabilize the patient. For the purposes of this section,  
 1280 "stabilization" means stabilization as defined in s. 397.311(46)  
 1281 ~~397.311(44)~~. Where consistent with these objectives, the plan  
 1282 may include services rendered by physicians, clinics, community  
 1283 hospitals, and alternative delivery sites, as well as at least  
 1284 one regional referral hospital per service area. The plan shall  
 1285 provide that agreements negotiated between the governing board,  
 1286 agency, or authority and providers shall recognize hospitals  
 1287 that render a disproportionate share of indigent care, provide  
 1288 other incentives to promote the delivery of charity care to draw  
 1289 down federal funds where appropriate, and require cost  
 1290 containment, including, but not limited to, case management.  
 1291 From the funds specified in subparagraphs (d)1. and 2. for  
 1292 indigent health care services, service providers shall receive  
 1293 reimbursement at a Medicaid rate to be determined by the  
 1294 governing board, agency, or authority created pursuant to this  
 1295 paragraph for the initial emergency room visit, and a per-member  
 1296 per-month fee or capitation for those members enrolled in their  
 1297 service area, as compensation for the services rendered

1298 following the initial emergency visit. Except for provisions of  
 1299 emergency services, upon determination of eligibility,  
 1300 enrollment shall be deemed to have occurred at the time services  
 1301 were rendered. The provisions for specific reimbursement of  
 1302 emergency services shall be repealed on July 1, 2001, unless  
 1303 otherwise reenacted by the Legislature. The capitation amount or  
 1304 rate shall be determined before program implementation by an  
 1305 independent actuarial consultant. In no event shall such  
 1306 reimbursement rates exceed the Medicaid rate. The plan must also  
 1307 provide that any hospitals owned and operated by government  
 1308 entities on or after the effective date of this act must, as a  
 1309 condition of receiving funds under this subsection, afford  
 1310 public access equal to that provided under s. 286.011 as to any  
 1311 meeting of the governing board, agency, or authority the subject  
 1312 of which is budgeting resources for the retention of charity  
 1313 care, as that term is defined in the rules of the Agency for  
 1314 Health Care Administration. The plan shall also include  
 1315 innovative health care programs that provide cost-effective  
 1316 alternatives to traditional methods of service and delivery  
 1317 funding.

1318         3. The plan's benefits shall be made available to all  
 1319 county residents currently eligible to receive health care  
 1320 services as indigents or medically poor as defined in paragraph  
 1321 (4) (d).

1322         4. Eligible residents who participate in the health care

1323 plan shall receive coverage for a period of 12 months or the  
 1324 period extending from the time of enrollment to the end of the  
 1325 current fiscal year, per enrollment period, whichever is less.

1326 5. At the end of each fiscal year, the governing board,  
 1327 agency, or authority shall prepare an audit that reviews the  
 1328 budget of the plan, delivery of services, and quality of  
 1329 services, and makes recommendations to increase the plan's  
 1330 efficiency. The audit shall take into account participant  
 1331 hospital satisfaction with the plan and assess the amount of  
 1332 poststabilization patient transfers requested, and accepted or  
 1333 denied, by the county public general hospital.

1334 Section 24. Paragraph (e) of subsection (2) of section  
 1335 394.4573, Florida Statutes, is amended to read:

1336 394.4573 Coordinated system of care; annual assessment;  
 1337 essential elements; measures of performance; system improvement  
 1338 grants; reports.—On or before December 1 of each year, the  
 1339 department shall submit to the Governor, the President of the  
 1340 Senate, and the Speaker of the House of Representatives an  
 1341 assessment of the behavioral health services in this state. The  
 1342 assessment shall consider, at a minimum, the extent to which  
 1343 designated receiving systems function as no-wrong-door models,  
 1344 the availability of treatment and recovery services that use  
 1345 recovery-oriented and peer-involved approaches, the availability  
 1346 of less-restrictive services, and the use of evidence-informed  
 1347 practices. The department's assessment shall consider, at a



1348 minimum, the needs assessments conducted by the managing  
 1349 entities pursuant to s. 394.9082(5). Beginning in 2017, the  
 1350 department shall compile and include in the report all plans  
 1351 submitted by managing entities pursuant to s. 394.9082(8) and  
 1352 the department's evaluation of each plan.

1353 (2) The essential elements of a coordinated system of care  
 1354 include:

1355 (e) Case management. Each case manager or person directly  
 1356 supervising a case manager who provides Medicaid-funded targeted  
 1357 case management services shall hold a valid certification from a  
 1358 department-approved credentialing entity as defined in s.  
 1359 397.311(10) ~~397.311(9)~~ by July 1, 2017, and, thereafter, within  
 1360 6 months after hire.

1361 Section 25. Subsection (6) of section 394.9085, Florida  
 1362 Statutes, is amended to read:

1363 394.9085 Behavioral provider liability.—

1364 (6) For purposes of this section, the terms  
 1365 "detoxification services," "addictions receiving facility," and  
 1366 "receiving facility" have the same meanings as those provided in  
 1367 ss. 397.311(26)(a)4. ~~397.311(25)(a)4.~~, 397.311(26)(a)1.  
 1368 ~~397.311(25)(a)1.~~, and 394.455(39), respectively.

1369 Section 26. Section 397.416, Florida Statutes, is amended  
 1370 to read:

1371 397.416 Substance abuse treatment services; qualified  
 1372 professional.—Notwithstanding any other provision of law, a

1373 person who was certified through a certification process  
 1374 recognized by the former Department of Health and Rehabilitative  
 1375 Services before January 1, 1995, may perform the duties of a  
 1376 qualified professional with respect to substance abuse treatment  
 1377 services as defined in this chapter, and need not meet the  
 1378 certification requirements contained in s. 397.311(34)  
 1379 ~~397.311(33)~~.

1380 Section 27. Subsection (3) of section 397.753, Florida  
 1381 Statutes, is amended to read:

1382 397.753 Definitions.—As used in this part:

1383 (3) "Inmate substance abuse services" means any service  
 1384 component as defined in s. 397.311 provided directly by the  
 1385 Department of Corrections and licensed and regulated by the  
 1386 Department of Children and Families pursuant to s. 397.4014  
 1387 ~~397.406~~, or provided through contractual arrangements with a  
 1388 service provider licensed pursuant to part II; or any self-help  
 1389 program or volunteer support group operating for inmates.

1390 Section 28. Section 409.1757, Florida Statutes, is amended  
 1391 to read:

1392 409.1757 Persons not required to be refingerprinted or  
 1393 rescreened.—Any law to the contrary notwithstanding, human  
 1394 resource personnel who have been fingerprinted or screened  
 1395 pursuant to chapters 393, 394, 397, 402, and this chapter,  
 1396 teachers who have been fingerprinted pursuant to chapter 1012,  
 1397 and law enforcement officers who meet the requirements of s.

1398 943.13, who have not been unemployed for more than 90 days  
 1399 thereafter, and who under the penalty of perjury attest to the  
 1400 completion of such fingerprinting or screening and to compliance  
 1401 with this section and the standards for good moral character as  
 1402 contained in such provisions as ss. 110.1127(2)(c), 393.0655(1),  
 1403 394.457(6), 397.4073 ~~397.451~~, 402.305(2), 409.175(6), and  
 1404 943.13(7), are not required to be refingerprinted or rescreened  
 1405 in order to comply with any caretaker screening or  
 1406 fingerprinting requirements.

1407 Section 29. Paragraphs (d) and (g) of subsection (1) of  
 1408 section 440.102, Florida Statutes, are amended to read:

1409 440.102 Drug-free workplace program requirements.—The  
 1410 following provisions apply to a drug-free workplace program  
 1411 implemented pursuant to law or to rules adopted by the Agency  
 1412 for Health Care Administration:

1413 (1) DEFINITIONS.—Except where the context otherwise  
 1414 requires, as used in this act:

1415 (d) "Drug rehabilitation program" means a service  
 1416 provider, established pursuant to s. 397.311(44) ~~397.311(42)~~,  
 1417 that provides confidential, timely, and expert identification,  
 1418 assessment, and resolution of employee drug abuse.

1419 (g) "Employee assistance program" means an established  
 1420 program capable of providing expert assessment of employee  
 1421 personal concerns; confidential and timely identification  
 1422 services with regard to employee drug abuse; referrals of

1423 employees for appropriate diagnosis, treatment, and assistance;  
 1424 and followup services for employees who participate in the  
 1425 program or require monitoring after returning to work. If, in  
 1426 addition to the above activities, an employee assistance program  
 1427 provides diagnostic and treatment services, these services shall  
 1428 in all cases be provided by service providers pursuant to s.  
 1429 397.311(44) ~~397.311(42)~~.

1430 Section 30. Paragraph (e) of subsection (4) of section  
 1431 985.045, Florida Statutes, is amended to read:

1432 985.045 Court records.—

1433 (4) A court record of proceedings under this chapter is  
 1434 not admissible in evidence in any other civil or criminal  
 1435 proceeding, except that:

1436 (e) Records of proceedings under this chapter may be used  
 1437 to prove disqualification under ss. 110.1127, 393.0655, 394.457,  
 1438 397.4073 ~~397.451~~, 402.305, 402.313, 409.175, 409.176, and  
 1439 985.644.

1440 Section 31. This act shall take effect July 1, 2017.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1031 Marine Turtle Protection  
**SPONSOR(S):** Altman  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1228

| REFERENCE  | ACTION    | ANALYST           | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|-----------|-------------------|--|
| 1) Natural Resources & Public Lands Subcommittee | 13 Y, 0 N | Gregory           | Shugar                                   |
| 2) Criminal Justice Subcommittee                 |           | Homburg <i>gh</i> | White <i>W</i>                           |
| 3) Government Accountability Committee           |           |                   |  |

### SUMMARY ANALYSIS

Five species of marine turtles (sea turtles) spend a portion of their lives in Florida's waters and nest on Florida's beaches. The federal government lists these turtles as endangered or threatened and these species receive special protections under the federal Endangered Species Act (ESA) and Florida's Marine Turtle Protection Act (MTPA). Except as authorized under the ESA or under the MTPA, a person, firm, or corporation may not knowingly possess, take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtles.

Prior to 2016, the MTPA did not specify that possession of a sea turtle, or parts thereof, was a violation. At least one court case found a defendant "not guilty" because "possession" of sea turtles was not specifically listed in law. In the 2016 session, HB 7013 (ch. 2016-107, L.O.F.) provided that possession of a sea turtle, hatchling, or parts thereof without authorization from the Fish and Wildlife Conservation Commission under the MTPA or from the federal government under the ESA is a third degree felony. This change created a new subparagraph 6. to s. 379.2431(1)(d), F.S. The former subparagraph 6., which makes solicitation or conspiracy to commit a violation of the MTPA a third degree felony, became subparagraph 7.

The 2016 legislation, however, did not correct the reference to former subparagraph 6. on the Offense Severity Ranking Chart (OSRC) in the Criminal Punishment Code. Currently, the OSRC lists solicitation or conspiracy to commit a violation of the MTPA with the old subparagraph 6. cross-reference. Further, the new provision providing that possession of a sea turtle, or parts thereof, is not listed on the OSRC. Thus under current law, judges must treat sentencing for the possession of a sea turtle, or parts thereof, as a level one violation under s. 921.0023(1), F.S., which ranks all felonies not listed for purposes of sentencing.

The bill amends the OSRC to correct the numbering for the solicitation or conspiracy to commit a violation of the MTPA. Further, the bill adds possession of a sea turtle species or hatchling, or parts thereof, or the nest of any sea turtle species as a level three violation. This change is consistent with the offense severity ranking for taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing sea turtles, sea turtle eggs, or sea turtle nests in violation of the MTPA and soliciting to commit or conspiring to commit a violation of the MTPA.

The Criminal Justice Impact Conference has not yet met to consider this bill.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION

###### Marine Turtle Protection Act

Five species of marine turtles (sea turtles) spend a portion of their lives in Florida waters and nest on Florida beaches.<sup>1</sup> The federal government lists these turtles as endangered or threatened,<sup>2</sup> and these species receive special protections under the federal Endangered Species Act (ESA).<sup>3</sup>

In order to implement the state's responsibilities under the U.S. Fish and Wildlife Service's species recovery plans, the Legislature passed the Marine Turtle Protection Act (MTPA).<sup>4</sup> Except as authorized under the MTPA or under the ESA, a person, firm, or corporation may not knowingly possess, take, disturb, mutilate, destroy, cause to be destroyed, transfer, sell, offer to sell, molest, or harass any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtles.<sup>5</sup>

Section 379.2431, F.S., provides the following penalties for violation of the MTPA:

| Sea Turtle Violations <sup>6</sup>   | Type of Infraction                 | Civil Penalty or Jail Time                             |
|--|------------------------------------|--|
| 1 <sup>st</sup> offense for possession of 11 or fewer sea turtle eggs  | 1 <sup>st</sup> Degree Misdemeanor | Max. \$1000 <sup>7</sup> and Max. 1 year <sup>8</sup>  |
| 2 <sup>nd</sup> and subsequent offense for possession of 11 or fewer sea turtle eggs   | 3 <sup>rd</sup> Degree Felony      | Max. \$5000 <sup>9</sup> or Max. 5 years <sup>10</sup> |
| 1 <sup>st</sup> offense for possession of more than 11 sea turtle eggs   | 3 <sup>rd</sup> Degree Felony      | Max. \$5000 or Max. 5 years                            |
| Illegally taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing any sea turtle species or hatchling, or parts thereof, or the eggs or nest of any sea turtle species | 3 <sup>rd</sup> Degree Felony      | Max. \$5000 or Max. 5 years                            |
| Possession of any sea turtle species or hatchling, or parts thereof, or the nest of any sea turtle species   | 3 <sup>rd</sup> Degree Felony      | Max. \$5000 or Max. 5 years                            |
| Soliciting or conspiring to commit a violation of the MTPA   | 3 <sup>rd</sup> Degree Felony      | Max. \$5000 or Max. 5 years                            |
| Additional penalty for each egg associated with the above violations   |                                    | \$100 per egg <sup>11</sup>                            |

<sup>1</sup> These species are the Loggerhead, Green Turtle, Leatherback, Kemp's Ridley, and Hawksbill. FWC, *Species of Sea Turtles Found in Florida*, <http://myfwc.com/research/wildlife/sea-turtles/florida/species/> (last visited March 2, 2017). See also s. 379.2431(1)(b), F.S.

<sup>2</sup> U.S. Fish and Wildlife Service, *Listed Animals*, [http://ecos.fws.gov/tess\\_public/reports/ad-hoc-species-report?kingdom=V&kingdom=I&status=E&status=T&status=EmE&status=EmT&status=EXPE&status=EXPN&status=SAE&status=SAT&mapstatus=3&fcrithab=on&fstatus=on&fspecrule=on&finvpop=on&fgroup=on&header=Listed+Animals](http://ecos.fws.gov/tess_public/reports/ad-hoc-species-report?kingdom=V&kingdom=I&status=E&status=T&status=EmE&status=EmT&status=EXPE&status=EXPN&status=SAE&status=SAT&mapstatus=3&fcrithab=on&fstatus=on&fspecrule=on&finvpop=on&fgroup=on&header=Listed+Animals) (last visited March 2, 2017).

<sup>3</sup> 16 U.S.C. § 1531 et seq.

<sup>4</sup> s. 379.2431(1)(b), F.S.

<sup>5</sup> s. 379.2431(1)(d), F.S.

<sup>6</sup> s. 379.2431(1)(e), F.S.

<sup>7</sup> s. 775.083(1)(d), F.S.

<sup>8</sup> s. 775.082(4)(a), F.S.

<sup>9</sup> s. 775.083(1)(c), F.S.

<sup>10</sup> s. 775.082(3)(e), F.S.

<sup>11</sup> s. 379.2431(1)(e), F.S.

The ESA also makes it unlawful to import, export, take, possess, sell, deliver, carry, transport, ship, or offer for sale an endangered or threatened fish or wildlife species without authorization.<sup>12</sup> Violators of this prohibition face a \$50,000 criminal penalty or up to one year in jail or a \$25,000 civil penalty.<sup>13</sup>

### 2016 Law

Prior to 2016, the MTPA did not specify that possession of a sea turtle, or parts thereof, was a violation.<sup>14</sup> At least one court case found a defendant “not guilty” because “possession” of sea turtles was not specifically listed in law.<sup>15</sup>

In the 2016 session, HB 7013 (ch. 2016-107, L.O.F.) provided that possession of a sea turtle, hatchling, or parts thereof without authorization from the Fish and Wildlife Conservation Commission under the MTPA or from the federal government under the ESA is a third degree felony. The bill also provided that illegally taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing sea turtle hatchlings, or parts thereof, is a third degree felony.

This change created a new subparagraph 6. to s. 379.2431(1)(d), F.S. The former subparagraph 6., which makes solicitation or conspiracy to commit a violation of the MTPA a third degree felony, became subparagraph 7.

T HB 7013 did not correct the reference on the Offense Severity Ranking Chart in the Criminal Punishment Code<sup>16</sup>. Judges must use the Offense Severity Ranking Chart with the Criminal Punishment Code worksheet to compute a sentence score for each felony offender whose offense was committed on or after October 1, 1998.<sup>17</sup> The offense severity ranking chart has ten offense levels, ranked from least severe, which are level one offenses, to most severe, which are level ten offenses. Each felony offense is assigned to a level according to the severity of the offense.

Currently, the Offense Severity Ranking Chart lists solicitation or conspiracy to commit a violation of the MTPA with the old subparagraph 6. This could cause confusion when using the sentencing guidelines.

Further, the new provision providing that possession of a sea turtle, or parts thereof, is not listed on the Offense Severity Ranking Chart. Thus, judges would treat sentencing for possession of a sea turtle, or parts thereof, as a level one violation under s. 921.0023(1), F.S., which ranks all felonies not listed for purposes of sentencing.

### **EFFECT OF PROPOSED CHANGES**

The bill amends s. 921.0022(3)(c), F.S., to correct the numbering on the Offense Severity Ranking Chart for solicitation or conspiracy to commit a violation of the MTPA. Further, the bill adds possession of a sea turtle species or hatchling, or parts thereof, or the nest of any sea turtle species as a level three violation. Thus, the offense ranking will increase from a level one to a level three. The maximum sentence time will remain the same, but the factors the judge uses to calculate the length of the sentence will change.<sup>18</sup> This change is consistent with the offense severity ranking for taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing sea turtles, sea turtle eggs, or sea turtle nests in violation of the MTPA and soliciting to commit or conspiring to commit a violation of the MTPA.

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<sup>12</sup> 16 U.S.C. § 1538(a)(1); 50 C.F.R. § 17.31(a).

<sup>13</sup> 16 U.S.C. § 1540(a) and (b).

<sup>14</sup> s. 379.2431(1), F.S. (2015).

<sup>15</sup> FWC, 2017 Legislative Proposal Agenda Item 17, November 17, 2016, available at: <http://myfwc.com/media/4089156/17-proposal.pdf> (last visited March 2, 2017).

<sup>16</sup> s. 921.0022, F.S.

<sup>17</sup> s. 921.0022(1), F.S.

<sup>18</sup> See ss. 921.002(1)(g) and 921.0024(1) and (2), F.S.



**B. SECTION DIRECTORY:**

Section 1. Amends s. 921.0022, F.S., relating to the Criminal Punishment Code offense severity ranking chart.

Section 2. Provides and effective date of July 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None.

2. Expenditures: The Criminal Justice Impact Conference has not yet considered this bill. It is anticipated that the bill would have a positive insignificant impact on the state, meaning an increase of fewer than 10 beds.

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

2. Other: None.

**B. RULE-MAKING AUTHORITY:** The bill does not provide rulemaking authority or require executive branch rulemaking.

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

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                   A bill to be entitled  
 2           An act relating to marine turtle protection; amending  
 3           s. 921.0022, F.S.; ranking and revising the  
 4           description of criminal violations of the Marine  
 5           Turtle Protection Act in the offense severity ranking  
 6           chart of the Criminal Punishment Code; providing an  
 7           effective date.

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

10  
 11           Section 1. Paragraph (c) of subsection (3) of section  
 12   921.0022, Florida Statutes, is amended to read:

13           921.0022 Criminal Punishment Code; offense severity  
 14   ranking chart.—

15           (3) OFFENSE SEVERITY RANKING CHART

16           (c) LEVEL 3

17

| Florida      | Felony |   |
|--------------|--------|---|
| Statute      | Degree | Description   |
| 119.10(2)(b) | 3rd    | Unlawful use of confidential information from police reports. |
| 316.066      | 3rd    | Unlawfully obtaining or using                                 |

18

19

|    |                 |     |   |
|----|-----------------|-----|---|
| 20 | (3) (b) - (d)   |     | confidential crash reports.   |
| 21 | 316.193 (2) (b) | 3rd | Felony DUI, 3rd conviction.   |
| 22 | 316.1935 (2)    | 3rd | Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.   |
| 23 | 319.30 (4)      | 3rd | Possession by junkyard of motor vehicle with identification number plate removed.                           |
| 24 | 319.33 (1) (a)  | 3rd | Alter or forge any certificate of title to a motor vehicle or mobile home.                                  |
| 25 | 319.33 (1) (c)  | 3rd | Procure or pass title on stolen vehicle.  |
| 26 | 319.33 (4)      | 3rd | With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration. |

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|    |                      |     |  |
|----|----------------------|-----|--|
| 27 | 327.35(2)(b)         | 3rd | Felony BUI.  |
| 28 | 328.05(2)            | 3rd | Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.  |
| 29 | 328.07(4)            | 3rd | Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.  |
| 30 | 376.302(5)           | 3rd | Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.  |
| 31 | 379.2431<br>(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. |

|    |                            |     |  |
|----|----------------------------|-----|--|
| 32 | 379.2431<br>(1) (e) 6.     | 3rd | <u>Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in</u> <del>Soliciting to commit or conspiring to commit a violation of</del> the Marine Turtle Protection Act. |
| 33 | <u>379.2431(1) (e) 7.</u>  | 3rd | <u>Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.</u>   |
| 34 | 400.9935 (4) (a)<br>or (b) | 3rd | Operating a clinic, or offering services requiring licensure, without a license.   |
| 35 | 400.9935 (4) (e)           | 3rd | Filing a false license application or other required information or failing to report information.   |
| 35 | 440.1051 (3)               | 3rd | False report of workers' compensation fraud or   |

|    |                     |     |   |
|----|---------------------|-----|---|
|    |                     |     | retaliation for making such a report.   |
| 36 | 501.001(2)(b)       | 2nd | Tampers with a consumer product or the container using materially false/misleading information. |
| 37 | 624.401(4)(a)       | 3rd | Transacting insurance without a certificate of authority.                                       |
| 38 | 624.401(4)(b)1.     | 3rd | Transacting insurance without a certificate of authority; premium collected less than \$20,000. |
| 39 | 626.902(1)(a) & (b) | 3rd | Representing an unauthorized insurer.   |
| 40 | 697.08              | 3rd | Equity skimming.  |
| 41 | 790.15(3)           | 3rd | Person directs another to discharge firearm from a vehicle.                                     |
| 42 |                     |     |   |

|    |                 |     |   |
|----|-----------------|-----|---|
| 43 | 806.10(1)       | 3rd | Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.      |
| 44 | 806.10(2)       | 3rd | Interferes with or assaults firefighter in performance of duty.                                 |
| 45 | 810.09(2)(c)    | 3rd | Trespass on property other than structure or conveyance armed with firearm or dangerous weapon. |
| 46 | 812.014(2)(c)2. | 3rd | Grand theft; \$5,000 or more but less than \$10,000.  |
| 47 | 812.0145(2)(c)  | 3rd | Theft from person 65 years of age or older; \$300 or more but less than \$10,000.               |
| 48 | 815.04(5)(b)    | 2nd | Computer offense devised to defraud or obtain property.   |
|    | 817.034(4)(a)3. | 3rd | Engages in scheme to defraud (Florida Communications Fraud                                      |

|    |                          |     |  |
|----|--------------------------|-----|--|
|    |                          |     | Act), property valued at less than \$20,000.   |
| 49 | 817.233                  | 3rd | Burning to defraud insurer.  |
| 50 | 817.234<br>(8) (b) & (c) | 3rd | Unlawful solicitation of persons involved in motor vehicle accidents.                  |
| 51 | 817.234(11) (a)          | 3rd | Insurance fraud; property value less than \$20,000.                                    |
| 52 | 817.236                  | 3rd | Filing a false motor vehicle insurance application.                                    |
| 53 | 817.2361                 | 3rd | Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card. |
| 54 | 817.413(2)               | 3rd | Sale of used goods as new.   |
| 55 | 817.505(4)               | 3rd | Patient brokering.   |
| 56 | 828.12(2)                | 3rd | Tortures any animal with intent  |



|    |                   |     |   |
|----|-------------------|-----|---|
|    |                   |     | to inflict intense pain,<br>serious physical injury, or<br>death.   |
| 57 | 831.28 (2) (a)    | 3rd | Counterfeiting a payment<br>instrument with intent to<br>defraud or possessing a<br>counterfeit payment instrument. |
| 58 | 831.29            | 2nd | Possession of instruments for<br>counterfeiting driver licenses<br>or identification cards.                         |
| 59 | 838.021 (3) (b)   | 3rd | Threatens unlawful harm to<br>public servant.   |
| 60 | 843.19            | 3rd | Injure, disable, or kill police<br>dog or horse.  |
| 61 | 860.15 (3)        | 3rd | Overcharging for repairs and<br>parts.  |
| 62 | 870.01 (2)        | 3rd | Riot; inciting or encouraging.  |
| 63 | 893.13 (1) (a) 2. | 3rd | Sell, manufacture, or deliver   |

|    |                |     |   |
|----|----------------|-----|---|
| 64 | 893.13(1)(d)2. | 2nd | <p>cannabis (or other s.<br/>             893.03(1)(c), (2)(c)1.,<br/>             (2)(c)2., (2)(c)3., (2)(c)5.,<br/>             (2)(c)6., (2)(c)7., (2)(c)8.,<br/>             (2)(c)9., (3), or (4) drugs).</p> <p>Sell, manufacture, or deliver<br/>             s. 893.03(1)(c), (2)(c)1.,<br/>             (2)(c)2., (2)(c)3., (2)(c)5.,<br/>             (2)(c)6., (2)(c)7., (2)(c)8.,<br/>             (2)(c)9., (3), or (4) drugs<br/>             within 1,000 feet of<br/>             university.</p> |
| 65 | 893.13(1)(f)2. | 2nd | <p>Sell, manufacture, or deliver<br/>             s. 893.03(1)(c), (2)(c)1.,<br/>             (2)(c)2., (2)(c)3., (2)(c)5.,<br/>             (2)(c)6., (2)(c)7., (2)(c)8.,<br/>             (2)(c)9., (3), or (4) drugs<br/>             within 1,000 feet of public<br/>             housing facility.</p>   |
| 66 | 893.13(4)(c)   | 3rd | <p>Use or hire of minor; deliver<br/>             to minor other controlled<br/>             substances.</p>  |

67

893.13(6)(a) 3rd Possession of any controlled substance other than felony possession of cannabis.

68

893.13(7)(a)8. 3rd Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

69

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

70

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

71

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

72

893.13(8)(a)1. 3rd Knowingly assist a patient,

|    |                |     |   |
|----|----------------|-----|---|
| 73 | 893.13(8)(a)2. | 3rd | <p>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.</p> |
| 74 | 893.13(8)(a)3. | 3rd | <p>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.</p>                          |
| 75 | 893.13(8)(a)4. | 3rd | <p>Knowingly write a prescription for a controlled substance for a fictitious person.</p>   |
|    |                |     | <p>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</p>        |

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|    |   |     |   |
|----|---|-----|---|
|    |   |     | practitioner.   |
| 76 | 918.13(1)(a)  | 3rd | Alter, destroy, or conceal investigation evidence.                                      |
| 77 | 944.47<br>(1)(a)1. & 2.                             | 3rd | Introduce contraband to correctional facility.  |
| 78 | 944.47(1)(c)  | 2nd | Possess contraband while upon the grounds of a correctional institution.                |
| 79 | 985.721   | 3rd | Escapes from a juvenile facility (secure detention or residential commitment facility). |
| 80 |   |     |   |
| 81 | Section 2. This act shall take effect July 1, 2017. |     |   |





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee

3 Representative Gonzalez offered the following:

4

5 **Amendment (with title amendment)**

6 Remove line 305 and insert:

7 educational attainment pursuant to this section. An inmate who  
 8 is subject to subparagraph (b)3. may not earn or receive gain-  
 9 time under this paragraph or any other type of gain-time in an  
 10 amount that would cause a sentence to expire, end, or terminate,  
 11 or that would result in a prisoner's release, prior to serving a  
 12 minimum of 85 percent of the sentence imposed.

13

14

-----

15

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

16

Remove line 31 and insert:

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Amendment No. 1

17 | incentive gain-time by the department; providing that gain-time  
18 | may not result in a prisoner serving less than 85 percent of his  
19 | or her sentence; amending s.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1201 Department of Corrections  
**SPONSOR(S):** Gonzalez  
**TIED BILLS:** HB 1203 **IDEN./SIM. BILLS:** SB 1604

| REFERENCE                              | ACTION | ANALYST  | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF  |
|--|--------|--|---|
| 1) Criminal Justice Subcommittee       |        | Merlin  | White  |
| 2) Justice Appropriations Subcommittee |        |  |   |
| 3) Judiciary Committee                 |        |  |   |

### SUMMARY ANALYSIS

The bill amends statutes relating to the operation of the state prison system. This includes:

*Employment Classification:* The bill converts the following positions at the Florida Department of Corrections (FDC) from Career Service to Selected Exempt Service: Correctional Officer Lieutenants and Captains and Correctional Probation Officers Supervisors and Senior Supervisors.

