

Criminal Justice Subcommittee

**Tuesday, March 28, 2017
12:00 PM – 3:00 PM
404 HOB**

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, March 28, 2017 12:00 pm
End Date and Time: Tuesday, March 28, 2017 03:00 pm
Location: Sumner Hall (404 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 893 Correctional Privatization by Richardson
HB 1199 Support for Parental Victims of Child Domestic Violence by Brown
HB 1207 Assault or Battery on Healthcare Providers by Baez

Consideration of the following proposed committee substitute(s):

PCS for HB 393 -- Compensation of Victims of Wrongful Incarceration
PCS for HB 641 -- Criminal Justice
PCS for HB 677 -- Justifiable Use of Force
PCS for HB 1091 -- Arrest Warrants for State Prisoners
PCS for HB 6013 -- Breach of the Peace

NOTICE FINALIZED on 03/24/2017 3:59PM by Gilliam.Ann

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 893 Correctional Privatization
SPONSOR(S): Richardson and others
TIED BILLS: IDEN./SIM. **BILLS:**

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

SUMMARY ANALYSIS

Chapter 944, F.S., assigns legal custody of all Florida inmates in state and private prisons to the Florida Department of Corrections (FDC). As such, FDC makes all decisions that affect inmate discipline, gain-time, and release, as well as routine audits in both public and private prisons.

The Florida Department of Management Services (DMS) provides administrative support services to state agencies and to state employees. As part of its responsibilities, DMS has the authority under s. 287.042(17), F.S., and ch. 957, F.S., to procure and manage private prison contracts. Currently, the responsibility for procuring, entering into, and managing contracts is with DMS.

The bill amends s. 287.042(17), F.S., to remove the express authority for DMS to enter into, manage, and enforce private prison contracts.

In addition, the bill amends several sections of ch. 957, F.S., to delete the statutory references to DMS so that the duties for procuring contracts and the administration and management of private prisons are transferred from DMS to FDC. The bill also amends s. 945.215(2)(a), F.S., to remove the reference to DMS in the "Privately Operated Institutions Inmate Welfare Trust Fund."

FDC and DMS estimate that there will be a fiscal impact on state expenditures and revenues, as funds would need to be transferred from one trust fund to another. Further, funds and full-time employee positions currently appropriated to DMS for private prison monitoring would need to be transferred to FDC. 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:

Present Situation

Department of Corrections

As of the 2010 Census, there are 2.3 million prisoners in the United States and 1,800 state and federal correctional facilities.¹ Of those numbers, “[t]he 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.”² FDC has 149 facilities statewide.³

Currently, chapter 944, F.S., assigns legal custody of all Florida inmates in state and private prisons to FDC.⁴ As such, FDC makes all decisions that affect inmate discipline, gain-time,⁵ and release.⁶ FDC also conducts routine security, infirmary, and contraband audits in both public and private prisons.⁷

Department of Management Services and Private Prison Monitoring

The Florida Department of Management Services (DMS) provides administrative support services to state agencies and to state employees.⁸ As part of its responsibilities, DMS has the authority under s. 287.042(17), F.S., and ch. 957, F.S., to procure and manage private prison contracts. Florida law provides that DMS has the following powers, duties, and functions:

- To enter into contracts pursuant to ch. 957, F.S., for the designing, financing, acquiring, leasing, constructing, or operating of private correctional facilities. DMS shall enter into a contract or contracts with one contractor per facility for the designing, acquiring, financing, leasing, constructing, and operating of that facility or may, if specifically authorized by the Legislature, separately contract for any such services.⁹
- To manage and enforce compliance with existing or future contracts entered into pursuant to chapter 957.¹⁰

Correctional Privatization Act

Chapter 957, F.S., known as the “Correctional Privatization Act,”¹¹ charges DMS’s Bureau of Private Prison Monitoring (Bureau) with issuing contracts, establishing operating standards, and monitoring compliance of the state’s private prisons.¹² The Bureau is responsible for entering into contracts for the design, construction, and operation of privately operated correctional facilities.¹³ The Bureau may not

¹ Christopher Ingraham, *The U.S. Has More Jails Than Colleges. Here’s a Map of Where Those Prisoners Live*, THE WASHINGTON POST, Jan. 6, 2015, available at https://www.washingtonpost.com/news/wonk/wp/2015/01/06/the-u-s-has-more-jails-than-colleges-heres-a-map-of-where-those-prisoners-live/?utm_term=.5cdca432d68d (last viewed Mar. 24, 2017).

² Florida Department of Corrections (FDC), *About the Florida Department of Corrections* (“Corrections Overview”), available at <http://www.dc.state.fl.us/about.html> (last viewed Mar. 24, 2017).

³ *Id.*

⁴ Office of Program Policy Analysis and Government Accountability, No. 08-71, *While DMS Has Improved Monitoring, It Needs to Strengthen Private Prison Oversight and Contracts*, at 2 (“2008 OPPAGA Report”), Dec. 2008, available at <http://www.oppaga.state.fl.us/reports/pdf/0871rpt.pdf> (last viewed Mar. 24, 2017).

⁵ ss. 944.275-944.291, F.S.

⁶ *Id.*

⁷ *Id.*

⁸ Website for the Department of Management Services (DMS), available at www.dms.myflorida.com/ (last viewed Mar. 24, 2017).

⁹ s. 287.042(17)(a), F.S.

¹⁰ s. 287.042(17)(b), F.S.

¹¹ S. 957.01, F.S.

¹² DMS Website, *Business Operations, Private Prison Monitoring* (“Private Prison Overview”), available at http://www.dms.myflorida.com/business_operations/private_prison_monitoring (last viewed Mar. 24, 2017); see also 2008 OPPAGA Report at 2.

¹³ s. 957.04(1)(a)2., F.S.

enter into a contract unless it determines that the contract or series of contracts in total for the facility will result in cost savings to the state of at least seven percent over the public provision of a similar facility by FDC.¹⁴ Once the savings is determined, the Bureau may enter into a contract with a private vendor to operate the facility for an agreed daily per diem calculated by FDC.¹⁵ The per diem includes the cost of all facility operations and the cost of the contract monitors employed by DMS. The Bureau currently oversees the operational contracts for seven facilities:¹⁶

- Bay Correctional Facility;
- Blackwater River Correctional Facility;
- Gadsden Correctional Facility;
- Graceville Correctional Facility;
- Lake City Youthful Offender Facility;
- Moore Haven Correctional Facility; and
- South Bay Correctional Facility.^{17, 18}

Cost Savings and Other Requirements

Florida law governs the specific circumstances under which DMS can contract. Section 957.04(1), F.S., provides that a contract entered under ch. 957, F.S., by DMS for the operation of private correctional facilities shall maximize the cost savings of such facilities and shall comply with additional requirements such as:

- Negotiating with the most qualified firm;¹⁹
- Indemnifying the state and the department, including their officials and agents, against any and all liability, including, but not limited to civil rights liability;²⁰
- Establishing operations standards for correctional facilities subject to the contract;²¹ and
- Requiring the selection of and appointment of a full-time contract monitor.²²

Section 957.04(2)(c), F.S., provides that each contract entered into for the design and construction of a private correctional facility or juvenile commitment facility must include a specific provision requiring the contractor, and not DMS, to obtain the financing required to design and construct the private correctional facility or juvenile commitment facility built under ch. 957, F.S.

Section 957.04(5), F.S., provides that each contract entered into by DMS must include substantial minority participation unless demonstrated by evidence, after a good faith effort, as impractical and must also include any other requirements DMS considers necessary and appropriate for carrying out the purposes of ch. 957, F.S. Sections 957.04(6) and (7), F.S., in turn, discuss lease-purchases, appraisals, and related negotiations.

Section 957.06(2), F.S., provides that a contract entered into under ch. 957, F.S., does not authorize, allow, or imply a delegation of authority to the contractor to choose the facility to which an inmate is initially assigned or subsequently transferred. The contractor may request, in writing, that an inmate be transferred to a facility operated by FDC. DMS, the contractor, and FDC are required to develop and

¹⁴ s. 957.07(1), F.S.

¹⁵ *Id.* (noting that “[t]he Department of Corrections shall calculate all of the cost components that determine the inmate per diem in correctional facilities of a substantially similar size, type, and location that are operated by the Department of Corrections, including administrative costs associated with central administration. Services that are provided to the Department of Corrections by other governmental agencies at no direct cost to the department shall be assigned an equivalent cost and included in the per diem.”).

¹⁶ As of February 28, 2017, there are 10,176 inmates in the seven private correctional facilities. See FDC website at <http://www.dc.state.fl.us/pub/pop/facility/index.html> (last viewed Mar. 24, 2017).

¹⁷ Private Prison Overview, *supra* note 12.

¹⁸ FDC Website, *Introduction to Information on Florida State Prison Facilities*, available at <http://www.dc.state.fl.us/facilities/ciindex.html> (last viewed Mar. 24, 2017).

¹⁹ s. 957.04(1)(a), F.S.

²⁰ s. 957.04(1)(b), F.S.

²¹ s. 957.04(1)(e), F.S.

²² s. 957.04(1)(g), F.S.

implement a cooperative agreement for transferring inmates between a correctional facility operated by FDC and a private correctional facility. FDC, DMS, and the contractor must comply with the cooperative agreement.

Section 957.07(1), F.S., provides that DMS cannot enter into a contract unless there is a determination that the contract will result in cost savings, as noted above. Section 957.07(5)(d), F.S., provides that if a private vendor chooses not to renew the contract at the appropriated level, DMS shall terminate the contract.

Section 957.08, F.S., provides that FDC shall transfer and assign prisoners to each private correctional facility opened pursuant to ch. 957, F.S., in an amount not less than 90 percent or more than 100 percent of the capacity of the facility pursuant to the contract with DMS. The prisoners transferred by FDC shall represent a cross-section of the general inmate population, based on the grade of custody or the offense of conviction, at the most comparable facility operated by the FDC.

Section 957.14, F.S., provides for control of a private correctional facility upon termination of a contract, due to material deficiencies, bankruptcy, and insolvency. Section 957.15, F.S., pertains to the funding of contracts for operation, maintenance, and lease-purchases of private correctional facilities. Finally, section 957.16, F.S., provides that DMS may modify and execute agreements with private contractors to expand up to the total capacity of contracted correctional facilities.

FDC has similar authority regarding private prison contracts as set forth in s. 944.105, F.S., and ss. 944.710-944.72, F.S. Section 944.105(1), F.S., provides that FDC is authorized to enter into contracts with private vendors for the provision of the operation and maintenance of correctional facilities and the supervision of inmates. However, no such contract shall be entered into or renewed unless:

- The contract offers a substantial savings to FDC, as determined by FDC. In determining the cost savings, FDC, after consultation with the Auditor General, shall calculate all the cost components that contribute to the inmate per diem, including all administrative costs associated with central and regional office administration. Services which are provided to FDC by other government agencies without any direct cost to FDC shall be assigned an equivalent cost and included in the per diem. The private firm shall be assessed the total annual cost to the state of monitoring the contract;
- The contract provides for the same quality of services as that offered by FDC; and
- The Legislature has given specific appropriation for the contract.

Presently, private prisons in Florida are managed by DMS under its statutory authority.²³ DMS has exercised management and oversight of private prisons since 2004.²⁴ Although chapter 957, F.S., does contain certain provisions involving FDC, these provisions are limited.²⁵ “Some examples are FDC’s calculation of the actual costs needed for determining private prison costs savings when the contract is being procured,²⁶ and the transfer of inmates²⁷ to and from private prisons.²⁸ However, the responsibility for procuring, entering into, and managing contracts is with DMS.²⁹

²³ 2017 Florida Department of Corrections Agency Analysis for HB 893, at 2 (“2017 FDC Agency Analysis”), Mar. 23, 2017 (on file with the Florida House Subcommittee on Criminal Justice).

²⁴ 2017 Florida Department of Management Services Agency Analysis for HB 893 (“2017 DMS Agency Analysis”), at 2, Mar. 23, 2017 (on file with the Florida House Subcommittee on Criminal Justice). The DMS analysis noted that from 1993-2004, this function resided with the Correctional Privatization Commission (CPC). *Id.* The CPC was an independent budget entity administratively housed, but independent from, DMS; *see also* 2008 OPPAGA Report, at 1. The duties of the CPC were set forth in s. 957.03, F.S., but this statute was repealed by s. 12, ch. 2004-248 effective July 1, 2005, and by s. 19, ch. 2006-2, effective July 4, 2006.

²⁵ FDC Agency Analysis, *supra* note 19.

²⁶ s. 957.01, F.S.

²⁷ s. 957.06, F.S.

²⁸ 2017 FDC Agency Analysis, at 2, *supra* note 19.

²⁹ *Id.*

Inmate Welfare Trust Fund

Section 945.215, F.S., is the statute governing the “Inmate Welfare Trust Fund.” This fund consists primarily of sales revenue obtained from FDC’s commissaries (called canteens) and commissions paid to FDC by telephone companies whose service is used by inmates at the Department’s correctional facilities. Trust Fund profits have typically been used to fund selected prison programs and activities not funded by Florida taxpayers.³⁰

Section 945.215(2), F.S., pertains to the “Privately Operated Institutions Inmate Welfare Trust Fund” at privately operated institutions or private correctional facilities. Section 945.215(2)(a), F.S., provides that for purposes of that subsection, privately operated institutions or private correctional facilities are those correctional facilities under contract with FDC pursuant to ch. 944 or DMS under ch. 957.

Effect of the Bill

The bill amends s. 287.042(17), F.S., to remove the express authority for DMS to enter into, manage, and enforce private prison contracts.

In addition, the bill amends ss. 957.04, 957.06, 975.07, 957.08, 957.14, 957.15, and 957.16, F.S., deleting the statutory references to DMS so that duties for procuring contracts, administration, and management of private prisons are transferred from DMS to FDC.

Other Effects of the Bill

The bill amends s. 945.215(2)(a), F.S., to remove the reference to DMS in the “Privately Operated Institutions Inmate Welfare Trust Fund.”

The bill makes technical changes to incorporate the language and terminology used in the act.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 957.04, F.S., relating to contract requirements.

Section 2. Amends s. 957.06, F.S., relating to powers and duties not delegable to contractor.

Section 3. Amends s. 957.07, F.S., relating to cost-saving requirements.

Section 4. Amends s. 957.08, F.S., relating to capacity requirements.

Section 5. Amends s. 957.14, F.S., relating to contract termination and control of a correctional facility by the department.

Section 6. Amends s. 957.15, F.S., relating to funding of contracts for operation, maintenance, and lease-purchase of private correctional facilities.

Section 7. Amends s. 957.16, F.S., relating to expanding capacity.

Section 8. Amends s. 287.042, F.S., relating to powers, duties, and functions.

Section 9. Amends s. 945.215, F.S., relating to inmate welfare and employee benefit trust funds.

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

³⁰ Office of Program Policy Analysis and Government Accountability, No. 96-46, *Follow-Up Report on the Inmate Welfare Trust Fund and Institution-Based Accounts Administered by the Department of Corrections*, at 1 (“1997 OPPAGA Report”), Feb. 7, 1997, available at <http://www.oppaga.state.fl.us/reports/pdf/9646rpt.pdf> (last viewed Mar. 24, 2017).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: Currently, DMS maintains an Operating Trust Fund which contains funds to be used for the purpose of major maintenance and repair of private prisons. These funds would need to be transferred to FDC Administrative Trust Fund to be used for the same purpose.³¹
2. Expenditures: For the Fiscal Year 2016-17, DMS was appropriated \$2,762,402, which included 14 full-time employee (FTE) positions, for private prison monitoring operations. Specifically, DMS reports that approximately \$1.26 million was appropriated for private prison monitoring bureau administration and support and \$1.5 million in Trust Fund spending authority for maintenance and repairs.³² If the private prison system is transferred from DMS to FDC, FDC estimates the transfer will result in an estimated savings of \$228,021 to the state and eliminate the need for four FTEs.³³ The funds and full time employee positions currently appropriated to DMS for private prison monitoring would need to be transferred to FDC.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have a fiscal impact on local government revenues.
2. Expenditures: The bill does not appear to have a fiscal 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, or 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: Section 20.06, F.S., requires the executive branch of state government to be reorganized by transferring the specified agencies, programs, and functions to other departments, commissions, or offices. This process may be accomplished by either a type one

³¹ 2017 FDC Agency Analysis, at 4, *supra* note 19.

³² 2017 DMS Agency Analysis, at 3, *supra* note 20.

³³ 2017 FDC Agency Analysis, at 4, *supra* note 19.

transfer, or a type two transfer. A type one transfer is the transferring intact of an existing agency or department so that the agency or department becomes a unit of another agency or department. A type two transfer is the merging into another agency or department of an existing agency or department, or program, activity, or function thereof. The bill appears to require a type two transfer, as an existing function of DMS is being transferred to FDC.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
2 An act relating to correctional privatization;
3 amending ss. 957.04, 957.06, 957.07, 957.08, 957.14,
4 957.15, and 957.16, F.S.; transferring the duties of
5 the Department of Management Services concerning
6 private correctional facilities to the Department of
7 Corrections; amending ss. 287.042 and 945.215, F.S.;
8 conforming provisions to changes made by the act;
9 providing an effective date.

10

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

12

13 Section 1. Paragraphs (a), (b), (e), and (g) of subsection
14 (1), paragraph (c) of subsection (2), and subsections (5), (6),
15 and (7) of section 957.04, Florida Statutes, are amended to
16 read:

17 957.04 Contract requirements.—

18 (1) A contract entered into under this chapter for the
19 operation of private correctional facilities shall maximize the
20 cost savings of such facilities and shall:

21 (a) Be negotiated with the firm found most qualified.

22 However, a contract for private correctional services may not be
23 entered into by the department of ~~Management Services~~ unless the
24 department of ~~Management Services~~ determines that the contractor
25 has demonstrated that it has:

26 1. The qualifications, experience, and management
 27 personnel necessary to carry out the terms of the contract.
 28 2. The ability to expedite the siting, design, and
 29 construction of correctional facilities.
 30 3. The ability to comply with applicable laws, court
 31 orders, and national correctional standards.
 32 (b) Indemnify the state and the department, including
 33 their officials and agents, against any and all liability,
 34 including, but not limited to, civil rights liability. Proof of
 35 satisfactory insurance is required in an amount to be determined
 36 by the department ~~of Management Services~~.
 37 (e) Establish operations standards for correctional
 38 facilities subject to the contract. However, if the department
 39 and the contractor disagree with an operations standard, the
 40 contractor may propose to waive any rule, policy, or procedure
 41 of the department related to the operations standards of
 42 correctional facilities which is inconsistent with the mission
 43 of the contractor to establish cost-effective, privately
 44 operated correctional facilities. The department ~~of Management~~
 45 ~~Services~~ shall be responsible for considering all proposals from
 46 the contractor to waive any rule, policy, or procedure and shall
 47 render a final decision granting or denying such request.
 48 (g) Require the selection and appointment of a full-time
 49 contract monitor. The contract monitor shall be appointed and
 50 supervised by the department ~~of Management Services~~. The

51 contractor is required to reimburse the department ~~of Management~~
 52 ~~Services~~ for the salary and expenses of the contract monitor. It
 53 is the obligation of the contractor to provide suitable office
 54 space for the contract monitor at the correctional facility. The
 55 contract monitor shall have unlimited access to the correctional
 56 facility.

57 (2) Each contract entered into for the design and
 58 construction of a private correctional facility or juvenile
 59 commitment facility must include:

60 (c) A specific provision requiring the contractor, and not
 61 the department ~~of Management Services~~, to obtain the financing
 62 required to design and construct the private correctional
 63 facility or juvenile commitment facility built under this
 64 chapter.

65 (5) Each contract entered into by the department ~~of~~
 66 ~~Management Services~~ must include substantial minority
 67 participation unless demonstrated by evidence, after a good
 68 faith effort, as impractical and must also include any other
 69 requirements the department ~~of Management Services~~ considers
 70 necessary and appropriate for carrying out the purposes of this
 71 chapter.

72 (6) Notwithstanding s. 253.025(9), the Board of Trustees
 73 of the Internal Improvement Trust Fund need not approve a lease-
 74 purchase agreement negotiated by the department ~~of Management~~
 75 ~~Services~~ if the department ~~of Management Services~~ finds that

76 | there is a need to expedite the lease-purchase.

77 | (7)(a) Notwithstanding s. 253.025 or s. 287.057, whenever
78 | the department ~~of Management Services~~ finds it to be in the best
79 | interest of timely site acquisition, it may contract without the
80 | need for competitive selection with one or more appraisers whose
81 | names are contained on the list of approved appraisers
82 | maintained by the Division of State Lands of the Department of
83 | Environmental Protection in accordance with s. 253.025(8). In
84 | those instances when the department ~~of Management Services~~
85 | directly contracts for appraisal services, it shall also
86 | contract with an approved appraiser who is not employed by the
87 | same appraisal firm for review services.

88 | (b) Notwithstanding s. 253.025(8), the department ~~of~~
89 | ~~Management Services~~ may negotiate and enter into lease-purchase
90 | agreements before an appraisal is obtained. Any such agreement
91 | must state that the final purchase price cannot exceed the
92 | maximum value allowed by law.

93 | Section 2. Subsection (2) of section 957.06, Florida
94 | Statutes, is amended to read:

95 | 957.06 Powers and duties not delegable to contractor.—A
96 | contract entered into under this chapter does not authorize,
97 | allow, or imply a delegation of authority to the contractor to:

98 | (2) Choose the facility to which an inmate is initially
99 | assigned or subsequently transferred. The contractor may
100 | request, in writing, that an inmate be transferred to a facility

101 operated by the department. The ~~Department of Management~~
 102 ~~Services, the~~ contractor, and the department shall develop and
 103 implement a cooperative agreement for transferring inmates
 104 between a correctional facility operated by the department and a
 105 private correctional facility. The department, ~~the Department of~~
 106 ~~Management Services,~~ and the contractor must comply with the
 107 cooperative agreement.

108 Section 3. Subsections (1) and (4) and paragraph (d) of
 109 subsection (5) of section 957.07, Florida Statutes, are amended
 110 to read:

111 957.07 Cost-saving requirements.—

112 (1) The department ~~of Management Services~~ may not enter
 113 into a contract or series of contracts unless the department
 114 determines that the contract or series of contracts in total for
 115 the facility will result in a cost savings to the state of at
 116 least 7 percent over the public provision of a similar facility.
 117 Such cost savings as determined by the department ~~of Management~~
 118 ~~Services~~ must be based upon the actual costs associated with the
 119 construction and operation of similar facilities or services as
 120 determined by the department ~~of Corrections~~ and certified by the
 121 Auditor General. The department ~~of Corrections~~ shall calculate
 122 all of the cost components that determine the inmate per diem in
 123 correctional facilities of a substantially similar size, type,
 124 and location that are operated by the department ~~of Corrections,~~
 125 including administrative costs associated with central

126 administration. Services that are provided to the department ~~of~~
 127 ~~Corrections~~ by other governmental agencies at no direct cost to
 128 the department shall be assigned an equivalent cost and included
 129 in the per diem.

130 (4) The department ~~of Corrections~~ shall provide a report
 131 detailing the state cost to design, finance, acquire, lease,
 132 construct, and operate a facility similar to the private
 133 correctional facility on a per diem basis. This report shall be
 134 provided to the Auditor General in sufficient time that it may
 135 be ~~certified to the Department of Management Services to be~~
 136 included in the request for proposals.

137 (5)

138 (d) If a private vendor chooses not to renew the contract
 139 at the appropriated level, the department ~~of Management Services~~
 140 shall terminate the contract as provided in s. 957.14.

141 Section 4. Section 957.08, Florida Statutes, is amended to
 142 read:

143 957.08 Capacity requirements.—The Department of
 144 Corrections shall transfer and assign prisoners to each private
 145 correctional facility opened pursuant to this chapter in an
 146 amount not less than 90 percent or more than 100 percent of the
 147 capacity of the facility pursuant to the contract ~~with the~~
 148 ~~Department of Management Services~~. The prisoners transferred by
 149 the Department of Corrections shall represent a cross-section of
 150 the general inmate population, based on the grade of custody or

151 | the offense of conviction, at the most comparable facility
 152 | operated by the department.

153 | Section 5. Section 957.14, Florida Statutes, is amended to
 154 | read:

155 | 957.14 Contract termination and control of a correctional
 156 | facility by the department.—A detailed plan shall be provided by
 157 | a private vendor under which the department shall assume
 158 | temporary control of a private correctional facility upon
 159 | termination of the contract. The department ~~of Management~~
 160 | ~~Services~~ may terminate the contract with cause after written
 161 | notice of material deficiencies and after 60 workdays in order
 162 | to correct the material deficiencies. If any event occurs that
 163 | involves the noncompliance with or violation of contract terms
 164 | and that presents a serious threat to the safety, health, or
 165 | security of the inmates, employees, or the public, the
 166 | department may temporarily assume control of the private
 167 | correctional facility, ~~with the approval of the Department of~~
 168 | ~~Management Services~~. A plan shall also be provided by a private
 169 | vendor for the purchase and temporary assumption of operations
 170 | of a correctional facility by the department in the event of
 171 | bankruptcy or the financial insolvency of the private vendor.
 172 | The private vendor shall provide an emergency plan to address
 173 | inmate disturbances, employee work stoppages, strikes, or other
 174 | serious events in accordance with standards of the American
 175 | Correctional Association.

176 Section 6. Section 957.15, Florida Statutes, is amended to
 177 read:

178 957.15 Funding of contracts for operation, maintenance,
 179 and lease-purchase of private correctional facilities.—The
 180 request for appropriation of funds to make payments pursuant to
 181 contracts entered into by the department ~~of Management Services~~
 182 for the operation, maintenance, and lease-purchase of the
 183 private correctional facilities authorized by this chapter shall
 184 be made by the department ~~of Management Services in a request to~~
 185 ~~the department~~. The department shall include such request in its
 186 budget request to the Legislature as a separately identified
 187 item and ~~shall forward the request of the Department of~~
 188 ~~Management Services without change. After an appropriation has~~
 189 ~~been made by the Legislature to the department for the private~~
 190 ~~correctional facilities, the department shall have no authority~~
 191 ~~over such funds other than to pay from such appropriation to the~~
 192 ~~appropriate private vendor such amounts as are certified for~~
 193 ~~payment by the Department of Management Services.~~

194 Section 7. Section 957.16, Florida Statutes, is amended to
 195 read:

196 957.16 Expanding capacity.—The department may ~~of~~
 197 ~~Management Services is authorized to~~ modify and execute
 198 agreements with contractors to expand up to the total capacity
 199 of contracted correctional facilities. Total capacity means the
 200 design capacity of all contracted correctional facilities

201 increased by one-half as described under s. 944.023(1)(b). Any
 202 additional beds authorized under this section must comply with
 203 the cost-saving requirements set forth in s. 957.07. Any
 204 additional beds authorized as a result of expanded capacity
 205 under this section are contingent upon specified appropriations.

206 Section 8. Subsection (17) of section 287.042, Florida
 207 Statutes, is amended to read:

208 287.042 Powers, duties, and functions.—The department
 209 shall have the following powers, duties, and functions:

210 ~~(17)(a) To enter into contracts pursuant to chapter 957~~
 211 ~~for the designing, financing, acquiring, leasing, constructing,~~
 212 ~~or operating of private correctional facilities. The department~~
 213 ~~shall enter into a contract or contracts with one contractor per~~
 214 ~~facility for the designing, acquiring, financing, leasing,~~
 215 ~~constructing, and operating of that facility or may, if~~
 216 ~~specifically authorized by the Legislature, separately contract~~
 217 ~~for any such services.~~

218 ~~(b) To manage and enforce compliance with existing or~~
 219 ~~future contracts entered into pursuant to chapter 957.~~

220

221 ~~The department may not delegate the responsibilities conferred~~
 222 ~~by this subsection.~~

223 Section 9. Paragraph (a) of subsection (2) of section
 224 945.215, Florida Statutes, is amended to read:

225 945.215 Inmate welfare and employee benefit trust funds.—

226 (2) PRIVATELY OPERATED INSTITUTIONS INMATE WELFARE TRUST
 227 FUND; PRIVATE CORRECTIONAL FACILITIES.—

228 (a) For purposes of this subsection, privately operated
 229 institutions or private correctional facilities are those
 230 correctional facilities under contract with the department
 231 pursuant to chapter 944 or ~~the Department of Management Services~~
 232 ~~pursuant to~~ chapter 957.