*Confidential Information:* Florida law is more restrictive than federal law regarding the disclosure of a patient's protected health information (PHI). The bill amends s. 943.04, F.S., to authorize the Florida Department of Law Enforcement (FDLE) to receive PHI, medical records, or mental health records of an inmate from FDC upon written demand when FDLE is conducting an investigation or assisting FDC in the investigation of an injury to or death of an inmate in the custody or control of FDC.

*Criminal Procedure and Corrections:* Section 944.151, F.S., currently provides that the Secretary of FDC is required to appoint a security review committee, composed of specified individuals, to conduct announced and unannounced inspections of existing buildings and facilities, as well as security audits. The bill amends the statute so that it removes the requirement that the committee be composed of specified individuals and instead permits the FDC Secretary to designate appropriate department staff. The bill clarifies the responsibilities and duties of the committee and the requirements for audits and inspections.

*Commitment Documents:* Under current Florida law, the documentation required for FDC to accept a prison is provided in paper form. The bill allows such documentation to be provided electronically.

*Educational Gain-Time:* The bill authorizes inmates sentenced on or after October 1, 1995 to receive an award of 60 days of gain-time for completing a high school diploma or vocational certificate.

*Transportation by Private Transport Company:* Current law requires a FDC contract for private prisoner transport to require company employees to meet the minimum standards for a correctional or law enforcement officer. The bill amends the statute to model federal law, which specifies other training requirements.

*Contracted Drug Testing:* The bill includes employees at community correctional centers among the list of designated individuals that can perform urine drug testing if certified by FDC.

*Youthful Offenders:* The bill amends s. 958.11, F.S., to make the statute comport with the Prison Rape Elimination Act.

The FDC estimates that the bill will have a \$941,485 on the department. The bill does not appear to have fiscal impact on local governments.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1201.CRJ

DATE: 3/19/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Career Service Classification System/Florida Department of Corrections**

In Florida, the majority of state jobs are classified in the Career Service System.<sup>1</sup> This system provides for uniform pay, job benefits, and job classification of non-managerial jobs in state government.<sup>2</sup> Career service employees enjoy certain rights of employment that begin after completing a probationary period of 12 months.<sup>3</sup> Selected Exempt Service (SES) positions include professional and supervisory positions,<sup>4</sup> and are specifically exempted from the Career Service system.<sup>5</sup> State employees in SES positions may be terminated at will. Employees in this category “serve at the pleasure of the agency head and shall be subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head. Such personnel actions are exempt from the provisions of chapter 120.”<sup>6</sup>

“The Florida Department of Corrections (FDC) is the third largest state prison system in the country with a budget of \$2.4 billion [and] approximately 98,000 inmates incarcerated and nearly 140,000 offenders on active community supervision.”<sup>7</sup> The purpose of FDC is “to protect the public through the incarceration and supervision of offenders and to rehabilitate offenders through the application of work, programs, and services.”<sup>8</sup> According to the FDC website:

FDC has 149 facilities statewide, including 49 major institutions, 17 annexes, seven private facilities (contracts for the private facilities are overseen by the Florida Department of Management Services), 33 work camps, four road prisons, two forestry camps, one boot camp, 13 FDC operated work release centers along with 20 more work release centers operated by various private vendors (FDC oversees these contracts). Over 80% of its staff of 21,948 employees are either certified correctional officers or probation officers.<sup>9</sup>

Florida law currently classifies the following positions at FDC as Career Service employees: Correctional Officer (CO) Lieutenants and Captains and Correctional Probation Officers (CPO) Supervisors and Senior Supervisors.

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<sup>1</sup> Division of Human Resource Management, *Applicant Guide*, DIVISION OF HUMAN RESOURCE MANAGEMENT, August 2014, available at [http://www.dms.myflorida.com/content/download/99277/573474/Applicant\\_Guide\\_final\\_08132014.pdf](http://www.dms.myflorida.com/content/download/99277/573474/Applicant_Guide_final_08132014.pdf) (last visited Mar. 10, 2017).

<sup>2</sup> *Id.*

<sup>3</sup> s. 110.213(1), F.S. (“Selection for appointment from among the most qualified candidates shall be the sole responsibility of the employing agency. All new employees must successfully complete at least a 1-year probationary period before attainment of permanent status.”); see also FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION, *Internal Management Policies and Procedures*, <http://legacy.myfwc.com/impp/6.4%20Performance%20Evaluation.pdf> (last visited Mar. 10, 2017).

<sup>4</sup> Division of Human Resource Management, *Classification and Compensation Guide*, DIVISION OF HUMAN RESOURCE MANAGEMENT (April 2014), available at [http://www.dms.myflorida.com/content/download/115449/637238/Classification\\_and\\_Compensation\\_Guide\\_April\\_2015.pdf](http://www.dms.myflorida.com/content/download/115449/637238/Classification_and_Compensation_Guide_April_2015.pdf) (last visited Mar. 10, 2017).

<sup>5</sup> ss. 110.602 and 110.205(2) and (5), F.S.

<sup>6</sup> s. 110.604, F.S.

<sup>7</sup> Florida Department of Corrections, *About the Florida Department of Corrections*, FLORIDA DEPARTMENT OF CORRECTIONS (“Corrections Overview”), available at <http://www.dc.state.fl.us/about.html> (last viewed Mar. 10, 2017).

<sup>8</sup> Office of Program Policy Analysis and Governmental Accountability, *GPS Government Program Studies, Department of Corrections* (“OPPAGA FDC Report Summary”), Oct. 3, 2016, available at <http://www.oppaga.state.fl.us/profiles/1074/> (last viewed Mar. 11, 2017).

<sup>9</sup> See Corrections Overview, *supra* note 7.

Section 110.205(2)(m)2., F.S., exempts the following positions in FDC from the Career Service System: warden, assistant warden, colonel, or major of an institution or which are assigned the primary duties of serving as the circuit administrator or deputy circuit administrator.<sup>10</sup>

#### Effect of the Bill

The bill amends s. 110.205(2)(m)2., F.S., so that CO Lieutenants and Captains and CPO Supervisors and Senior Supervisors at FDC are added to the category of positions that are exempt from the Career Service System.

#### Medical Privacy under Federal Law

Federal law provides a right to privacy for health and medical records under the Health Insurance Portability and Accountability Act (HIPAA).<sup>11</sup> The HIPPA Privacy Rule sets national standards for the use and disclosure of individuals' health information, called protected health information (PHI), by covered entities.<sup>12</sup>

Although many disclosures about an individual's health and medical records are private under HIPPA, there are exceptions that are applicable to health and safety, protection of the public, protection of law enforcement, and the furtherance of investigations.<sup>13</sup> These exceptions also include correctional facilities,<sup>14</sup> where disclosure of PHI for inmates and other covered individuals is permitted if it is necessary for:

- The provision of health care to such individuals;
- The health and safety of such individual or other inmates;
- The health and safety of the officers or employees of or others at the correctional institution;
- The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution; or
- The administration and maintenance of the safety, security, and good order of the correctional institution.

Under HIPPA, a covered entity that is a correctional institution may use the PHI of individuals who are inmates for any purpose for which such information may be disclosed.<sup>15</sup>

The HIPPA Privacy Rule establishes a baseline or "floor" of privacy protections for PHI, not a "ceiling." Where state laws are more protective of privacy than HIPPA, the state requirements will remain in effect.<sup>16</sup>

Currently, Florida law affords greater privacy protection than HIPPA. Section 945.10(2)(g), F.S., only allows FDC to share the record of an inmate or offender's mental, medical, and substance abuse information in one circumstance – to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to HIV. Section 456.057(7), F.S., in turn, provides limited exceptions for sharing records. While HIPPA permits limited sharing for specified purposes, FDC is presently unable to share such information under Florida law without a court order, subpoena, or inmate consent.

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<sup>10</sup> s. 110.205(2)(m)2., F.S.

<sup>11</sup> Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-91, 110 Stat. 1936 (1996).

<sup>12</sup> *Summary of HIPPA Privacy Rule*, United States Department of Health and Human Services, May 2003, available at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (Last viewed Mar. 9, 2017); see also *HIPPA for Professionals*, United States Department of Health and Human Services, available at <https://www.hhs.gov/hipaa/for-professionals/> (Last viewed Mar. 9, 2017).

<sup>13</sup> See generally 45 C.F.R. 164.512.

<sup>14</sup> 45 C.F.R. 164.512(k)(5)(i)(A)-(F).

<sup>15</sup> 45 C.F.R. 164.512(k)(5)(ii).

<sup>16</sup> 45 C.F.R. 160.201-05.

### *Florida Department of Law Enforcement*

The Florida Department of Law Enforcement (FDLE) is a statewide law enforcement agency headquartered in Tallahassee, Florida.<sup>17</sup> FDLE's primary mission is "[t]o promote public safety and strengthen domestic security by providing services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida's citizens and visitors."<sup>18</sup> As authorized by s. 943.03, F.S., FDLE provides assistance to federal, state, and local criminal justice agencies.<sup>19</sup>

Section 943.04, F.S., creates the Criminal Justice Investigations and Forensic Science Program (CJIFSP). The purpose of CJIFSP is to provide "forensic analysis, criminal investigations, and public security to prevent, investigate, and solve crime. It conducts independent criminal investigations that target crime and criminal organizations whose illegal activities cross jurisdictional boundaries, include multiple victims, or represent a major public safety concern to the state. It also commits investigative resources to initiatives that address a statewide public safety priority or provide expertise or assistance to Florida's law enforcement community. The program also provides forensic analysis of evidentiary materials to aid in the investigation and prosecution of criminal offenses."<sup>20</sup>

Currently, whenever FDLE is investigating or assisting FDC in an investigation, and an FDC inmate does not or cannot agree to release their PHI (such as in the case of injury, unconsciousness, unresponsiveness, or death), FDLE must produce or obtain a HIPPA compliant subpoena<sup>21</sup> or a search warrant. Once FDC receives the subpoena or search warrant, FDC will provide the PHI, medical records, or mental health records of an FDC inmate.

### Effect of the Bill

The bill amends s. 943.04, F.S., adding subsection (6) to authorize FDLE to receive inmates' PHI, medical records, or mental health records from FDC upon written demand when FDLE is conducting an investigation or assisting FDC in the investigation of an injury to or death of an inmate in the custody or control of FDC. The information is to be used for the limited purpose for which the records were requested.

The bill provides that the investigative demand must be specific and limited in scope to the extent reasonably practicable in light of the purpose for which the PHI or records are sought and must include a certification that:

- The PHI or records sought are relevant and material to a legitimate law enforcement inquiry;
- There is a clear connection between the investigated incident and the inmate whose PHI and records are sought; and
- De-identified information could not reasonably be used.

### Security Review Committee

Section 944.151, F.S., currently provides that the Secretary of FDC<sup>22</sup> is required to appoint a security review committee. At a minimum, s. 944.151, F.S., requires that the committee be composed of: "the

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<sup>17</sup> Florida Department of Law Enforcement Website, *Contacts*, available at <http://www.fdle.state.fl.us/cms/Contacts.aspx> (last viewed Mar. 11, 2017).

<sup>18</sup> Office of Program Policy Analysis and Governmental Accountability, *GPS Government Program Studies, Department of Law Enforcement* ("OPPAGA FDLE Report Summary"), Mar. 6, 2017, available at <http://www.oppaga.state.fl.us/profiles/1075> (last viewed Mar. 11, 2017).

<sup>19</sup> *Id.*

<sup>20</sup> Office of Program Policy Analysis and Governmental Accountability, *GPS Government Program Studies, Department of Law Enforcement, Criminal Investigations and Forensic Science* ("OPPAGA CJIFSP Report Summary"), May 31, 2016, available at <http://www.oppaga.state.fl.us/profiles/1061/> (last viewed Mar. 11, 2017).

<sup>21</sup> See U.S. Department of Health and Human Services Website, *Court Orders and Subpoenas*, available at <https://www.hhs.gov/hipaa/for-individuals/court-orders-subpoenas/index.html> (last viewed Mar. 11, 2017).

<sup>22</sup> The current Secretary of the Florida Department of Corrections is Julie L. Jones. See Website for the Florida Department of Corrections, available at <http://www.dc.state.fl.us/secretary/> (last viewed Mar. 11, 2017).

inspector general, the statewide security coordinator, the regional security coordinators, and three wardens and one correctional officer.”<sup>23</sup> The committee is required to:

1. Establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution. Such schedule must give priority to older institutions, institutions housing a large proportion of violent offenders, and institutions that have experienced a significant number of escapes or escape attempts.<sup>24</sup>
2. Conduct both announced and unannounced annual security audits and operational reviews of all state and private correctional institutions.<sup>25</sup> In conducting such audits, priority must be given to older institutions, institutions housing a large proportion of violent offenders, and institutions with a history of escapes or escape attempts. The audit must include an evaluation of the physical plant, landscaping, fencing, security alarms and perimeter lighting, and inmate classification and staffing policies. The secretary must report the general survey findings annually to the Governor and the Legislature.
3. Adopt and enforce minimum security standards that include: (a) random monitoring of outgoing telephone calls by inmates; (b) maintenance of current photographs of all inmates; (c) daily inmate counts at varied intervals; (d) use of canine units, where appropriate; (e) use of escape alarms and perimeter lighting; (f) Florida Crime Information Center/National Crime Information Center capabilities; (g) employment background investigations.<sup>26</sup>
4. Annually make written prioritized budget recommendations to the Secretary that identify critical security deficiencies at major correctional institutions.<sup>27</sup>
5. Investigate and evaluate the usefulness and dependability of existing security technology at the institutions and new technology available and make periodic written recommendations to the Secretary on the discontinuation or purchase of various security devices.<sup>28</sup>
6. Contract, if deemed necessary, with security personnel, consulting engineers, architects, or other security experts the committee deems necessary for security audits and security consultant services.<sup>29</sup>

In addition to appointing the security review committee, the Secretary is required to:

- Maintain and produce quarterly reports with accurate escape statistics. For the purposes of these reports, “escape” includes all possible types of escape, regardless of prosecution by the state attorney, and including offenders who walk away from nonsecure community facilities;
- Adopt, enforce, and annually evaluate the emergency escape response procedures, which shall at a minimum include the immediate notification and inclusion of local and state law enforcement through a mutual aid agreement; and
- Submit in the annual legislative budget request a prioritized summary of critical repair and renovation security needs.

#### Effect of the Bill

The bill amends s. 944.151, F.S., to clarify that the focus of the statute pertains both to the safe operation and security of correctional institutions and facilities.

The bill amends s. 944.151(1), F.S., to remove the requirement that the security review committee be composed of specified individuals and instead permits the FDC Secretary to appoint “appropriate department staff” to the committee. The bill changes the name of the committee to the “safety and security review committee” (“committee”).

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<sup>23</sup> s. 944.151(1), F.S.

<sup>24</sup> s. 944.151(1)(a), F.S.

<sup>25</sup> s. 944.151(1)(b), F.S.

<sup>26</sup> s. 944.151(1)(c), F.S.

<sup>27</sup> s. 944.151(1)(d), F.S.

<sup>28</sup> s. 944.151(1)(e), F.S.

<sup>29</sup> s. 944.151(1)(f), F.S.

The bill provides that the committee shall:

- Evaluate new safety and security technology;
- Review and discuss current issues impacting state and private correctional institutions and facilities; and
- Review and discuss other issues as requested by department management.

The bill removes the requirement that the committee itself conduct the activities discussed in 1. through 6. above, and the additional responsibilities of the Secretary, and, instead, provides that the committee shall direct appropriate department staff to conduct those activities. The bill amends the activities discussed above:

- In 1., by adding to the list of priorities for the scheduling of inspections, institutions and facilities that have experience a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse.
- In 2., by repealing current law's list of priorities for the conduct of audits, and instead providing that the audits shall give priority to institutions and facilities that have experience a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse. The bill also adds that the audit must evaluate confinement, arsenal, key and lock, and entrance and exit policies. The bill repeals the requirement for the audit to address inmate classification and staffing policies, and adds that the evaluation of physical plant policies must identify blind spots or areas where staff or inmates may be isolated and the deployment of video or other monitoring systems in those areas.
- In 3., by moving the minimum safety and security standards to a different subsection.
- In 4., by repealing the requirement to make annual written prioritized budget recommendations that identify critical security deficiencies at major correctional institutions.
- In 5., by clarifying that staff should investigate and evaluate the usefulness and dependability of existing safety and security technology at state and private correctional institutions and facilities; investigate and evaluate new available safety and security technology; and make periodic written recommendations to the Secretary on the discontinuation or purchase of various safety and security devices.
- In 6., by clarifying that the provision regarding contracting includes safety and security experts and safety and security consulting services.

The bill directs appropriate department staff to review staffing policies and practices as needed, and adds that such staff must submit in the annual legislative budget request a prioritized summary of critical "safety and security deficiencies" and repair and renovation security needs.

#### **Transmittal of Required Commitment Documents Electronically**

When a person has been sentenced to prison, county jail personnel receive the documents required for FDC to accept an inmate from the clerk of court. Transport officers then provide this documentation, in paper form, to staff at the receiving reception facility at the time the inmate is transported.

Section 944.17(5), F.S., currently provides that FDC shall refuse to accept a person into the state correctional system unless the required documentation is provided to the officer in charge of the reception process.

#### **Effect of the Bill**

The bill amends s. 944.17(5), F.S., to clarify that documents required to lawfully receive a prisoner into FDC custody may be transmitted electronically. Specifically, the bill provides, "The department may, at its discretion, receive such documents electronically."

## **Gain-Time**

Currently, FDC may grant inmates incentive gain-time for each month in which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities.<sup>30</sup> Inmates earn incentive gain-time at the rate that was in effect on the date the inmate committed the offense which resulted in his or her incarceration.<sup>31</sup> For offenses committed on or after October 1, 1995, FDC may grant up to 10 days per month of incentive gain-time, but the total amount of incentive gain-time cannot result in release of an inmate before he or she serves a minimum of 85 percent of his or her sentence.<sup>32</sup> Inmates sentenced to life imprisonment or sentenced pursuant to certain statutes<sup>33</sup> are not entitled to gain-time.<sup>34</sup> When an inmate is found guilty of a violation of the laws of the state or FDC rules, gain-time may be forfeited.<sup>35</sup>

### *Educational Gain-Time*

Currently, s. 944.275(4)(d), F.S., authorizes a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate. An eligible inmate includes one who was:

- Sentenced for offenses committed prior to January 1, 1994; and
- Sentenced for offenses committed on or after January 1, 1994 and before October 1, 1995.

At present, inmates who were sentenced to prison on or after October 1, 1995 do not have the ability to receive an award of educational gain-time for completing such educational achievements.

### **Effect of the Bill**

The bill amends s. 944.275(4)(d), F.S., by permitting inmates who were sentenced to prison on or after October 1, 1995, to receive gain-time for completing such educational achievements.

## **Transportation and Return of Prisoners**

### *Sheriffs*

Section 30.24(2)(a), F.S., provides that the sheriff<sup>36</sup> of any county in Florida is authorized to contract with private transport companies for the transportation of prisoners both within and beyond the limits of this state.

Section 30.24(2)(b), F.S., provides that any company transporting a prisoner is considered an independent contractor and is solely liable for the prisoner while the prisoner is in the custody of the company. Further, any transport company contracting with a sheriff for the transportation of prisoners is required to be insured and provide no less than \$100,000 in liability insurance with respect to the transporting of the prisoners.

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<sup>30</sup> s. 944.275(4)(b), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> s. 944.275(4)(b)3., F.S.

<sup>33</sup> For example, inmates sentenced to a mandatory minimum term of imprisonment as a dangerous sexual felony offender are not eligible to receive gain-time. s. 794.0115(7), F.S.

<sup>34</sup> s. 944.275(4)(b)3., F.S.

<sup>35</sup> s. 944.275(5), F.S.

<sup>36</sup> In Florida, the “[S]heriff is a constitutional officer and a county administrative officer whose powers and duties are prescribed by statute like other county administrative officers, and he possesses such authority as has been expressly granted by statute or is necessarily implied in order to carry out some function expressly imposed or authorized by statute.” 06-06 Fla. Op. Att’y Gen. (2006); FLA. CONST. art. VIII, s. 1(d); s. 30.072(5), F.S. Sixty-six of Florida’s 67 counties have elected Sheriffs as their chief law-enforcement officers. The sole exception is Miami-Dade County, which appoints a Director to the Miami-Dade Police Department. See website for the Florida Sheriff’s Association, available at <https://www.flsheriffs.org/sheriffs/directory/> (last viewed Mar. 11, 2017).

In addition, personnel employed by any transport company for the transportation of prisoners under s. 30.24(2)(b), F.S. are specifically exempted from:

- Any requirements of being appointed as deputy sheriffs;
- Providing bond; and
- Meeting requirements and training as provided by the Criminal Justice Standards and Training Commission for law enforcement and correctional officers.

#### *Federal Regulation of Prisoner Transport Companies*

At the federal level, there are for-profit transportation companies which assist in the extradition of prisoners, fugitives, and individuals with open arrest warrants. Such companies are governed by a 2000 law known as Jeanna's Act.<sup>37</sup> Under the Act, there are minimum standards for the length and type of training employees of private transport companies must undergo before they can transport prisoners. These standards include 100 hours of preservice training focusing on the transportation of prisoners. In addition, training is required for:

- Use of restraints;
- Searches;
- Use of force, including use of appropriate weapons and firearms;
- Cardiopulmonary Resuscitation;
- Map reading; and
- Defensive driving.

#### *FDC - Transportation and Return by Private Transport Company*

Currently, section 944.597(1), F.S., provides that FDC is authorized to contract with private transport companies for the transportation of prisoners both within and beyond the limits of this state. Section 944.597(2)(b), F.S., provides that in any contract between FDC and a transport company, personnel employed with the transport company who are based in Florida are required to meet the minimum standards for a correctional or law enforcement officer in s. 943.13, F.S. Likewise, personnel employed with the transport company based outside of Florida are required to meet the minimum standards for a correctional officer or law enforcement officer in the state where the employee is based.<sup>38</sup>

#### Effect of the Bill

The bill amends s. 944.597(2)(b), F.S., to change the minimum requirements of personnel employed by a transport company. Similar to federal law, the bill requires that employees of a transport company complete 100 hours of training before transporting prisoners. The bill provides that the curriculum for the training must be approved by FDC and must include instruction in:

- Use of restraints;
- Searches of prisoners;
- Use of force, including use of appropriate weapons and firearms;
- Cardiopulmonary Resuscitation;
- Map reading; and
- Defensive driving.

#### Contracted Drug Testing

Section 944.033(1), F.S., provides that there is a statewide system of correctional facilities known as "community correctional centers" or "CCCs." Section 944.033(2), F.S., provides that "[t]he purpose of these centers is to facilitate the reintegration of state inmates back into the community by means of participation in various work-release, study-release, community service, substance abuse treatment, and other rehabilitative programs."

<sup>37</sup> Jeanna's Act of 2000, Pub. L. No. 106-560, 114 Stat. 2784, S. 1898, 106th Cong. (Dec. 21, 2000).

<sup>38</sup> s. 944.597(2)(b), F.S.



Currently, correctional officers in Florida perform inmate drug testing at contracted CCCs, rather than the employees at those sites; this may require a correctional officer to travel away from his institutional assignment or post. Section 945.36(1), F.S., provides:

Any law enforcement officer, state or county probation officer, or employee of FDC, who is certified by FDC pursuant to subsection (2), is exempt from part I of chapter 483, for the limited purpose of administering a urine screen drug test to:

- Persons during incarceration;
- Persons released as a condition of probation for either a felony or misdemeanor;
- Persons released as a condition of community control;
- Persons released as a condition of conditional release;
- Persons released as a condition of parole;
- Persons released as a condition of provisional release;
- Persons released as a condition of pretrial release; or
- Persons released as a condition of control release.<sup>39</sup>

Section 945.36(2), F.S., provides that FDC is required develop a procedure for certification of any law enforcement officer, state or county probation officer, or employee of FDC to perform a urine screen drug test on such persons.<sup>40</sup> However, the statute does not provide authority for employees at CCCs to perform these tests.

#### *Effect of the Bill*

The bill amends s. 945.36(1) and (2), F.S., to include employees at contracted CCCs among the list of designated individuals that can perform a urine screen drug testing if they are certified by FDC.

### **Youthful Offenders**

#### *Florida Youthful Offenders*

The Florida Youthful Offender Act (“the Act”)<sup>41</sup> was enacted by the Legislature in 1978 to create “an alternative sentencing scheme available to judges when sentencing certain youthful criminal defendants.”<sup>42</sup> The legislative intent of the Act is “to improve the chances of correction and successful return to the community of youthful offenders sentenced to imprisonment by providing them with enhanced vocational, educational, counseling, or public service opportunities and by preventing their association with older and more experienced criminals during the terms of their confinement.”<sup>43</sup>

Section 958.03(4), F.S., defines a “youthful offender” as “any person who is sentenced as such by the court or is classified as such by the department pursuant to s. 958.04.” Section 958.04, F.S., provides that a court may sentence a defendant as a youthful offender if the defendant:

- Is at least 18 years old but less than 21 years of age at the time of sentencing, or is under 18 years of age but was prosecuted as an adult pursuant to chapter 985, F.S.;
- Has been found guilty of or entered a plea of nolo contendere to a felony, unless he or she was found guilty of a capital or life felony; and
- Has not previously been classified as a youthful offender under the Act.<sup>44</sup>

The court has four sentencing options for a youthful offender:

- Incarceration for no more than 364 days in a county facility, department probation and restitution center, or community residential center as a condition of community supervision;
- Community supervision;

<sup>39</sup> s. 945.36(1), F.S.

<sup>40</sup> s. 945.36(2), F.S.

<sup>41</sup> ss. 958.011 – 958.015, F.S.

<sup>42</sup> *Jackson v. State*, 137 So. 3d 470, 473 (Fla. 4th DCA 2014) (citing Ch. 78-84, Laws of Fla. and s. 958.04(1), F.S.).

<sup>43</sup> s. 958.021, F.S.

<sup>44</sup> s. 958.04(1)(1)(a)-(c), F.S.

- Incarceration; or
- A split sentence of incarceration and community supervision.

The total period of incarceration, community supervision, or a split sentence cannot be longer than six years or the maximum sentence for the offense if the maximum sentence is less than six years.<sup>45</sup>

#### *Classification as a Youthful Offender by the Department of Corrections*

A defendant who is not sentenced as a youthful offender can still be classified and assigned as a youthful offender by FDC. Chapter 958, F.S., requires FDC to continuously screen all institutions, facilities, and programs for inmates who are less than 25 years old and who FDC believes should be classified and assigned as a youthful offender. Specifically:

- Section 958.045(8)(a), F.S., permits FDC to designate an inmate who is less than 25 years old as a youthful offender if he or she met the eligibility criteria to be sentenced as a youthful offender by the court pursuant to s. 958.04, F.S., but was not.
- Section 958.11(4), F.S., allows designation of an inmate who is less than 25 years old as a youthful offender if the inmate was ineligible for youthful offender sentencing by the court only because he or she was more than 21 years old at the time of sentencing, and the total sentence does not exceed 10 years.

#### *Special Provisions for Juveniles or Vulnerable Young Adults*

Some younger inmates are assigned to youthful offender facilities even though they cannot be designated as a youthful offender. FDC is required to assign an inmate who is less than 18 years old to a youthful offender facility even if he or she was not sentenced as a youthful offender. Such an inmate may continue to be assigned to the youthful offender facility until reaching 22 years of age if FDC determines that it is in the inmate's best interests and that the assignment does not pose an unreasonable risk to other inmates in the facility.<sup>46</sup> FDC may also assign an inmate who is less than 20 years old, except a capital or life felon, to a youthful offender facility if it determines that the inmate's mental or physical vulnerability would substantially or materially jeopardize his or her safety in a non-youthful offender facility.<sup>47</sup>

#### *Youthful Offender Facilities*

Section 958.11, F.S., requires FDC to designate separate institutions and programs for youthful offenders and requires personnel to be specially qualified by training and experience to operate the institutions and programs. Male youthful offenders who are 14 through 18 years old must be separated from those who are older than 19. Separate institutions exist for each age group.<sup>48</sup> Female youthful offenders of all ages may be housed together due to the small numbers and lesser risk posed by combining age groups.<sup>49</sup> Only youthful offenders can be in the designated institutions and programs, with the exception of select adult offenders who may be assigned to a youthful offender facility under special circumstances.<sup>50</sup>

#### *Assignment of Youthful Offenders to Adult Facilities or Outside of Age Range*

Section 958.11(3), F.S., limits the circumstances in which FDC can assign a youthful offender to an adult facility. These circumstances are:

- Conviction of a new felony under Florida law;
- Commission of serious violations of FDC rules to the point that the youthful offender becomes a serious management or disciplinary problem, and his or her presence would be detrimental to the interests of other youthful offenders and to the program;

<sup>45</sup> s. 958.04(2), F.S.

<sup>46</sup> s. 944.1905(5)(a), F.S.

<sup>47</sup> s. 958.11(6), F.S.

<sup>48</sup> s. 958.11(1), F.S. However, 18-year old youthful offenders can be assigned to a facility for 19-24 year olds if facilities designed for 14 to 18 year olds exceed 100 percent of lawful capacity.

<sup>49</sup> s. 958.11(2), F.S.

<sup>50</sup> *Id.*

- Need for medical treatment, health services, or other specialized treatment not available at the youthful offender facility; and
- Transfer outside of the state correctional system to receive services not provided by FDC.

There are several scenarios in which a youthful offender may be assigned to a youthful offender facility that is outside of his or her age range. A youthful offender who is over 18 years old may be retained in a 14 to 18 year old facility to which originally assigned if “the department determines that it is in the best interest of the youthful offender and the department.”<sup>51</sup> Likewise, a youthful offender who was originally assigned to a facility designated for the 19-24 age group may be reassigned to a 14-18 year old age group facility if he is “mentally or physically vulnerable” with the older age group, and “the department determines that reassignment is necessary to protect the safety of the youthful offender or the institution.”<sup>52</sup> On the other hand, a youthful offender can be moved up from a facility designated for the 14 to 18 year old age group to a facility for 19 to 24 year olds if he is “disruptive, incorrigible, or uncontrollable,” and “the department determines that a reassignment would serve the interests of the youthful offender and the department.”<sup>53</sup>

#### *Federal Prison Rape Elimination Act*

In September 2003, Congress passed the Prison Rape Elimination Act (PREA),<sup>54</sup> which was created to eliminate sexual abuse in confinement facilities including adult prisons and jails, lockup, community confinement facilities, and juvenile facilities.<sup>55</sup> PREA includes 43 standards that define three clear goals: to prevent; detect; and respond to sexual abuse.<sup>56</sup> “The act also created the National Prison Rape Elimination Commission and charged it with developing draft standards for the elimination of prison rape.”<sup>57</sup> Those standards were published in June 2009, and were turned over to the Department of Justice for review and passage as a final rule.<sup>58</sup> That final rule became effective August 20, 2012.<sup>59</sup>

In Florida, FDC “has established a zero-tolerance policy<sup>60</sup> for all forms of sexual abuse, sexual battery, and sexual harassment”<sup>61</sup> based on PREA standards. “Zero-tolerance applies not only to incidents between inmates, but also to incidents involving staff members, contractors, and volunteers. The policy also encompasses an inmate, staff or volunteer’s right to be free from retaliation if they report an incident or participate in an investigation.”<sup>62</sup> FDC has assigned a PREA coordinator and support staff to help in developing, implementing, and monitoring compliance with these standards.<sup>63</sup>

Under PREA, the term:

- “Juvenile means any person under the age of 18, unless under adult court supervision and confined or detained in a prison or jail.”
- “Prison means an institution under Federal or State jurisdiction whose primary use is for the confinement of individuals convicted of a serious crime, usually in excess of one year in length, or a felony.

<sup>51</sup> s. 958.11(3)(f), F.S.

<sup>52</sup> s. 958.11(3)(g), F.S.

<sup>53</sup> s. 958.11(3)(h), F.S.

<sup>54</sup> Prison Rape Elimination Act of 2003, Pub. L. No. 108-79 (2003); see 42 U.S.C. § 15601 et seq.

<sup>55</sup> See Florida Department of Corrections, *Prison Rape Elimination Act (PREA)* (“Florida PREA Information Description”), available at <http://www.dc.state.fl.us/oth/PREA/> (last viewed Mar. 14, 2017).

<sup>56</sup> *Id.*

<sup>57</sup> 42 U.S.C. § 15606.

<sup>58</sup> See United States Department of Justice, *Prison Rape Elimination Act, Prisons and Jail Standards*, United States Department of Justice File Rule, May 17, 2012, available at <http://www.dc.state.fl.us/oth/PREA/PREAFinalStandards.pdf> (last viewed Mar. 14, 2017); 28 C.F.R. part 115 et seq.; see also 42 U.S.C. § 15607.

<sup>59</sup> National PREA Resource Center, *Prison Rape Elimination Act*, available at <https://www.prearesourcecenter.org/about/prison-rape-elimination-act-prea> (last viewed Mar. 14, 2017).

<sup>60</sup> 42 U.S.C. § 15602.

<sup>61</sup> Florida PREA Information Description, *supra* note 52.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

- Youthful inmate means any person under the age of 18 who is under adult court supervision and incarcerated or detained in a prison or jail.<sup>64</sup>

PREA requires that offenders under the age of 18 be housed separately from adults in correctional facilities. Specifically:

- A youthful inmate shall not be placed in a housing unit in which the youthful inmate will have sight, sound, or physical contact with any adult inmate through use of a shared dayroom or other common space, shower area, or sleeping quarters.<sup>65</sup>
- In areas outside of housing units, agencies shall either:
  - Maintain sight and sound separation between youthful inmates and adult inmates; or
  - Provide direct staff supervision when youthful inmates and adult inmates have sight, sound, or physical contact.<sup>66</sup>

Further, agencies are required to make “best efforts to avoid placing youthful inmates in isolation to comply with this provision.”<sup>67</sup> “Absent exigent circumstances, agencies shall not deny youthful inmates daily large-muscle exercise and any legally required special education services to comply with this provision. Youthful inmates shall also have access to other programs and work opportunities to the extent possible.”<sup>68</sup>

As described above, FDC identifies youthful offenders in two age groups: those who are 14 to 18 years of age and those who are 19 to 24 years of age. Under PREA, however, inmates who are under 18 years of age must be housed separately from adults. As a result of these requirements, FDC has reported that it currently maintains separate housing for those inmates who are 17 years of age or younger; those who are 18 years of age; and those who are 19 to 21 years of age.<sup>69</sup>

#### *Effect of the Bill*

The bill amends s. 958.11, F.S., relating to the assignment of youthful offenders at institutions and programs to align with PREA guidelines regarding age groups for youthful offenders. Specifically, the bill amends s. 958.11(1), F.S., to decrease the maximum age limits in that section. Under the bill, youthful offenders who are at least 14 years of age but are under the age of 18 at the time of reception (i.e., 17 years of age or younger) shall be separated from offenders who are 18 years of age or older.

The bill deletes the requirement that 18-year old youthful offenders can be assigned to a facility for 19-24 year olds if facilities designed for 14 to 18 year olds exceed 100 percent of lawful capacity.

The bill provides that FDC may assign a youthful offender who is not older than 17 years old to an adult facility for medical or mental health reasons, for protective management, or for close management. The bill also provides that a youthful offender shall be separated from offenders who are 18 years of age or older.

The bill also provide that if the youthful offender was originally assigned to a facility for 18- to 22-year old youthful offenders, but subsequently reaches the age of 23 years, FDC may retain the offender until the age of 25 if FDC determines that it is in the best interest of the offender and FDC.

The bill amends s. 958.11(3)(f), F.S., and redesignates it s. 958.11(5), F.S., to decrease the age limits currently set forth in that section. The bill provides that if a youthful offender was originally assigned to a facility designated for 14- to 17-year old youthful offenders, but subsequently reaches the age of 18

<sup>64</sup> 28 C.F.R. § 115.5.

<sup>65</sup> 28 C.F.R. § 115.14(a).

<sup>66</sup> 28 C.F.R. § 115.14(b)(1)-(2).

<sup>67</sup> 28 C.F.R. § 115.14(c).

<sup>68</sup> *Id.*

<sup>69</sup> See 2017 Department of Corrections Legislative Bill Analysis for HB 1201, Mar. 10, 2017 (on file with the House Criminal Justice Subcommittee).

years, FDC may retain the youthful offender in a facility designed for 18- to 22-year old youth offenders if FDC determines that it is in the best interest of the offender and FDC.

The bill deletes provisions in the statute relating to the reassignment of youthful offenders in the 19 to 24-year old group who are designated mentally or physically vulnerable. Likewise, the bill deletes the provisions in the statute relating to reassignment of youthful offenders in the 14- to 18-year old group who are disruptive, incorrigible, or uncontrollable.

The bill makes technical changes to incorporate the language and terminology used in the act.

The bill takes effect on July 1, 2017.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 110.205, F.S., relating to career service; exemptions.

Section 2. Amends s. 943.04, F.S., relating to Criminal Justice Investigations and Forensic Science Program; creation; investigative, forensic, and related authority.

Section 3. Amends s. 944.151, relating to security of correctional institutions and facilities.

Section 4. Amends s. 944.17, F.S., relating to commitments and classification; transfers.

Section 5. Amends s. 944.275, F.S., relating to gain-time.

Section 6. Amends s. 944.597, F.S., relating to transportation and return of prisoners by private transport company.

Section 7. Amends s. 945.36, F.S., relating to exemption from health testing regulations for law enforcement personnel conducting drug tests on inmates and releases.

Section 8. Amends s. 958.11, F.S., relating to designation of institutions and programs for youthful offenders; assignment from youthful offender institutions and programs.

Section 9. Provides an effective date of July 1, 2017.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: This bill does not appear to have an impact on state government revenues.
2. Expenditures: According to the FDC, the proposed change to convert CO Lieutenants and Captains and CPO Supervisors from Career Service to SES would entail the following costs:

|  |             |
|--|-------------|
| Correctional Officer Lieutenants and Captains:           | \$1,071,267 |
| Correctional Probation Supervisor and Senior Supervisor: | \$369,633   |
| Total Cost:  | \$1,440,900 |

As to the portion of the bill regarding educational gain-time, the FDC notes the following: Since the impact is a small shift in the release date of some inmates, the estimated long-term impact of the bill is indeterminate. However, the FDC estimates that the first year of implementation will have an impact on the average daily population (ADP) of approximately 86 inmates.

Year 1 Impact-Population Reduction:  $(86) \times \$15.91 = (499,415)$

The Department of Corrections has indicated that the Total Anticipated Fiscal Impact of the Bill is \$941,485.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.
2. Other: None.

**B. RULE-MAKING AUTHORITY: Section 945.10(4), F.S., currently requires FDC to adopt rules to prevent the disclosure of confidential records or information to unauthorized persons. To the extent that FDC would be permitted to share or disclose any confidential records or information with FDLE, the bill will require FDC to amend its existing rules set forth in Rules 33-401.701 and 33.601.901, F.A.C.**

Section 958.11(1), F.S., provides that FDC, by rule, shall "designate separate institutions and programs for youthful offenders and shall employ and utilize personnel specially qualified by training and experience to operate all such institutions and programs for youthful offenders." To the extent that the bill amends this statute, the bill will require FDC to amend existing rules as set forth in the relevant part of Rule 33.601, F.A.C.

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

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A.

1 A bill to be entitled  
2 An act relating to the Department of Corrections;  
3 amending s. 110.205, F.S.; exempting specified  
4 positions from the career service system; amending s.  
5 943.04, F.S.; authorizing the Department of Law  
6 Enforcement to issue an investigative demand seeking  
7 the production of an inmate's protected health  
8 information, medical records, or mental health records  
9 under certain circumstances; specifying requirements  
10 for the investigative demand; amending s. 944.151,  
11 F.S.; revising legislative intent; revising membership  
12 requirements for the safety and security review  
13 committee appointed by the Department of Corrections;  
14 specifying the duties of the committee; requiring the  
15 department to direct appropriate staff to complete  
16 specified duties of the department; revising  
17 scheduling requirements for inspections of state and  
18 private correctional institutions and facilities;  
19 revising the list of institutions that must be given  
20 priority for inspection; revising the list of  
21 institutions that must be given priority for certain  
22 security audits; revising minimum audit and evaluation  
23 requirements; requiring the department to direct  
24 appropriate staff to review staffing policies and  
25 practices as needed; conforming provisions to changes

26 made by the act; amending s. 944.17, F.S.; authorizing  
 27 the department to receive specified documents  
 28 electronically at its discretion; amending s. 944.275,  
 29 F.S.; revising the conditions on which an inmate may  
 30 be granted a one-time award of 60 additional days of  
 31 incentive gain-time by the department; amending s.  
 32 944.597, F.S.; revising provisions relating to  
 33 training of transport company's employees before  
 34 transporting prisoners; amending s. 945.36, F.S.;  
 35 exempting employees of a contracted community  
 36 correctional center from certain health testing  
 37 regulations for the limited purpose of administering  
 38 urine screen drug tests on inmates and releasees;  
 39 amending s. 958.11, F.S.; deleting a provision  
 40 authorizing the department to assign 18-year-old  
 41 youthful offenders to the 19-24 age group facility  
 42 under certain circumstances; deleting a condition that  
 43 all female youth offenders are allowed to continue to  
 44 be housed together only until certain institutions are  
 45 established or adapted for separation by age and  
 46 custody classifications; authorizing inmates who are  
 47 17 years of age or under to be placed at an adult  
 48 facility for specified purposes, subject to certain  
 49 conditions; authorizing the department to retain  
 50 certain youthful offenders until 25 years of age in a



51 facility designated for 18- to 22-year-old youth  
 52 offenders under certain circumstances; conforming  
 53 provisions to changes made by the act; providing an  
 54 effective date.

55  
 56 Be It Enacted by the Legislature of the State of Florida:

57  
 58 Section 1. Paragraph (m) of subsection (2) of section  
 59 110.205, Florida Statutes, is amended to read:

60 110.205 Career service; exemptions.—

61 (2) EXEMPT POSITIONS.—The exempt positions that are not  
 62 covered by this part include the following:

63 (m) All assistant division director, deputy division  
 64 director, and bureau chief positions in any department, and  
 65 those positions determined by the department to have managerial  
 66 responsibilities comparable to such positions, which include,  
 67 but are not limited to:

68 1. Positions in the Department of Health and the  
 69 Department of Children and Families which are assigned primary  
 70 duties of serving as the superintendent or assistant  
 71 superintendent of an institution.

72 2. Positions in the Department of Corrections which are  
 73 assigned primary duties of serving as the warden, assistant  
 74 warden, colonel, ~~or~~ major, captain, or lieutenant of an  
 75 institution or which ~~that~~ are assigned primary duties of serving

76 as the circuit administrator, ~~or~~ deputy circuit administrator,  
 77 correctional probation supervisor, or senior supervisor.

78 3. Positions in the Department of Transportation which are  
 79 assigned primary duties of serving as regional toll managers and  
 80 managers of offices, as specified in s. 20.23(3)(b) and (4)(c).

81 4. Positions in the Department of Environmental Protection  
 82 which are assigned the duty of an Environmental Administrator or  
 83 program administrator.

84 5. Positions in the Department of Health which are  
 85 assigned the duties of Environmental Administrator, Assistant  
 86 County Health Department Director, and County Health Department  
 87 Financial Administrator.

88 6. Positions in the Department of Highway Safety and Motor  
 89 Vehicles which are assigned primary duties of serving as  
 90 captains in the Florida Highway Patrol.

91  
 92 Unless otherwise fixed by law, the department shall set the  
 93 salary and benefits of the positions listed in this paragraph in  
 94 accordance with the rules established for the Selected Exempt  
 95 Service.

96 Section 2. Subsection (6) is added to section 943.04,  
 97 Florida Statutes, to read:

98 943.04 Criminal Justice Investigations and Forensic  
 99 Science Program; creation; investigative, forensic, and related  
 100 authority.—

101           (6) (a) In furtherance of the duties and responsibilities  
 102 of the inspector general under s. 944.31, if the Department of  
 103 Law Enforcement is conducting an investigation or assisting in  
 104 the investigation of an injury to or death of an inmate which  
 105 occurs while the inmate is under the custody or control of the  
 106 Department of Corrections, the department is authorized to,  
 107 before the initiation of a criminal proceeding relating to such  
 108 injury or death, issue in writing and serve upon the Department  
 109 of Corrections an investigative demand seeking the production of  
 110 the inmate's protected health information, medical records, or  
 111 mental health records as specified in s. 945.10(1)(a). The  
 112 department shall use such records for the limited purpose of  
 113 investigating or assisting in an investigation of an injury to  
 114 or death of an inmate for which the records were requested. Any  
 115 records disclosed pursuant to this subsection remain  
 116 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 117 of the State Constitution in accordance with s. 945.10(2).

118           (b) The investigative demand must be specific and limited  
 119 in scope to the extent reasonably practicable in light of the  
 120 purpose for which the protected health information or records  
 121 are sought and must include a certification that:

122           1. The protected health information or records sought are  
 123 relevant and material to a legitimate law enforcement inquiry;

124           2. There is a clear connection between the investigated  
 125 incident and the inmate whose protected health information and

126 records are sought; and

127 3. De-identified information could not reasonably be used.

128 Section 3. Section 944.151, Florida Statutes, is amended  
129 to read:

130 944.151 Safe operation and security of correctional  
131 institutions and facilities.—It is the intent of the Legislature  
132 that the Department of Corrections shall be responsible for the  
133 safe operation and security of the correctional institutions and  
134 facilities. The safe operation and security of the state's  
135 correctional institutions and facilities are ~~is~~ critical to  
136 ensure public safety and the safety of department employees and  
137 offenders, and to contain violent and chronic offenders until  
138 offenders are otherwise released from the department's custody  
139 pursuant to law. The Secretary of Corrections shall, at a  
140 minimum:

141 (1) Appoint appropriate department staff to a safety and  
142 security review committee that ~~which~~ shall evaluate new safety  
143 and security technology, review and discuss current issues  
144 impacting state and private correctional institutions and  
145 facilities, and review and discuss other issues as requested by  
146 department management., ~~at a minimum, be composed of: the~~  
147 ~~inspector general, the statewide security coordinator, the~~  
148 ~~regional security coordinators, and three wardens and one~~  
149 ~~correctional officer. The security review committee shall:~~

150 (2)(a) Direct appropriate department staff to establish a

151 periodic schedule for the physical inspection of buildings and  
 152 structures of each state and private correctional institution  
 153 and facility to determine safety and security deficiencies. In  
 154 scheduling the inspections, priority shall be given to older  
 155 institutions and facilities; ~~institutions and facilities~~ that  
 156 house a large proportion of violent offenders; institutions and  
 157 facilities that have experienced a significant number of  
 158 inappropriate incidents of use of force on inmates, assaults on  
 159 employees, or inmate sexual abuse; ~~and institutions and~~  
 160 facilities that have experienced a significant number of escapes  
 161 or escape attempts in the past.

162 (3) ~~(b)~~ Direct appropriate department staff to conduct or  
 163 cause to be conducted announced and unannounced comprehensive  
 164 security audits of all state and private correctional  
 165 institutions and facilities. Priority shall be given to those  
 166 institutions and facilities that have experienced a significant  
 167 number of inappropriate incidents of use of force on inmates,  
 168 assaults on employees, or sexual abuse ~~In conducting the~~  
 169 ~~security audits, priority shall be given to older institutions,~~  
 170 ~~institutions that house a large proportion of violent offenders,~~  
 171 ~~and institutions that have experienced a history of escapes or~~  
 172 ~~escape attempts.~~ At a minimum, the audit must ~~shall~~ include an  
 173 evaluation of the physical plant, landscaping, fencing, security  
 174 alarms and perimeter lighting, and confinement, arsenal, key and  
 175 lock, and entrance and exit ~~inmate classification and staffing~~

176 policies. The evaluation of the physical plant policies must  
 177 include the identification of blind spots or areas where staff  
 178 or inmates may be isolated and the deployment of video  
 179 monitoring systems and other appropriate monitoring technologies  
 180 in such spots or areas. Each correctional institution and  
 181 facility shall be audited at least annually. The secretary shall  
 182 annually report the audit ~~general survey~~ findings ~~annually~~ to  
 183 the Governor and the Legislature.

184 ~~(c) Adopt and enforce minimum security standards and~~  
 185 ~~policies that include, but are not limited to:~~

- 186 ~~1. Random monitoring of outgoing telephone calls by~~
- 187 ~~inmates.~~
- 188 ~~2. Maintenance of current photographs of all inmates.~~
- 189 ~~3. Daily inmate counts at varied intervals.~~
- 190 ~~4. Use of canine units, where appropriate.~~
- 191 ~~5. Use of escape alarms and perimeter lighting.~~
- 192 ~~6. Florida Crime Information Center/National Crime~~
- 193 ~~Information Center capabilities.~~
- 194 ~~7. Employment background investigations.~~

195 ~~(d) Annually make written prioritized budget~~  
 196 ~~recommendations to the secretary that identify critical security~~  
 197 ~~deficiencies at major correctional institutions.~~

198 (4)(e) Direct appropriate department staff to investigate  
 199 and evaluate the usefulness and dependability of existing safety  
 200 and security technology at state and private correctional ~~the~~

201 institutions and facilities, investigate and evaluate new  
 202 available safety and security technology, ~~available~~ and make  
 203 periodic written recommendations to the secretary on the  
 204 discontinuation or purchase of various safety and security  
 205 devices.

206 ~~(5)(f)~~ Direct appropriate department staff to contract, if  
 207 deemed necessary, with security personnel, consulting engineers,  
 208 architects, or other safety and security experts the department  
 209 ~~committee~~ deems necessary for safety and security ~~audits and~~  
 210 ~~security~~ consultant services.

211 ~~(6)(g)~~ Direct appropriate department staff, in conjunction  
 212 with the regional offices, to establish a periodic schedule for  
 213 conducting announced and unannounced escape simulation drills.

214 ~~(7)(2)~~ Direct appropriate department staff to maintain and  
 215 produce quarterly reports with accurate escape statistics. For  
 216 the purposes of these reports, the term "escape" includes all  
 217 possible types of escape, regardless of prosecution by the state  
 218 attorney, and includes ~~including~~ offenders who walk away from  
 219 nonsecure community facilities.

220 ~~(8)(3)~~ Direct appropriate department staff to adopt,  
 221 enforce, and annually evaluate the emergency escape response  
 222 procedures, which must ~~shall~~ at a minimum include the immediate  
 223 notification and inclusion of local and state law enforcement  
 224 through a mutual aid agreement.

225 (9) Direct appropriate department staff to review staffing

226 policies and practices as needed.

227 (10) Direct appropriate department staff to adopt and  
 228 enforce minimum safety and security standards and policies that  
 229 include, but are not limited to:

230 (a) Random monitoring of outgoing telephone calls by  
 231 inmates.

232 (b) Maintenance of current photographs of all inmates.

233 (c) Daily inmate counts at varied intervals.

234 (d) Use of canine units, where appropriate.

235 (e) Use of escape alarms and perimeter lighting.

236 (f) Use of the Florida Crime Information Center and  
 237 National Crime Information Center capabilities.

238 (g) Employment background investigations.

239 (11)(4) Direct appropriate department staff to submit in  
 240 the annual legislative budget request a prioritized summary of  
 241 critical safety and security deficiencies and repair and  
 242 renovation security needs.

243 Section 4. Subsection (5) of section 944.17, Florida  
 244 Statutes, is amended to read:

245 944.17 Commitments and classification; transfers.—

246 (5) The department shall also refuse to accept a person  
 247 into the state correctional system unless the following  
 248 documents are presented in a completed form by the sheriff or  
 249 chief correctional officer, or a designated representative, to  
 250 the officer in charge of the reception process. The department



251 may, at its discretion, receive such documents electronically:

252 (a) The uniform commitment and judgment and sentence forms  
253 as described in subsection (4).

254 (b) The sheriff's certificate as described in s. 921.161.

255 (c) A certified copy of the indictment or information  
256 relating to the offense for which the person was convicted.

257 (d) A copy of the probable cause affidavit for each  
258 offense identified in the current indictment or information.

259 (e) A copy of the Criminal Punishment Code scoresheet and  
260 any attachments thereto prepared pursuant to Rule 3.701, Rule  
261 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or  
262 any other rule pertaining to the preparation of felony  
263 sentencing scoresheets.

264 (f) A copy of the restitution order or the reasons by the  
265 court for not requiring restitution pursuant to s. 775.089(1).

266 (g) The name and address of any victim, if available.

267 (h) A printout of a current criminal history record as  
268 provided through an FCIC/NCIC printer.

269 (i) Any available health assessments including medical,  
270 mental health, and dental, including laboratory or test  
271 findings; custody classification; disciplinary and adjustment;  
272 and substance abuse assessment and treatment information which  
273 may have been developed during the period of incarceration  
274 before ~~prior to~~ the transfer of the person to the department's  
275 custody. Available information shall be transmitted on standard

276 forms developed by the department.

277

278 In addition, the sheriff or other officer having such person in  
 279 charge shall also deliver with the foregoing documents any  
 280 available presentence investigation reports as described in s.  
 281 921.231 and any attached documents. After a prisoner is admitted  
 282 into the state correctional system, the department may request  
 283 such additional records relating to the prisoner as it considers  
 284 necessary from the clerk of the court, the Department of  
 285 Children and Families, or any other state or county agency for  
 286 the purpose of determining the prisoner's proper custody  
 287 classification, gain-time eligibility, or eligibility for early  
 288 release programs. An agency that receives such a request from  
 289 the department must provide the information requested. The  
 290 department may, at its discretion, receive such information  
 291 electronically.

292 Section 5. Paragraph (d) of subsection (4) of section  
 293 944.275, Florida Statutes, is amended to read:

294 944.275 Gain-time.—

295 (4)

296 (d) Notwithstanding the monthly maximum awards of  
 297 incentive gain-time under subparagraphs (b)1., ~~and 2., and 3.,~~  
 298 the education program manager shall recommend, and the  
 299 Department of Corrections may grant, a one-time award of 60  
 300 additional days of incentive gain-time to an inmate who is

301 otherwise eligible and who successfully completes requirements  
 302 for and is, or has been during the current commitment, awarded a  
 303 high school equivalency diploma or vocational certificate. Under  
 304 no circumstances may an inmate receive more than 60 days for  
 305 educational attainment pursuant to this section.

306 Section 6. Subsection (2) of section 944.597, Florida  
 307 Statutes, is amended to read:

308 944.597 Transportation and return of prisoners by private  
 309 transport company.—

310 (2) The department shall include, but is ~~shall~~ not ~~be~~  
 311 limited to, the following requirements in any contract with any  
 312 transport company:

313 (a) That the transport company shall maintain adequate  
 314 liability coverage with respect to the transportation of  
 315 prisoners.†

316 (b) That the transport company shall require its employees  
 317 to complete at least 100 hours of training before transporting  
 318 prisoners. The curriculum for such training must be approved by  
 319 the department and include instruction in:

- 320 1. Use of restraints;
- 321 2. Searches of prisoners;
- 322 3. Use of force, including use of appropriate weapons and  
 323 firearms;
- 324 4. Cardiopulmonary resuscitation;
- 325 5. Map reading; and

326           6. Defensive driving. ~~personnel employed with the~~  
 327 ~~transport company who are based in the state shall meet the~~  
 328 ~~minimum standards in accordance with s. 943.13 and that~~  
 329 ~~personnel employed with the transport company based outside of~~  
 330 ~~Florida shall meet the minimum standards for a correctional~~  
 331 ~~officer or law enforcement officer in the state where the~~  
 332 ~~employee is based;~~

333           (c) That the transport company shall adhere to standards  
 334 which provide for humane treatment of prisoners while in the  
 335 custody of the transport company.†

336           (d) That the transport company shall submit reports to the  
 337 department regarding incidents of escape, use of force, and  
 338 accidents involving prisoners in the custody of the transport  
 339 company.

340           Section 7. Section 945.36, Florida Statutes, is amended to  
 341 read:

342           945.36 Exemption from health testing regulations for law  
 343 enforcement personnel conducting drug tests on inmates and  
 344 releasees.-

345           (1) Any law enforcement officer, state or county probation  
 346 officer, ~~or~~ employee of the Department of Corrections, or  
 347 employee of a contracted community correctional center who is  
 348 certified by the Department of Corrections pursuant to  
 349 subsection (2), is exempt from part I of chapter 483, for the  
 350 limited purpose of administering a urine screen drug test to:

- 351 (a) Persons during incarceration;  
 352 (b) Persons released as a condition of probation for  
 353 either a felony or misdemeanor;  
 354 (c) Persons released as a condition of community control;  
 355 (d) Persons released as a condition of conditional  
 356 release;  
 357 (e) Persons released as a condition of parole;  
 358 (f) Persons released as a condition of provisional  
 359 release;  
 360 (g) Persons released as a condition of pretrial release;  
 361 or  
 362 (h) Persons released as a condition of control release.

363 (2) The Department of Corrections shall develop a  
 364 procedure for certification of any law enforcement officer,  
 365 state or county probation officer, ~~or~~ employee of the Department  
 366 of Corrections, or employee of a contracted community  
 367 correctional center to perform a urine screen drug test on the  
 368 persons specified in subsection (1).

369 Section 8. Section 958.11, Florida Statutes, is amended to  
 370 read:

371 958.11 Designation of institutions and programs for  
 372 youthful offenders; assignment from youthful offender  
 373 institutions and programs.—

374 (1) The department shall by rule designate separate  
 375 institutions and programs for youthful offenders and shall

376 employ and utilize personnel specially qualified by training and  
 377 experience to operate all such institutions and programs for  
 378 youthful offenders. Youthful offenders who are at least 14 years  
 379 of age but who have not yet reached the age of 18 ~~19~~ years at  
 380 the time of reception shall be separated from ~~youthful~~ offenders  
 381 who are 18 ~~19~~ years of age or older, ~~except that if the~~  
 382 ~~population of the facilities designated for 14-year-old to 18-~~  
 383 ~~year-old youthful offenders exceeds 100 percent of lawful~~  
 384 ~~capacity, the department may assign 18-year-old youthful~~  
 385 ~~offenders to the 19-24 age group facility.~~

386 (2) Youthful offender institutions and programs shall  
 387 contain only those youthful offenders sentenced as such by a  
 388 court or classified as such by the department, pursuant to the  
 389 requirements of subsections (7) ~~(4)~~ and (9) ~~(6)~~, except that  
 390 under special circumstances select adult offenders may be  
 391 assigned to youthful offender institutions. All female youthful  
 392 offenders ~~of all ages~~ may continue to be housed together at  
 393 those institutions designated by department rule ~~until such time~~  
 394 ~~as institutions for female youthful offenders are established or~~  
 395 ~~adapted to allow for separation by age and to accommodate all~~  
 396 ~~custody classifications.~~

397 (3) The department may assign a youthful offender who is  
 398 18 years of age or older to a facility in the state correctional  
 399 system which is not designated for the care, custody, control,  
 400 and supervision of youthful offenders or an age group only in

401 the following circumstances:

402 (a) If the youthful offender is convicted of a new crime  
 403 that ~~which~~ is a felony under the laws of this state.

404 (b) If the youthful offender becomes such a serious  
 405 management or disciplinary problem resulting from serious  
 406 violations of the rules of the department that his or her  
 407 original assignment would be detrimental to the interests of the  
 408 program and to other inmates committed thereto.

409 (c) If the youthful offender needs medical treatment,  
 410 health services, or other specialized treatment otherwise not  
 411 available at the youthful offender facility.