233 Section 10. 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 Brown offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 17-21 and insert:

7 Section 1. Section 984.071, Florida Statutes, is amended
 8 to read:

9 984.071 Resources and information packet.-

10 (1) The Department of Juvenile Justice, in collaboration
 11 with the Department of Children and Families and the Department
 12 of Education, shall develop and publish an information packet
 13 that explains the current process under this chapter for
 14 obtaining assistance for a child in need of services or a family
 15 in need of services and the community services and resources
 16 available to parents of troubled or runaway children. In



Amendment No. 1

17 preparing the information packet, the Department of Juvenile
 18 Justice shall work with school district superintendents,
 19 juvenile court judges, county sheriffs, and other local law
 20 enforcement officials in order to ensure that the information
 21 packet lists services and resources that are currently available
 22 within the county in which the packet is distributed. Each
 23 information packet shall be annually updated ~~and shall be~~
 24 ~~available for distribution by January 1, 1998.~~ The school
 25 district shall distribute this information packet to parents of
 26 truant children and to other parents upon request or as deemed
 27 appropriate by the school district. In addition, the Department
 28 of Juvenile Justice shall distribute the information packet to
 29 state and local law enforcement agencies. Any law enforcement
 30 officer who has contact with the parent of a child who is locked
 31 out of the home or who runs away from home shall make the
 32 information available to the parent.

33 (2) The department, in collaboration with organizations
 34 that provide expertise, training, and advocacy in the areas of
 35 family and domestic violence, shall develop and maintain

36 -----
 37

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

39 Remove lines 3-6 and insert:



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1199 (2017)

Amendment No. 1

40 | child domestic violence; amending s. 984.071, F.S.; requiring
41 | the Department of Juvenile Justice, in collaboration with
42 | specified organizations, to develop and maintain updated
43 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1199 Support for Parental Victims of Child Domestic Violence
SPONSOR(S): Brown
TIED BILLS: IDEN./SIM. **BILLS:** SB 1694

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Homburg	White
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Domestic violence affects thousands of individuals and families in Florida. In 2015, there were 107,666 domestic violence offenses reported to law enforcement. Currently, the Florida Department of Juvenile Justice (DJJ) provides certain services to families in need of assistance, such as families who have children who are persistently disobeying reasonable and lawful parental demands or who are at risk of entering the justice system. Additionally, the Florida Coalition Against Domestic Violence (FCADV) is tasked with operating Florida's toll-free, confidential, domestic violence hotline, linking callers to the nearest shelter, and coordinating resources and transitional assistance to victims of domestic violence. FCADV also works with outside organizations to provide training and resources to staff or others working with victims of domestic violence.

The bill amends s. 984.11, F.S., to require the DJJ and the FCADV to develop and maintain updated information and materials detailing the resources and services available in this state to:

- Parents and legal custodians who are victims of domestic violence committed by children or who fear that they will become victims; and
- Children who have committed acts of domestic violence or who demonstrate behaviors that may escalate into domestic violence.

The bill also requires the DJJ to post information and materials on the DJJ website and to make the materials available for distribution through specified entities to the public.

Finally, the bill requires the Criminal Justice Standards and Training Commission ensure that its six-hour basic skills training course in handling domestic violence cases, which must be completed by persons seeking to be certified as law enforcement officers, also include instruction on the issues involved in child-to-parent domestic violence cases.

The bill is likely to have a fiscal impact on the DJJ and Florida Department of Law Enforcement. The bill may also have a fiscal impact on the Florida Coalition Against Domestic Violence. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Domestic Violence

Domestic violence affects thousands of individuals and families in Florida. In 2015, there were 107,666 domestic violence offenses reported to law enforcement.¹ Law enforcement officers who investigate alleged domestic violence incidents have to inform victims of the domestic violence centers where the victims can receive services.²

Acts of domestic violence are defined by statute as offenses which result in the “physical injury or death of one family or household member by another family or household member.”³ While any criminal offense may constitute domestic violence, statute specifically identifies assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, and false imprisonment as offenses which may qualify as such violence.⁴

The term “family or household member” in this context means 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. The family or household members must be currently residing together or have resided together in the past. Persons with children in common need not live or have lived together.⁵

Florida Coalition Against Domestic Violence

The Florida Coalition Against Domestic Violence (FCADV) is a statewide organization tasked with operating Florida’s toll-free, confidential, domestic violence hotline (1-800-500-1119), linking callers to the nearest shelter, and coordinating resources and transitional assistance to victims of domestic violence. FCADV also works with outside organizations to provide training and resources to staff or others working with victims of domestic violence. Additionally, FCADV administers state and federal funding to Florida’s 42 certified domestic violence centers.⁶

Families in Need of Services

Florida allows certain families to request assistance from the state if they wish to receive it. A “family in need of services” is one that has a child who is running away, persistently disobeying reasonable and lawful parental demands, or habitually truant⁷ from school. The family may also qualify if the child is engaging in any acts which place the child at risk of future abuse, neglect, or abandonment or at risk of entering the juvenile justice system.⁸

The Department of Juvenile Justice (DJJ) provides services to those families determined to be in need of services.⁹ These services can include intensive crisis counseling, parent training, recreational services, or other services determined appropriate by the DJJ.¹⁰ The department is required to advise

¹ Florida Department of Law Enforcement, *Domestic Violence*, available at <http://www.fdle.state.fl.us/cms/FSAC/Crime-Trends/Domestic-Violence.aspx> (last visited March 27, 2017).

² Section 741.29(1), F.S.

³ s. 741.28, F.S.

⁴ *Id.*

⁵ s. 741.28(3), F.S.

⁶ Florida Coalition Against Domestic Violence, *About FCADV* <http://fcadv.org/about/about-fcadv> (last visited March 16, 2017)

⁷ “Habitually truant” means having 15 unexcused absences from school within 90 calendar days. s. 984.03(27)(a), F.S.

⁸ s. 984.03(25), F.S.

⁹ s. 984.11, F.S.

¹⁰ s. 984.11(2), F.S.

the parents or legal guardians that they are responsible for contributing to the cost of such services and treatment to the extent of their ability to pay.¹¹

Law Enforcement Training

The Criminal Justice Standards and Training Commission is tasked with certifying law enforcement officers in Florida, establishing curriculum requirements for criminal justice training schools, and establishing training standards for officers in the various criminal justice disciplines.¹² In general, the details of the standards and curriculum for law enforcement recruits are left to the determination of the Commission; however, since 1986, statute has required that each law enforcement officer recruit take at least six hours of training on how to handle domestic violence cases.¹³

Effect of Proposed Changes

Resources for Parents, Guardians, and Children

The bill amends s. 984.11, F.S., to require the DJJ and the FCADV to develop and maintain updated information and materials detailing the resources and services available to:

- Parents and legal custodians who are victims of domestic violence committed by children or who fear they will become victims; and
- Children who have committed acts of domestic violence or who demonstrate behaviors that may escalate into domestic violence.

The bill specifies that the materials and services must include, but are not limited to:

The services available under ch. 984, F.S.;
Domestic violence services available under ch. 39, F.S.; and
Juvenile justice services available under ch. 985, F.S., including prevention, diversion, detention, and alternative placements.

The materials must also describe how to access the resources and services throughout the state.

The DJJ must post information and materials on the DJJ website and make the materials available for distribution to the public by providing it to:

Certified domestic violence centers;
Other organizations serving victims of domestic violence;
The clerks of courts;
Law enforcement agencies; and
Other appropriate organizations.

Law Enforcement Basic Skills Training

The bill amends s. 943.171(1), F.S., to require that the six-hour basic skills training in handling domestic violence cases also include instruction on the issues involved in child-to-parent domestic violence cases.

The bill makes technical changes to remove an obsolete date.

The bill takes effect July 1, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 984.11(5), F.S., relating to services to families in need of services.

Section 2. Amends s. 943.171, F.S., relating to basic skills training in handling domestic violence cases

¹¹ s. 984.11(3), F.S.

¹² s. 943.12, F.S.

¹³ s. 943.171, F.S.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: The bill requires the DJJ and the FCADV to develop and maintain materials specifying the resources and services available for certain victims of domestic violence. It also requires the DJJ to post such information on its website and to make the materials available to specified entities. The fiscal impact of developing, posting, and making these materials available to the specified entities has been requested from the DJJ.

The bill requires the issues involved in child-to-parent domestic violence cases to be included in the domestic violence portion of an officer's basic skills course for his or her initial certification. The fiscal impact of this requirement has been requested from the Florida Department of Law Enforcement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill requires the FCADV and the DJJ to develop and maintain materials specifying the resources and services available for certain victims of domestic violence. The bill may have a currently indeterminate fiscal impact on the FCADV.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This 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: This bill does not appear to create the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to support for parental victims of
 3 child domestic violence; amending s. 984.11, F.S.;
 4 requiring the Department of Juvenile Justice and the
 5 Florida Coalition Against Domestic Violence to
 6 collaborate to develop and maintain updated
 7 information and materials regarding specified services
 8 and resources; requiring the department to make the
 9 information and materials available through specified
 10 means; amending s. 943.171, F.S.; requiring domestic
 11 violence training for law enforcement officers to
 12 include training concerning child-to-parent cases;
 13 providing an effective date.

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

16
 17 Section 1. Subsection (5) is added to section 984.11,
 18 Florida Statutes, to read:

19 984.11 Services to families in need of services.—

20 (5) The department and the Florida Coalition Against
 21 Domestic Violence shall collaborate to develop and maintain
 22 updated information and materials describing resources and
 23 services available to parents and legal custodians who are
 24 victims of domestic violence committed by children or who fear
 25 that they will become victims of such acts and to children who

26 have committed acts of domestic violence or who demonstrate
 27 behaviors that may escalate into domestic violence. Such
 28 resources and services shall include, but are not limited to,
 29 those available under this chapter, domestic violence services
 30 available under chapter 39, and juvenile justice services
 31 available pursuant to chapter 985, including prevention,
 32 diversion, detention, and alternative placements. The materials
 33 shall describe how parents and legal custodians may access the
 34 resources and services in their local area. The department shall
 35 post this information on its website and make the materials
 36 available to certified domestic violence centers, other
 37 organizations serving victims of domestic violence, clerks of
 38 court, law enforcement agencies, and other appropriate
 39 organizations for distribution to the public.

40 Section 2. Subsection (1) of section 943.171, Florida
 41 Statutes, is amended to read:

42 943.171 Basic skills training in handling domestic
 43 violence cases.—

44 (1) The commission shall establish standards for
 45 instruction of law enforcement officers in the subject of
 46 domestic violence. Every basic skills course required in order
 47 for law enforcement officers to obtain initial certification
 48 shall, ~~after January 1, 1986,~~ include a minimum of 6 hours of
 49 training in handling domestic violence cases. Such training must
 50 include training in the recognition and determination of the

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51 | primary aggressor in domestic violence cases and the issues
52 | involved in child-to-parent cases.

53 | Section 3. This act shall take effect July 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 Baez offered the following:

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

6 Remove lines 29-364 and insert:

7 firefighters, emergency medical care providers, health care
8 providers, public transit employees or agents, or other
9 specified officers; reclassification of offenses; minimum
10 sentences.-

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

12 (c) "Health care provider" means a physician, a registered
13 nurse, an employee, an agent, or a volunteer of a hospital, as
14 defined in s. 395.002, who is employed by, under contract with,
15 or otherwise authorized by such hospital to perform duties



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16 directly associated with the care and treatment rendered by the
17 hospital.

18 (2) Whenever any person is charged with knowingly
19 committing an assault or battery upon a law enforcement officer,
20 a firefighter, an emergency medical care provider, a health care
21 provider, a railroad special officer, a traffic accident
22 investigation officer as described in s. 316.640, a nonsworn law
23 enforcement agency employee who is certified as an agency
24 inspector, a blood alcohol analyst, or a breath test operator
25 while such employee is in uniform and engaged in processing,
26 testing, evaluating, analyzing, or transporting a person who is
27 detained or under arrest for DUI, a law enforcement explorer, a
28 traffic infraction enforcement officer as described in s.
29 316.640, a parking enforcement specialist as defined in s.
30 316.640, a person licensed as a security officer as defined in
31 s. 493.6101 and wearing a uniform that bears at least one patch
32 or emblem that is visible at all times that clearly identifies
33 the employing agency and that clearly identifies the person as a
34 licensed security officer, or a security officer employed by the
35 board of trustees of a community college, while the officer,
36 firefighter, emergency medical care provider, health care
37 provider, railroad special officer, traffic accident
38 investigation officer, traffic infraction enforcement officer,
39 inspector, analyst, operator, law enforcement explorer, parking
40 enforcement specialist, public transit employee or agent, or

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41 security officer is engaged in the lawful performance of his or
42 her duties, the offense for which the person is charged shall be
43 reclassified as follows:

44 (a) In the case of assault, from a misdemeanor of the
45 second degree to a misdemeanor of the first degree.

46 (b) In the case of battery, from a misdemeanor of the
47 first degree to a felony of the third degree.

48 (c) In the case of aggravated assault, from a felony of
49 the third degree to a felony of the second degree.

50 Notwithstanding any other provision of law, any person convicted
51 of aggravated assault upon a law enforcement officer shall be
52 sentenced to a minimum term of imprisonment of 3 years.

53 (d) In the case of aggravated battery, from a felony of
54 the second degree to a felony of the first degree.

55 Notwithstanding any other provision of law, any person convicted
56 of aggravated battery of a law enforcement officer shall be
57 sentenced to a minimum term of imprisonment of 5 years.

58 (3) Any person who is convicted of a battery under
59 paragraph (2)(b) and, during the commission of the offense, such
60 person possessed:

61 (a) A "firearm" or "destructive device" as those terms are
62 defined in s. 790.001, shall be sentenced to a minimum term of
63 imprisonment of 3 years.

64 (b) A semiautomatic firearm and its high-capacity
65 detachable box magazine, as defined in s. 775.087(3), or a



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66 machine gun as defined in s. 790.001, shall be sentenced to a
67 minimum term of imprisonment of 8 years.

68
69 Notwithstanding s. 948.01, adjudication of guilt or imposition
70 of sentence shall not be suspended, deferred, or withheld, and
71 the defendant is not eligible for statutory gain-time under s.
72 944.275 or any form of discretionary early release, other than
73 pardon or executive clemency, or conditional medical release
74 under s. 947.149, prior to serving the minimum sentence.

75 Section 2. Subsection (15) of section 901.15, Florida
76 Statutes, is amended to read:

77 901.15 When arrest by officer without warrant is lawful.—A
78 law enforcement officer may arrest a person without a warrant
79 when:

80 (15) There is probable cause to believe that the person
81 has committed assault upon a law enforcement officer, a
82 firefighter, an emergency medical care provider, a health care
83 provider, public transit employees or agents, or other specified
84 officers as set forth in s. 784.07 or has committed assault or
85 battery upon any employee of a receiving facility as defined in
86 s. 394.455 who is engaged in the lawful performance of his or
87 her duties.

88 Section 3. Paragraph (a) of subsection (3) of section
89 985.644, Florida Statutes, is amended to read:



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90 985.644 Departmental contracting powers; personnel
91 standards and investigation.-

92 (3)(a) All employees of the department and all personnel
93 of contract providers for any program for children, including
94 all owners, operators, employees, persons who have access to
95 confidential juvenile records, and volunteers, must complete:

96 1. A level 2 employment screening pursuant to chapter 435
97 before employment. The security background investigation
98 conducted under this section must ensure that, in addition to
99 the disqualifying offenses listed in s. 435.04, no person
100 subject to the background screening provisions of this section
101 has an arrest awaiting final disposition for, been found guilty
102 of, regardless of adjudication, or entered a plea of nolo
103 contendere or guilty to, or been adjudicated delinquent and the
104 record has not been sealed or expunged for, any offense
105 prohibited under the following provisions of state law or
106 similar laws of another jurisdiction:

107 a. Section 784.07, relating to assault or battery of law
108 enforcement officers, firefighters, emergency medical care
109 providers, health care providers, public transit employees or
110 agents, or other specified officers.

111 b. Section 817.568, relating to criminal use of personal
112 identification information.



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113 2. A national criminal records check by the Federal Bureau
114 of Investigation every 5 years following the date of the
115 person's employment.

116 Section 4. For the purpose of incorporating the amendment
117 made by this act to section 784.07, Florida Statutes, in
118 references thereto, paragraphs (d), (e), (f), and (g) of
119 subsection (1) of section 775.0877, Florida Statutes, are
120 reenacted to read:

121 775.0877 Criminal transmission of HIV; procedures;
122 penalties.-

123 (1) In any case in which a person has been convicted of or
124 has pled nolo contendere or guilty to, regardless of whether
125 adjudication is withheld, any of the following offenses, or the
126 attempt thereof, which offense or attempted offense involves the
127 transmission of body fluids from one person to another:

128 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
129 relating to assault;

130 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
131 relating to aggravated assault;

132 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
133 relating to battery;

134 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
135 relating to aggravated battery;

136



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137 the court shall order the offender to undergo HIV testing, to be
138 performed under the direction of the Department of Health in
139 accordance with s. 381.004, unless the offender has undergone
140 HIV testing voluntarily or pursuant to procedures established in
141 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
142 rule providing for HIV testing of criminal offenders or inmates,
143 subsequent to her or his arrest for an offense enumerated in
144 paragraphs (a)-(n) for which she or he was convicted or to which
145 she or he pled nolo contendere or guilty. The results of an HIV
146 test performed on an offender pursuant to this subsection are
147 not admissible in any criminal proceeding arising out of the
148 alleged offense.

149 Section 5. For the purpose of incorporating the amendment
150 made by this act to section 784.07, Florida Statutes, in a
151 reference thereto, subsection (1) of section 794.056, Florida
152 Statutes, is reenacted to read:

153 794.056 Rape Crisis Program Trust Fund.—

154 (1) The Rape Crisis Program Trust Fund is created within
155 the Department of Health for the purpose of providing funds for
156 rape crisis centers in this state. Trust fund moneys shall be
157 used exclusively for the purpose of providing services for
158 victims of sexual assault. Funds credited to the trust fund
159 consist of those funds collected as an additional court
160 assessment in each case in which a defendant pleads guilty or
161 nolo contendere to, or is found guilty of, regardless of



Amendment No. 1

162 adjudication, an offense provided in s. 775.21(6) and (10)(a),
 163 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
 164 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
 165 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
 166 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 167 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
 168 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.
 169 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 170 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.
 171 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),
 172 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust
 173 fund also shall include revenues provided by law, moneys
 174 appropriated by the Legislature, and grants from public or
 175 private entities.

176 Section 6. For the purpose of incorporating the amendment
 177 made by this act to section 784.07, Florida Statutes, in a
 178 reference thereto, paragraph (d) of subsection (3) of section
 179 921.0022, Florida Statutes, is reenacted to read:

180 921.0022 Criminal Punishment Code; offense severity
 181 ranking chart.—

182 (3) OFFENSE SEVERITY RANKING CHART

183 (d) LEVEL 4

184

Florida	Felony	Description
Statute	Degree	



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185	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.
186	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
187	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
188	517.07(1)	3rd	Failure to register securities.
189	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
190	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.

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191	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
192	784.075	3rd	Battery on detention or commitment facility staff.
193	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
194	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
195	784.081(3)	3rd	Battery on specified official or employee.
196	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
197	784.083(3)	3rd	Battery on code inspector.
198	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or



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materials.

199

787.03(1) 3rd Interference with custody;
wrongly takes minor from
appointed guardian.

200

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

201

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

202

787.07 3rd Human smuggling.

203

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

204

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



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property.

205

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

206

800.04(7)(c) 3rd Lewd or lascivious exhibition;
offender less than 18 years.

207

810.02(4)(a) 3rd Burglary, or attempted
burglary, of an unoccupied
structure; unarmed; no assault
or battery.

208

810.02(4)(b) 3rd Burglary, or attempted
burglary, of an unoccupied
conveyance; unarmed; no assault
or battery.

209

810.06 3rd Burglary; possession of tools.

210

810.08(2)(c) 3rd Trespass on property, armed
with firearm or dangerous
weapon.

211

812.014(2)(c)3. 3rd Grand theft, 3rd degree \$10,000



Amendment No. 1

218

837.02(1) 3rd Perjury in official proceedings.

219

837.021(1) 3rd Make contradictory statements in official proceedings.

220

838.022 3rd Official misconduct.

221

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

222

839.13(2)(c) 3rd Falsifying records of the Department of Children and Families.

223

843.021 3rd Possession of a concealed handcuff key by a person in custody.

224

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.



Amendment No. 1

225	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
226	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
227	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
228	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).
229	914.14(2)	3rd	Witnesses accepting bribes.
230	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
231	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily

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Amendment No. 1

injury.

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918.12 3rd Tampering with jurors.

233

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

234

Section 7. For the purpose of incorporating the amendment
made by this act to section 784.07, Florida Statutes, in a
reference thereto, section 938.08, Florida Statutes, is
reenacted to read:

238

938.08 Additional cost to fund programs in domestic
violence.—In addition to any sanction imposed for a violation of
s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s.
784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s.
784.083, s. 784.085, s. 794.011, or for any offense of domestic
violence described in s. 741.28, the court shall impose a
surcharge of \$201. Payment of the surcharge shall be a condition
of probation, community control, or any other court-ordered
supervision. The sum of \$85 of the surcharge shall be deposited
into the Domestic Violence Trust Fund established in s. 741.01.
The clerk of the court shall retain \$1 of each surcharge that
the clerk of the court collects as a service charge of the
clerk's office. The remainder of the surcharge shall be provided
to the governing board of the county and must be used only to

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Amendment No. 1

252 defray the costs of incarcerating persons sentenced under s.
253 741.283 and provide additional training to law enforcement
254 personnel in combating domestic violence.

255 Section 8. For the purpose of incorporating the amendment
256 made by this act to section 784.07, Florida Statutes, in a
257 reference thereto, section 938.085, Florida Statutes, is
258 reenacted to read:

259 938.085 Additional cost to fund rape crisis centers.—In
260 addition to any sanction imposed when a person pleads guilty or
261 nolo contendere to, or is found guilty of, regardless of
262 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and
263 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;
264 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.
265 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.
266 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.
267 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.
268 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.
269 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.
270 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.
271 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and
272 (14)(c); or s. 985.701(1), the court shall impose a surcharge of
273 \$151. Payment of the surcharge shall be a condition of
274 probation, community control, or any other court-ordered
275 supervision. The sum of \$150 of the surcharge shall be deposited
276 into the Rape Crisis Program Trust Fund established within the

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Amendment No. 1

277 Department of Health by chapter 2003-140, Laws of Florida. The
278 clerk of the court shall retain \$1 of each surcharge that the
279 clerk of the court collects as a service charge of the clerk's
280 office.

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283

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

284

Remove lines 2-18 and insert:

285

An act relating to assault or battery on health care providers;

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amending s. 784.07, F.S.; defining the term "health care

287

provider"; providing for the reclassification of certain assault

288

and battery offenses committed on health care providers;

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amending ss. 901.15 and 985.644, F.S.; conforming provisions to

290

changes made by the act; reenacting ss. 775.0877(1)(d), (e),

291

(f), and (g), 794.056(1), 921.0022(3)(d), 938.08, and 938.085,

292

F.S., relating to criminal transmission of HIV, the Rape Crisis

293

Program Trust Fund, the offense severity ranking chart of the

294

Criminal Punishment Code, additional cost to fund programs in

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domestic violence, and additional cost to fund rape crisis

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centers, respectively, to incorporate the amendments made by the

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act; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1207 Assault or Battery on Healthcare Providers

SPONSOR(S): Baez and others

TIED BILLS: IDEN./SIM. BILLS: SB 1712

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

SUMMARY ANALYSIS

Section 784.04(2), F.S., provides that when a person is charged with knowingly committing an assault or battery upon law enforcement officers, firefighters, and other persons while those persons are engaged in the lawful performance of their duties, the offense is to be reclassified as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree;
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree;
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of three years; and
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of five years.

The bill amends s. 784.07, F.S., to create a definition for a healthcare provider. Under the bill:

- "Healthcare provider" includes a physician, registered nurse, employee, agent, or volunteer of a hospital, as defined in s. 395.002, who is employed, under contract, or otherwise authorized by such a hospital to perform duties directly associated with the care and treatment rendered by the hospital.

The bill adds the term "healthcare provider" to the list of individuals or persons, which would trigger reclassification for assault or battery.

The Criminal Justice Impact Conference ("CJIC") has not considered the impact of this bill. It is anticipated that the bill will increase the need for state prison beds. The bill may decrease the need for jail beds to the extent that it reclassifies first degree misdemeanors to third degree felonies. The bill may also increase the need for jail beds to the extent that it reclassifies second degree misdemeanors to first degree misdemeanors.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Reclassification for Committing Assault or Battery on First Responders

Florida law currently provides for certain assault or battery offenses to be increased in severity when committed against persons who are employed as first responders, e.g., law enforcement officers, firefighters, and emergency medical care providers.¹

Section 784.07, F.S., provides that when a person is charged with knowingly committing an assault² or battery³ upon one of a list of specified types of employees or persons while that employee or person is engaged in the lawful performance of his or her duties, the offense is to be reclassified. The list contains the following types of employees or persons:

- A law enforcement officer;⁴
- A firefighter;⁵
- An emergency medical care provider;⁶
- A railroad special officer;⁷
- A traffic accident investigation officer as described in s. 316.640, F.S.;
- A nonsworn law enforcement agency employee who is certified as an agency inspector;
- A blood alcohol analyst or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- A law enforcement explorer;⁸
- A traffic infraction enforcement officer as described in s. 316.640, F.S.;
- A parking enforcement specialist as defined in s. 316.640, F.S.;
- A person licensed as a security officer as defined in s. 493.6101, F.S., and wearing a uniform that bears at least one patch or emblem that is visible at all times that clearly identifies the employing agency and that clearly identifies the person as a licensed security officer;

¹ s. 784.07, F.S.

² An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. s. 784.011(1), F.S.

³ The offense of "battery" occurs when a person: actually and intentionally touches or strikes another person against the will of the other; or intentionally causes bodily harm to another person. s. 784.03(1)(a), F.S.

⁴ "Law enforcement officer" includes a law enforcement officer, a correctional officer, a correctional probation officer, a part-time law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, F.S., and any county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; a federal law enforcement officer as defined in s. 901.1505; F.S., and law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement. s. 784.07(1)(c), F.S.

⁵ "Firefighter" means any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires. s. 784.07(1)(b), F.S.

⁶ "Emergency medical care provider" means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, F.S., medical director as defined in s. 401.23, F.S., or any person authorized by an emergency medical service licensed under chapter 401, F.S., who is engaged in the performance of his or her duties. The term "emergency medical care provider" also includes physicians, employees, agents, or volunteers of hospitals as defined in chapter 395, F.S., who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof. s. 784.07(1)(a), F.S.

⁷ "Railroad special officer" means a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the Governor pursuant to s. 354.01, F.S. s. 784.07(1)(f), F.S.

⁸ "Law enforcement explorer" means any person who is a current member of a law enforcement agency's explorer program and who is performing functions other than those required to be performed by sworn law enforcement officers on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents. s. 784.07(1)(c), F.S.