412 (d) If the department determines that the youthful  
 413 offender should be transferred outside of the state correctional  
 414 system, as provided by law, for services not provided by the  
 415 department.

416 (e) If bed space is not available in a designated  
 417 community residential facility, the department may assign a  
 418 youthful offender to a community residential facility, provided  
 419 that the youthful offender is separated from other offenders  
 420 insofar as is practical.

421 (4) The department may assign a youthful offender whose  
 422 age does not exceed 17 years to an adult facility for medical or  
 423 mental health reasons, for protective management, or for close  
 424 management. The youthful offender shall be separated from  
 425 offenders who are 18 years of age or older.

426            ~~(5)(f)~~ If the youthful offender was originally assigned to  
 427 a facility designated for 14- to 17-year-old ~~14-year-old to 18-~~  
 428 ~~year-old~~ youthful offenders, but subsequently reaches the age of  
 429 18 19 years, the department may retain the youthful offender in  
 430 a ~~the~~ facility designated for 18- to 22-year-old youthful  
 431 offenders if the department determines that it is in the best  
 432 interest of the youthful offender and the department.

433            (6) If the youthful offender was originally assigned to a  
 434 facility designated for 18- to 22-year-old youthful offenders,  
 435 but subsequently reaches the age of 23 years, the department may  
 436 retain the offender in the facility until the age of 25 if the  
 437 department determines that it is in the best interest of the  
 438 youthful offender and the department.

439            ~~(g) If the department determines that a youthful offender~~  
 440 ~~originally assigned to a facility designated for the 19-24 age~~  
 441 ~~group is mentally or physically vulnerable by such placement,~~  
 442 ~~the department may reassign a youthful offender to a facility~~  
 443 ~~designated for the 14-18 age group if the department determines~~  
 444 ~~that a reassignment is necessary to protect the safety of the~~  
 445 ~~youthful offender or the institution.~~

446            ~~(h) If the department determines that a youthful offender~~  
 447 ~~originally assigned to a facility designated for the 14-18 age~~  
 448 ~~group is disruptive, incorrigible, or uncontrollable, the~~  
 449 ~~department may reassign a youthful offender to a facility~~  
 450 ~~designated for the 19-24 age group if the department determines~~



451 ~~that a reassignment would best serve the interests of the~~  
 452 ~~youthful offender and the department.~~

453 (7)~~(4)~~ The department shall continuously screen all  
 454 institutions, facilities, and programs for any inmate who meets  
 455 the eligibility requirements for youthful offender designation  
 456 specified in s. 958.04(1)(a) and (c) whose age does not exceed  
 457 24 years and whose total length of sentence does not exceed 10  
 458 years, and the department may classify and assign as a youthful  
 459 offender any inmate who meets the criteria of this subsection.

460 (8)~~(5)~~ The department shall coordinate all youthful  
 461 offender assignments or transfers and shall review and maintain  
 462 access to full and complete documentation and substantiation of  
 463 all such assignments or transfers of youthful offenders to or  
 464 from facilities in the state correctional system which are not  
 465 designated for their care, custody, and control, except  
 466 assignments or transfers made pursuant to paragraph (3)(c).



467 (9)~~(6)~~ The department may assign to a youthful offender  
 468 facility any inmate, except a capital or life felon, whose age  
 469 does not exceed 19 years but who does not otherwise meet the  
 470 criteria of this section, if the department determines that such  
 471 inmate's mental or physical vulnerability would substantially or  
 472 materially jeopardize his or her safety in a nonyouthful  
 473 offender facility. Assignments made under this subsection shall  
 474 be included in the department's annual report.

475 Section 9. This act shall take effect July 1, 2017.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1203 Pub. Rec./DOC/Health Information  
**SPONSOR(S):** Gonzalez  
**TIED BILLS:** HB 1201 **IDEN./SIM. BILLS:** SB 1526

| REFERENCE   | ACTION | ANALYST  | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF  |
|---|--------|--|---|
| 1) Criminal Justice Subcommittee                            |        | Merlin  | White  |
| 2) Oversight, Transparency & Administration<br>Subcommittee |        |  |   |
| 3) Judiciary Committee                                      |        |  |   |

### SUMMARY ANALYSIS

Federal law provides a right to privacy for health and medical records under the Health Insurance Portability and Accountability Act ("HIPAA"). The HIPAA Privacy Rule sets national standards for the use and disclosure of individuals' health information, called protected health information ("PHI"), by covered entities. Although an individual's health and medical records are generally private under HIPAA, there are exceptions which allow disclosure for purposes of promoting health and safety, protecting law enforcement, and assisting in criminal and other types of investigations.

The HIPAA Privacy Rule establishes a baseline or "floor" of privacy protections for PHI, not a "ceiling." Where state laws are more protective of privacy than HIPAA, the state requirements will remain in effect.

Florida law affords greater privacy protection than HIPAA. Section 945.10(2)(g), F.S., only allows the Department of Corrections ("DOC") to share the record of an inmate's mental, medical, and substance abuse information pursuant to a court order, subpoena, or inmate consent and in one other limited circumstance – to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for HIV.

The bill, which is linked to the passage of HB 1201, amends s. 945.10(1), F.S., to revise the types of inmate health information held by DOC, which is confidential and exempt from disclosure, and expands the entities to which the DOC may disclose such information. Under the bill, state attorneys, law enforcement agencies, the Executive Office of the Governor, the Correctional Medical Authority, the Division of Risk Management of the Department of Financial Services, the Department of Legal Affairs, the Department of Children and Families, and other entities may receive such confidential and exempt information if specified requirements are met. The bill also provides for disclosure of a deceased inmate's PHI and other health records under specified circumstances.

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

The bill takes effect on the same date that HB 1201 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. HB 1201 takes effect on July 1, 2017.

The bill provides for repeal of the public records exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

**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.**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1203.CRJ

DATE: 3/19/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Records Law**

##### Florida Constitution

Article I, Section 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Legislature, however, may exempt records from the requirements of Article I, Section 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.<sup>2</sup>

##### Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act<sup>3</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>4</sup> However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.<sup>5</sup>

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2<sup>nd</sup> of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup> The Act also requires specified questions to be considered during the review process.<sup>7</sup>

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<sup>1</sup> FLA. CONST. art 1, s. 24(a).

<sup>2</sup> FLA. CONST. art 1, s. 24(c).

<sup>3</sup> s. 119.15, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> s. 119.15(3), F.S.

<sup>7</sup> Section 119.15(6)(a), F.S., states that the specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

## Medical Privacy under Federal Law

Federal law provides a right to privacy for health and medical records. In 1996, Congress passed the Health Insurance Portability and Accountability Act ("HIPAA").<sup>8</sup> Among its purposes are the following:

- To provide the ability to transfer and continue health insurance coverage for workers and their families when they change or lose their jobs;
- To reduce health care fraud and abuse;
- To mandate industry-wide standards for health care information on electronic billing and other processes; and
- To require the protection and confidential handling of protected health information.

Under HIPAA, the Secretary of Health and Human Services ("HHS") is required to publicize national standards for the electronic exchange, privacy, and security of health information. These standards are collectively known as the Administrative Simplification provisions. HIPAA also required the Secretary of HHS to issue privacy regulations governing individually identifiable health information if Congress did not enact privacy legislation within three years of the Act's passage.<sup>9</sup>

As Congress did not enact the privacy legislation within three years of HIPAA's passage, the Secretary of HHS developed the HIPAA Privacy Rule, which was first published in 2000 and modified in 2002.<sup>10</sup> The Privacy Rule sets national standards for the use and disclosure of individuals' health information, called protected health information ("PHI"), by three types of covered entities: health plans, health care clearinghouses, and health care providers who conduct the standard health care transactions electronically.<sup>11</sup> A state agency or department which performs functions that make it a "covered entity," must comply with the HIPAA Privacy Rule.

The HIPAA Privacy Rule defines PHI as individually identifiable health information,<sup>12</sup> held or maintained by a covered entity or its business associates acting for the covered entity, which is transmitted or maintained in any form or medium. This includes identifiable demographic and other information relating to the past, present, or future physical or mental health or condition of an individual, or the provision or payment of health care to an individual that is created or received by a health care provider, health plan, employer, or health care clearinghouse.

Although many disclosures about an individual's health and medical records are private under HIPAA, there are also exceptions which are applicable to health and safety. This includes things such as the protection of the public and members of law enforcement, as well as the furtherance of investigative functions, judicial proceedings, food safety investigation, crime prevention, disease prevention, child abuse, neglect, and domestic violence investigations, school-related health and safety concerns, medical examinations, research, and national security.<sup>13</sup> These exceptions also specifically include correctional facilities,<sup>14</sup> where disclosure of PHI for inmates and other covered individuals is permitted if it is necessary for:

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<sup>8</sup> Pub. L. 104-91, 110 Stat. 1936 (1996).

<sup>9</sup> *Summary of HIPAA Privacy Rule*, United States Department of Health and Human Services, May 2003, available at <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (Last viewed Mar. 9, 2017); see also *HIPAA for Professionals*, United States Department of Health and Human Services, available at <https://www.hhs.gov/hipaa/for-professionals/> (Last viewed Mar. 9, 2017).

<sup>10</sup> See 45 C.F.R. Parts 160 and 164, Subparts A and E.

<sup>11</sup> As defined in 45 C.F.R. 160.103, a "[h]ealth plan means an individual or group plan that provides, or pays the cost of, medical care..." *Id.* "Healthcare clearinghouse means a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and 'value-added' networks and switches, that [performs one or another function described in the rule]." *Id.* "Health care provider means a provider of services..., a provider of medical or health services..., and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business." *Id.*

<sup>12</sup> "Personal health information" or "PHI" is defined in 45 CFR 160.103, along with the related definitions of "individually identifiable health information" and "health information."

<sup>13</sup> See generally 45 C.F.R. 164.512.

<sup>14</sup> 45 C.F.R. 164.512(k)(5)(i)(A)-(F).

- The provision of health care to such individuals;
- The health and safety of such individual or other inmates;
- The health and safety of the officers or employees of or others at the correctional institution;
- The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution; or
- The administration and maintenance of the safety, security, and good order of the correctional institution.

Under HIPPA, a covered entity that is a correctional institution may use the PHI of individuals who are inmates for any purpose for which such information may be disclosed.<sup>15</sup>

If a state law is contrary to HIPPA, then the latter preempts it and is controlling. However, where state laws are more protective of privacy than HIPPA, the state requirements will remain in effect. HIPPA sets a floor, not a ceiling.<sup>16</sup>

### **Right to Privacy in Medical Records in Florida**

In Florida, citizens have a fundamental right to privacy, as provided in the Florida Constitution.<sup>17</sup> This includes information about a patient's medical records, health condition, treatment, and care, and imposes a high burden on a member of the public or a government agency to obtain this information or permit it to be disclosed.<sup>18</sup>

Along with the constitutional right to privacy, there are also specific statutory provisions which protect an individual's health and medical records. For example, s. 456.057, F.S., involves the confidentiality of both medical records and communications between a person and his doctor, who is the "record owner."<sup>19</sup> Consistent with the constitutional right of privacy, s. 456.057, F.S., indicates that medical records may not be furnished, and discussions about a patient's medical condition may not be disclosed, to any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the patient's care or treatment, except upon written authorization from the patient, and subject to limited exceptions.<sup>20</sup>

Likewise, there is a statutory right to privacy in medical records held by the Florida Department of Corrections ("DOC"). Section 945.10(1), F.S., state[s] that mental, medical, and substance abuse

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<sup>15</sup> 45 C.F.R. 164.512(k)(5)(ii).

<sup>16</sup> 45 C.F.R. 160.201-05.

<sup>17</sup> FLA. CONST., art. I, s. 23 ("Every natural person has the right to be let alone and free from governmental intrusion into the person's private life. . .").

<sup>18</sup> *State v. Johnson*, 814 So. 2d 390, 393 (Fla. 2002) (noting, "[a] patient's medical records enjoy a confidential status by virtue of the right to privacy contained in the Florida Constitution, and any attempt on the part of the government to obtain such records must first meet constitutional muster."); *Fla. Dep't of Corrs. v. Abril*, 969 So. 2d 201, 205-06 (Fla. 2007); *State v. Strickling*, 164 So. 3d 727, 731 (Fla. 3d DCA 2015); *Johnson*, 814 So. 2d 393 (noting, "The right to privacy is not absolute and will yield to compelling governmental interests.").

<sup>19</sup> Chapter 456, F.S., generally governs health professions and occupations, while s. 456.057, F.S., pertains to ownership and control of patient records; reports or copies of records to be furnished; and disclosure of information. Section 456.057(1), F.S., defines a "record owner" as "any health care practitioner who generates a medical record after making a physical or mental examination of, or administering treatment or dispensing legend drugs to, any person; any health care practitioner to whom records are transferred by a previous records owner; or any health care practitioner's employer, including, but not limited to, group practices and staff-model health maintenance organizations, provided the employment contract or agreement between the employer and the health care practitioner designates the employer as the records owner." *Id.*

<sup>20</sup> s. 456.057(7)(a), F.S. (providing a list of exceptions where records can be furnished, including a patient's consent for care or treatment; compulsory physical examination in a civil case where records are furnished to both the plaintiff and defendant; issuance of a subpoena in a civil action or criminal proceeding; statistical and scientific research; or treatment of poison control). *See also State v. Sun*, 82 So. 3d 866 (Fla. 4th DCA 2011).

records of inmates and offenders held by DOC are confidential and exempt.<sup>21</sup> Section 945.10, F.S. also requires DOC to adopt rules to prevent disclosure of such records or information to unauthorized persons.<sup>22</sup> Presently, s. 945.10(2)(g), F.S., only allows record sharing of an inmate or offender's mental, medical, and substance abuse information in one circumstance – to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection (“HIV”).<sup>23</sup> The definition of an HIV test is set forth in the public health chapter of the Florida statutes, s. 381.004, F.S.<sup>24</sup>

DOC is a “covered entity” for purposes of the HIPPA Privacy Rule.<sup>25</sup> Further, because DOC creates and maintains hospital records through its licensed hospital, the Reception Medical Center, DOC is a “record owner” subject to ss. 456.057 and 945.10, F.S. However, s. 945.10, F.S., provides greater privacy protection than, and is more restrictive than, the HIPPA Privacy Rule.

### **Effect of the Bill**

The bill amends s. 945.10(1), F.S., so that the following additional information held by DOC is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

- PHI of an inmate or an offender; and
- The identity of an inmate or offender upon whom an HIV test has been performed and the inmate or offender's test results.

The bill provides the following definitions:

- PHI has the same meaning as provided in 45 C.F.R. 160.103, the HIPPA Privacy Rule.
- HIV test has the same meaning as provided in s. 381.004, F.S.

The bill provides for the repeal of each of these exemptions on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill amends s. 945.10(2), F.S., to add clarifying language in conformity with the changes to s. 945.10(1), F.S.

The bill also amends s. 945.10(2), F.S., so that PHI and mental health, medical or substance abuse records of an inmate or offender may be released to the following persons or groups unless expressly prohibited by federal law:

- To the Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including:
  - Audits;
  - Civil, Administrative, or Criminal Investigations; or
  - Inspections relating to the provision of health services, in accordance with 45 C.F.R. part 164, subpart E.
- To a state attorney, a state court, or a law enforcement agency (“LEA”) conducting an ongoing criminal investigation if:

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<sup>21</sup> s. 945.10(1)(a), F.S. (noting, “Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution: Mental health, medical, or substance abuse records of an inmate or an offender.”).

<sup>22</sup> Section 945.10(4), F.S., requires DOC to “adopt rules to prevent disclosure of confidential records or information to unauthorized persons.” *Id.* The corresponding provisions of the Florida Administrative Code are Rule 33.601.901, F.A.C. (Confidential Records) and Rule 33-401.701, F.A.C. (Medical and Substance Abuse Clinical Files).

<sup>23</sup> See s. 945.10(2)(g), F.S., which involves an exception for positive testing of the Human Immunodeficiency Virus (“HIV”). This is consistent with HIV testing under s. 381.004(2), F.S., providing exceptions for disclosure due to risk of exposure, health, and treatment.

<sup>24</sup> s. 381.004(1)(b), F.S. (indicating that an “HIV test” means “a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection.”).

<sup>25</sup> See *Christie v. Dep't of Corr.*, Case No. 09-2312RP, at 9, 2009 WL 3663682, at \*4 (Fla. DOAH, Nov. 2, 2009).

- The inmate agrees to the disclosure and provides written consent; or
- The inmate refuses to provide written consent, in response to:
  - An order of a court of competent jurisdiction;
  - A subpoena, including a grand jury, investigative, or administrative subpoena;
  - A court-ordered warrant; or
  - A statutorily authorized investigative demand or other process as authorized by law in accordance with 45 C.F.R. part 164, subpart E, provided that:
    - The PHI and records sought are relevant and material to a legitimate law enforcement inquiry;
    - There is a clear connection between the investigated incident and the inmate whose PHI and records are sought;
    - The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought; and
    - De-identified information could not reasonably be used.
- To a state attorney or LEA, regarding an inmate who is suspected of being the victim of a crime, if:
  - The inmate agrees to the disclosure and provides written consent; or
  - The inmate is unable to agree because of incapacity or other emergency circumstance in accordance with 45 C.F.R. part 164, subpart E, provided that:
    - The PHI and records are needed to determine whether a violation of law by a person other than the inmate victim has occurred;
    - The PHI or records are not intended to be used against the inmate victim;
    - The immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the inmate is able to agree with the disclosure;
    - The disclosure is in the best interests of the inmate victim, as determined by DOC.
- To a state attorney or LEA if DOC believes in good faith that the information and records constitute evidence of criminal conduct that occurred in a correctional institution or facility, in accordance with 45 C.F.R. part 164, subpart E, provided that:
  - The PHI and records disclosed are specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought;
  - There is a clear connection between the criminal conduct and the inmate whose PHI and records are sought; and
  - De-identified information could not reasonably be used.
- To the Division of Risk Management ("DRM") of the Department of Financial Services, in accordance with 45 C.F.R. part 164, subpart E, upon certification by DRM that such information and records are necessary to investigate and provide legal representation for a claim against DOC.
- To the Department of Legal Affairs or to an attorney retained to represent DOC in a legal proceeding, by an inmate who is bringing a legal action against DOC, in accordance with 45 C.F.R. part 164, subpart E.
- To another correctional institution or facility or law enforcement official having lawful custody of the inmate, in accordance with 45 C.F.R. part 164, subpart E, if the PHI or records are necessary for:
  - The provision of health care to the inmate;
  - The health and safety of the inmate or other inmates;
  - The health and safety of the officers, employees, or others at the correctional institution or facility;
  - The health and safety of the individuals or officers responsible for transporting the inmate from one correctional institution, facility, or setting to another;
  - Law enforcement on the premises of the correctional institution or facility; or
  - The administration and maintenance of the safety, security, and good order of the correctional institution or facility.



- To the Department of Children and Families and the Florida Commission on Offender Review, in accordance with 45 C.F.R. part 164, subpart E, if the inmate received mental health treatment while in the custody of DOC and becomes eligible for release under supervision or upon the end of his or her sentence.

The bill also permits persons who have authority to act on behalf of a deceased inmate, upon request, to have access to the deceased inmate's PHI, mental health, medical, or substance abuse records. This request applies notwithstanding s. 456.057, F.S., and in accordance with 45 C.F.R. Part 164, subpart E. The bill provides that the following individuals have authority to make such requests:

- A person appointed by a court to act as the personal representative, executor, administrator, curator, or temporary administrator of the deceased inmate's or offender's estate;
- If a judicial appointment has not been made by the court, then a person designated by the inmate or offender to act as his or her personal representative in a last will that is self-proved; or
- If no judicial appointment has been made, or if no person has been designated in a last will, then the section would apply to:
  - A surviving spouse;
  - If there is no surviving spouse, to a surviving adult child of the inmate or offender; or
  - If there is no surviving spouse or adult child, to a parent of the inmate or offender.

The bill provides that all requests for access to a deceased inmate or offender's PHI or mental health, medical, or substance abuse records must be in writing and must include the following:

- If there was an appointment by the court, the requestor must provide a copy of the letter of administration and a copy of the court order appointing such person as the representative of the inmate or offender's estate; or
- If there was a designation in a self-proved will, the requestor must provide a copy of the self-proved last will designating the person as the inmate or offender's representative; or
- If there was no judicial appointment or designation in a will, the requestor must provide a letter from the person's attorney verifying the person's relationship to the inmate or offender and the absence of a court-appointed representative and self-proved last will.

The bill also provides that this section does not limit any rights to obtain records by subpoena or other court process.

In the bill's public necessity statement, it provides legislative findings relating to PHI and HIV testing information held by DOC. Specifically, the bill finds:

- It is a public necessity that an inmate or offender's PHI and HIV testing information held by DOC pursuant to s. 945.10, F.S., remain confidential and exempt from public disclosure "as envisioned by the Legislature in this statute and as provided in department rules."
- Allowing PHI to be publicly disclosed would in some cases cause a conflict with existing federal law and would be a violation of an inmate or offender's privacy under the state constitution.
- Maintaining the confidentiality of an inmate or offender's HIV testing information is essential to his or her participation in such testing. Thus, the harm from disclosure would outweigh the public benefit derived from it.
- Appropriate records and PHI are available to various governmental entities in order for them to perform their duties.
- It is mandatory that prisons function as effectively, efficiently, and nonviolently as possible.
- To release such information to the public would severely impede that function and would jeopardize the health and safety of those within and outside the prison system.

Finally, the bill provides that it will take effect on the same date as that of HB 1201 or similar legislation, if such legislation is passed during the same session, or an extension of that session, and becomes law.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 945.10, F.S., relating to confidential information.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date that is the same as that of HB 1201 or similar legislation, if such legislation is passed during the same session, or an extension of that session, and becomes law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: This bill does not appear to have an impact on state government revenues.
2. Expenditures: This bill does not appear to have an impact on state government expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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 public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption limited to expunged criminal records of victims of human trafficking. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

- B. RULE-MAKING AUTHORITY: Section 945.10(4), F.S., currently requires DOC to adopt rules to prevent the disclosure of confidential records or information to unauthorized persons. This bill will require DOC to amend its existing rules set forth in Rules 33-401.701 and 33.601.901, F.A.C.
- C. DRAFTING ISSUES OR OTHER COMMENTS: None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A.

1                   A bill to be entitled  
 2           An act relating to public records; amending s. 945.10,  
 3           F.S.; providing that certain protected health  
 4           information held by the Department of Corrections is  
 5           confidential and exempt from public records  
 6           requirements; authorizing the release of protected  
 7           health information and other records of an inmate to  
 8           certain entities, subject to specified conditions and  
 9           under certain circumstances; providing a statement of  
 10          public necessity; providing an effective date.

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

13  
 14           Section 1. Paragraph (a) of subsection (1) of section  
 15   945.10, Florida Statutes, is amended, present paragraph (h) of  
 16   that subsection is redesignated as paragraph (i), a new  
 17   paragraph (h) is added to that subsection, subsection (2) of  
 18   that section is amended, and subsection (6) is added to that  
 19   section, to read:

20           945.10 Confidential information.—

21           (1) Except as otherwise provided by law or in this  
 22   section, the following records and information held by the  
 23   Department of Corrections are confidential and exempt from the  
 24   provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 25   Constitution:

26 (a)1. Mental health, medical, or substance abuse records  
 27 of an inmate or an offender; and

28 2. Protected health information of an inmate or an  
 29 offender. Protected health information, as used in this section,  
 30 has the same meaning as provided in 45 C.F.R. s. 160.103. This  
 31 subparagraph is subject to the Open Government Sunset Review Act  
 32 of 1995 in accordance with s. 119.15 and shall stand repealed on  
 33 October 2, 2022, unless reviewed and saved from repeal through  
 34 reenactment by the Legislature.

35 (h) The identity of any inmate or offender upon whom an  
 36 HIV test has been performed and the inmate's or offender's test  
 37 results, in accordance with s. 381.004. The term "HIV test" has  
 38 the same meaning as provided in s. 381.004. This paragraph is  
 39 subject to the Open Government Sunset Review Act of 1995 in  
 40 accordance with s. 119.15 and shall stand repealed on October 2,  
 41 2022, unless reviewed and saved from repeal through reenactment  
 42 by the Legislature.

43 (2) The records and information specified in paragraphs  
 44 (1)(a)-(i) ~~(1)(a)-(h)~~ may be released as follows unless  
 45 expressly prohibited by federal law:

46 (a) Information specified in paragraphs (1)(b), (d), and  
 47 (f) to the Executive Office of the Governor, the Legislature,  
 48 the Florida Commission on Offender Review, the Department of  
 49 Children and Families, a private correctional facility or  
 50 program that operates under a contract, the Department of Legal

51 | Affairs, a state attorney, the court, or a law enforcement  
 52 | agency. A request for records or information pursuant to this  
 53 | paragraph need not be in writing.

54 |       (b) Information specified in paragraphs (1)(c), (e), and  
 55 | (i) ~~(h)~~ to the Executive Office of the Governor, the  
 56 | Legislature, the Florida Commission on Offender Review, the  
 57 | Department of Children and Families, a private correctional  
 58 | facility or program that operates under contract, the Department  
 59 | of Legal Affairs, a state attorney, the court, or a law  
 60 | enforcement agency. A request for records or information  
 61 | pursuant to this paragraph must be in writing and a statement  
 62 | provided demonstrating a need for the records or information.

63 |       (c) Information specified in paragraph (1)(b) to an  
 64 | attorney representing an inmate under sentence of death, except  
 65 | those portions of the records containing a victim's statement or  
 66 | address, or the statement or address of a relative of the  
 67 | victim. A request for records of information pursuant to this  
 68 | paragraph must be in writing and a statement provided  
 69 | demonstrating a need for the records or information.

70 |       (d) Information specified in paragraph (1)(b) to a public  
 71 | defender representing a defendant, except those portions of the  
 72 | records containing a victim's statement or address, or the  
 73 | statement or address of a relative of the victim. A request for  
 74 | records or information pursuant to this paragraph need not be in  
 75 | writing.

76 (e) Information specified in paragraph (1)(b) to state or  
 77 local governmental agencies. A request for records or  
 78 information pursuant to this paragraph must be in writing and a  
 79 statement provided demonstrating a need for the records or  
 80 information.

81 (f) Information specified in paragraph (1)(b) to a person  
 82 conducting legitimate research. A request for records and  
 83 information pursuant to this paragraph must be in writing, the  
 84 person requesting the records or information must sign a  
 85 confidentiality agreement, and the department must approve the  
 86 request in writing.

87 (g) Protected health information and records specified in  
 88 paragraphs ~~paragraph~~ (1)(a) and (h) to the Department of Health  
 89 and the county health department where an inmate plans to reside  
 90 if he or she has tested positive for the presence of the  
 91 antibody or antigen to human immunodeficiency virus infection or  
 92 as authorized in s. 381.004.

93 (h) Protected health information and mental health,  
 94 medical, or substance abuse records specified in paragraph  
 95 (1)(a) to the Executive Office of the Governor, the Correctional  
 96 Medical Authority, and the Department of Health for health care  
 97 oversight activities authorized by state or federal law,  
 98 including audits; civil, administrative, or criminal  
 99 investigations; or inspections relating to the provision of  
 100 health services, in accordance with 45 C.F.R. part 164, subpart

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E.  
(i) Protected health information and mental health,  
medical, or substance abuse records specified in paragraph  
(1)(a) to a state attorney, a state court, or a law enforcement  
agency conducting an ongoing criminal investigation, if the  
inmate agrees to the disclosure and provides written consent or,  
if the inmate refuses to provide written consent, in response to  
an order of a court of competent jurisdiction, a subpoena,  
including a grand jury, investigative, or administrative  
subpoena, a court-ordered warrant, or a statutorily authorized  
investigative demand or other process as authorized by law, in  
accordance with 45 C.F.R. part 164, subpart E, provided that:  
 1. The protected health information and records sought are  
relevant and material to a legitimate law enforcement inquiry;  
 2. There is a clear connection between the investigated  
incident and the inmate whose protected health information and  
records are sought;  
 3. The request is specific and limited in scope to the  
extent reasonably practicable in light of the purpose for which  
the information or records are sought; and  
 4. De-identified information could not reasonably be used.  
(j) Protected health information and mental health,  
medical, or substance abuse records specified in paragraph  
(1)(a) of an inmate who is or is suspected of being the victim  
of a crime, to a state attorney or a law enforcement agency if



126 the inmate agrees to the disclosure and provides written consent  
 127 or if the inmate is unable to agree because of incapacity or  
 128 other emergency circumstance, in accordance with 45 C.F.R. part  
 129 164, subpart E, provided that:

130 1. Such protected health information and records are  
 131 needed to determine whether a violation of law by a person other  
 132 than the inmate victim has occurred;

133 2. Such protected health information or records are not  
 134 intended to be used against the inmate victim;

135 3. The immediate law enforcement activity that depends  
 136 upon the disclosure would be materially and adversely affected  
 137 by waiting until the inmate victim is able to agree to the  
 138 disclosure; and

139 4. The disclosure is in the best interests of the inmate  
 140 victim, as determined by the department.

141 (k) Protected health information and mental health,  
 142 medical, or substance abuse records specified in paragraph  
 143 (1)(a) to a state attorney or a law enforcement agency if the  
 144 department believes in good faith that the information and  
 145 records constitute evidence of criminal conduct that occurred in  
 146 a correctional institution or facility, in accordance with 45  
 147 C.F.R. part 164, subpart E, provided that:

148 1. The protected health information and records disclosed  
 149 are specific and limited in scope to the extent reasonably  
 150 practicable in light of the purpose for which the information or

151 records are sought;

152 2. There is a clear connection between the criminal  
 153 conduct and the inmate whose protected health information and  
 154 records are sought; and

155 3. De-identified information could not reasonably be used.