- A security officer employed by the board of trustees of a community college; and
- A public transit employee or agent.⁹

Section 787.04(2), F.S., provides that when a person is charged with knowingly committing an assault or battery upon specified employees or persons while that employee or person is engaged in the lawful performance of his or her duties, the offense is to be reclassified as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree;
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree;
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree. Notwithstanding any other provision of law, any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of three years; and
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree. Notwithstanding any other provision of law, any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of 5 years.¹⁰

Section 787.04(3), F.S., provides that a person who is convicted of battery upon one of those listed employees or persons and who during the commission of the offense possessed:

- A “firearm” or “destructive device” as those terms are defined in s. 790.001, F.S., shall be sentenced to a minimum term of imprisonment of 3 years.
- A semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), F.S., or a machine gun as defined in s. 790.001, F.S., shall be sentenced to a minimum term of imprisonment of 8 years.

Section 787.04(3), F.S., further provides, “[n]otwithstanding s. 948.01, F.S., adjudication of guilt or imposition of sentence cannot be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time under s. 944.275, F.S., or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release under s. 947.149, F.S., prior to serving the minimum sentence.”

Reclassification of an offense has the effect of increasing the maximum sentence and fines that can be imposed for an offense. The maximum sentence or fine that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is 60 days of incarceration in a county jail and a \$500 fine; for a first degree misdemeanor, it is one year of incarceration in a county jail and a \$1,000 fine; for a third degree felony, it is five years of imprisonment, and a \$5,000 fine; for a second degree felony, it is 15 years of imprisonment, and a \$10,000 fine; and for a first degree felony, it is thirty years of imprisonment, and a \$10,000 fine.¹¹ The maximum available fines also escalate based on the degree of the offense.¹²

Effect of the Bill

The bill amends s. 784.07, F.S., to create a definition for a healthcare provider. Under the bill:

- “Healthcare provider” includes a physician, registered nurse, employee, agent, or volunteer of a hospital, as defined in s. 395.002, who is employed, under contract, or otherwise authorized by

⁹ It is unclear whether a public transit employee or agent is included. Section 784.07(2), F.S., applies if someone is charged with knowingly committing an assault or battery upon an employee or person of a type contained in list 1 while that employee or person, identified in list 2 by using terms different from those in list 1, is engaged in the lawful performance of his or her duties. The term “public transit employee or agent” is not included in list 1, but it is in list 2. “Public transit employees or agents” means “bus operators, train operators, revenue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in s. 812.015(1)(l).” s. 784.07(1)(e), F.S.

¹⁰ s. 784.07(2)(a)-(d), F.S.

¹¹ s. 775.082, F.S.

¹² s. 775.083, F.S.

such a hospital to perform duties directly associated with the care and treatment rendered by the hospital.

The bill adds the term "healthcare provider" to the list of individuals or persons, which would trigger reclassification for assault or battery.

Other Effects of the Bill:

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

B. SECTION DIRECTORY:

Section 1. Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

Section 2. Reenacts s. 775.0877, F.S., relating to criminal transmission of HIV; procedures; penalties.

Section 3. Reenacts s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 4. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 5. Reenacts s. 938.08, F.S., relating to additional cost to fund programs in domestic violence.

Section 6. Reenacts s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

Section 7. Reenacts s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

Section 8. Reenacts s. 985.11, F.S., relating to fingerprinting and photographing.

Section 9. Reenacts s. 985.644, F.S., relating to Departmental contracting powers; personnel standards and investigation.

Section 10. 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 government revenues.
2. Expenditures: The Criminal Justice Impact Conference ("CJIC") has not considered the impact of this bill. It is anticipated that the bill will increase the need for state 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 may decrease the need for jail beds to the extent that it reclassifies first degree misdemeanors to third degree felonies. The bill may also increase the need for jail beds to the extent that it reclassifies second degree misdemeanors to first degree misdemeanors.

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:

In the bill's definition of "healthcare provider," it states that the term "includes" certain individuals. Criminal laws, in order to provide sufficient notice of the conduct proscribed, must specifically indicate who is included in the definition. It may be desirable to amend the bill to substitute the term "means" for the term "includes."

Section 784.07(2), F.S., applies if someone is charged with knowingly committing an assault or battery upon a law enforcement officer or other specified individual while that individual is engaged in the lawful performance of his or her duties. As currently drafted, lines 40-41 of the bill includes healthcare providers among the specified individuals but makes no mention in lines 55-61 of healthcare providers acting in the lawful performance of their duties.

The bill reenacts ss. 901.15(15) and 985.64(3)(a), F.S., for the purpose of incorporating an amendment made to s. 784.07, F.S., in a reference. However, as currently drafted, the bill does not include the term "healthcare provider" among the list of individuals that are mentioned in each of these sections. It may be desirable to amend the bill to include the term "healthcare provider" in the statutes to conform to changes made by the act.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

26 that subsection, subsection (2) of that section is amended, and
 27 subsection (3) of that section is republished to read:

28 784.07 Assault or battery of law enforcement officers,
 29 firefighters, emergency medical care providers, public transit
 30 employees or agents, or other specified officers;
 31 reclassification of offenses; minimum sentences.-

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

33 (c) "Healthcare provider" includes a physician, registered
 34 nurse, employee, agent, or volunteer of a hospital, as defined
 35 in s. 395.002, who is employed, under contract, or otherwise
 36 authorized by such a hospital to perform duties directly
 37 associated with the care and treatment rendered by the hospital.

38 (2) Whenever any person is charged with knowingly
 39 committing an assault or battery upon a law enforcement officer,
 40 a firefighter, an emergency medical care provider, a healthcare
 41 provider, a railroad special officer, a traffic accident
 42 investigation officer as described in s. 316.640, a nonsworn law
 43 enforcement agency employee who is certified as an agency
 44 inspector, a blood alcohol analyst, or a breath test operator
 45 while such employee is in uniform and engaged in processing,
 46 testing, evaluating, analyzing, or transporting a person who is
 47 detained or under arrest for DUI, a law enforcement explorer, a
 48 traffic infraction enforcement officer as described in s.
 49 316.640, a parking enforcement specialist as defined in s.
 50 316.640, a person licensed as a security officer as defined in

51 s. 493.6101 and wearing a uniform that bears at least one patch
 52 or emblem that is visible at all times that clearly identifies
 53 the employing agency and that clearly identifies the person as a
 54 licensed security officer, or a security officer employed by the
 55 board of trustees of a community college, while the officer,
 56 firefighter, emergency medical care provider, railroad special
 57 officer, traffic accident investigation officer, traffic
 58 infraction enforcement officer, inspector, analyst, operator,
 59 law enforcement explorer, parking enforcement specialist, public
 60 transit employee or agent, or security officer is engaged in the
 61 lawful performance of his or her duties, the offense for which
 62 the person is charged shall be reclassified as follows:

63 (a) In the case of assault, from a misdemeanor of the
 64 second degree to a misdemeanor of the first degree.

65 (b) In the case of battery, from a misdemeanor of the
 66 first degree to a felony of the third degree.

67 (c) In the case of aggravated assault, from a felony of
 68 the third degree to a felony of the second degree.

69 Notwithstanding any other provision of law, any person convicted
 70 of aggravated assault upon a law enforcement officer shall be
 71 sentenced to a minimum term of imprisonment of 3 years.

72 (d) In the case of aggravated battery, from a felony of
 73 the second degree to a felony of the first degree.

74 Notwithstanding any other provision of law, any person convicted
 75 of aggravated battery of a law enforcement officer shall be

76 sentenced to a minimum term of imprisonment of 5 years.

77 (3) Any person who is convicted of a battery under
78 paragraph (2)(b) and, during the commission of the offense, such
79 person possessed:

80 (a) A "firearm" or "destructive device" as those terms are
81 defined in s. 790.001, shall be sentenced to a minimum term of
82 imprisonment of 3 years.

83 (b) A semiautomatic firearm and its high-capacity
84 detachable box magazine, as defined in s. 775.087(3), or a
85 machine gun as defined in s. 790.001, shall be sentenced to a
86 minimum term of imprisonment of 8 years.

87
88 Notwithstanding s. 948.01, adjudication of guilt or imposition
89 of sentence shall not be suspended, deferred, or withheld, and
90 the defendant is not eligible for statutory gain-time under s.
91 944.275 or any form of discretionary early release, other than
92 pardon or executive clemency, or conditional medical release
93 under s. 947.149, prior to serving the minimum sentence.

94 Section 2. For the purpose of incorporating the amendment
95 made by this act to section 784.07, Florida Statutes, in
96 references thereto, paragraphs (d), (e), (f), and (g) of
97 subsection (1) of section 775.0877, Florida Statutes, are
98 reenacted to read:

99 775.0877 Criminal transmission of HIV; procedures;
100 penalties.-

101 (1) In any case in which a person has been convicted of or
 102 has pled nolo contendere or guilty to, regardless of whether
 103 adjudication is withheld, any of the following offenses, or the
 104 attempt thereof, which offense or attempted offense involves the
 105 transmission of body fluids from one person to another:

106 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
 107 relating to assault;

108 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
 109 relating to aggravated assault;

110 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
 111 relating to battery;

112 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
 113 relating to aggravated battery;

114

115 the court shall order the offender to undergo HIV testing, to be
 116 performed under the direction of the Department of Health in
 117 accordance with s. 381.004, unless the offender has undergone
 118 HIV testing voluntarily or pursuant to procedures established in
 119 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
 120 rule providing for HIV testing of criminal offenders or inmates,
 121 subsequent to her or his arrest for an offense enumerated in
 122 paragraphs (a)-(n) for which she or he was convicted or to which
 123 she or he pled nolo contendere or guilty. The results of an HIV
 124 test performed on an offender pursuant to this subsection are
 125 not admissible in any criminal proceeding arising out of the

126 | alleged offense.

127 | Section 3. For the purpose of incorporating the amendment
 128 | made by this act to section 784.07, Florida Statutes, in a
 129 | reference thereto, subsection (15) of section 901.15, Florida
 130 | Statutes, is reenacted to read:

131 | 901.15 When arrest by officer without warrant is lawful.—A
 132 | law enforcement officer may arrest a person without a warrant
 133 | when:

134 | (15) There is probable cause to believe that the person
 135 | has committed assault upon a law enforcement officer, a
 136 | firefighter, an emergency medical care provider, public transit
 137 | employees or agents, or other specified officers as set forth in
 138 | s. 784.07 or has committed assault or battery upon any employee
 139 | of a receiving facility as defined in s. 394.455 who is engaged
 140 | in the lawful performance of his or her duties.

141 | Section 4. For the purpose of incorporating the amendment
 142 | made by this act to section 784.07, Florida Statutes, in a
 143 | reference thereto, paragraph (d) of subsection (3) of section
 144 | 921.0022, Florida Statutes, is reenacted to read:

145 | 921.0022 Criminal Punishment Code; offense severity
 146 | ranking chart.—

147 | (3) OFFENSE SEVERITY RANKING CHART

148 | (d) LEVEL 4

149 |

Florida	Felony	Description
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HB 1207

2017

	Statute	Degree	
150	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.
151	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
152	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
153	517.07(1)	3rd	Failure to register securities.
154	517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
155	784.07(2)(b)	3rd	Battery of law enforcement

			officer, firefighter, etc.
156	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
157	784.075	3rd	Battery on detention or commitment facility staff.
158	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
159	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
160	784.081(3)	3rd	Battery on specified official or employee.
161	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
162	784.083(3)	3rd	Battery on code inspector.
163	784.085	3rd	Battery of child by throwing, tossing, projecting, or

			expelling certain fluids or materials.
164	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
165	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
166	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
167	787.07	3rd	Human smuggling.
168	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
169	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or

170			other weapon on school property.
171	790.115(2)(c)	3rd	Possessing firearm on school property.
172	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
173	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
174	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
175	810.06	3rd	Burglary; possession of tools.
176	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.

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177	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
178	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
179	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
180	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03 (5) drugs.
181	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
182	817.625 (2) (a)	3rd	Fraudulent use of scanning device or reencoder.
	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any

			registered horse or cattle.
183	837.02 (1)	3rd	Perjury in official proceedings.
184	837.021 (1)	3rd	Make contradictory statements in official proceedings.
185	838.022	3rd	Official misconduct.
186	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
187	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Families.
188	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
189	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of

			protection or communication.
190	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
191	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
192	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
193	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).
194	914.14(2)	3rd	Witnesses accepting bribes.
195	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
196	914.23(2)	3rd	Retaliation against a witness,

victim, or informant, no bodily injury.

197

918.12 3rd Tampering with jurors.

198

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

199

200 Section 5. For the purpose of incorporating the amendment
 201 made by this act to section 784.07, Florida Statutes, in a
 202 reference thereto, section 938.08, Florida Statutes, is
 203 reenacted to read:

204 938.08 Additional cost to fund programs in domestic
 205 violence.—In addition to any sanction imposed for a violation of
 206 s. 784.011, s. 784.021, s. 784.03, s. 784.041, s. 784.045, s.
 207 784.048, s. 784.07, s. 784.08, s. 784.081, s. 784.082, s.
 208 784.083, s. 784.085, s. 794.011, or for any offense of domestic
 209 violence described in s. 741.28, the court shall impose a
 210 surcharge of \$201. Payment of the surcharge shall be a condition
 211 of probation, community control, or any other court-ordered
 212 supervision. The sum of \$85 of the surcharge shall be deposited
 213 into the Domestic Violence Trust Fund established in s. 741.01.
 214 The clerk of the court shall retain \$1 of each surcharge that
 215 the clerk of the court collects as a service charge of the

216 clerk's office. The remainder of the surcharge shall be provided
 217 to the governing board of the county and must be used only to
 218 defray the costs of incarcerating persons sentenced under s.
 219 741.283 and provide additional training to law enforcement
 220 personnel in combating domestic violence.