156 (l) Protected health information and mental health,  
 157 medical, or substance abuse records specified in paragraph  
 158 (1)(a) to the Division of Risk Management of the Department of  
 159 Financial Services, in accordance with 45 C.F.R. part 164,  
 160 subpart E, upon certification by the Division of Risk Management  
 161 that such information and records are necessary to investigate  
 162 and provide legal representation for a claim against the  
 163 Department of Corrections.

164 (m) Protected health information and mental health,  
 165 medical, or substance abuse records specified in paragraph  
 166 (1)(a) of an inmate who is bringing a legal action against the  
 167 department, to the Department of Legal Affairs or to an attorney  
 168 retained to represent the department in a legal proceeding, in  
 169 accordance with 45 C.F.R. part 164, subpart E.

170 (n) Protected health information and mental health,  
 171 medical, or substance abuse records of an inmate as specified in  
 172 paragraph (1)(a) to another correctional institution or facility  
 173 or law enforcement official having lawful custody of the inmate,  
 174 in accordance with 45 C.F.R. part 164, subpart E, if the  
 175 protected health information or records are necessary for:

- 176           1. The provision of health care to the inmate;  
 177           2. The health and safety of the inmate or other inmates;  
 178           3. The health and safety of the officers, employees, or  
 179 others at the correctional institution or facility;  
 180           4. The health and safety of the individuals or officers  
 181 responsible for transporting the inmate from one correctional  
 182 institution, facility, or setting to another;  
 183           5. Law enforcement on the premises of the correctional  
 184 institution or facility; or  
 185           6. The administration and maintenance of the safety,  
 186 security, and good order of the correctional institution or  
 187 facility.  
 188           (o) Protected health information and mental health,  
 189 medical, or substance abuse records of an inmate as specified in  
 190 paragraph (1)(a) to the Department of Children and Families and  
 191 the Florida Commission on Offender Review, in accordance with 45  
 192 C.F.R. part 164, subpart E, if the inmate received mental health  
 193 treatment while in the custody of the Department of Corrections  
 194 and becomes eligible for release under supervision or upon the  
 195 end of his or her sentence.  
 196           (p) Notwithstanding s. 456.057 and in accordance with 45  
 197 C.F.R. part 164, subpart E, protected health information and  
 198 mental health, medical, or substance abuse records specified in  
 199 paragraph (1)(a) of a deceased inmate or offender to an  
 200 individual with authority to act on behalf of the deceased

201 inmate or offender, upon the individual's request. For purposes  
 202 of this section, the following individuals have authority to act  
 203 on behalf of a deceased inmate or offender only for the purpose  
 204 of requesting access to such protected health information and  
 205 records:

206 1. A person appointed by a court to act as the personal  
 207 representative, executor, administrator, curator, or temporary  
 208 administrator of the deceased inmate's or offender's estate;

209 2. If a court has not made a judicial appointment under  
 210 subparagraph 1., a person designated by the inmate or offender  
 211 to act as his or her personal representative in a last will that  
 212 is self-proved under s. 732.503; or

213 3. If a court has not made a judicial appointment under  
 214 subparagraph 1. or if the inmate or offender has not designated  
 215 a person in a self-proved last will as provided in subparagraph  
 216 2., only the following individuals:

217 a. A surviving spouse.

218 b. If there is no surviving spouse, a surviving adult  
 219 child of the inmate or offender.

220 c. If there is no surviving spouse or adult child, a  
 221 parent of the inmate or offender.

222 (q) All requests for access to a deceased inmate's or  
 223 offender's protected health information or mental health,  
 224 medical, or substance abuse records specified in paragraph  
 225 (1)(a) must be in writing and must be accompanied by the

226 following:

227 1. If made by a person authorized under subparagraph  
 228 (p)1., a copy of the letter of administration and a copy of the  
 229 court order appointing such person as the representative of the  
 230 inmate's or offender's estate.

231 2. If made by a person authorized under subparagraph  
 232 (p)2., a copy of the self-proved last will designating the  
 233 person as the inmate's or offender's representative.

234 3. If made by a person authorized under subparagraph  
 235 (p)3., a letter from the person's attorney verifying the  
 236 person's relationship to the inmate or offender and the absence  
 237 of a court-appointed representative and self-proved last will.

238  
 239 Records and information released under this subsection remain  
 240 confidential and exempt from the provisions of s. 119.07(1) and  
 241 s. 24(a), Art. I of the State Constitution when held by the  
 242 receiving person or entity.

243 (6) This section does not limit any right to obtain  
 244 records by subpoena or other court process.

245 Section 2. The Legislature finds that it is a public  
 246 necessity that an inmate or offender's protected health  
 247 information and HIV testing information held by the Department  
 248 of Corrections pursuant to s. 945.10, Florida Statutes, remain  
 249 confidential and exempt from public disclosure as the  
 250 Legislature envisioned in this statute and as provided in

251 department rules. Allowing protected health information to be  
252 publicly disclosed would in some cases cause a conflict with  
253 existing federal law and would be a violation of an inmate or  
254 offender's privacy under the state constitution. Maintaining the  
255 confidentiality of an inmate or offender's HIV testing  
256 information is essential to his or her participation in such  
257 testing. Thus, the harm from disclosure would outweigh any  
258 public benefit derived therefrom. Appropriate records and  
259 protected health information are available, however, to various  
260 governmental entities in order for them to perform their duties.  
261 It is mandatory that prisons function as effectively,  
262 efficiently, and nonviolently as possible. To release such  
263 information to the public would severely impede that function  
264 and would jeopardize the health and safety of those within and  
265 outside the prison system.

266       Section 3. This act shall take effect on the same date  
267 that HB 1201 or similar legislation takes effect, if such  
268 legislation is adopted in the same legislative session or an  
269 extension thereof and becomes law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1385 Domestic Violence  
**SPONSOR(S):** Nuñez  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1564

| REFERENCE                              | ACTION | ANALYST        | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|--------|----------------|--|
| 1) Criminal Justice Subcommittee       |        | Hall <i>WH</i> | White <i>W</i>                           |
| 2) Justice Appropriations Subcommittee |        |                |  |
| 3) Judiciary Committee                 |        |                |  |

### SUMMARY ANALYSIS

Florida law classifies certain offenses as domestic violence (DV) crimes when one member of a family or household perpetrates the crime on another member of the family or household. Certain DV offenses are subject to mandatory probation terms and requirements, including the requirement to attend a batterer's intervention program (BIP). The BIP is designed to address tactics of power and control by one person over another and require the offender to take responsibility for his or her actions.

Penalties for DV offenses may be increased if it is proven that the offender intentionally caused bodily harm to another, or committed the offense in the presence of a related child. Furthermore, in certain circumstances when an offender is charged with a felony offense the court is prohibited from withholding the adjudication of the defendant, unless a statutory exception applies.

The bill amends s. 741.281, F.S., to require a court to order certain defendants to attend *and complete* BIP. A failure to complete BIP would result in a violation of probation, subjecting the offender to further criminal penalty. Additionally, the bill increases mandatory jail time for offenders who have been adjudicated guilty and who intentionally caused bodily harm to another, and further increases the penalty if, in addition to the previous two factors, the violence was committed in the presence of a related child under 16 years of age:

- An offender adjudicated guilty, who intentionally committed bodily harm to another person, must serve 10 days in jail for a first offense; 15 days in jail for a second offense; and 20 days in jail for a third or subsequent offense.
- An offender described above whose violence was committed in the presence of a related child under age 16, must serve 15 days in jail for a first offense; 20 days in jail for a second offense; and 30 days in jail for a third or subsequent offense.

Additionally, the bill amends s. 775.08435, F.S., to prohibit a court from withholding the adjudication of a defendant when he or she committed a third degree felony offense of domestic violence. The court would be prohibited from doing so, unless one of the following exceptions applies:

- The state attorney makes a written request for adjudication to be withheld; or
- The court makes written findings that the withholding of adjudication is reasonably justified based on the circumstances or statutory mitigating factors.

The bill amends s. 741.30, F.S., to include a provision prohibiting a court from awarding attorney's fees in any proceeding for an injunction for protection against domestic violence. This prohibition addresses the current conflict between Florida courts regarding the issue.

The bill does not appear to have a fiscal impact on state government. The bill may increase the need for jail beds. Please see "FISCAL & ECONOMIC ANALYSIS," *infra*.

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



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Domestic Violence-Related Crimes**

Florida law defines a domestic violence crime as a violation of any of the following statutes, when the offense is committed on one family or household member by another family or household member:

- Section 784.071, F.S., relating to assault;
- Section 784.021, F.S., relating to aggravated assault;
- Section 784.03(1)(b), F.S., relating to battery;
- Section 784.03(2), F.S., relating to felony battery;<sup>1</sup>
- Section 784.041(1), F.S., relating to felony battery;<sup>2</sup>
- Section 784.041(2), F.S., relating to felony battery by strangulation;
- Section 784.045, F.S., relating to aggravated battery;<sup>3</sup>
- Section 794.011, F.S., relating to sexual assault or sexual battery;
- Section 784.048, F.S., relating to stalking or aggravated stalking;<sup>4</sup>
- Section 787.01, F.S., relating to kidnapping;
- Section 787.02, F.S., relating to false imprisonment; or
- Any criminal offense resulting in physical injury or death.

For the purpose of defining domestic violence offenses, s. 741.28, F.S., defines a “family or household member” to mean “spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have resided together in the same single dwelling unit.”

##### *Criminal Penalties for Domestic Violence Offenders*

Florida law requires certain mandatory penalties related to domestic violence offenses. The court must sentence any person convicted<sup>5</sup> of a domestic violence crime to a minimum term of one year probation with a condition requiring the person to attend a batterer’s intervention program (BIP). The court must order BIP, unless it states on the record why BIP is inappropriate or determines that the offender does not qualify for BIP. The programs are modeled to address tactics of power and control by one person over another and require the offender to take responsibility for his or her actions.<sup>6</sup> By law, the BIP is

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<sup>1</sup> This form of felony battery occurs when a person actually or intentionally touches or strikes another person against their will, or intentionally causes bodily harm to another person, and the offender has a prior conviction for battery, aggravated battery, or felony battery. The existence of the prior conviction enhances the offense from a first degree misdemeanor to a third degree felony. s. 784.03, F.S.

<sup>2</sup> This form of felony battery occurs when a person actually or intentionally touches or strikes another person against the will of the other and causes great bodily harm, permanent disability, or permanent disfigurement. s. 784.041(1), F.S.

<sup>3</sup> This form of battery can occur if any of the following additional circumstances are present in the course of committing a battery: 1) a person intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; 2) a person uses a deadly weapon; or 3) the victim of the battery was pregnant at the time of the offense and the offender knew or should have known the victim was pregnant. s. 784.045, F.S.

<sup>4</sup> Aggravated stalking can occur if any of the following additional circumstances are present in the commission of the crime: 1) the offender makes a credible threat to the victim; 2) stalking occurs after the issuance of an injunction against repeat violence, sexual violence, or dating violence; or an injunction for protection against domestic violence, or any other court-ordered prohibition of conduct; 3) the victim is under 16 years of age; or 4) the offender has been sentenced for sexual battery, lewd and lascivious molestation, or soliciting a minor and is prohibited from contacting the victim. s. 784.048, F.S.

<sup>5</sup> This provision applies to any person found guilty of, having an adjudication withheld on, or pleading nolo contendere to a crime of domestic violence. s. 741.281, F.S.

<sup>6</sup> s. 741.325, F.S.

required to be at least 29 weeks in length and include 24 weekly sessions, plus appropriate intake, assessment, and orientation programming.<sup>7</sup>

In addition to mandatory probation and BIP, certain domestic violence offenders must serve mandatory jail time. If a person is adjudicated guilty of a crime of domestic violence and the person intentionally caused bodily harm to another person, the court must sentence the offender to serve a minimum of five days in the county jail as part of any sentence imposed.<sup>8</sup> Additionally, if an offender is convicted of a felony offense of domestic violence and a jury determines the offense was committed in the presence of a child under the age of 16 who is a family household member of the victim or the perpetrator, the offender's minimum sentence is increased.<sup>9</sup>

*Effect of the Bill*

The bill amends s. 741.281, F.S., to require a court to order the defendant to both attend *and complete*<sup>10</sup> BIP as a condition of probation. A failure to complete BIP would result in a violation of probation, thereby subjecting the defendant to further criminal penalty.

Additionally, the bill amends s. 741.28, F.S., to increase the penalties for both first-time and subsequent domestic violence offenders who intentionally cause bodily harm to another person and are adjudicated guilty. The penalties are further enhanced for these offenders if the crime took place in front of a child, under 16 years of age, who is a family or household member of the victim or the perpetrator.<sup>11</sup> The court must order an offender to serve a minimum county jail sentence as follows:<sup>12</sup>

| <b>Domestic Violence Offense Mandatory Jail Sentence</b> |   |   |
|--|---|---|
|  | Adjudication of Guilt + Intentionally Caused Bodily Harm to Another | Adjudication of Guilt + Intentionally Caused Bodily Harm to Another + Presence of Child |
| 1 <sup>st</sup> Offense                                  | 10 days   | 15 days   |
| 2 <sup>nd</sup> Offense                                  | 15 days   | 20 days   |
| 3 <sup>rd</sup> or Subsequent Offense                    | 20 days   | 30 days   |

**Withholding Adjudication of Guilt**

Florida law contains a prohibition on withholding adjudication of guilt in certain felony cases. Currently, a sentencing court may not withhold adjudication of guilt upon a defendant for a capital, life, or first degree felony.<sup>13</sup> For a second degree felony, the court cannot withhold adjudication unless either the state attorney makes a written request to do so, or the court makes written findings that a withhold of adjudication is reasonably justified based on the circumstances or statutorily recognized mitigating factors. The same prohibition and exceptions apply when a defendant has committed a third degree

<sup>7</sup> s. 741.325(1)(c), F.S.

<sup>8</sup> The court is not required to order five days in the county jail when the court orders an offender to a period of incarceration in a state correction facility. s. 741.283, F.S.

<sup>9</sup> The subtotal sentencing points may be multiplied by a multiplier of 1.5 to increase the offender's lowest permissible sentence. s. 921.0024, F.S.

<sup>10</sup> *Emphases added.*

<sup>11</sup> It is anticipated this enhancement will need to be plead in the charging document and found by a jury as the United States Supreme Court has held that "[f]acts that increase the mandatory minimum sentence are therefore elements and must be submitted to the jury and found beyond a reasonable doubt." *Alleyne v. United States*, 133 S. Ct. 2151, 2158 (2013).

<sup>12</sup> The mandatory jail time does not apply if the court sentences a defendant to a nonsuspended period of incarceration in a state correctional facility.

<sup>13</sup> s. 775.08435(1)(a), F.S.

felony and has a prior withholding of adjudication for another felony offense. Regardless of the presence of mitigating circumstances,<sup>14</sup> a court may not withhold adjudication when a defendant has committed a second degree felony and has a prior withhold of adjudication from a different offense, or when the defendant committed a third degree felony and has two or more prior withholdings of adjudication from a different offense.<sup>15</sup>

#### *Effect of the Bill*

The bill amends s. 775.08435, F.S., to add an additional circumstance in which the court is prohibited from withholding the adjudication of a defendant unless certain exceptions apply. The bill prohibits the court from withholding adjudication for a third degree felony that is a crime of domestic violence unless the state attorney makes a written request for the adjudication be withheld, or the court makes written findings that the withholding of adjudication is reasonably justified based on the circumstances or statutory mitigating factors. The third degree felony domestic violence offenses to which this prohibition would apply include the following:

- Section 784.021, F.S., relating to aggravated assault;
- Section 784.03(2), F.S., relating to felony battery;
- Section 784.041(1), F.S., relating to felony battery;
- Section 784.041, F.S., relating to felony battery by strangulation;
- Section 784.048, F.S., relating to aggravated stalking;
- Section 787.02, F.S., relating to false imprisonment.

#### **Domestic Violence Injunctions**

Florida law creates a cause of action for an injunction for protection against domestic violence. Any person, who is a family or household member, who is either the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of any act of domestic violence, may petition for an injunction for the protection against domestic violence.<sup>16</sup> After reviewing the petition, if the court finds there is an immediate and present danger of domestic violence, it may grant a temporary injunction, pending a full hearing.<sup>17</sup> Following a full hearing, if the court determines the petitioner is the victim of domestic violence or is in imminent danger of becoming a victim of domestic violence, the court may enter a final injunction.

Section 741.30, F.S., does not currently specifically address the award of attorney's fees related to domestic violence injunction hearings. Florida courts are in conflict regarding whether other statutory authority<sup>18</sup> allows a court to order attorney fees incurred in domestic violence injunction proceedings. The Third District Court of Appeals<sup>19</sup> has held there is no statutory authority to award attorney's fees as sanctions in a domestic violence injunction case, while the First District Court of Appeals<sup>20</sup> has held that the practice is allowed because there is no statutory prohibition against such fee statutory authority in the chapters of law governing domestic violence that it is impermissible.

#### *Effect of the Bill*

The bill creates s. 741.30(1)(g), F.S., to prohibit attorney's fees from being awarded in any proceeding for an injunction for protection against domestic violence under this section.

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<sup>14</sup> Section 921.0026 sets forth 14 statutory mitigating circumstances that a court may consider when sentencing for a felony offense.

<sup>15</sup> s. 775.08435, F.S.

<sup>16</sup> s. 741.30, F.S.

<sup>17</sup> s. 741.30(5)(a), F.S.

<sup>18</sup> Section 57.105, F.S., authorizes a court to award reasonable attorney's fees when the court finds the losing party or the losing party's attorney should have known that a claim or defense presented to the court or at trial was either: 1) not supported by the material facts necessary to establish the claim or defense; or 2) would not be supported by the application of then-existing law to those material facts.

<sup>19</sup> See *Ratigan v. Stone*, 947 So. 2d 607, 608 (Fla. 3d 2007); see also *Cisneros v. Cisneros*, 831 So. 2d 257, 258 (Fla. 3d DCA 2002).

<sup>20</sup> *Hall v. Lopez*, 2016 Fla. App. LEXIS 11493 (Fla. 1st DCA 2016).

**B. SECTION DIRECTORY:**

Section 1: Amending s. 741.281, F.S., relating to court to order batterers' intervention program attendance.

Section 2: Amending s. 741.283, F.S., relating to minimum term of imprisonment for domestic violence.

Section 3: Amending s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

Section 4: Amending s. 775.08435, F.S., relating to prohibition on withholding adjudication in felony cases.

Section 5: Providing an effective date of October 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

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

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill may increase the need for jail beds because it creates new minimum jail sentence requirements for certain misdemeanor domestic violence crimes, and increases existing minimum jail sentence requirements.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** None.

**D. FISCAL COMMENTS:** None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.
2. Other: None.

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

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

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A



26 batterers' intervention program as a condition of probation. The  
 27 court must impose the condition of the batterers' intervention  
 28 program for a defendant under this section, but the court, in  
 29 its discretion, may determine not to impose the condition if it  
 30 states on the record why a batterers' intervention program might  
 31 be inappropriate. The court must impose the condition of the  
 32 batterers' intervention program for a defendant placed on  
 33 probation unless the court determines that the person does not  
 34 qualify for the batterers' intervention program pursuant to s.  
 35 741.325. The imposition of probation under this section does not  
 36 preclude the court from imposing any sentence of imprisonment  
 37 authorized by s. 775.082.

38 Section 2. Section 741.283, Florida Statutes, is amended  
 39 to read:

40 741.283 Minimum term of imprisonment for domestic  
 41 violence.—

42 (1)(a) Except as provided in paragraph (b), if a person is  
 43 adjudicated guilty of a crime of domestic violence, as defined  
 44 in s. 741.28, and the person has intentionally caused bodily  
 45 harm to another person, the court shall order the person to  
 46 serve a minimum of 10 ~~5~~ days in the county jail for a first  
 47 offense, 15 days for a second offense, and 20 days for a third  
 48 or subsequent offense as part of the sentence imposed, unless  
 49 the court sentences the person to a nonsuspended period of  
 50 incarceration in a state correctional facility.

51 (b) If a person is adjudicated guilty of a crime of  
 52 domestic violence, as defined in s. 741.28, and the person has  
 53 intentionally caused bodily harm to another person, and the  
 54 crime of domestic violence takes place in the presence of a  
 55 child under 16 years of age who is a family or household member,  
 56 as defined in s. 741.28, of the victim or the perpetrator, the  
 57 court shall order the person to serve a minimum of 15 days in  
 58 the county jail for a first offense, 20 days for a second  
 59 offense, and 30 days for a third or subsequent offense as part  
 60 of the sentence imposed, unless the court sentences the person  
 61 to a nonsuspended period of incarceration in a state  
 62 correctional facility.

63 (2) This section does not preclude the court from  
 64 sentencing the person to probation, community control, or an  
 65 additional period of incarceration.

66 Section 3. Paragraphs (g), (h), (i), and (j) of subsection  
 67 (1) of section 741.30, Florida Statutes, are redesignated as  
 68 paragraphs (h), (i), (j), and (k), respectively, and paragraph  
 69 (g) is added to that subsection, to read:

70 741.30 Domestic violence; injunction; powers and duties of  
 71 court and clerk; petition; notice and hearing; temporary  
 72 injunction; issuance of injunction; statewide verification  
 73 system; enforcement; public records exemption.—

74 (1) There is created a cause of action for an injunction  
 75 for protection against domestic violence.



76 (g) Notwithstanding any other law, attorney fees may not  
 77 be awarded in any proceeding under this section.

78 Section 4. Paragraph (c) of subsection (1) of section  
 79 775.08435, Florida Statutes, is redesignated as paragraph (d),  
 80 and a new paragraph (c) is added to that subsection, to read:

81 775.08435 Prohibition on withholding adjudication in  
 82 felony cases.—

83 (1) Notwithstanding the provisions of s. 948.01, the court  
 84 may not withhold adjudication of guilt upon the defendant for:

85 (c) A third degree felony that is a crime of domestic  
 86 violence as defined in s. 741.28, unless:

87 1. The state attorney requests in writing that  
 88 adjudication be withheld; or

89 2. The court makes written findings that the withholding  
 90 of adjudication is reasonably justified based on circumstances  
 91 or factors in accordance with s. 921.0026.

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





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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee  
 3 Representative Harrison offered the following:

**Amendment**

6 Remove lines 28-208 and insert:

7 (a) "Child" means a person who is less than 18 years of  
8 age.

9 (b) "Criminal justice agency" means a law enforcement  
10 agency, court, or prosecutor in this state.

11 (c) "Sexual exploitation or abuse of a child" means a  
12 criminal offense based on any conduct described in s. 39.01(70).

13 (d) "Sexual offender" means a person who meets the  
14 criteria provided in s. 943.0435(1)(h)1.a.(I) and was convicted  
15 of at least one qualifying offense that involved a victim who  
16 was a child at the time of the offense.



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17       (2) (a) AUTHORIZATION.—In any investigation of:  
18       1. An offense involving the sexual exploitation or abuse  
19 of a child;  
20       2. A sexual offense allegedly committed by a sexual  
21 offender who has not registered as required under s. 775.21; or  
22       3. An offense under chapter 847 involving a child victim  
23 which is not otherwise included in subparagraph 1. or  
24 subparagraph 2.,  
25  
26 a criminal justice agency may issue in writing and cause to be  
27 served a subpoena requiring the production of any record,  
28 object, or other information or testimony described in paragraph  
29 (b).  
30       (b) A subpoena issued under this section may require:  
31       1. The production of any record, object, or other  
32 information relevant to the investigation.  
33       2. Testimony by the custodian of the record, object, or  
34 other information concerning its production and authenticity.  
35       (c) A subpoena issued under this section with respect to a  
36 provider of electronic communications services or remote  
37 computing services shall not extend beyond:  
38       1. Requiring the provider to disclose any record, object,  
39 or other information that may be relevant to the investigation;  
40 or  
41       2. Requiring a custodian of the record, object, or other



Amendment No. 1

42 information of such provider to testify concerning its  
43 production and authenticity.

44 (3) CONTENTS OF SUBPOENAS.—A subpoena issued under this  
45 section shall describe any record, object, or other information  
46 required to be produced and prescribe a reasonable return date  
47 within which the record, object, or other information can be  
48 assembled and made available.

49 (4) WITNESS EXPENSES.—Witnesses subpoenaed under this  
50 section shall be reimbursed for fees and mileage at the same  
51 rate at which witnesses in the courts of this state are  
52 reimbursed.

53 (5) PETITIONS BEFORE RETURN DATE.—At any time before the  
54 return date specified in the subpoena, the person or entity  
55 summoned may, in the circuit court of the county in which that  
56 person or entity conducts business or resides, petition for an  
57 order modifying or setting aside the subpoena or the requirement  
58 for nondisclosure of certain information under subsection (6).

59 (6) NONDISCLOSURE.—

60 (a)1. If a subpoena issued under this section is  
61 accompanied by a written certification under subparagraph 2. and  
62 notice under paragraph (c), the recipient of the subpoena shall  
63 not disclose, for a period of 180 days, to any person the  
64 existence or contents of the subpoena.

65 2. The requirement in subparagraph 1. applies if the  
66 criminal justice agency that issued the subpoena certifies in

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67 writing that the disclosure may result in one or more of the  
68 following circumstances:

- 69 a. Endangering a person's life or physical safety;  
70 b. Encouraging a person's flight from prosecution;  
71 c. Destruction of or tampering with evidence;  
72 d. Intimidation of potential witnesses; or  
73 e. Otherwise seriously jeopardizing an investigation or  
74 unduly delaying a trial.

75 (b)1. A recipient of a subpoena may disclose information  
76 subject to the nondisclosure requirement in subparagraph (a)1.  
77 to:

- 78 a. A person to whom disclosure is necessary in order to  
79 comply with the subpoena;  
80 b. An attorney in order to obtain legal advice or  
81 assistance regarding the subpoena; or  
82 c. Any other person as authorized by the criminal justice  
83 agency that issued the subpoena.

84 2. A recipient of a subpoena who discloses to a person  
85 described in subparagraph 1. information subject to the  
86 nondisclosure requirement shall notify such person of the  
87 nondisclosure requirement by providing the person with a copy of  
88 the subpoena. A person to whom information is disclosed under  
89 subparagraph 1. is subject to the nondisclosure requirement in  
90 subparagraph (a)1.

91 3. At the request of the criminal justice agency that

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92 issued the subpoena, a recipient of a subpoena who discloses or  
93 intends to disclose to a person described in sub-subparagraph  
94 1.a. or sub-subparagraph 1.b. information subject to the  
95 nondisclosure requirement shall provide to the criminal justice  
96 agency the identity of the person to whom such disclosure was or  
97 will be made.

98 (c)1. The nondisclosure requirement imposed under  
99 paragraph (a) is subject to judicial review under subsection  
100 (13).

101 2. A subpoena issued under this section, in connection  
102 with which a nondisclosure requirement under paragraph (a) is  
103 imposed, shall include:

104 a. Notice of the nondisclosure requirement and  
105 availability of judicial review.

106 b. Notice that the nondisclosure requirement may subject  
107 the recipient or any person to whom the subpoena is disclosed  
108 under subparagraph 1. to contempt of court under subsection (11)  
109 for a violation of the requirement.

110 (d) The nondisclosure requirement in (a) may be extended  
111 under subsection (13).

112 (7) EXCEPTIONS TO PRODUCTION.—A subpoena issued under this  
113 section shall not require the production of anything that is  
114 protected from production under the standards applicable to a  
115 subpoena duces tecum issued by a court of this state.

116 (8) RETURN OF RECORDS AND OBJECTS.—If a case or proceeding



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117 resulting from the production of any record, object, or other  
118 information under this section does not arise within a  
119 reasonable period of time after such production, the criminal  
120 justice agency to which it was delivered shall, upon written  
121 demand made by the person producing it, return the record,  
122 object, or other information to such person, unless the record  
123 was a copy and not an original.

124 (9) TIME OF PRODUCTION.—A subpoena issued under this  
125 section may require production of any record, object, or other  
126 information as soon as possible, but the recipient of the  
127 subpoena must have at least 24 hours after he or she is served  
128 to produce the record, object, or other information.

129 (10) SERVICE.—A subpoena issued under this section may be  
130 served as provided in chapter 48.

131 (11) ENFORCEMENT.—

132 (a) If a recipient of a subpoena under this section  
133 refuses to comply with the subpoena, the criminal justice agency  
134 may invoke the aid of any circuit court described in subsection  
135 (5) or in the circuit court of the county in which the  
136 authorized investigation is being conducted. Such court may  
137 issue an order requiring the recipient of a subpoena to appear  
138 before the criminal justice agency that issued the subpoena to  
139 produce any record, object, or other information or to testify  
140 concerning the production and authenticity of the record,  
141 object, or other information.

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142 (b) Any failure to comply with an order under paragraph  
143 (a) or with a nondisclosure requirement under subsection (6) may  
144 be punished by the court as a contempt of court. All process in  
145 any such case may be served in any county in which such person  
146 may be found.

147 (12) IMMUNITY.—Notwithstanding any other law, any person,  
148 including any officer, agent, or employee, receiving a subpoena  
149 under this section who complies in good faith with the subpoena  
150 and produces any record, object, or other information sought is  
151 not liable in any court in this state to any customer or other  
152 person for such production or disclosure.

153 (13) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENT.—

154 (a)1.a. If a recipient of a subpoena under this section  
155 wishes to have a court review a nondisclosure requirement under  
156 subsection (6), the recipient may notify the criminal justice  
157 agency issuing the subpoena or file a petition for judicial  
158 review in the circuit court described in subsection (5).

159 b. Within 30 days after the date on which the criminal  
160 justice agency receives the notification under sub-subparagraph  
161 a., the criminal justice agency shall apply for an order  
162 prohibiting the disclosure of the existence or contents of the  
163 subpoena. An application under this sub-subparagraph may be  
164 filed in the circuit court described in subsection (5) or in the  
165 circuit court of the county in which the authorized  
166 investigation is being conducted.

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167 c. The nondisclosure requirement shall remain in effect  
168 during the pendency of proceedings relating to the requirement.

169 d. A circuit court that receives a petition under sub-  
170 subparagraph a. or an application under sub-subparagraph b.  
171 shall rule on such petition or application as expeditiously as  
172 possible.

173 2. An application for a nondisclosure order or extension  
174 thereof or a response to a petition filed under this paragraph  
175 must include a certification from the state criminal justice  
176 agency that issued the subpoena indicating that the disclosure  
177 of such information may result in one or more of the  
178 circumstances described in subparagraph (6)(a)2.

179 3. A circuit court shall issue a nondisclosure order or  
180 extension thereof under this paragraph if it determines that  
181 there is reason to believe that disclosure of such information  
182 may result in one or more of the circumstances described in  
183 subparagraph (6)(a)2.

184 4. Upon a showing that any of the circumstances described  
185 in subparagraph (6)(a)2. continue to exist, a circuit court may  
186 issue an ex parte order extending a nondisclosure order imposed  
187 under this section for an additional 180 days. There is no limit  
188 on the number of nondisclosure extensions that may be granted  
189 under this subparagraph.

190 (b) In all proceedings under this subsection, subject to  
191 any right to an open hearing in a contempt proceeding, a circuit



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192 | court must close any hearing to the extent necessary to prevent  
193 | the unauthorized disclosure of a request for records, objects,  
194 |

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1429 Child Predators  
**SPONSOR(S):** Harrison  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1244

| REFERENCE                              | ACTION | ANALYST           | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|--------|-------------------|--|
| 1) Criminal Justice Subcommittee       |        | Homburg <i>jh</i> | White <i>tw</i>                          |
| 2) Justice Appropriations Subcommittee |        |                   |  |
| 3) Judiciary Committee                 |        |                   |  |

### SUMMARY ANALYSIS

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

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

This bill addresses the issuance of subpoenas in investigations involving sexual offenses against minors. When issuing subpoenas in such investigations, the bill authorizes a law enforcement agency to impose a nondisclosure requirement on the recipient of the subpoena if the agency certifies in writing that disclosure of the subpoena could result in:

- Endangering a person's life or physical safety;
- Encouraging a person's flight from prosecution;
- Destruction of or tampering with evidence;
- Intimidation of potential witnesses; or
- Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

A recipient of a subpoena that has a nondisclosure requirement, as authorized by the bill, may seek judicial review to have the subpoena or nondisclosure requirement modified or set aside.

The bill may have an indeterminate fiscal impact on the state court system. The bill does not appear to have a fiscal impact on local government. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

This bill has an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Law**

##### *Subpoenas*

A subpoena is an order directed to a person which requires his or her attendance at a particular time and place to testify as a witness. A subpoena may also require the witness to bring documents or other tangible evidence which may be introduced as evidence in a case.<sup>1</sup> The Sixth Amendment to the United States Constitution guarantees the defendant in a criminal case the right to have compulsory process for obtaining witnesses in his or her favor.<sup>2</sup> Subpoenas may be issued in a criminal investigation<sup>3</sup> or in a criminal prosecution during discovery<sup>4</sup> or for trial<sup>5</sup> by the defendant, his or her counsel, or the state attorney. Generally, a subpoena must state the name of the court and the title of action and the time and the place at which the witness is commanded to give testimony or produce evidence.<sup>6</sup> Once a witness is subpoenaed by either party, he or she must remain available for attendance until the case is resolved or until he or she is excused by the court hearing the case.<sup>7</sup> A witness's failure to do so could result in being held in contempt of court.<sup>8</sup>

In some cases, a subpoena may require the recipient of the subpoena to not disclose the existence or contents of the subpoena. For example, Florida statute authorizes an agency that is investigating<sup>9</sup> a violation of Florida's Racketeer Influenced and Corrupt Organizations (RICO) Act<sup>10</sup> to issue a civil investigative subpoena for testimony or documents.<sup>11</sup> This subpoena is confidential for 120 days, meaning the recipient of the subpoena may not disclose its contents or existence to any person or entity other than his or her attorney during that period.<sup>12</sup> The 120-day period may be extended by a circuit court upon showing of good cause by the investigative agency.<sup>13</sup> For good cause to exist, there must be a showing:

- Of sufficient factual grounds to reasonably indicate a violation of ss. 895.01 – 895.06, F.S.;
- That the documents or testimony requested appear reasonably calculated to lead to the discovery of admissible evidence; and
- Of facts that reasonably indicate that disclosure of the subpoena would hamper or impede the investigation, or would result in a flight from prosecution.<sup>14</sup>

---

<sup>1</sup> BLACK'S LAW DICTIONARY, *What is Subpoena?*, <http://thelawdictionary.org/subpoena/> (last visited March 20, 2017).

<sup>2</sup> U.S. Const. am. 6

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

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

<sup>5</sup> Fla. R. Crim. P. 3.361(a), provides that subpoenas for testimony before the court and subpoenas for production of tangible evidence before the court may be issued by the clerk of the court or by any attorney of record in the case.

<sup>6</sup> *Id.*

<sup>7</sup> s. 914.03, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> In order to issue a subpoena, the level of proof required is that there must be "something more than a fishing expedition, and something less than probable cause." *Check 'n Go of Florida, Inc. v. State* 790 So.2d 454,458 (Fla. 5th DCA 2001).

<sup>10</sup> The Racketeer Influenced and Corrupt Organizations Act was passed by Congress in 1970 as part of the Organized Crime Control Act of 1970. Florida passed its own RICO Act in 1977.

<sup>11</sup> s. 895.06, F.S.

<sup>12</sup> s. 895.06(2), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Upon failure of the person or enterprise to comply with the subpoena, the investigative agency may apply to the circuit court to enforce the subpoena.<sup>15</sup>

Similarly, federal law authorizes the Federal Bureau of Investigation (FBI) to issue a National Security Letter (NSL), which is an administrative subpoena that allows the FBI to require records from wire or electronic communication service providers if the records are relevant to investigations related to terrorism or clandestine intelligence activities.<sup>16</sup> For such subpoenas, the FBI may require nondisclosure if the FBI certifies that disclosure may result in (i) a danger to the national security of the United States; (ii) interference with a criminal counterterrorism, or counterintelligence investigation; (iii) interference with diplomatic relations; or (iv) danger to the life or physical safety of any person.<sup>17</sup>

To avoid potential First Amendment concerns with such a restraint on speech, Congress passed the USA FREEDOM Act of 2015, which in relevant part authorizes a recipient of a NSL/subpoena to notify the Government or file a petition for judicial review if the recipient wishes to have a court review a nondisclosure requirement in such subpoena.<sup>18</sup> Courts have upheld the FBI's authority to issue the subpoenas and the accompanying nondisclosure requirements because of the government interest in protecting national security and the provisions for judicial review included in the Act.<sup>19</sup>

## Effect of the Bill

### Definitions

The bill defines:

- "Sexual exploitation or abuse of a child" as a criminal offense based on any conduct described in s. 39.01(70), F.S. This definition includes sexual abuse of a child, engaging in sexual acts in front of or with a child, and engaging in human trafficking of a child.
- "Sexual offender" as a person who has been convicted of a sexual offense<sup>20</sup> against a minor.

### Issuing a Subpoena

Under the bill, a law enforcement agency is authorized to issue a subpoena for any investigation of an offense involving:

- The sexual exploitation or abuse of a child;
- A sexual offense alleged to have been committed by a sexual offender who has not properly registered; or
- An offense under ch. 847, F.S., involving a minor that doesn't qualify under the first two prongs.

---

<sup>15</sup> s. 895.06(4), F.S.

<sup>16</sup> 18 U.S.C. § 2709(b)(1).

<sup>17</sup> *Id.* at § 2709(c)(1)(B).

<sup>18</sup> 18 U.S.C. § 3511(b)(1)(A).

<sup>19</sup> *See, In re Nat'l Sec. Letters*, 2016 WL 7017215 (D.D.C. July 25, 2016); *In re Nat'l Sec. Letter*, 165 F.Supp.3d 352 (D. Md. 2015).

<sup>20</sup> The specified sexual offenses are the offenses for which a person must register as a sexual offender. These offenses include: s. 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability); s. 394.4593(2), F.S. (sexual misconduct with a patient); ss. 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor; s. 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking); s. 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.; s. 794.05, F.S. (unlawful activity with certain minors); former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 810.145(8), F.S. (relating to video voyeurism); s. 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person); s. 827.071, F.S. (sexual performance by a child); s. 847.0133, F.S. (prohibition of certain acts in connection with obscenity); s. 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.; s. 847.0137, F.S. (transmission of pornography by electronic device or equipment); s. 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment); s. 847.0145, F.S. (selling or buying of minors); s. 916.1075(2), F.S. (sexual misconduct with a forensic client); or s. 985.701(1), F.S. (sexual misconduct with a juvenile offender).

s. 943.0435(1)(h)1.a.(I), F.S.

The subpoena may require the production of any relevant record or object relevant to the investigation and may also require the custodian of the record to testify as to its authenticity. The subpoena must identify and describe any record, object, or other information that is required to be produced or testified to and provide a reasonable return date by which the record, object, or information must be submitted.

#### *Nondisclosure Requirement*

The bill also allows a state official to require that the recipient of the subpoena not disclose the existence or contents of the subpoena. In order for the subpoena to be subject to a nondisclosure requirement, it must be accompanied by a written certification that disclosure of the subpoena may result in:

- Endangering a person's life or physical safety;
- Encouraging a person's flight from prosecution;
- Destruction of or tampering with evidence;
- Intimidation of potential witnesses; or
- Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

Upon such written certification, the recipient is prohibited from disclosing the contents or existence of the subpoena for 180 days, except that a recipient may disclose the subpoena and its contents to:

- A person to whom disclosure is necessary in order to comply with the subpoena;
- An attorney to obtain legal advice or assistance regarding the subpoena; or
- Any other person authorized by the state official issuing the subpoena.

A person to whom such disclosure is made is bound by the same nondisclosure requirements as the original recipient. A state official may require the person disclosing the subpoena to provide the identity of the person to whom he or she is disclosing. If a person refuses to comply with the subpoena, the state official may request that the circuit court issue an order to comply. The circuit court may then issue an order, a violation of which may be punishable as contempt of court.

#### *Petition Process and Judicial Review*

The bill allows the person who receives the subpoena to challenge the requirements of the subpoena at any time before the return date by petitioning the circuit court of the county in which he or she lives. The bill also allows the subpoena recipient to challenge a nondisclosure requirement by filing a petition for judicial review in the circuit court or notifying the state official who issued the subpoena. The petition may be for an order to modify or set aside the subpoena, or to modify or set aside the prohibition of disclosure of information.

#### *Other Effects*

Witnesses subpoenaed to testify are reimbursed for fees and mileage at the same rate at which witnesses Florida courts are reimbursed.<sup>21</sup> A subpoena issued under the bill must not require the production of anything that is protected from production with a subpoena duces tecum issued by a Florida court.<sup>22</sup>

The bill allows law enforcement to require the production of documents as soon as possible, but the recipient of the subpoena must be given at least 24 hours after he or she is served to comply. The law enforcement agency must return any original documents or objects upon request, within a reasonable time, if prosecution does not occur.

The bill provides that the service of a subpoena under this section may be served as provided in ch. 48, F.S.

---

<sup>21</sup> Section 92.142, F.S. establishes the amount that witnesses in a court in Florida will be reimbursed for their time. Consideration is given to the length of testimony, the distance traveled, and the reason testifying.

<sup>22</sup> A subpoena may request evidence that is relevant and admissible or is reasonably calculated to lead to admissible evidence. *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995). Certain documents, such as materials prepared for trial or work products, are not discoverable under the Florida Rules of Civil Procedure. Fla. R. Civ. P. 1.280.

The bill provides immunity from civil liability for persons disclosing information requested in the subpoena. This allows persons with information needed by law enforcement to disclose it without fear that the person being investigated may sue them for disclosing the information.

**B. SECTION DIRECTORY:**

Section 1. Creates s. 794.10, F.S., relating to investigative subpoenas in certain cases involving child victims.

Section 2. Provides an effective date of July 1, 2017.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: This bill does not appear to have any impact on state government revenues.
2. Expenditures: The bill's provisions authorizing judicial review of the subpoenas and nondisclosure requirements may increase judicial workload. The fiscal impact of such increase is currently indeterminate.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
This bill does not appear to have any impact on local government revenues.
2. Expenditures:  
This bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:  
This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.
2. Other: None.

**B. RULE-MAKING AUTHORITY:**

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



C. DRAFTING ISSUES OR OTHER COMMENTS: In some cases, the bill uses terminology inconsistently, e.g., "minor" is used interchangeably with "child" and "record or object" is used interchangeably with "record, object, or other information." It may be desirable to amend the bill so that such terms are used consistently.

The bill authorizes "law enforcement agencies" to issue the subpoenas, but does not define this term. It may be desirable to amend the bill to provide that such agencies include prosecutors and the court.

The bill provides that a recipient's refusal to comply with a subpoena may subject the recipient to contempt of court. The bill, however, does not specifically address a remedy for when a recipient violates a nondisclosure requirement. It may be desirable to amend the bill to specify that a nondisclosure violation is also subject to contempt of court.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A

1                                   A bill to be entitled  
 2           An act relating to child predators; creating s.  
 3           794.10, F.S.; providing definitions; authorizing  
 4           subpoenas in certain investigations of sexual offenses  
 5           involving child victims and specifying requirements  
 6           therefor; providing for specified reimbursement of  
 7           witnesses; authorizing certain motions; requiring  
 8           nondisclosure of specified information in certain  
 9           circumstances; providing exceptions to such  
 10          nondisclosure requirement; providing for judicial  
 11          review and extension of such nondisclosure requirement  
 12          and specifying requirements therefor; exempting  
 13          certain records and objects from production; providing  
 14          for return of records and objects produced; specifying  
 15          time periods within which records and objects must be  
 16          returned; providing for service and enforcement of  
 17          subpoenas; providing immunity for certain persons  
 18          complying with subpoenas in certain circumstances;  
 19          providing an effective date.

20  
 21   Be It Enacted by the Legislature of the State of Florida:

22  
 23           Section 1.   Section 794.10, Florida Statutes, is created to  
 24   read:  
 25           794.10 Investigative subpoenas in certain cases involving

26 child victims.-

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

28 (a) "Sexual exploitation or abuse of a child" means a  
 29 criminal offense based on any conduct described in s. 39.01(70).

30 (b) "Sexual offender" means a person who meets the  
 31 criteria provided in s. 943.0435(1)(h)1.a.(I) and was convicted  
 32 of at least one qualifying offense that involved a victim who  
 33 was a minor at the time of the offense.

34 (2) (a) AUTHORIZATION.-In any investigation of:

35 1. An offense involving the sexual exploitation or abuse  
 36 of a child;

37 2. A sexual offense allegedly committed by a sexual  
 38 offender who has not registered as required under s. 775.21; or

39 3. An offense under chapter 847 involving a minor victim  
 40 that is not otherwise included in subparagraph 1. or  
 41 subparagraph 2.,

42  
 43 a law enforcement agency may issue in writing and cause to be  
 44 served a subpoena requiring the production of any record or  
 45 object or testimony described in paragraph (b).

46 (b) A subpoena issued under this section may require:

47 1. The production of any record or object relevant to the  
 48 investigation.

49 2. Testimony by the custodian of the record or object  
 50 concerning its production and authenticity.

51 (c) A subpoena issued under this section with respect to a  
 52 provider of electronic communications services or remote  
 53 computing services shall not extend beyond:

54 1. Requiring the provider to disclose any record, object,  
 55 or other information that may be relevant to the law enforcement  
 56 agency investigation; or

57 2. Requiring a custodian of the record or object of such  
 58 provider to testify concerning its production and authenticity.

59 (3) CONTENTS OF SUBPOENAS.—A subpoena issued under this  
 60 section shall describe any record, object, or other information  
 61 required to be produced and prescribe a reasonable return date  
 62 within which the record or object can be assembled and made  
 63 available.

64 (4) WITNESS EXPENSES.—Witnesses subpoenaed under this  
 65 section shall be reimbursed for fees and mileage at the same  
 66 rate at which witnesses in the courts of this state are  
 67 reimbursed.

68 (5) PETITIONS BEFORE RETURN DATE.—At any time before the  
 69 return date specified in the subpoena, the person or entity  
 70 summoned may, in the circuit court of the county in which that  
 71 person or entity conducts business or resides, petition for an  
 72 order modifying or setting aside the subpoena or prohibiting the  
 73 disclosure of certain information under subsection (6).

74 (6) NONDISCLOSURE.—

75 (a)1. If a subpoena issued under this section is

76 accompanied by a written certification under subparagraph 2. and  
 77 notice of the right to judicial review under paragraph (c), the  
 78 recipient of the subpoena shall not disclose, for a period of  
 79 180 days, to any person that the state official who issued the  
 80 subpoena has sought or obtained access to any record or object  
 81 under this section.

82 2. The requirement in subparagraph 1. applies if the state  
 83 official who issued the subpoena certifies in writing that the  
 84 disclosure may result in:

- 85 a. Endangering a person's life or physical safety;
- 86 b. Encouraging a person's flight from prosecution;
- 87 c. Destruction of or tampering with evidence;
- 88 d. Intimidation of potential witnesses; or
- 89 e. Otherwise seriously jeopardizing an investigation or  
 90 unduly delaying a trial.

91 (b)1. A recipient of a subpoena may disclose information  
 92 subject to the nondisclosure requirement in subparagraph (a)1.  
 93 to:

- 94 a. A person to whom disclosure is necessary in order to  
 95 comply with the subpoena;
- 96 b. An attorney in order to obtain legal advice or  
 97 assistance regarding the subpoena; or
- 98 c. Any other person as permitted by the state official who  
 99 issued the subpoena.

100 2. A person to whom information is disclosed under

101 subparagraph 1. is subject to the nondisclosure requirement in  
 102 subparagraph (a)1.

103 3. A recipient of a subpoena who discloses to a person  
 104 described in subparagraph 1. information subject to the  
 105 nondisclosure requirement shall notify such person of the  
 106 nondisclosure requirement.

107 4. At the request of the state official who issued the  
 108 subpoena, a recipient of a subpoena who discloses or intends to  
 109 disclose to a person described in sub-subparagraph 1.a. or sub-  
 110 subparagraph 1.b. information subject to the nondisclosure  
 111 requirement shall provide to the state official the identity of  
 112 the person to whom such disclosure was or will be made.

113 (c)1. The nondisclosure requirement imposed under  
 114 paragraph (a) is subject to judicial review under subsection  
 115 (13).

116 2. A subpoena issued under this section, in connection  
 117 with which a nondisclosure requirement under paragraph (a) is  
 118 imposed, shall include notice of the availability of judicial  
 119 review.

120 (d) The nondisclosure requirement in (a) may be extended  
 121 under subsection (13).

122 (7) EXCEPTIONS TO PRODUCTION.—A subpoena issued under this  
 123 section shall not require the production of anything that is  
 124 protected from production under the standards applicable to a  
 125 subpoena duces tecum issued by a court of this state.

126       (8) RETURN OF RECORDS AND OBJECTS.—If a case or proceeding  
 127 resulting from the production of any record or object under this  
 128 section does not arise within a reasonable period of time after  
 129 such production, the agency to which it was delivered shall,  
 130 upon written demand made by the person producing it, return the  
 131 record or object to such person, unless the record was a copy  
 132 and not an original.

133       (9) TIME OF PRODUCTION.—A subpoena issued under this  
 134 section may require production of any record or object as soon  
 135 as possible, but the recipient of the subpoena must have at  
 136 least 24 hours after he or she is served to produce the record  
 137 or object.

138       (10) SERVICE.—A subpoena issued under this section may be  
 139 served as provided in chapter 48.

140       (11) ENFORCEMENT.—If a recipient of a subpoena under this  
 141 section refuses to comply with the subpoena, the state official  
 142 may invoke the aid of any circuit court described in subsection  
 143 (5) or in the circuit court of the county in which the  
 144 authorized investigation is being conducted. Such court may  
 145 issue an order requiring the recipient of a subpoena to appear  
 146 before the state official who issued the subpoena to produce any  
 147 record or object or testify concerning the production and  
 148 authenticity of the record or object. Any failure to comply with  
 149 such order may be punished by the court as a contempt of court.  
 150 All process in any such case may be served in any county in

151 which such person may be found.

152 (12) IMMUNITY.—Notwithstanding any other law to the  
 153 contrary, any person, including any officer, agent, or employee,  
 154 receiving a subpoena under this section who complies in good  
 155 faith with the subpoena and produces any record or object sought  
 156 is not liable in any court in this state to any customer or  
 157 other person for such production or disclosure.

158 (13) JUDICIAL REVIEW OF NONDISCLOSURE REQUIREMENT.—

159 (a)1.a. If a recipient of a subpoena under this section  
 160 wishes to have a court review the nondisclosure requirement in  
 161 subsection (6), the recipient may notify the state official  
 162 issuing the subpoena or file a petition for judicial review in  
 163 the circuit court described in subsection (5).

164 b. Within 30 days after the date on which the state  
 165 official receives the notification under sub-subparagraph a.,  
 166 the state official shall apply for an order prohibiting the  
 167 disclosure of the existence or contents of the subpoena. An  
 168 application under this sub-subparagraph may be filed in the  
 169 circuit court described in subsection (5) or in the circuit  
 170 court of the county in which the authorized investigation is  
 171 being conducted. The nondisclosure requirement shall remain in  
 172 effect during the pendency of proceedings relating to the  
 173 requirement.

174 c. A circuit court that receives a petition under sub-  
 175 subparagraph a. or an application under sub-subparagraph b.



176 shall rule on such petition or application as expeditiously as  
 177 possible.

178 2. An application for a nondisclosure order or extension  
 179 thereof or a response to a petition filed under this paragraph  
 180 must include a certification from the state official who issued  
 181 the subpoena indicating that the disclosure of such information  
 182 may result in:

- 183 a. Endangering a person's life or physical safety;
- 184 b. Encouraging a person's flight from prosecution;
- 185 c. Destruction of or tampering with evidence;
- 186 d. Intimidation of potential witnesses; or
- 187 e. Otherwise seriously jeopardizing an investigation or  
 188 unduly delaying a trial.

189 3. A circuit court shall issue a nondisclosure order or  
 190 extension thereof under this paragraph if it determines that  
 191 there is reason to believe that disclosure of such information  
 192 may result in:

- 193 a. Endangering a person's life or physical safety;
- 194 b. Encouraging a person's flight from prosecution;
- 195 c. Destruction of or tampering with evidence;
- 196 d. Intimidation of potential witnesses; or
- 197 e. Otherwise seriously jeopardizing an investigation or  
 198 unduly delaying a trial.

199 4. Upon a showing that any of the circumstances described  
 200 in subparagraph 3. continue to exist, a circuit court may issue

201 an ex parte order extending a nondisclosure order imposed under  
 202 this section for an additional 180 days. There is no limit on  
 203 the number of nondisclosure extensions that may be granted under  
 204 this subparagraph.

205 (b) In all proceedings under this subsection, subject to  
 206 any right to an open hearing in a contempt proceeding, a circuit  
 207 court must close any hearing to the extent necessary to prevent  
 208 the unauthorized disclosure of a request for records, a report,  
 209 or other information made to any person or entity under this  
 210 section. Petitions, filings, records, orders, certifications,  
 211 and subpoenas must also be kept under seal to the extent and as  
 212 long as necessary to prevent the unauthorized disclosure of any  
 213 information under this section.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJ 17-05 Probation and Community Control  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:**           **IDEN./SIM. BILLS:**

| REFERENCE                                  | ACTION | ANALYST        | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|--------|----------------|--|
| Orig. Comm.: Criminal Justice Subcommittee |        | Hall <i>WH</i> | White <i>TW</i>                          |

### SUMMARY ANALYSIS

Probation is a form of community supervision that requires an offender to have specified contacts with a probation officer in addition to completing other imposed terms and conditions. In Florida, the Department of Corrections is responsible for the supervision of probationers.

Chapter 948, F.S., relates to probation and community control and defines the various levels of supervision to which a court may sentence an offender. The bill revises various sections of ch. 948, F.S., to delete obsolete provisions, use terminology consistently, and reflect the Department of Corrections' current practices relating to probation and community control.

The bill also amends s. 948.06, F.S., to address the recent court decision in *Mobley v. State*. In *Mobley*, the Fourth District Court of Appeal held that an offender's probationary term was not tolled when the trial court issued an arrest warrant for technical violations of probation. The court held that the probation statute's reference to s. 901.02, F.S., which authorizes a judge to issue an arrest warrant for the commission of a crime, required the trial court to issue a warrant which alleged the probationer committed a new crime in order for probation to be tolled.

As a result of *Mobley*, an offender's probationary term is not currently tolled if the arrest warrant alleges only technical violations, instead of a new crime. This may result in the offender's probationary term expiring before the court has an opportunity to sentence the offender for the technical violations.

The bill amends s. 948.06, F.S., to remove the requirement for the warrant to be issued pursuant to s. 901.02, F.S., thereby removing the requirement that the warrant be issued for a new crime. As a result, any warrant for a violation of probation, including a technical violation, would result in the offender's probationary term being tolled.

The bill does not appear to have a fiscal impact on state or local governments. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Probation and Community Control – Updating Definitions and Terminology**

Chapter 948, F.S., relates to probation and community control, with s. 948.001, F.S., defining terms relevant to the chapter. Probation is a form of community supervision that requires specified contacts with a parole and probation officer in addition to completion of other imposed terms and conditions.<sup>1</sup> The least restrictive form of probation is administrative probation, which is a form of noncontact supervision in which an offender who presents a low risk of harm to the community may, upon successful completion of at least half the term of probation, be transferred to nonreporting status until the expiration of the probation term.<sup>2</sup> Community control is the most intense form of probation, in which the offender is subject to supervised custody in the community, including surveillance on weekends and holidays, by a probation officer with a restricted caseload.<sup>3</sup>

Section 948.001, F.S., provides a definition for a “community residential drug punishment center” as a residential drug punishment center designated by the Department of Corrections (“DOC”).<sup>4</sup> However, the centers are no longer in existence as the Legislature repealed s. 948.034, F.S., which related to community residential drug punishment centers, in 2010.<sup>5</sup>

##### *Effect of Bill*

The bill amends s. 948.001, F.S., to update the definitions for “administrative probation” and “probation” and repeal the definition for “community residential drug punishment center.” The definition for “administrative probation” is amended to specify that it is a form of no contact, nonreporting supervision and specifies that the authority for this type of reduced level of supervision is provided for in s. 948.013, F.S. The definition of “probation” is amended to remove the reference to parole officers as DOC now employs probation officers for all forms of supervision.<sup>6</sup> Finally, s. 948.001, F.S., is amended to remove the definition for a “community residential drug treatment center” because such centers no longer exist.

The bill also amends ss. 948.03 and 948.101, F.S., relating to the terms and conditions of probation and the terms and conditions of community control, respectively, to remove references to parole officers and correctional probation officers as DOC uniformly uses the term “probation officer”. Additionally, the bill repeals references to “probation program drug punishment center” or “community residential facility” because these centers and facilities no longer exist.

##### **Uniform Order of Supervision**

In relevant part, s. 948.01, F.S., authorizes a court to place a defendant on probation or into community control. Pursuant to this statute, DOC is required to consult with the Office of the State Courts Administrator to *develop* and *disseminate* uniform order of supervision<sup>7</sup> forms to the courts by July 1 of each year. The law requires the courts to use the forms provided by DOC whenever a person is placed on community supervision.

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<sup>1</sup> s. 948.001(9), F.S.

<sup>2</sup> s. 948.001(1), F.S.

<sup>3</sup> s. 948.001(3), F.S.

<sup>4</sup> s. 948.001(4), F.S.

<sup>5</sup> ch. 2010-113, L.O.F.

<sup>6</sup> Department of Corrections, Agency Bill Analysis for PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

<sup>7</sup> An order of supervision refers to an individual order of probation, community control, parole, conditional release, or other document from a sentencing, releasing or pretrial authority, providing for specific terms and conditions of a community supervision program.

FLORIDA DEPARTMENT OF CORRECTIONS, *Community Supervision Definitions*,

<http://www.dc.state.fl.us/facilities/comcorinfo/definitions.html> (last visited March 16, 2017).

STORAGE NAME: pcb05.CRJ

DATE: 3/19/2017

### *Effect of Bill*

The bill amends s. 948.01, F.S., to revise language to acknowledge that the uniform order of supervision was developed and has been implemented since 2009. The bill amends the requirement for DOC to instead *revise* the form, as necessary, and *make it available* to courts thereafter.

### **Split Sentences**

Section 948.012, F.S., authorizes a sentencing court to sentence a defendant for any felony or misdemeanor, except for a capital felony, to a split sentence. A split sentence occurs when a defendant is sentenced to a specified term of incarceration, in either the county jail or state prison, which is followed by a period of community supervision following his or her release.<sup>8</sup> The period of probation or community control must begin immediately following a defendant's release from incarceration, except in circumstances where the defendant is subject to an involuntary civil commitment proceeding pursuant to ch. 394, F.S.<sup>9</sup>

### *Effect of the Bill*

The bill creates an additional exception to the requirement for a defendant's period of probation or community control to begin immediately following release from incarceration for those required to complete addiction-recovery supervision.<sup>10</sup> An offender who received a split sentence of probation following his or her release from incarceration must first serve out the term of addiction-recovery supervision before the term of probation or community control may begin. The bill creates the additional exception to acknowledge that such an offender is not permitted to begin his or her term of probation or community control immediately following release from incarceration.