221 Section 6. For the purpose of incorporating the amendment
 222 made by this act to section 784.07, Florida Statutes, in a
 223 reference thereto, section 938.085, Florida Statutes, is
 224 reenacted to read:

225 938.085 Additional cost to fund rape crisis centers.—In
 226 addition to any sanction imposed when a person pleads guilty or
 227 nolo contendere to, or is found guilty of, regardless of
 228 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and
 229 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;
 230 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.
 231 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.
 232 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.
 233 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.
 234 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.
 235 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.
 236 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.
 237 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and
 238 (14)(c); or s. 985.701(1), the court shall impose a surcharge of
 239 \$151. Payment of the surcharge shall be a condition of
 240 probation, community control, or any other court-ordered

241 supervision. The sum of \$150 of the surcharge shall be deposited
 242 into the Rape Crisis Program Trust Fund established within the
 243 Department of Health by chapter 2003-140, Laws of Florida. The
 244 clerk of the court shall retain \$1 of each surcharge that the
 245 clerk of the court collects as a service charge of the clerk's
 246 office.

247 Section 7. For the purpose of incorporating the amendment
 248 made by this act to section 784.07, Florida Statutes, in a
 249 reference thereto, paragraph (b) of subsection (3) of section
 250 943.051, Florida Statutes, is reenacted to read:

251 943.051 Criminal justice information; collection and
 252 storage; fingerprinting.-

253 (3)

254 (b) A minor who is charged with or found to have committed
 255 the following offenses shall be fingerprinted and the
 256 fingerprints shall be submitted electronically to the
 257 department, unless the minor is issued a civil citation pursuant
 258 to s. 985.12:

- 259 1. Assault, as defined in s. 784.011.
- 260 2. Battery, as defined in s. 784.03.
- 261 3. Carrying a concealed weapon, as defined in s.
- 262 790.01(1).
- 263 4. Unlawful use of destructive devices or bombs, as
- 264 defined in s. 790.1615(1).
- 265 5. Neglect of a child, as defined in s. 827.03(1)(e).

266 6. Assault or battery on a law enforcement officer, a
 267 firefighter, or other specified officers, as defined in s.
 268 784.07(2)(a) and (b).

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

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

271 9. Unlawful possession of a firearm, as defined in s.
 272 790.22(5).

273 10. Petit theft, as defined in s. 812.014(3).

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

275 12. Arson, as defined in s. 806.031(1).

276 13. Unlawful possession or discharge of a weapon or
 277 firearm at a school-sponsored event or on school property, as
 278 provided in s. 790.115.

279 Section 8. For the purpose of incorporating the amendment
 280 made by this act to section 784.07, Florida Statutes, in a
 281 reference thereto, paragraph (b) of subsection (1) of section
 282 985.11, Florida Statutes, is reenacted to read:

283 985.11 Fingerprinting and photographing.—

284 (1)

285 (b) Unless the child is issued a civil citation or is
 286 participating in a similar diversion program pursuant to s.
 287 985.12, a child who is charged with or found to have committed
 288 one of the following offenses shall be fingerprinted, and the
 289 fingerprints shall be submitted to the Department of Law
 290 Enforcement as provided in s. 943.051(3)(b):

- 291 1. Assault, as defined in s. 784.011.
- 292 2. Battery, as defined in s. 784.03.
- 293 3. Carrying a concealed weapon, as defined in s.
- 294 790.01(1).
- 295 4. Unlawful use of destructive devices or bombs, as
- 296 defined in s. 790.1615(1).
- 297 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 298 6. Assault on a law enforcement officer, a firefighter, or
- 299 other specified officers, as defined in s. 784.07(2)(a).
- 300 7. Open carrying of a weapon, as defined in s. 790.053.
- 301 8. Exposure of sexual organs, as defined in s. 800.03.
- 302 9. Unlawful possession of a firearm, as defined in s.
- 303 790.22(5).
- 304 10. Petit theft, as defined in s. 812.014.
- 305 11. Cruelty to animals, as defined in s. 828.12(1).
- 306 12. Arson, resulting in bodily harm to a firefighter, as
- 307 defined in s. 806.031(1).
- 308 13. Unlawful possession or discharge of a weapon or
- 309 firearm at a school-sponsored event or on school property as
- 310 defined in s. 790.115.

311
 312 A law enforcement agency may fingerprint and photograph a child
 313 taken into custody upon probable cause that such child has
 314 committed any other violation of law, as the agency deems
 315 appropriate. Such fingerprint records and photographs shall be

316 retained by the law enforcement agency in a separate file, and
 317 these records and all copies thereof must be marked "Juvenile
 318 Confidential." These records are not available for public
 319 disclosure and inspection under s. 119.07(1) except as provided
 320 in ss. 943.053 and 985.04(2), but shall be available to other
 321 law enforcement agencies, criminal justice agencies, state
 322 attorneys, the courts, the child, the parents or legal
 323 custodians of the child, their attorneys, and any other person
 324 authorized by the court to have access to such records. In
 325 addition, such records may be submitted to the Department of Law
 326 Enforcement for inclusion in the state criminal history records
 327 and used by criminal justice agencies for criminal justice
 328 purposes. These records may, in the discretion of the court, be
 329 open to inspection by anyone upon a showing of cause. The
 330 fingerprint and photograph records shall be produced in the
 331 court whenever directed by the court. Any photograph taken
 332 pursuant to this section may be shown by a law enforcement
 333 officer to any victim or witness of a crime for the purpose of
 334 identifying the person who committed such crime.

335 Section 9. For the purpose of incorporating the amendment
 336 made by this act to section 784.07, Florida Statutes, in a
 337 reference thereto, paragraph (a) of subsection (3) of section
 338 985.644, Florida Statutes, is reenacted to read:

339 985.644 Departmental contracting powers; personnel
 340 standards and investigation.—

341 (3)(a) All employees of the department and all personnel
 342 of contract providers for any program for children, including
 343 all owners, operators, employees, persons who have access to
 344 confidential juvenile records, and volunteers, must complete:

345 1. A level 2 employment screening pursuant to chapter 435
 346 before employment. The security background investigation
 347 conducted under this section must ensure that, in addition to
 348 the disqualifying offenses listed in s. 435.04, no person
 349 subject to the background screening provisions of this section
 350 has an arrest awaiting final disposition for, been found guilty
 351 of, regardless of adjudication, or entered a plea of nolo
 352 contendere or guilty to, or been adjudicated delinquent and the
 353 record has not been sealed or expunged for, any offense
 354 prohibited under the following provisions of state law or
 355 similar laws of another jurisdiction:

356 a. Section 784.07, relating to assault or battery of law
 357 enforcement officers, firefighters, emergency medical care
 358 providers, public transit employees or agents, or other
 359 specified officers.

360 b. Section 817.568, relating to criminal use of personal
 361 identification information.

362 2. A national criminal records check by the Federal Bureau
 363 of Investigation every 5 years following the date of the
 364 person's employment.

365 Section 10. This act shall take effect October 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 393 Compensation of Victims of Wrongful Incarceration

SPONSOR(S): Criminal Justice Subcommittee

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 494; SB 556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Aziz PA	White TN

SUMMARY ANALYSIS

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

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

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

The bill's fiscal impact on state government is indeterminate. The bill does not appear to have a fiscal impact on local governments. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill is effective October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Victims of Wrongful Incarceration Compensation Act

In Florida, 13 people have been exonerated or released from incarceration since 2000 as a result of post-conviction DNA testing.¹ During the regular session of 2008, the Legislature passed the “Victims of Wrongful Incarceration Compensation Act” (Act) to compensate persons determined to be actually innocent of a felony offense they were accused of committing and for which they were wrongfully convicted and imprisoned.²

The Act provides a process by which persons whose conviction and sentence has been vacated based upon exonerating evidence may petition the court to seek and obtain compensation as a “wrongfully incarcerated person”³ who is “eligible for compensation.”⁴

The Petition Process

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

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

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

- Stipulate to the petitioner’s innocence and eligibility for compensation;
- Contest the evidence of actual innocence; or
- Contest the eligibility of the petitioner to compensation.⁵

Without a stipulation from the prosecuting authority of the petitioner’s innocence and eligibility, the original sentencing court, based on the pleadings and the supporting documents, must determine whether the petitioner’s eligibility for compensation has been established by a preponderance of the evidence. If the court finds the petitioner is not eligible for compensation, it must dismiss the petition.⁶

If the court finds the petitioner is eligible for compensation and the prosecuting authority contests the actual innocence of the petitioner, the court must set forth its findings and transfer the petition to the

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

² Ch. 2008-39, Laws of Fla.

³ Section 961.02(4), F.S., defines a “wrongfully incarcerated person” as a “person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and, with respect to whom pursuant to the requirements of s. 961.03, F.S., the original sentencing court has issued its order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.”

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

⁵ s. 961.03(2)(a) and (b), F.S.

⁶ s. 961.03(4)(a), F.S.

Division of Administrative Hearings (DOAH) for a hearing before an administrative law judge (ALJ). The ALJ must make factual findings regarding the petitioner's actual innocence and draft a recommended order on the determination of whether the petitioner has established by clear and convincing evidence that he or she is a wrongfully incarcerated person.⁷ The ALJ must file its findings and recommended order within 45 days of the hearing's adjournment.⁸ The original sentencing court must review the findings and recommendation of the ALJ and issue its own order declining or adopting the recommended order within 60 days.⁹

Eligibility

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

- Was convicted or pled guilty or nolo contendere to a felony offense in this state, a federal offense that is a felony, or to an offense in another state that would be a felony in this state before his or her wrongful conviction or incarceration.
- Was convicted of, or pled guilty or nolo contendere to, a felony offense while wrongfully incarcerated;
- Was serving a concurrent sentence for another felony for which the person was not wrongfully convicted while wrongfully incarcerated; or
- Committed a felony while serving on parole or community supervision for the wrongful conviction.¹⁰

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

The Application Process

A petitioner who is found to be a "wrongfully incarcerated person" has two years to initiate an application for compensation with the Department of Legal Affairs after the original sentencing court enters its order.¹¹ Only the petitioner, not his or her estate or personal representative of the estate, may apply for compensation.¹² Section 961.05(4), F.S., lists the content requirements of an application for compensation. In part, it requires that the application include:

- A certified copy of the order vacating the conviction and sentence;
- A certified copy of the original sentencing court's order finding the claimant to be a wrongfully incarcerated person who is eligible for compensation under the Act;
- Certified copies of the original judgment and sentence; and
- Documentation demonstrating the length of the sentence served, including documentation from the Department of Corrections regarding the person's admission into and release from the custody of the Department of Corrections.¹³

Compensation

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

- Monetary compensation, at the rate of \$50,000 for each year of wrongful incarceration;
- A waiver of tuition and fees for up to 120 hours of instruction at a public career center, community college, or state university;
- A refund of fines, penalties, and court costs imposed and paid;
- Reasonable attorney's fees and expenses incurred and paid; and
- Immediate expunction, including administrative expunction, of the person's criminal record of the wrongful arrest, conviction, and incarceration.¹⁴

⁷ s. 961.03(4)(b), F.S.

⁸ s. 961.03 (5)(c) and (d), F.S.

⁹ s. 961.03(5)(d), F.S.

¹⁰ ss. 961.04 and 961.06(2), F.S.

¹¹ s. 961.05(1) and (2), F.S.

¹² s. 961.05(2), F.S.

¹³ s. 961.05(4), F.S.

¹⁴ s. 961.06(1), F.S.

Total compensation awarded may not exceed \$2 million.¹⁵

Wrongful Incarceration Claims in Florida

To date, four persons have been compensated under the administrative process for a total of \$4,276,901. Six other claimants had their claims denied, based on either ineligibility or incomplete applications.¹⁶

Claim Bills

Since the Act's inception, a number of claim bills have been filed on behalf of wrongfully incarcerated persons who are ineligible for compensation under the Act due to a felony conviction before or during the wrongful incarceration. At least two such persons have received compensation for a wrongful incarceration through the claim bill process. For example in 2012, a claim bill was adopted for the wrongful incarceration of William Dillon. Due to a prior felony conviction for a single quaalude, Dillon was barred from seeking compensation under the Act.^{17, 18}

Other States - Clean Hands Requirements

Currently, there are 29 states that have a system to compensate wrongfully incarcerated individuals. Of this number, nine states have some form of clean hands provision that prohibits compensation for convictions.¹⁹ Three of the nine states revoke compensation if the person is later convicted of a felony.²⁰ Florida, however, is the only state that bars applicants for a prior felony conviction.

Effect of the Bill

The bill amends the eligibility requirements of the Act in ss. 961.04 and 961.06, F.S., to narrow the types of felonies which disqualify a person from receiving compensation for a wrongful incarceration. Under the bill, the term "disqualifying felony" is defined to mean, "any felony other than one or more felonies of the third degree which arise from a single criminal act, transaction, or episode."²¹ Accordingly, only persons with a first²² or second degree felony²³ conviction or with a third degree felony²⁴ conviction arising from a *second or subsequent* criminal act, transaction, or episode will be disqualified from receiving compensation under the Act.

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

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

¹⁵ *Id.*

¹⁶ Email correspondence with the Office of the Attorney General (Jan. 14, 2016 and March 1, 2017) (on file with House of Representatives Criminal Justice Subcommittee). Persons whose claims have been successful are Leroy McGee (2010), James Bain (2011), Luis Diaz (2012), and James Richardson (2015). Jarvis McBride's claim was denied (2012). Three persons had their claims rejected based on incomplete applications. These are Robert Lewis (2011), Edwin Lampkin (2012), and Robert Glenn Mosley (2014). Two other claimants were determined to be ineligible for compensation (Ricardo Johnson (2013) and Joseph McGowan (2015)).

¹⁷ Chapter 2012-229, L.O.F. (compensating William Dillon for wrongful incarceration despite ineligibility for compensation under the Act).

¹⁸ *See also* ch. 2008-259, L.O.F. (compensating Alan Crotzer for wrongful incarceration despite ineligibility for compensation under the Act).

¹⁹ 50 State Survey of Wrongful Incarceration Compensation Law, June 2014 (on file with the House of Representatives Criminal Justice Subcommittee).