### **Administrative Probation**

Section 948.013, F.S., prohibits certain types of offenders from eligibility for administrative probation. Currently, persons convicted of offenses committed on or after July 1, 1998, are ineligible for administrative probation if they are sentenced to or serving a term of probation for committing, attempting, conspiring, or soliciting to commit, any one of the following felony offenses:

- Section 787.01, F.S. (Kidnapping) or s. 787.02, F.S. (False imprisonment), where the victim is a minor and the defendant is not the victim's parent;
- Section 787.025, F.S. (Luring or enticing a child);
- Section 787.06(3)(g), F.S. (Human trafficking);
- Chapter 794, F.S. (Sexual battery);
- Former s. 796.03, F.S. (Procuring person under age of 18 for prostitution);
- Section 800.04, F.S. (Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
- Section 825.1025(2)(b), F.S. (Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person);
- Section 827.071, F.S. (Sexual performance by a child);
- Section 847.0133, F.S. (Protection of minors, prohibition of certain acts in connection with obscenity);
- Section 847.0135, F.S. (Computer pornography, traveling to meet a minor); or
- Section 847.0145, F.S. (Selling or buying of minors).

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<sup>8</sup> *Id.*

<sup>9</sup> This type of proceeding relates to the civil commitment of a sexually violent predator following his or her release from incarceration which causes them to be transferred to the custody of the Department of Children and Families ("DCF"). The period of probation following release from incarceration for one of these offenders is tolled while he or she remains in the custody of the DCF. ch. 394, F.S.

<sup>10</sup> Any offender released from prison who is convicted of a crime committed on or after July 1, 2001, must be given addiction-recovery supervision if the offender has: 1) a history of substance abuse or addiction; 2) participated in any drug treatment; 3) no current or previous convictions for a violent offense; 4) no current or previous convictions for drug trafficking or for the unlawful sale of a controlled substance; 5) no current or previous convictions for a property offense, with certain exceptions; and 6) no current or previous conviction for a traffic offense involving injury or death. s. 944.4731, F.S.

### *Effect of Bill*

The bill amends s. 948.013, F.S., to specify that the current provisions of ineligibility for administrative probation for certain offenders apply to persons whose crimes were committed after July 1, 1998, but before October 1, 2017. Additionally the bill adds a new provision to make offenders, whose offense was committed on or after October 1, 2017, ineligible for placement on administrative probation if the person is sentenced to or serving a term of probation for committing, attempting, conspiring, or soliciting to commit, any of the following felony offenses:

- Any offense described in s. 775.21(4)(a)1.a. or (4)(a)1.b.;<sup>11</sup> or
- Any offense described in s. 943.0435(1)(h)1.a.<sup>12</sup>

The cross-referenced sections of law result in any offender who is convicted of an offense on or after October 1, 2017, which qualifies for designation as a “sexual predator” or “sexual offender,” being ineligible for administrative probation. This eliminates the need for the enumerated offenses currently listed in the statute to be continually updated; instead, the offenses will be updated when the cross-referenced sections of law relating to the classification of sexual predators or sexual offenders is updated.

### **Community Service**

Public service, as it relates to probation and community control, is work an offender performs without pay for the benefit of the community. The work may only be performed for designated tax-supported or tax-exempt entities, which enter into an agreement with DOC to employ offenders as a condition of supervision. Section 948.031, F.S., requires DOC to establish a public works program for a county upon request of the chief judge of the circuit. DOC does not operate an established public service work program in every county in the state.<sup>13</sup>

### *Effect of Bill*

The bill amends s. 948.031, F.S., to authorize DOC to require certain offenders to complete *community service*. The amendment reflects the fact that DOC does not currently have a public service work program in all counties in Florida and emphasizes that such a requirement should be performed for the benefit of the community.

### **Residential Treatment as a Condition of Probation or Community Control**

As a condition of probation or community control, an offender may be sentenced to complete a residential treatment program. Section 948.035, F.S., restricts the court from ordering residential treatment unless supervised by one of the following types of facilities:

- A DOC probation and restitution center;<sup>14</sup>
- A probation program drug punishment treatment center;<sup>15</sup>
- A community residential facility which is owned and operated by any public or private entity, excluding a community correctional center as defined in s. 944.026, F.S.;<sup>16</sup> or
- A county-owned facility.

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<sup>11</sup> The Florida Sexual Predator Act lists the offenses for which an offender is designated as a “sexual predator” and is subject to registration and community public notification provisions under the Act. s. 775.21(4), F.S.

<sup>12</sup> This section lists the offenses for which a person is designated a “sexual offender” and is subject to registration and reporting requirements. s. 943.0435, F.S.

<sup>13</sup> Department of Corrections, Agency Bill Analysis for PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

<sup>14</sup> Probation and restitution centers (“PRC”) are medium intensity residential programs for selected offenders on probation and community control who require more supervision. The PRC stresses employment and restitution to the victim, community service work, GED and basic life skills, group and individual counseling, and other opportunities for self-improvement. All offenders in the PRC receive a substance abuse evaluation and, if treatment is needed, are treated at the PRC facility. FLORIDA DEPARTMENT OF CORRECTIONS, *Executive Summary: Probation and Restitution Centers*, <http://www.dc.state.fl.us/pub/subabuse/probation/99-00/execsum3.html>.

<sup>15</sup> Section 948.034, F.S., regarding residential drug punishment centers was repealed in 2010. ch. 2010-113, L.O.F.

<sup>16</sup> Community-based residential drug treatment facilities include both secure and nonsecure facilities. s. 944.026(b), F.S.

Prior to an offender's admission into a treatment center, the court is required to obtain an individual assessment and recommendation pursuant to the Community Control Implementation Manual which must be considered by the court when ordering such a placement.<sup>17</sup>

#### *Effect of Bill*

The bill amends s. 948.035, F.S., to reflect the current process for evaluation and referral of offenders to residential treatment programs. The bill repeals references to a probation program drug punishment treatment center, which no longer exists. Further, the bill removes the requirement for an individualized assessment to be performed in accordance with the Community Control Implementation Manual, as this manual is obsolete.<sup>18</sup> Instead, the bill amends the requirements to reflect the current practice of having a qualified practitioner provide an assessment and recommendation on the appropriate treatment needs of an offender.

#### **Education and Learning as a Condition of Probation**

Section 948.037, F.S., requires a court to order an offender who has not obtained a high school diploma or a high school equivalency diploma to make a good faith effort towards obtaining the same as a condition of probation or community control. The law prohibits the court from revoking an offender's probation or community control because he or she is unable to achieve such skills or diploma, but may revoke supervision if the offender fails to make a good faith effort<sup>19</sup> to do so.

#### *Effect of Bill*

The bill amends s. 948.037, F.S., to make a court's decision to order an offender to complete education or learning as a condition of supervision discretionary, rather than mandatory.

#### **Violation of Probation and Community Control**

Upon a violation of probation, it is typically the probation officer's responsibility to file an affidavit<sup>20</sup> alleging the acts which constitute a violation of probation. A violation of probation may occur for a new crime committed while the offender is on probation, or for a technical violation,<sup>21</sup> such as failure to pay cost of supervision or a positive urinalysis test. In some circuits, the chief judge may direct DOC to use a notification letter for technical violations, instead of using a violation report, affidavit, or warrant.<sup>22</sup>

When probation is properly tolled upon the filing of an affidavit alleging a violation of probation, the court continues to maintain jurisdiction over the offender for the violation that is alleged and for any new violation which may occur during the tolling period. The probation officer is permitted to continue to supervise the probationer until the court revokes or terminates the probation.<sup>23</sup>

Section 948.06(1)(f), F.S., provides the current alternatives by which an offender's probationary period may be tolled upon a violation of probation. In addition to the filing of an affidavit alleging a violation of probation, one of the following must also occur:

- Issuance of a warrant pursuant to s. 901.02, F.S.;
- A warrantless arrest of the offender; or
- Issuance of a notice to appear.

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<sup>17</sup> s. 948.035(3), F.S.

<sup>18</sup> ch. 2008-250, L.O.F.

<sup>19</sup> "Good faith effort" is defined to mean "the offender is enrolled in a program of instruction and is attending and making satisfactory progress toward completion of requirements." s. 948.037(1), F.S.

<sup>20</sup> An affidavit "refers to a sworn written statement of fact that details the conditions of supervision violated and the manner in which the conditions were violated." FLORIDA DEPARTMENT OF CORRECTIONS, *Community Supervision Definitions*, [www.dc.state.fl.us/facilities/comcorinfo/definitions.html](http://www.dc.state.fl.us/facilities/comcorinfo/definitions.html) (last visited March 16, 2017).

<sup>21</sup> "Technical violation" generally means any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. *See* s. 948.06(h)1., F.S.

<sup>22</sup> If this is applicable, the chief judge must provide written direction as to the types of technical violations which are to be reported by notification letter of a technical violation, any exceptions to those violations, and the required process for submissions. s. 948.06(g), F.S.

<sup>23</sup> s. 948.06(1)(f), F.S.



Section 901.02, F.S., relating to the issuance of arrest warrants, authorizes a judge to issue an arrest warrant for *any crime committed* within the judge's jurisdiction, when he or she is satisfied that probable cause exists.<sup>24</sup>

Recently, a Fourth District Court of Appeal case exposed a potential defect in s. 948.06(1)(f), F.S. In *Mobley v. State*, the defendant was charged with technical violations of probation for failing to make restitution payments and a drug testing fee payment. On the same day the affidavit of violation of probation was filed, the trial court issued warrants to arrest the defendant for the technical violations. After the date the defendant's probation was originally set to expire, the court sentenced him to over 25 years in prison.<sup>25</sup>

Mobley appealed arguing that the warrant for his arrest was not issued pursuant to s. 901.02, F.S., because it did not allege he committed any crime. Therefore, he argued, his probationary period had not been tolled and had expired before the sentencing hearing, meaning the court lacked jurisdiction to sentence him for the violation.

The Fourth District Court of Appeal agreed, holding that s. 948.06(1)(f), F.S., clearly required a warrant to be issued under s. 901.02, F.S., in order for the probationary period to be tolled. In turn, the court held that s. 901.02, F.S., required that the warrant be issued for *a crime*. In this case, because the warrants were issued for technical violations, and not crimes, they were not issued under s. 901.02, F.S., and the defendant's probation was never tolled.<sup>26</sup> At least one other conviction for a violation of probation has been reversed and the sentence vacated based on the same analysis in the court used in *Mobley*.<sup>27</sup> Recently, the Florida Supreme Court declined a certified question by the Fourth District Court of Appeal following the *Mobley* decision.<sup>28</sup>

#### *Effect of the Bill*

The bill amends s. 948.06, F.S., to remove the requirement that a warrant for a violation of probation be issued under s. 901.02, F.S. Rather, the bill authorizes a warrant to be issued for any violation, thereby making *any* warrant for a violation of probation sufficient to toll an offender's probationary term. Additionally, the bill amends s. 948.06, F.S., to provide an additional option for technical violations in lieu of a violation report, affidavit, and warrant, by allowing a probation officer to issue a notice to appear. Furthermore, the bill removes references to parole officers throughout s. 948.06, F.S., to conform the language to the rest of ch. 948, using the term "probation officer."

#### **Payment for Cost of Supervision**

Supervision fees are used by DOC to offset the costs associated with community supervision programs. Section 948.09, F.S. requires a person placed under any of the following forms of supervision to pay a monthly fee:

- Probation;
- Drug offender probation;
- Community control;
- Parole;
- Addiction-recovery supervision;
- Conditional release supervision; or
- Pretrial intervention program.

The law requires DOC to consider the offender's ability to pay and to incorporate that ability into a payment plan, if necessary. A failure to pay supervision fees may result in the revocation of probation by the court, the revocation of parole or conditional release by the Florida Commission on Offender

<sup>24</sup> s. 901.02(1), F.S. (*emphasis added*).

<sup>25</sup> *Mobley v. State*, 197 So. 3d 572, 573 (Fla. 4th 2016).

<sup>26</sup> *Id.* at 574.

<sup>27</sup> *See Lewin v. State*, 192 So. 3d 91 (Fla. 4th 2016).

<sup>28</sup> *State v. Mobley*, SC 16-936, 2016 Fla. LEXIS 1174 (Fla. 2016).

Review, the revocation of control release by the Control Release authority, or removal from a pretrial intervention program by the state attorney.<sup>29</sup>

Section 948.09, F.S., authorizes DOC to exempt a person from payment of any or all of his or her supervision fees if one of the following circumstances applies:

- The offender has diligently attempted, but is unable to *obtain* employment which provides him or her sufficient income to make payments;
- The offender is a student and certification of such student status is supplied by the school to *the Secretary of Corrections*;
- The offender has an employment handicap, as determined by an examination *acceptable to, or ordered by, the Secretary of Corrections*;
- The offender's age prevents him or her from obtaining employment;
- The offender is responsible for dependents and the payment of supervision fees constitutes an undue hardship on the offender;
- The offender's supervision has been transferred outside the state; or
- *There are other extenuating circumstances, as determined by the Secretary of Corrections.*

Section 948.09(4), F.S., authorizes DOC to contract with public or private entities to provide probation services for misdemeanor offenders. The law requires the provider to compile a monthly report, made available to DOC, relating to supervision of misdemeanor offenders.

#### *Effect of Bill*

The bill amends s. 948.09, F.S., to remove language specifying the different types of probation or community control requiring an offender to pay a supervision fee. Rather, the bill specifies that anyone placed on supervision or in a pretrial intervention program must pay a monthly supervision fee. The bill repeals reference to parole as a form of supervision that may be revoked for failure to pay supervision fees.

Additionally, the bill amends the factors for which DOC may exempt a person from payment of supervision fees in the following ways:

- Adds the offender's inability to *maintain* employment, despite diligent attempt, which provides him or her with sufficient income to make such payments;
- Changes the person to whom certification of student status must be supplied to the *offender's probation officer*;
- Removes the requirement that the examination determining employment handicap be *acceptable to, or approved by, the Secretary of Corrections*;
- Removes *other extenuating circumstances, as determined by the Secretary of Corrections.*

Further, the bill repeals s. 948.09(4), F.S., related to misdemeanor probation providers, as DOC reports this section is outdated and obsolete.<sup>30</sup>

#### **Community Control Programs**

Community control is the most rigid form of supervision and is generally used as an alternative for offenders that otherwise would have been incarcerated in jail or prison. Section 948.10, F.S., provides that community control should be used to address the following offenders:

- Those who violate probation with technical violations or *misdemeanor* violations;
- Those who violate parole with technical violations or *misdemeanor* violations; or
- Those found guilty of felonies, who, because of their criminal background or the seriousness of the offense, would not be placed on regular probation.

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<sup>29</sup> s. 948.09, F.S.

<sup>30</sup> Department of Corrections, Agency Bill Analysis PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

The law requires the caseloads of community control officers to be no more than 25 cases per officer and requires DOC to commit at least 10 percent of its probation field staff to the operation of the community control program.<sup>31</sup> Section 948.10(5), F.S., currently requires DOC to make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, including a detailed analysis of the community control program.

#### *Effect of Bill*

The bill amends s. 948.10, F.S., to add the term “home confinement” to the section directory, specifying that community control is such a program. Additionally, the bill repeals the reference to *misdemeanor* violations in the targeted groups of offenders for community control. As such, the bill authorizes courts and the Florida Commission on Offender Review to use community control for offenders who violate their probation or parole with *any* new violation of law, not just misdemeanor offenses. The bill repeals the requirement for DOC to allocate at least 10 percent of its probation field staff to the community control program and increases the maximum caseload of an officer to 30 cases. Furthermore, the bill repeals s. 948.10(5), F.S., requiring DOC to make an annual report to certain government officials, because the law requiring this report was repealed by the Legislature in 2008.<sup>32</sup>

#### **Electronic Monitoring**

Currently, s. 948.11, F.S., *authorizes* DOC to electronically monitor an offender who is sentenced to community control when the court has imposed electronic monitoring as a condition of supervision.

#### *Effect of Bill*

The bill amends s. 948.11, F.S., to *require* DOC to electronically monitor an offender on community control when the court has imposed such as a condition of supervision. Additionally, the bill makes technical changes to s. 948.011, F.S., to use the uniform terminology of “supervision” and “probation officer” as used throughout ch. 948, F.S.

#### **Misdemeanor Probation Services**

Section 948.15, F.S., allows a private entity to contract with a county to provide misdemeanor probation services. The law requires such contract to include certain provisions, including the requirement to report staff qualifications and criminal record checks of staff in accordance with essential standards established by the American Correctional Association as of January 1, 1991.<sup>33</sup>

#### *Effect of Bill*

The bill removes the requirement for private probation providers to provide staff qualifications and criminal record checks in accordance with essential standards established by the American Correctional Association as of January 1, 1991, as the standards are obsolete.<sup>34</sup>

#### **Miscellaneous Effects of Bill**

The bill repeals s. 948.50, F.S. providing the short title “Community Corrections Partnership Act.”

The bill reenacts the following provisions to incorporate the amendments by the bill:

- Section 921.187, F.S., relating to disposition and sentencing, is reenacted to incorporate the amendment made to s. 948.013, F.S.
- Section 947.1405, F.S., relating to the conditional release program, is reenacted for the purpose of incorporating the amendment made to s. 948.09, F.S.
- Sections 947.1747 and 948.01, F.S., relating to community control as a special condition of parole and when a court may place a defendant on probation or into community control, respectively, are reenacted to incorporate the amendment made to s. 948.10, F.S.

<sup>31</sup> s. 948.10(2), F.S.

<sup>32</sup> ch. 2008-250, L.O.F.

<sup>33</sup> s. 948.15(3), F.S.

<sup>34</sup> Department of Corrections, Agency Bill Analysis PCB CRJ 17-05 (2017) (on file with Criminal Justice Subcommittee).

The bill provides an effective date of July 1, 2017, except as otherwise expressly provided in the act. Section 4. of the act takes effect on October 1, 2017.

**B. SECTION DIRECTORY:**

Section 1: Amending s. 948.001, F.S., relating to definitions.

Section 2: Amending s. 948.01, F.S., relating to when the court may place defendant on probation or into community control.

Section 3: Amending s. 948.012, F.S., relating to split sentence of probation or community control and imprisonment.

Section 4: Amending s. 948.013, F.S., relating to administrative probation.

Section 5: Amending s. 948.03, F.S., relating to terms and conditions of probation.

Section 6: Amending s. 948.031, F.S., relating to conditions of probation or community control; public service.

Section 7: Amending s. 948.035, F.S., relating to residential treatment as a condition of probation or community control.

Section 8: Amending s. 948.037, F.S., relating to education and learning as a condition of probation or community control.

Section 9: Amending s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 10: Amending s. 948.09, F.S., relating to payment for cost of supervision and rehabilitation.

Section 11: Amending s. 948.10, F.S., relating to community control programs.

Section 12: Amending s. 948.101, F.S., relating to terms and conditions of community control.

Section 13: Amending s. 948.11, F.S., relating to electronic monitoring devices.

Section 14: Amending s. 948.15, F.S., relating to misdemeanor probation services.

Section 15: Repealing s. 948.502, F.S., relating to a short title.

Section 16: Reenacting s. 921.187(1)(n), F.S., relating to disposition and sentencing, alternatives, and restitution, to incorporate the amendment made to s. 948.013, F.S., in a reference thereto.

Section 17: Reenacting s. 947.1405(7)(b), F.S., relating to conditional release program, to incorporate the amendment made to s. 948.09, F.S., in a reference thereto.

Section 18: Reenacting s. 947.1747, F.S., relating to community control as a special condition of parole, to incorporate the amendment made to s. 948.10, F.S., in a reference thereto.

Section 19: Reenacting s. 948.01(3), F.S., relating to when a court may place a defendant on probation or into community control, to incorporate the amendment made to s. 948.10, F.S., in a reference thereto.

Section 20: Providing effective dates.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

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

2. Expenditures: The DOC does not anticipate a fiscal impact. Any potential impact on courts is unknown at this time.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

2. Other: None.

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

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

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A

1   A bill to be entitled  
 2           An act relating to probation and community control;  
 3           amending s. 948.001, F.S.; redefining terms and  
 4           deleting a definition; amending s. 948.01, F.S.;  
 5           requiring the Department of Corrections to revise and  
 6           make available to the courts, rather than develop and  
 7           disseminate to the courts, uniform order of  
 8           supervision forms; amending s. 948.012, F.S.; adding  
 9           the addiction-recovery supervision program as an  
 10          exception to the immediate commencement of the period  
 11          of probation upon the release of the defendant;  
 12          amending s. 948.013, F.S.; revising the list of  
 13          offenses that make an offender ineligible for  
 14          placement on administrative probation during specified  
 15          time periods; amending s. 948.03, F.S.; authorizing  
 16          the court to require a probationer or offender to  
 17          report to, to permit visits by, to submit to random  
 18          testing as directed by, probation officers, rather  
 19          than probation and parole supervisors or correctional  
 20          probation officers; removing the option of  
 21          incarceration in specified locations if a court  
 22          withholds adjudication of guilt or imposes  
 23          incarceration as a condition of probation; amending s.  
 24          948.031, F.S.; replacing the term "public service"  
 25          with the term "community service"; amending s.

26 948.035, F.S.; removing a probation program drug  
 27 punishment treatment community facility from the list  
 28 of residential treatment or incarceration facilities  
 29 that an offender must be restricted to under certain  
 30 circumstances; requiring a qualified practitioner to  
 31 provide, rather than a court to obtain, an assessment  
 32 and recommendation on the treatment needs of an  
 33 offender entering a treatment facility; amending s.  
 34 948.037, F.S.; authorizing, rather than requiring, a  
 35 court to require an offender to make a good faith  
 36 effort toward completion of certain skills or a  
 37 specific diploma as a condition of community control,  
 38 probation, or probation following incarceration;  
 39 amending s. 948.06, F.S.; replacing the term "parole  
 40 or probation supervisor" with the term "probation  
 41 officer"; specifying that the probationary period is  
 42 tolled after the issuance of a violation of probation  
 43 or community control warrant, rather than an arrest  
 44 warrant; authorizing a chief judge to direct the  
 45 department to use a notice to appear for technical  
 46 violations; amending s. 948.09, F.S.; expanding the  
 47 types of supervision under which an offender must pay  
 48 for the cost of supervision; conforming provisions to  
 49 changes made by the act; revising the factors under  
 50 which the department may exempt an offender from

51 payments; requiring the certification of student  
 52 status to be supplied to the offender's probation  
 53 officer, rather than to the Secretary of Corrections;  
 54 deleting duties of the secretary; deleting provisions  
 55 authorizing the department to provide monthly payments  
 56 to court-approved entities that provide supervision or  
 57 rehabilitation for offenders under certain  
 58 circumstances; deleting provisions relating to  
 59 contract terms with, and a monthly report from,  
 60 certain entities; amending s. 948.10, F.S.; requiring  
 61 a community control program to focus on the provision  
 62 of home confinement with limitations, rather than  
 63 sanctions and consequences, commensurate with the  
 64 crime committed; specifying and revising who the  
 65 target population is for the community control  
 66 program; revising departmental requirements for the  
 67 operation of the program and caseloads; making  
 68 technical changes; specifying the types of facilities  
 69 used for the community control program; deleting an  
 70 annual reporting requirement of the department to the  
 71 Governor and the Legislature which includes certain  
 72 information; amending s. 948.101, F.S.; conforming  
 73 provisions to changes made by the act; amending s.  
 74 948.11, F.S.; requiring, rather than authorizing, the  
 75 department to electronically monitor offenders



76 sentenced to community control under certain  
 77 circumstances; conforming terminology to changes made  
 78 by the act; amending s. 948.15, F.S.; revising the  
 79 required terms of the contract for a private entity  
 80 providing services for the supervision of misdemeanor  
 81 probationers; repealing s. 948.50, F.S., relating to a  
 82 short title; reenacting s. 921.187(1)(n), F.S.,  
 83 relating to disposition and sentencing, alternatives,  
 84 and restitution, to incorporate the amendment made to  
 85 s. 948.013, F.S., in a reference thereto; reenacting  
 86 s. 947.1405(7)(b), F.S., relating to the conditional  
 87 release program, to incorporate the amendment made to  
 88 s. 948.09, F.S., in a reference thereto; reenacting  
 89 ss. 947.1747 and 948.01(3), F.S., relating to  
 90 community control as a special condition of parole and  
 91 when a court may place a defendant on probation or  
 92 into community control, respectively, to incorporate  
 93 the amendment made to s. 948.10, F.S., in references  
 94 thereto; providing effective dates.

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

97 Section 1. Subsection (1) and present subsections (4) and  
 98 (9) of section 948.001, Florida Statutes, are amended, and  
 99 present subsections (5) through (14) of that section are  
 100 redesignated as subsections (4) through (13), respectively, to

101 read:

102 948.001 Definitions.—As used in this chapter, the term:

103 (1) "Administrative probation" means a form of no contact,  
 104 nonreporting ~~noncontact~~ supervision in which an offender who  
 105 presents a low risk of harm to the community may, upon  
 106 satisfactory completion of half the term of probation, be  
 107 transferred by the Department of Corrections to this type of  
 108 reduced level of supervision, as provided in s. 948.013  
 109 ~~nonreporting status until expiration of the term of supervision.~~

110 ~~(4) "Community residential drug punishment center" means a~~  
 111 ~~residential drug punishment center designated by the Department~~  
 112 ~~of Corrections. The Department of Corrections shall adopt rules~~  
 113 ~~as necessary to define and operate such a center.~~

114 ~~(8)(9)~~ "Probation" means a form of community supervision  
 115 requiring specified contacts with ~~parole and~~ probation officers  
 116 and other terms and conditions as provided in s. 948.03.

117 Section 2. Paragraph (b) of subsection (1) of section  
 118 948.01, Florida Statutes, is amended to read:

119 948.01 When court may place defendant on probation or into  
 120 community control.—

121 (1) Any state court having original jurisdiction of  
 122 criminal actions may at a time to be determined by the court,  
 123 with or without an adjudication of the guilt of the defendant,  
 124 hear and determine the question of the probation of a defendant  
 125 in a criminal case, except for an offense punishable by death,

126 who has been found guilty by the verdict of a jury, has entered  
 127 a plea of guilty or a plea of nolo contendere, or has been found  
 128 guilty by the court trying the case without a jury.

129 (b) The department, in consultation with the Office of the  
 130 State Courts Administrator, shall revise and make available  
 131 ~~develop and disseminate~~ to the courts uniform order of  
 132 supervision forms by July 1 of each year or as necessary. The  
 133 courts shall use the uniform order of supervision forms provided  
 134 by the department for all persons placed on community  
 135 supervision.

136 Section 3. Subsection (1) of section 948.012, Florida  
 137 Statutes, is amended, and subsections (4), (5), and (6) of that  
 138 section are republished, to read:

139 948.012 Split sentence of probation or community control  
 140 and imprisonment.—

141 (1) If punishment by imprisonment for a misdemeanor or a  
 142 felony, except for a capital felony, is prescribed, the court  
 143 may, at the time of sentencing, impose a split sentence whereby  
 144 the defendant is to be placed on probation or, with respect to  
 145 any such felony, into community control upon completion of any  
 146 specified period of such sentence which may include a term of  
 147 years or less. In such case, the court shall stay and withhold  
 148 the imposition of the remainder of sentence imposed upon the  
 149 defendant and direct that the defendant be placed upon probation  
 150 or into community control after serving such period as may be

151 imposed by the court. Except as provided in s. 944.4731(2)(b)  
 152 and subsection (6), the period of probation or community control  
 153 shall commence immediately upon the release of the defendant  
 154 from incarceration, whether by parole or gain-time allowances.

155 (4) Effective for offenses committed on or after September  
 156 1, 2005, the court must impose a split sentence pursuant to  
 157 subsection (1) for any person who is convicted of a life felony  
 158 for lewd and lascivious molestation pursuant to s. 800.04(5)(b)  
 159 if the court imposes a term of years in accordance with s.  
 160 775.082(3)(a)4.a.(II) rather than life imprisonment. The  
 161 probation or community control portion of the split sentence  
 162 imposed by the court for a defendant must extend for the  
 163 duration of the defendant's natural life and include a condition  
 164 that he or she be electronically monitored.

165 (5)(a) Effective for offenses committed on or after  
 166 October 1, 2014, if the court imposes a term of years in  
 167 accordance with s. 775.082 which is less than the maximum  
 168 sentence for the offense, the court must impose a split sentence  
 169 pursuant to subsection (1) for any person who is convicted of a  
 170 violation of:

- 171 1. Section 782.04(1)(a)2.c.;
- 172 2. Section 787.01(3)(a)2. or 3.;
- 173 3. Section 787.02(3)(a)2. or 3.;
- 174 4. Section 794.011, excluding s. 794.011(10);
- 175 5. Section 800.04;

176 6. Section 825.1025; or

177 7. Section 847.0135(5).

178 (b) The probation or community control portion of the  
 179 split sentence imposed by the court must extend for at least 2  
 180 years. However, if the term of years imposed by the court  
 181 extends to within 2 years of the maximum sentence for the  
 182 offense, the probation or community control portion of the split  
 183 sentence must extend for the remainder of the maximum sentence.

184 (6) If a defendant who has been sentenced to a split  
 185 sentence pursuant to subsection (1) is transferred to the  
 186 custody of the Department of Children and Families pursuant to  
 187 part V of chapter 394, the period of probation or community  
 188 control is tolled until such person is no longer in the custody  
 189 of the Department of Children and Families. This subsection  
 190 applies to all sentences of probation or community control which  
 191 begin on or after October 1, 2014, regardless of the date of the  
 192 underlying offense.

193 Section 4. Effective October 1, 2017, subsection (2) of  
 194 section 948.013, Florida Statutes, is amended to read:

195 948.013 Administrative probation.--

196 (2) (a) Effective for an offense committed on or after July  
 197 1, 1998, and before October 1, 2017, a person is ineligible for  
 198 placement on administrative probation if the person is sentenced  
 199 to or is serving a term of probation or community control,  
 200 regardless of the conviction or adjudication, for committing, or

201 attempting, conspiring, or soliciting to commit, any of the  
 202 felony offenses described in s. 787.01 or s. 787.02, where the  
 203 victim is a minor and the defendant is not the victim's parent;  
 204 s. 787.025; s. 787.06(3)(g); chapter 794; former s. 796.03; s.  
 205 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0133; s. 847.0135;  
 206 or s. 847.0145.

207 (b) Effective for an offense committed on or after October  
 208 1, 2017, a person is ineligible for placement on administrative  
 209 probation if the person is sentenced to or is serving a term of  
 210 probation or community control, regardless of the conviction or  
 211 adjudication, for committing, or attempting, conspiring, or  
 212 soliciting to commit, any of the felony offenses described in s.  
 213 775.21(4)(a)1.a. or (4)(a)1.b. or s. 943.0435(1)(h)1.a.

214 Section 5. Paragraphs (a), (b), (l), and (m) of subsection  
 215 (1) and subsection (2) of section 948.03, Florida Statutes, are  
 216 amended to read:

217 948.03 Terms and conditions of probation.—

218 (1) The court shall determine the terms and conditions of  
 219 probation. Conditions specified in this section do not require  
 220 oral pronouncement at the time of sentencing and may be  
 221 considered standard conditions of probation. These conditions  
 222 may include among them the following, that the probationer or  
 223 offender in community control shall:

224 (a) Report to the probation officer ~~and parole supervisors~~  
 225 as directed.

226 (b) Permit the probation officer ~~such supervisors~~ to visit  
 227 him or her at his or her home or elsewhere.

228 (1)1. Submit to random testing as directed by the  
 229 ~~correctional~~ probation officer or the professional staff of the  
 230 treatment center where he or she is receiving treatment to  
 231 determine the presence or use of alcohol or controlled  
 232 substances.

233 2. If the offense was a controlled substance violation and  
 234 the period of probation immediately follows a period of  
 235 incarceration in the state correction system, the conditions  
 236 must ~~shall~~ include a requirement that the offender submit to  
 237 random substance abuse testing intermittently throughout the  
 238 term of supervision, upon the direction of the ~~correctional~~  
 239 probation officer ~~as defined in s. 943.10(3)~~.

240 (m) Be prohibited from possessing, carrying, or owning  
 241 any:

- 242 1. Firearm.
- 243 2. Weapon without first procuring the consent of the  
 244 ~~correctional~~ probation officer.

245 (2) The enumeration of specific kinds of terms and  
 246 conditions does ~~shall~~ not prevent the court from adding thereto  
 247 such other or others as it considers proper. However, the  
 248 sentencing court may only impose a condition of supervision  
 249 allowing an offender convicted of s. 794.011, s. 800.04, s.  
 250 827.071, s. 847.0135(5), or s. 847.0145~~7~~ to reside in another

251 state, if the order stipulates that it is contingent upon the  
 252 approval of the receiving state interstate compact authority.  
 253 The court may rescind or modify at any time the terms and  
 254 conditions theretofore imposed by it upon the probationer.  
 255 However, if the court withholds adjudication of guilt or imposes  
 256 a period of incarceration as a condition of probation, the  
 257 period may ~~shall~~ not exceed 364 days, and incarceration shall be  
 258 restricted to either a county facility, or a probation and  
 259 restitution center under the jurisdiction of the Department of  
 260 Corrections, ~~a probation program drug punishment phase I secure~~  
 261 ~~residential treatment institution, or a community residential~~  
 262 ~~facility owned or operated by any entity providing such~~  
 263 ~~services.~~

264 Section 6. Section 948.031, Florida Statutes, is amended  
 265 to read:

266 948.031 Condition of probation or community control;  
 267 community ~~public~~ service.—

268 (1) Any person who is convicted of a felony or misdemeanor  
 269 and who is placed on probation or into community control may be  
 270 required as a condition of supervision to perform some type of  
 271 community ~~public~~ service for a tax-supported or tax-exempt  
 272 entity, with the consent of such entity. Such community ~~public~~  
 273 service shall be performed at a time other than during such  
 274 person's regular hours of employment.

275 (2) Upon the request of the chief judge of the circuit,



276 the Department of Corrections shall establish a community ~~public~~  
 277 service program for a county, which program may include, but is  
 278 ~~shall~~ not be limited to, any of the following types of community  
 279 ~~public~~ service:

280 (a) Maintenance work on any property or building owned or  
 281 leased by any state, county, or municipality or any nonprofit  
 282 organization or agency.

283 (b) Maintenance work on any state-owned, county-owned, or  
 284 municipally owned road or highway.

285 (c) Landscaping or maintenance work in any state, county,  
 286 or municipal park or recreation area.

287 (d) Work in any state, county, or municipal hospital or  
 288 any developmental services institution or other nonprofit  
 289 organization or agency.

290 Section 7. Subsections (1) and (3) of section 948.035,  
 291 Florida Statutes, are amended to read:

292 948.035 Residential treatment as a condition of probation  
 293 or community control.-

294 (1) If the court imposes a period of residential treatment  
 295 or incarceration as a condition of probation or community  
 296 control, the residential treatment or incarceration shall be  
 297 restricted to the following facilities:

298 (a) A Department of Corrections probation and restitution  
 299 center;

300 ~~(b) A probation program drug punishment treatment~~

301 ~~community,~~

302 (b) ~~(e)~~ A community residential facility that ~~which~~ is  
 303 owned and operated by a ~~any~~ public or private entity, excluding  
 304 a community correctional center as defined in s. 944.026; or

305 (c) ~~(d)~~ A county-owned facility.

306 (3) Before ~~Prior to~~ admission to such a facility or center  
 307 ~~treatment community,~~ a qualified practitioner must provide the  
 308 ~~court shall obtain~~ an individual assessment and recommendation  
 309 on the appropriate treatment needs ~~pursuant to the Community~~  
 310 ~~Control Implementation Manual which shall be considered by the~~  
 311 ~~court in ordering such placements.~~ Placement in such a facility  
 312 or center may, ~~or in the phase I secure residential phase of a~~  
 313 ~~probation program drug punishment treatment community,~~ shall not  
 314 exceed 364 days. Early completion of an offender's placement  
 315 shall be recommended to the court, when appropriate, by the  
 316 facility or center supervisor, by the supervising probation  
 317 officer, or by the program manager. The Department of  
 318 Corrections is authorized to contract with appropriate agencies  
 319 for provision of services.

320 Section 8. Subsection (1) of section 948.037, Florida  
 321 Statutes, is amended to read:

322 948.037 Education and learning as a condition of probation  
 323 or community control.—

324 (1) As a condition of community control, probation, or  
 325 probation following incarceration, the court may ~~shall~~ require

326 an offender who has not obtained a high school diploma or high  
 327 school equivalency diploma or who lacks basic or functional  
 328 literacy skills, upon acceptance by an adult education program,  
 329 to make a good faith effort toward completion of such basic or  
 330 functional literacy skills or high school equivalency diploma,  
 331 as defined in s. 1003.435, in accordance with the assessed adult  
 332 general education needs of the individual offender. The court  
 333 may ~~shall~~ not revoke community control, probation, or probation  
 334 following incarceration because of the offender's inability to  
 335 achieve such skills or diploma but may revoke community control,  
 336 probation, or probation following incarceration if the offender  
 337 fails to make a good faith effort to achieve such skills or  
 338 diploma. The court may grant early termination of community  
 339 control, probation, or probation following incarceration upon  
 340 the offender's successful completion of the approved program. As  
 341 used in this subsection, "good faith effort" means the offender  
 342 is enrolled in a program of instruction and is attending and  
 343 making satisfactory progress toward completion of the  
 344 requirements.

345 Section 9. Paragraphs (a), (e), (f), and (g) of subsection  
 346 (1) of section 948.06, Florida Statutes, are amended to read:

347 948.06 Violation of probation or community control;  
 348 revocation; modification; continuance; failure to pay  
 349 restitution or cost of supervision.—

350 (1) (a) Whenever within the period of probation or

351 community control there are reasonable grounds to believe that a  
 352 probationer or offender in community control has violated his or  
 353 her probation or community control in a material respect, any  
 354 law enforcement officer who is aware of the probationary or  
 355 community control status of the probationer or offender in  
 356 community control or any ~~parole or~~ probation officer ~~supervisor~~  
 357 may arrest or request any county or municipal law enforcement  
 358 officer to arrest such probationer or offender without warrant  
 359 wherever found and return him or her to the court granting such  
 360 probation or community control.

361 (e) Any ~~parole or~~ probation officer ~~supervisor~~, any  
 362 officer authorized to serve criminal process, or any peace  
 363 officer of this state is authorized to serve and execute such  
 364 warrant. Any ~~parole or~~ probation officer ~~supervisor~~ is  
 365 authorized to serve such notice to appear.

366 (f) Upon the filing of an affidavit alleging a violation  
 367 of probation or community control and following issuance of a  
 368 warrant for such violation ~~under s. 901.02~~, a warrantless arrest  
 369 under this section, or a notice to appear under this section,  
 370 the probationary period is tolled until the court enters a  
 371 ruling on the violation. Notwithstanding the tolling of  
 372 probation, the court shall retain jurisdiction over the offender  
 373 for any violation of the conditions of probation or community  
 374 control that is alleged to have occurred during the tolling  
 375 period. The probation officer is permitted to continue to

376 supervise any offender who remains available to the officer for  
 377 supervision until the supervision expires pursuant to the order  
 378 of probation or community control or until the court revokes or  
 379 terminates the probation or community control, whichever comes  
 380 first.

381 (g) The chief judge of each judicial circuit may direct  
 382 the department to use a notification letter of a technical  
 383 violation in appropriate cases in lieu of a violation report,  
 384 affidavit, and warrant or a notice to appear when the alleged  
 385 violation is not a new felony or misdemeanor offense. Such  
 386 direction must be in writing and must specify the types of  
 387 specific technical violations which are to be reported by a  
 388 notification letter of a technical violation, any exceptions to  
 389 those violations, and the required process for submission. At  
 390 the direction of the chief judge, the department shall send the  
 391 notification letter of a technical violation to the court.

392 Section 10. Section 948.09, Florida Statutes, is amended  
 393 to read:

394 948.09 Payment for cost of supervision and other monetary  
 395 obligations ~~rehabilitation.~~-

396 (1)(a)1. Any person ordered by the court, the Department  
 397 of Corrections, or the Florida Commission on Offender Review to  
 398 be placed under ~~on probation, drug offender probation, community~~  
 399 ~~control, parole, control release, provisional release~~  
 400 ~~supervision, addiction recovery supervision, or conditional~~

401 ~~release~~ supervision under this chapter, chapter 944, chapter  
 402 945, chapter 947, or chapter 958, or in a pretrial intervention  
 403 program, must, as a condition of any placement, pay the  
 404 department a total sum of money equal to the total month or  
 405 portion of a month of supervision times the court-ordered  
 406 amount, but not to exceed the actual per diem cost of the  
 407 supervision. The department shall adopt rules by which an  
 408 offender who pays in full and in advance of regular termination  
 409 of supervision may receive a reduction in the amount due. The  
 410 rules shall incorporate provisions by which the offender's  
 411 ability to pay is linked to an established written payment plan.  
 412 Funds collected from felony offenders may be used to offset  
 413 costs of the Department of Corrections associated with community  
 414 supervision programs, subject to appropriation by the  
 415 Legislature.

416       2. In addition to any other contribution or surcharge  
 417 imposed by this section, each felony offender assessed under  
 418 this paragraph shall pay a \$2-per-month surcharge to the  
 419 department. The surcharge shall be deemed to be paid only after  
 420 the full amount of any monthly payment required by the  
 421 established written payment plan has been collected by the  
 422 department. These funds shall be used by the department to pay  
 423 for correctional probation officers' training and equipment,  
 424 including radios, and firearms training, firearms, and attendant  
 425 equipment necessary to train and equip officers who choose to

426 carry a concealed firearm while on duty. This subparagraph does  
 427 not limit the department's authority to determine who shall be  
 428 authorized to carry a concealed firearm while on duty, or limit  
 429 the right of a correctional probation officer to carry a  
 430 personal firearm approved by the department.

431 (b) Any person placed on misdemeanor probation by a county  
 432 court must contribute not less than \$40 per month, as decided by  
 433 the sentencing court, to the court-approved public or private  
 434 entity providing misdemeanor supervision.

435 (2) Any person being electronically monitored by the  
 436 department as a result of being placed on supervision shall pay  
 437 the department for electronic monitoring services at a rate that  
 438 may not exceed the full cost of the monitoring service in  
 439 addition to the cost of supervision as directed by the  
 440 sentencing court. The funds collected under this subsection  
 441 shall be deposited in the General Revenue Fund. The department  
 442 may exempt a person from paying all or any part of the costs of  
 443 the electronic monitoring service if it finds that any of the  
 444 factors listed in subsection (3) exist.

445 (3) Any failure to pay contribution as required under this  
 446 section may constitute a ground for the revocation of  
 447 supervision ~~probation~~ by the court or, ~~the revocation of parole~~  
 448 ~~or conditional release~~ by the Florida Commission on Offender  
 449 Review, the revocation of control release by the Control Release  
 450 Authority, or the removal from the pretrial intervention program

451 by the state attorney. The Department of Corrections may exempt  
 452 a person from the payment of all or any part of the contribution  
 453 if it finds any of the following factors ~~to exist:~~

454 (a) The offender has diligently attempted, but has been  
 455 unable, to obtain or maintain employment that ~~which~~ provides him  
 456 or her sufficient income to make such payments.

457 (b) The offender is a student in a school, college,  
 458 university, or course of career training designed to fit the  
 459 student for gainful employment. Certification of such student  
 460 status shall be supplied to the offender's probation officer  
 461 ~~Secretary of Corrections~~ by the educational institution in which  
 462 the offender is enrolled.

463 (c) The offender has an employment handicap, as determined  
 464 by a physical, psychological, or psychiatric examination  
 465 ~~acceptable to, or ordered by, the secretary.~~

466 (d) The offender's age prevents him or her from obtaining  
 467 employment.

468 (e) The offender is responsible for the support of  
 469 dependents, and the payment of such contribution constitutes an  
 470 undue hardship on the offender.

471 (f) The offender has been transferred outside the state  
 472 under an interstate compact adopted pursuant to chapter 949.

473 ~~(g) There are other extenuating circumstances, as~~  
 474 ~~determined by the secretary.~~

475 ~~(4) In addition to the contribution required under~~



476 ~~subsection (1), the department may provide a maximum payment of~~  
 477 ~~\$10 per month for each misdemeanor probationer who is~~  
 478 ~~contributing \$10 per month to the court approved public or~~  
 479 ~~private entity which is providing him or her with misdemeanor~~  
 480 ~~supervision or rehabilitation. The \$10 payment set forth herein~~  
 481 ~~shall only be for first degree misdemeanors, petty theft, and~~  
 482 ~~worthless checks. The department shall make such payment to the~~  
 483 ~~court approved public or private entity which is providing~~  
 484 ~~supervision to the offender under this section. Such payment~~  
 485 ~~shall be implemented through a contract to be entered into by~~  
 486 ~~the Secretary of Corrections and the entity. Terms of the~~  
 487 ~~contract shall state, but are not limited to, the extent of the~~  
 488 ~~services to be rendered by the entity providing supervision or~~  
 489 ~~rehabilitation. In addition, the entity shall supply the~~  
 490 ~~department with a monthly report documenting the acceptance of~~  
 491 ~~each offender placed under its supervision by the court,~~  
 492 ~~documenting the payment of the required contribution by each~~  
 493 ~~offender under supervision or rehabilitation, and notifying the~~  
 494 ~~department of all offenders for whom supervision or~~  
 495 ~~rehabilitation will be terminated. Supervisory records of the~~  
 496 ~~entity shall be open to inspection upon the request of the~~  
 497 ~~department or its agents.~~

498 (4)-(5) As a condition of an interstate compact adopted  
 499 pursuant to chapter 949, the department shall require each out-  
 500 of-state probationer or parolee transferred to this state to

501 contribute not less than \$30 or more than the cost of  
 502 supervision, certified by the Department of Corrections, per  
 503 month to defray the cost incurred by this state as a result of  
 504 providing supervision and rehabilitation during the period of  
 505 supervision.

506       (5)~~(6)~~ In addition to any other required contributions,  
 507 the department, at its discretion, may require offenders under  
 508 any form of supervision to submit to and pay for urinalysis  
 509 testing to identify drug usage as part of the rehabilitation  
 510 program. Any failure to make such payment, or participate, may  
 511 be considered a ground for revocation by the court, the Florida  
 512 Commission on Offender Review, or the Control Release Authority,  
 513 or for removal from the pretrial intervention program by the  
 514 state attorney. The department may exempt a person from such  
 515 payment if it determines that any of the factors specified in  
 516 subsection (3) exist.

517       (6)~~(7)~~ The department shall establish a payment plan for  
 518 all costs ordered by the courts for collection by the department  
 519 and a priority order for payments, except that victim  
 520 restitution payments authorized under s. 948.03(1)(f) take  
 521 precedence over all other court-ordered payments. The department  
 522 is not required to disburse cumulative amounts of less than \$10  
 523 to individual payees established on this payment plan.

524       Section 11. Section 948.10, Florida Statutes, is amended  
 525 to read:

526 948.10 Community control programs; home confinement.—

527 (1) The Department of Corrections shall develop and  
 528 administer a community control program. This ~~complementary~~  
 529 program shall be rigidly structured and designed to accommodate  
 530 offenders who, in the absence of such a program, would have been  
 531 incarcerated in a jail or prison. The program shall focus on the  
 532 provision of home confinement subject to an authorized level of  
 533 limited freedom and special conditions ~~sanctions and~~  
 534 ~~consequences which~~ that are commensurate with the seriousness of  
 535 the crime. The program shall offer the courts and the Florida  
 536 Commission on Offender Review an alternative, community-based  
 537 method to punish an offender in lieu of incarceration and shall  
 538 provide intensive supervision to closely monitor compliance with  
 539 restrictions and special conditions, including, but not limited  
 540 to, treatment or rehabilitative programs. The targeted  
 541 population for this community control program includes ~~if the~~  
 542 ~~offender is a member of one of the following target groups:~~

543 (a) Probation violators charged with technical violations  
 544 or new misdemeanor violations of law.

545 (b) Parole or conditional release violators charged with  
 546 technical violations or new misdemeanor violations of law.

547 (c) Individuals found guilty of felonies, who, due to  
 548 their criminal backgrounds or the seriousness of the offenses,  
 549 would not be placed on regular probation.

550 (2) ~~The department shall commit not less than 10 percent~~

551 ~~of the parole and probation field staff and supporting resources~~  
 552 ~~to the operation of the community control program.~~ Caseloads  
 553 should be restricted to a maximum of 30 ~~25~~ cases per officer in  
 554 order to ensure an adequate level of staffing. Community control  
 555 is an individualized program in which the offender is restricted  
 556 to a residential treatment facility or a nursing facility  
 557 ~~noninstitutional quarters~~ or restricted to his or her approved  
 558 ~~own~~ residence subject to an authorized level of limited freedom.

559 (3) Procedures governing violations of community control  
 560 are ~~shall be~~ the same as those described in s. 948.06 with  
 561 respect to probation.

562 (4) Upon completion of the sanctions imposed and ~~in the~~  
 563 ~~community control plan~~ before the expiration of the community  
 564 control term ordered by the court, the department may petition  
 565 the court to terminate early the supervision of ~~discharge~~ the  
 566 offender from community control supervision or to return the  
 567 offender to a program of regular probation supervision for the  
 568 remainder of the term. In considering the petition, the court  
 569 should recognize the limited staff resources committed to the  
 570 community control program, the purpose of the program, and the  
 571 offender's successful compliance with the conditions set forth  
 572 in the order of the court.

573 ~~(5) In its annual report to the Governor, the President of~~  
 574 ~~the Senate, and the Speaker of the House of Representatives~~  
 575 ~~under s. 20.315(5), the department shall include a detailed~~

576 ~~analysis of the community control program and the department's~~  
 577 ~~specific efforts to protect the public from offenders placed on~~  
 578 ~~community control. The analysis must include, but need not be~~  
 579 ~~limited to, specific information on the department's ability to~~  
 580 ~~meet minimum officer to offender contact standards, the number~~  
 581 ~~of crimes committed by offenders on community control, and the~~  
 582 ~~level of community supervision provided.~~

583 Section 12. Subsection (2) of section 948.101, Florida  
 584 Statutes, is amended to read:

585 948.101 Terms and conditions of community control.—

586 (2) The enumeration of specific kinds of terms and  
 587 conditions does not prevent the court from adding any other  
 588 terms or conditions that the court considers proper. However,  
 589 the sentencing court may only impose a condition of supervision  
 590 allowing an offender convicted of s. 794.011, s. 800.04, s.  
 591 827.071, s. 847.0135(5), or s. 847.0145 to reside in another  
 592 state if the order stipulates that it is contingent upon the  
 593 approval of the receiving state interstate compact authority.  
 594 The court may rescind or modify at any time the terms and  
 595 conditions theretofore imposed by it upon the offender in  
 596 community control. However, if the court withholds adjudication  
 597 of guilt or imposes a period of incarceration as a condition of  
 598 community control, the period may not exceed 364 days, and  
 599 incarceration shall be restricted to a county facility, a  
 600 probation and restitution center under the jurisdiction of the

601 Department of Corrections, or a ~~probation program drug~~  
 602 ~~punishment phase I~~ secure residential treatment institution, ~~or~~  
 603 ~~a community residential~~ facility owned or operated by any entity  
 604 providing such services.

605 Section 13. Subsections (1), (2), and (3) of section  
 606 948.11, Florida Statutes, are amended, and subsection (5) of  
 607 that section is republished, to read:

608 948.11 Electronic monitoring devices.—

609 (1) The Department of Corrections shall ~~may~~ electronically  
 610 monitor an offender sentenced to community control when the  
 611 court has imposed electronic monitoring as a condition of  
 612 community control.

613 (2) Any offender placed under supervision ~~on community~~  
 614 ~~control~~ who violates the terms and conditions of supervision  
 615 ~~community control~~ and is restored to supervision ~~community~~  
 616 ~~control~~ may be supervised by means of an electronic monitoring  
 617 device or system if ordered by the court.

618 (3) For those offenders being electronically monitored,  
 619 the Department of Corrections shall develop procedures to  
 620 determine, investigate, and report the offender's noncompliance  
 621 with the terms and conditions of sentence 24 hours per day. All  
 622 reports of noncompliance shall be immediately investigated by a  
 623 probation ~~community control~~ officer.

624 (5) Any person being electronically monitored by the  
 625 department as a result of being placed on supervision shall pay

626 the department for the electronic monitoring services as  
 627 provided in s. 948.09(2).

628 Section 14. Paragraph (b) of subsection (3) of section  
 629 948.15, Florida Statutes, is amended to read:

630 948.15 Misdemeanor probation services.—

631 (3) Any private entity, including a licensed substance  
 632 abuse education and intervention program, providing services for  
 633 the supervision of misdemeanor probationers must contract with  
 634 the county in which the services are to be rendered. In a county  
 635 having a population of fewer than 70,000, the county court  
 636 judge, or the administrative judge of the county court in a  
 637 county that has more than one county court judge, must approve  
 638 the contract. Terms of the contract must state, but are not  
 639 limited to:

640 (b) Staff qualifications and criminal record checks of  
 641 ~~staff in accordance with essential standards established by the~~  
 642 ~~American Correctional Association as of January 1, 1991.~~

643  
 644 In addition, the entity shall supply the chief judge's office  
 645 with a quarterly report summarizing the number of offenders  
 646 supervised by the private entity, payment of the required  
 647 contribution under supervision or rehabilitation, and the number  
 648 of offenders for whom supervision or rehabilitation will be  
 649 terminated. All records of the entity must be open to inspection  
 650 upon the request of the county, the court, the Auditor General,

651 the Office of Program Policy Analysis and Government  
 652 Accountability, or agents thereof.

653 Section 15. Section 948.50, Florida Statutes, is repealed.

654 Section 16. For the purpose of incorporating the amendment  
 655 made by this act to section 948.013, Florida Statutes, in a  
 656 reference thereto, paragraph (n) of subsection (1) of section  
 657 921.187, Florida Statutes, is reenacted to read:

658 921.187 Disposition and sentencing; alternatives;  
 659 restitution.—

660 (1) The alternatives provided in this section for the  
 661 disposition of criminal cases shall be used in a manner that  
 662 will best serve the needs of society, punish criminal offenders,  
 663 and provide the opportunity for rehabilitation. If the offender  
 664 does not receive a state prison sentence, the court may:

665 (n) Impose split probation whereby upon satisfactory  
 666 completion of half the term of probation, the Department of  
 667 Corrections may place the offender on administrative probation  
 668 pursuant to s. 948.013 for the remainder of the term of  
 669 supervision.

670 Section 17. For the purpose of incorporating the amendment  
 671 made by this act to section 948.09, Florida Statutes, in a  
 672 reference thereto, paragraph (b) of subsection (7) of section  
 673 947.1405, Florida Statutes, is reenacted to read:

674 947.1405 Conditional release program.—

675 (7)



676 (b) For a releasee whose crime was committed on or after  
 677 October 1, 1997, in violation of chapter 794, s. 800.04, s.  
 678 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to  
 679 conditional release supervision, in addition to any other  
 680 provision of this subsection, the commission shall impose the  
 681 following additional conditions of conditional release  
 682 supervision:

683 1. As part of a treatment program, participation in a  
 684 minimum of one annual polygraph examination to obtain  
 685 information necessary for risk management and treatment and to  
 686 reduce the sex offender's denial mechanisms. The polygraph  
 687 examination must be conducted by a polygrapher who is a member  
 688 of a national or state polygraph association and who is  
 689 certified as a postconviction sex offender polygrapher, where  
 690 available, and at the expense of the releasee. The results of  
 691 the examination shall be provided to the releasee's probation  
 692 officer and qualified practitioner and may not be used as  
 693 evidence in a hearing to prove that a violation of supervision  
 694 has occurred.

695 2. Maintenance of a driving log and a prohibition against  
 696 driving a motor vehicle alone without the prior approval of the  
 697 supervising officer.

698 3. A prohibition against obtaining or using a post office  
 699 box without the prior approval of the supervising officer.

700 4. If there was sexual contact, a submission to, at the

701 releasee's expense, an HIV test with the results to be released  
702 to the victim or the victim's parent or guardian.

703 5. Electronic monitoring of any form when ordered by the  
704 commission. Any person who has been placed under supervision and  
705 is electronically monitored by the department must pay the  
706 department for the cost of the electronic monitoring service at  
707 a rate that may not exceed the full cost of the monitoring  
708 service. Funds collected under this subparagraph shall be  
709 deposited into the General Revenue Fund. The department may  
710 exempt a person from the payment of all or any part of the  
711 electronic monitoring service cost if the department finds that  
712 any of the factors listed in s. 948.09(3) exist.

713 Section 18. For the purpose of incorporating the amendment  
714 made by this act to section 948.10, Florida Statutes, in a  
715 reference thereto, section 947.1747, Florida Statutes, is  
716 reenacted to read:

717 947.1747 Community control as a special condition of  
718 parole.—Upon the establishment of an effective parole release  
719 date as provided for in ss. 947.1745 and 947.1746, the  
720 commission may, as a special condition of parole, require an  
721 inmate to be placed in the community control program of the  
722 Department of Corrections as described in s. 948.10 for a period  
723 not exceeding 6 months. In every case in which the commission  
724 decides to place an inmate on community control as a special  
725 condition of parole, the commission shall provide a written

726 explanation of the reasons for its decision.

727 Section 19. For the purpose of incorporating the amendment  
 728 made by this act to section 948.10, Florida Statutes, in a  
 729 reference thereto, subsection (3) of section 948.01, Florida  
 730 Statutes, is reenacted to read:

731 948.01 When court may place defendant on probation or into  
 732 community control.-

733 (3) If, after considering the provisions of subsection (2)  
 734 and the offender's prior record or the seriousness of the  
 735 offense, it appears to the court in the case of a felony  
 736 disposition that probation is an unsuitable dispositional  
 737 alternative to imprisonment, the court may place the offender in  
 738 a community control program as provided in s. 948.10. Or, in a  
 739 case of prior disposition of a felony commitment, upon motion of  
 740 the offender or the department or upon its own motion, the court  
 741 may, within the period of its retained jurisdiction following  
 742 commitment, suspend the further execution of the disposition and  
 743 place the offender in a community control program upon such  
 744 terms as the court may require. The court may consult with a  
 745 local offender advisory council pursuant to s. 948.90 with  
 746 respect to the placement of an offender into community control.  
 747 Not later than 3 working days before the hearing on the motion,  
 748 the department shall forward to the court all relevant material  
 749 on the offender's progress while in custody. If this sentencing  
 750 alternative to incarceration is utilized, the court shall:

751 (a) Determine what community-based sanctions will be  
 752 imposed in the community control plan. Community-based sanctions  
 753 may include, but are not limited to, rehabilitative restitution  
 754 in money or in kind, curfew, revocation or suspension of the  
 755 driver license, community service, deprivation of nonessential  
 756 activities or privileges, or other appropriate restraints on the  
 757 offender's liberty.

758 (b) After appropriate sanctions for the offense are  
 759 determined, develop, approve, and order a plan of community  
 760 control which contains rules, requirements, conditions, and  
 761 programs that are designed to encourage noncriminal functional  
 762 behavior and promote the rehabilitation of the offender and the  
 763 protection of the community. If the offense was a controlled  
 764 substance violation, the conditions shall include a requirement  
 765 that the offender submit to random substance abuse testing  
 766 intermittently throughout the term of supervision, upon the  
 767 direction of the correctional probation officer as defined in s.  
 768 943.10(3).

769 Section 20. Except as otherwise expressly provided in this  
 770 act, this act shall take effect July 1, 2017.