²⁰ Alabama, Texas, and Virginia. *Id.*

²¹ To determine whether offenses arose out of the same criminal episode, a reviewing court must consider whether: (a) there are multiple victims; (b) the offenses occurred in multiple locations, and (c) there has been a 'temporal break' between offenses. *State v. Paul*, 934 So. 2d 1167, 1173 (Fla.2006) (overruled on other grounds by *Valdes*, 3 So. 3d 1067).

²² A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

²³ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

²⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

B. SECTION DIRECTORY:

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

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

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

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

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

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

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

Section 8. 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 revenues
2. Expenditures: The bill expands the pool of persons eligible for compensation due to wrongful incarceration and, thus, there could be an increase in state expenditures to provide such compensation. Such increase is indeterminate, however, because data regarding the number of wrongfully incarcerated persons who may now qualify for compensation under the Act is unavailable. The Act is funded through a continuing appropriation.²⁵

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

²⁵ s. 961.07, F.S.

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

26 effective date.

27

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

29

30 Section 1. Section 961.02, Florida Statutes, is reordered
31 and amended to read:

32 961.02 Definitions.—As used in ss. 961.01-961.07, the
33 term:

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

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

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

40 ~~(4)(3)~~ "Division" means the Division of Administrative
41 Hearings.

42 ~~(7)(4)~~ "Wrongfully incarcerated person" means a person
43 whose felony conviction and sentence have been vacated by a
44 court of competent jurisdiction and who is the subject of an
45 order issued by the original sentencing court pursuant to s.
46 961.03, with respect to whom pursuant to the requirements of s.
47 961.03, the original sentencing court has issued its order
48 finding that the person did not commit ~~neither committed~~ the act
49 or ~~nor the~~ offense that served as the basis for the conviction
50 and incarceration and that the person did not aid, abet, or act

51 | as an accomplice or accessory to a person who committed the act
 52 | or offense.

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

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

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

63 | 961.04 Eligibility for compensation for wrongful
 64 | incarceration.—A wrongfully incarcerated person is not eligible
 65 | for compensation under the act if:

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

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

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

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

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

82 | 961.06 Compensation for wrongful incarceration.—

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

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

99 | 961.03 Determination of status as a wrongfully
100 | incarcerated person; determination of eligibility for

101 compensation.-

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

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

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

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

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

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

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

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

151 regardless of his or her claim of wrongful incarceration. If the
 152 court finds the petitioner ineligible under the provisions of s.
 153 961.04, it shall dismiss the petition.

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

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

170 961.05 Application for compensation for wrongful
 171 incarceration; administrative expunction; determination of
 172 entitlement to compensation.—

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

176 subject to the provisions in s. 961.06.

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

181 961.055 Application for compensation for a wrongfully
 182 incarcerated person; exemption from application by nolle
 183 prosequi.—

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

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

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

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



199 961.056 Alternative application for compensation for a
 200 wrongfully incarcerated person.—

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 641 Criminal Justice
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		White 	White 

SUMMARY ANALYSIS

Under current law, the total sentence points calculated by the Criminal Punishment Code scoresheet determine the lowest permissible sentence (LPS) for an offender. The LPS for an offender who receives less than or equal to 44 points on his or her worksheet is a nonstate prison sanction (NSPS). The LPS for an offender with 45 or more points is determined by the total number of sentence points minus 28 multiplied by .75. For example, the LPS is 12.75 months for 45 points and 24 months for 60 points.

In general, a sentencing judge, in his or her discretion, may sentence an offender to a term that is between the LPS and the statutory maximum for the offense, unless the judge's discretion is limited because a mandatory minimum sentence applies. A sentencing judge may depart below the LPS, unless a mandatory minimum sentence that exceeds the LPS applies, if the judge enters a written statement delineating the reasons for the departure.

In some cases, statute authorizes a NSPS, even though a defendant's scoresheet result would warrant a prison sentence. For example, under s.948.01, F.S., a defendant may be placed into a postadjudicatory treatment-based drug court program with a scoresheet result of 60 points or fewer if he or she is amenable to substance abuse treatment and meets other criteria.

The bill amends s. 775.082, F.S., to require the court to sentence a defendant to a NSPS if the defendant's primary offense is possession of a controlled substance and the total sentence points are 60 points or fewer. The only exception to this requirement is that the court may impose a prison sentence if the court makes written findings that a NSPS could present a danger to the public.

The bill defines "possession of a controlled substance" as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

The bill will reduce the need for prison beds and operating costs for the Department of Corrections. The bill does not appear to have a fiscal impact on local governments. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill takes effect on October 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Criminal Punishment Code Sentencing

In 1997, the Legislature enacted the Criminal Punishment Code¹ (CPC) as Florida's "primary sentencing policy."² Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).³ Points are assigned on a CPC scoresheet and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.⁴ Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury.

The total sentence points calculated by the CPC scoresheet determine the lowest permissible sentence (LPS) for an offender.⁵ The LPS for an offender who receives less than or equal to 44 points on his or her scoresheet is a nonstate prison sanction (NSPS).⁶ The LPS for an offender with 45 or more points is determined by the total number of sentence points minus 28 multiplied by .75.⁷ For example, the LPS is 12.75 months for 45 points and 24 months for 60 points.⁸

In general, a sentencing judge, in his or her discretion, may sentence an offender to a term that is between the LPS and the statutory maximum for the offense, unless the judge's discretion is limited because a mandatory minimum sentence applies.⁹ The statutory maximum for a: (a) felony of the first degree is 30 years; (b) felony of the second degree is 15 years; and (c) felony of the third degree is 5 years.¹⁰

A sentencing judge may depart below the LPS, unless a mandatory minimum sentence that exceeds the LPS applies, if the judge enters a written statement delineating the reasons for the departure.¹¹ A non-exclusive list of mitigating factors that may be considered by a sentencing judge in imposing a downward departure sentence is specified in s. 921.0026, F.S.

Exceptions to a CPC Sentence

Multiple exceptions to typical CPC sentencing exist. NSPSs are sometimes required or allowed in cases where a sentence of imprisonment would have otherwise been authorized or required under the CPC. For each of the following examples, the defendant must have committed his or her offense on or after July 1, 2009:

¹ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

² *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* (Executive Summary), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on March 26, 2017).

³ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

⁴ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

⁵ s. 921.0024(1)-(3), F.S.

⁶ s. 921.0042(2), F.S.

⁷ Florida Department of Corrections and the Office of State Courts Administrator, *Florida Criminal Punishment Code Scoresheet Preparation Manual*, July 1, 2015, at p. 26, available at http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

⁸ *Id.*

⁹ s. 921.0024(2), F.S.

¹⁰ s. 775.082(3)(b), (d), and (e), F.S.

¹¹ s. 921.00265, F.S.

- Under s. 775.082(10), F.S., a defendant who is sentenced for a third degree felony, but not a forcible felony,¹² and whose total sentence points pursuant to s. 921.0024, F.S., are 22 points or fewer, *must be sentenced to a NSPS*. However, if the court makes written findings that a NSPS could present a danger to the public, the court may sentence the offender to state prison.
- Under s. 921.00241, F.S., a defendant who would otherwise receive a prison sentence *may be sentenced to a NSPS* if:
 - The offender's primary offense is a third degree felony.
 - The offender's total scoresheet points are not more than 48 points, or are 54 points and six of those points are for a violation of probation, community control, or other community supervision, and do not involve a new violation of law.
 - The offender has not been convicted or previously convicted of a forcible felony.
 - The offender's primary offense does not require a mandatory minimum sentence.
- Under s. 948.01, F.S., a defendant *may be placed* into a postadjudicatory treatment-based drug court program if:
 - His or her scoresheet result is 60 points or fewer;
 - He or she is amenable to substance abuse treatment; and
 - He or she otherwise qualifies under s. 397.334(3), F.S.¹³

Effect of Bill

The bill amends s. 775.082, F.S., to create a new subsection (11) that requires the court to sentence a defendant to a NSPS if:

- His or her primary offense is possession of a controlled substance;
- Such primary offense is committed on or after October 1, 2017; and
- The total sentence points are 60 points or fewer.

The only exception to the aforementioned required NSPS is that the court may impose a prison sentence if the court makes written findings that a NSPS could present a danger to the public.

The bill defines “possession of a controlled substance” as possession of a controlled substance in violation of s. 893.13, F.S., but does not include possession with intent to sell, manufacture, or deliver a controlled substance or possession of a controlled substance in violation of s. 893.135, F.S., which punishes drug trafficking.

This diversion provision could apply to a defendant who has a prior record, which might include a prior violent offense. For example, a defendant with a current offense of possession of a controlled substance and a prior offense of aggravated assault would score fewer than 60 total points. However, under the bill, the court may choose to not divert such defendant from prison if the court finds that the NSPS could present a danger to the public.

The bill takes effect October 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 775.083, F.S., relating to penalties.

¹² Section 776.08, F.S., defines a “forcible felony” as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

¹³ Section 948.01(7), F.S. Section 397.334(3)(a), F.S., provides that entry into any postadjudicatory treatment-based drug court program as a condition of probation or community control pursuant to s. 948.01, F.S., s. 948.06, F.S., or s. 948.20, F.S., must be based upon the sentencing court’s assessment of the defendant’s criminal history, substance abuse screening outcome, amenability to the services of the program, total sentence points, the recommendation of the state attorney and the victim, if any, and the defendant’s agreement to enter the program.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have a fiscal impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) met on March 2, 2017, and determined that bill could reduce the need for prison beds by 155 beds in Fiscal Year (FY) 2017-2018 and by a total of 1,001 beds for FYs 2017-2022. According to CJIC, the bill could result in a savings for FY 2017-2018 of \$1,575,808 for operating costs and \$35,718,480 for fixed capital outlay costs (total: \$37,294,288 for FY 2017-2018). For FYs 2017-2022, the CJIC indicated that the bill could result in a savings of \$64,848,390 for operating costs and \$65,858,966 for fixed capital outlay costs (total \$130,706,356).

According to the Department of Corrections, the bill's reduction in the prison population will be offset by an increase in supervision costs; however, the net effect of the bill will be a cost savings as shown below:

FY 2017-2018 to FY 2021-2022				
% of Inmates Affected	Affected Population	Inmate Costs	Supervision Costs	Total Cost to Implement
5%	264	(2,610,112)	536,729	(2,073,383)
10%	528	(5,220,223)	1,073,360	(4,146,863)
15%	792	(7,830,335)	1,610,088	(6,220,247)
20%	1,059	(10,469,510)	2,152,872	(8,316,638)
25%	1,321	(13,062,186)	2,685,569	(10,376,617)
50%	2,646	(26,159,244)	5,379,103	(20,780,141)
75%	3,966	(39,209,801)	8,062,551	(31,147,250)
100%	5,287	(52,271,986)	10,748,119	(41,523,867)

Data from the Florida Department of Corrections, February 10, 2017.¹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

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.

¹⁴ This data is on file with the House of Representatives Criminal Justice Subcommittee.

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 sentencing for possession of a
 3 controlled substance; amending s. 775.082, F.S.;
 4 requiring that a court sentence a defendant who is
 5 convicted of a primary offense of possession of a
 6 controlled substance committed on or after a specified
 7 date to a nonstate prison sanction under certain
 8 circumstances; defining the term "possession of a
 9 controlled substance"; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Present subsection (11) of section 775.082,
 14 Florida Statutes, is redesignated as subsection (12), and a new
 15 subsection (11) is added to that section to read:

16 775.082 Penalties; applicability of sentencing structures;
 17 mandatory minimum sentences for certain reoffenders previously
 18 released from prison.—

19 (11) If a defendant is sentenced for a primary offense of
 20 possession of a controlled substance committed on or after
 21 October 1, 2017, and if the total sentence points pursuant to s.
 22 921.0024 are 60 points or fewer, the court must sentence the
 23 offender to a nonstate prison sanction. However, if the court
 24 makes written findings that a nonstate prison sanction could
 25 present a danger to the public, the court may sentence the

26 offender to a state correctional facility pursuant to this
27 section. As used in this subsection, the term "possession of a
28 controlled substance" means possession of a controlled substance
29 in violation of s. 893.13, but does not include possession with
30 intent to sell, manufacture, or deliver a controlled substance
31 or possession of a controlled substance in violation of s.
32 893.135.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 677 Justifiable Use of Force
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Hall WH	White JR

SUMMARY ANALYSIS

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

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

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

In 2014, the Legislature amended s. 776.13(3), F.S., relating to the right to self-defense in a person's dwelling, residence, or vehicle. The statute currently states, "A person who is *attacked* in his or her dwelling, residence, or vehicle has no duty to retreat" and has the right to use or threaten to use defensive force. The statute may potentially be interpreted to require a person to first be attacked before he or she is entitled to use force in self-defense. Such a requirement would be inconsistent with the remainder of ch. 776, F.S., which allows a person to use defensive force as soon as the person reasonably believes such force is necessary to *prevent* or terminate another person's use of unlawful force.

The bill revises s. 776.013(3), F.S., to strike the word "attacked" from the right to use self-defense in a person's dwelling, residence, or vehicle. This revision removes any ambiguity that the right to self-defense in a person's dwelling, residence, or vehicle may be interpreted to require anything more than is required throughout the remainder of ch. 776, F.S., and ensures that a person may use defensive force in his or her dwelling, residence, or vehicle to *prevent* another's unlawful use of force.

Additionally, the bill revises s. 776.013, F.S., relating to home protection, to reorganize certain subsections. This reorganization makes no substantive change to the law; instead, it more logically organizes the section.

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

The bill provides it is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Justifiable Use of Force

Chapter 776, F.S., authorizes a person to use or threaten to use force in order to defend himself, herself, another, or property. In 2005, the Legislature enacted into law what is commonly referred to as the "Stand Your Ground" (SYG) law.¹ The law codified the common law's "Castle Doctrine" which provides that a person, who is threatened with an intruder in his or her own home, has no duty to retreat and may defend himself or herself and his or her castle.² The 2005 SYG law extended this privilege to allow a person to use defensive force, without a duty to retreat, in any place that he or she had a right to be. Most recently in 2014, the Legislature amended ch. 776, F.S., to extend the justifiable use of force to also entitle a person to "threaten to use" force in the same manner in which they are justified in actually using force.³

Home Protection

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

- The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had entered, a dwelling,⁴ residence,⁵ or occupied vehicle,⁶ or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and
- The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

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

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

- Has a right to be in or is a lawful owner of the dwelling, residence, or occupied vehicle;⁷
- Is in lawful custody of a child or grandchild and sought to remove the child or grandchild from the dwelling, residence, or occupied vehicle;⁸ or
- Is a law enforcement officer who enters the dwelling, residence, or occupied vehicle in the performance of his or her duties.⁹

¹ ch. 2005-27, L.O.F.

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

³ ch. 2014-195, L.O.F.

⁴ "Dwelling" is defined to mean "a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night." s. 776.013(5)(a), F.S.

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

⁶ "Vehicle" is defined to mean "a conveyance of any kind, whether or not motorized, which is designed to transport people or property." s. 776.013(5)(c), F.S.

⁷ As long as the person does not have an injunction for protection from domestic violence or a no-contact order that him or her. s. 776.013(2)(a), F.S.

⁸ s. 776.013(2)(b), F.S.

⁹ s. 776.013(2)(c), F.S.

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

Currently, section 776.013(3), F.S., authorizes a person who is *attacked*¹⁰ in his or her dwelling, residence, or vehicle to stand his or her ground and use or threaten to use force, including deadly force, if he or she uses or threatens to use force either in accordance with:

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

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

Additionally, the circumstances under which a person in his or her dwelling, residence, or vehicle is entitled to a presumption of reasonable fear appear in the law before the section codifying the right to use or threaten to use justifiable force. Therefore, the organization of s. 776.013, F.S., may be somewhat confusing.

Defense of Property

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

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

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

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

Defense of Person

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

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

- Imminent death or great bodily harm to himself or herself;
- Imminent death or great bodily harm to another; or
- The imminent commission of a forcible felony.¹¹

¹⁰ *Emphasis added.* This change resulted from the amendments to s. 776.013(3) made in 2014. ch. 2014-195, L.O.F.

¹¹ Crimes which are classified as a "forcible felony" include: treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy;

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

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

Effect of Bill

The bill amends s. 776.013, F.S., relating to home protection, to reorganize and provide clarity to the right to the use of justifiable force in a dwelling, residence, or vehicle. The bill amends s. 776.013(3), F.S., to repeal the word “attacked” from the subsection and remove any ambiguity or potential that the law could be interpreted to require a person to first be attacked before being entitled to lawful self-defense. As a result, the law will now authorize a person who is in his or her dwelling, residence, or vehicle, to stand his or her ground and use or threaten to use force, including deadly force, if she or she threatens to use force in accordance with:

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

Persons using force in accordance with either of these provisions do not have a duty to retreat.

Additionally, the bill reorganizes the current subsections within s. 766.013, F.S., to move the subsection authorizing a person’s right to stand his or her ground, without requiring a duty to retreat, to appear before the subsections relating to the presumption of fear set forth in the statute. This reorganization makes no substantive change to the law; instead, it more logically organizes the section..

B. SECTION DIRECTORY:

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

Section 2: Providing an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

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A bill to be entitled
An act relating to justifiable use of force; amending
s. 776.013, F.S.; deleting a requirement that a person
first be attacked in his or her dwelling, residence,
or vehicle before using or threatening to use force;
conforming a cross-reference; providing an effective
date.

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

Section 1. Subsection (1) of section 776.013, Florida
Statutes, is renumbered as subsection (2) and present
subsections (2) and (3) of that section are amended to read:

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

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

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

(a) The person against whom the defensive force is used or
threatened has the right to be in or is a lawful resident of the

26 dwelling, residence, or vehicle, such as an owner, lessee, or
 27 titleholder, and there is not an injunction for protection from
 28 domestic violence or a written pretrial supervision order of no
 29 contact against that person; or

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

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

38 (d) The person against whom the defensive force is used or
 39 threatened is a law enforcement officer, as defined in s.
 40 943.10(14), who enters or attempts to enter a dwelling,
 41 residence, or vehicle in the performance of his or her official
 42 duties and the officer identified himself or herself in
 43 accordance with any applicable law or the person using or
 44 threatening to use force knew or reasonably should have known
 45 that the person entering or attempting to enter was a law
 46 enforcement officer.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1091 Arrest Warrants for State Prisoners
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Merlin <i>JG</i>	White <i>TW</i>

SUMMARY ANALYSIS

In some circumstances, a defendant who was sentenced to probation or community control in one county may violate the terms of his supervision and flee the county. The defendant may later commit an unrelated crime in a different county, which results in a conviction and sentence for the new offense.

The sheriff where the probation or community control originated may file a detainer with the correctional institution where the defendant is incarcerated, requesting that the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent. However, the sheriff is not required to serve or execute an arrest warrant while the defendant is being held on the detainer.

A detainer is not the equivalent of an arrest and does not trigger a probationer's right to be brought before the court that placed him on probation or community control for a violation of probation ("VOP") or violation of community control ("VCC") hearing. As a result, a defendant may not be sentenced for the VOP or VCC until after he or she has served his or her prison sentence for the new charges.

The PCS creates s. 948.33, F.S., to address unserved arrest warrants for state prisoners. Under the PCS:

- A state prisoner who has an unserved VOP or violation of community control ("VCC") warrant for his or her arrest may file a state prisoner's notice of unserved warrant in the circuit court of the judicial circuit where the unserved warrant was issued;
- The prisoner must also serve notice on the state attorney of that circuit;
- The circuit court must schedule the notice for a status hearing within 90 days after receipt of the notice; and
- The state prisoner may not be transported to the status hearing.

At the status hearing, the state attorney must inform the court as to whether there is an unserved VOP or VCC warrant for the arrest of the state prisoner. If there is an outstanding warrant, the court must enter an order within 30 days after the status hearing to transport the state prisoner to the county jail of the county that issued the warrant. The court must send the order to the county sheriff for execution.

The Criminal Justice Impact Conference ("CJIC") has not met to consider the impact of this bill. However, it is anticipated that the PCS will decrease the need for prison beds to the extent that state prisoners serve concurrent sentences for VOPs or VCCs addressed while imprisoned. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The PCS has an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Unserved Arrest Warrants

In some circumstances, a defendant who was sentenced to probation¹ or community control² in one county ("County A") may violate the terms of his supervision and flee the county. The defendant may later commit an unrelated crime in a different county ("County B"), which results in a conviction and sentence for the new offense. The court in County B may order that the defendant's sentence run concurrently³ to any sentence imposed for violating probation ("VOP") or community control ("VCC") in County A.

The sheriff in County A may file a detainer with the correctional institution where the defendant is incarcerated, requesting that the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent.⁴ However, the sheriff in County A is not required to serve or execute an arrest warrant⁵ while the defendant is being held on the detainer.

A detainer is not the equivalent of an arrest and does not trigger a probationer's right to be brought before the court that placed him on probation or community control for a VOP or VCC hearing.⁶ As a result, a defendant may not be sentenced for the VOP or VCC in County A until after he or she has served the prison sentence for the offense committed in County B.

In *Chapman v. State*,⁷ the Fifth District Court of Appeal addressed a similar situation. In that case, the defendant was sentenced in Brevard County in 1996 as a youthful offender to two years in prison, followed by four years of probation.⁸ In 1998, the defendant violated probation and was sentenced to two years of community control, followed by 18 months of probation.⁹ The defendant subsequently violated his community control and fled the county. In 1999, he was arrested on new charges in Bay County for burglary to a structure and principal to a burglary of a conveyance.¹⁰ The defendant entered pleas to the Bay County charges. He was sentenced to consecutive five-year terms for the two burglary cases, but concurrent with any sentence imposed for violating community control ("VCC") in Brevard County.¹¹

¹ Section 948.001(9), F.S., defines "probation" as "a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03." See also *Coulson v. State*, 342 So. 2d 1042, 1042 (Fla. 4th DCA 1977) (noting that purpose of probation is to rehabilitate an offender); see *Crossin v. State*, 244 So. 2d 142, 145 (Fla. 4th DCA 1971) (explaining, "[t]he underlying purpose of probation is to give [an] individual a second chance to live within the rules of society and the law of the land during which time he can prove that he will thereafter do so and become a useful member of society.").

² Section 948.001(3), F.S., defines "community control" as "a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced."

³ "The word 'concurrent' means 'operating or occurring at the same time.'" *Jones v. State*, 966 So. 2d 319, 326 (Fla. 2007) (citing *Merriam Webster's Collegiate Dictionary* 239 (10th ed. 2001)).

⁴ *Gethers v. State*, 838 So. 2d 504, 507 (Fla. 2003).

⁵ *Id.* (explaining that "[a] warrant is a 'writ directing or authorizing someone to do an act, esp. one directing a law enforcer to make an arrest, a search, or a seizure.'" (citing *Black's Law Dictionary* 1579 (7th ed. 1999))).

⁶ s. 948.06(1)(b)-(1)(c), F.S.

⁷ *Diaz v. State*, 737 So. 2d 1203, 1204 (Fla. 5th DCA 1999).

⁸ *Chapman v. State*, 910 So. 2d 940 (Fla. 5th DCA 2005).

⁹ *Id.* at 941.

¹⁰ *Id.*

¹¹ *Id.*

The defendant sought to have the Brevard County cases resolved by plea or trial, but “Brevard County only placed a detainer; they did not seek to have him arrested and returned for trial.”¹² The defendant filed a petition in the trial court seeking to compel the Brevard County Sheriff’s Office to arrest him by serving the arrest warrant.¹³ The trial court denied the petition, ruling that the defendant “was not entitled to mandamus relief while serving a sentence on a separate charge in a different county for an offense committed while he was on Brevard County community control.”¹⁴

On appeal, the Fifth District explained that there was no mechanism by which the defendant could compel Brevard County to arrest him.¹⁵ The defendant had no personal right to have the arrest warrant executed; rather, the state or governmental entity seeking prosecution is the entity that has a right to the service of the arrest warrant.¹⁶ The Fifth District also noted that a trial court has no ministerial duty to conduct a hearing on an affidavit alleging a VOP. A probationer is only entitled to be heard on a VOP after his arrest and return to the court which granted the probation.¹⁷

Based on the above, there is currently no provision in Florida law for a prisoner to compel an unserved warrants while in prison. The Florida Department of Corrections (“DOC”) estimates that at any given time, there are approximately 20 inmates that have unserved VOP or VCC warrants.¹⁸

Effect of the Bill

The bill creates s. 948.33, F.S., to address unserved arrest warrants for state prisoners. Under the bill:

- A state prisoner who has an unserved VOP or VCC warrant for his or her arrest may file a state prisoner’s notice of unserved warrant in the circuit court of the judicial circuit where the unserved warrant was issued;
- The prisoner must also serve notice on the state attorney of that circuit;
- The circuit court must schedule the notice for a status hearing within 90 days after receipt of the notice; and
- The state prisoner may not be transported to the status hearing.

At the status hearing, the state attorney must inform the court as to whether there is an unserved VOP or VCC warrant for the arrest of the state prisoner. If there is an outstanding warrant, the court must enter an order within 30 days after the status hearing to transport the state prisoner to the county jail of the county that issued the warrant. The court must send the order to the county sheriff for execution.

The DOC states that prisoners who are able to address their warrants for VOPs or VOCCs while imprisoned on other charges are likely to receive a concurrent sentence; thereby, reducing the need for prison beds. Additionally, being able to dispose of such warrants before release from prison, may allow the prisoner to participate in transitional and reintegration programs that would otherwise be unavailable when an outstanding warrant exists.¹⁹

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

B. SECTION DIRECTORY:

Section 1. Creates s. 948.33, F.S., relating to prosecution for VOP and VCC arrest warrants of state prisoners.

¹² *Id.*

¹³ *Id.* at 940-41.

¹⁴ *Id.* at 941.

¹⁵ *Id.* at 942.

¹⁶ *Id.* at 941-42.

¹⁷ *Id.* at 942.

¹⁸ 2017 Agency Legislative Bill Analysis for HB 1091, Department of Corrections, at 2, dated Mar. 9, 2017 (on file with the House Criminal Justice Subcommittee).

¹⁹ *Id.*

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have any impact on state government revenue.
2. Expenditures: The Criminal Justice Impact Conference ("CJIC") has not met to consider the impact of this bill. However, it is anticipated that the bill will decrease the need for prison beds to the extent that state prisoners serve concurrent sentences for VOPs and VCCs addressed while imprisoned.

The Justice Administration Commission ("JAC") states that the bill will have no fiscal impact to its agency. Impacts, if any, to the state courts system are unknown at this time.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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

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

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

²⁰ HB 1091 is identical to SB 894. JAC reviewed the Senate version of the bill, and the same analysis is applicable here. See JAC Memorandum No. 021-17, dated Feb. 17, 2017 (on file with the House Criminal Justice Subcommittee).

1 A bill to be entitled
2 An act relating to arrest warrants for state
3 prisoners; creating s. 948.33, F.S.; authorizing a
4 prisoner in a state prison who has an unserved
5 violation of probation or an unserved violation of
6 community control warrant to file a notice of unserved
7 warrant in the circuit court where the warrant was
8 issued; requiring the prisoner to serve notice on the
9 state attorney; requiring the circuit court to
10 schedule a status hearing within a certain time after
11 receiving notice; specifying procedures and
12 requirements for the status hearing; providing for
13 prosecution of the violation; requiring the court to
14 send the order to the county sheriff; providing an
15 effective date.

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

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19 Section 1. Section 948.33, Florida Statutes, is created to
20 read:

21 948.33 Prosecution for violation of probation and
22 community control arrest warrants of state prisoners.-A prisoner
23 in a state prison in this state who has an unserved violation of
24 probation or an unserved violation of community control warrant
25 for his or her arrest may file a state prisoner's notice of

26 unserved warrant in the circuit court of the judicial circuit in
 27 which the unserved warrant was issued. The prisoner must also
 28 serve notice on the state attorney of that circuit. The circuit
 29 court shall schedule the notice for a status hearing within 90
 30 days after receipt of the notice. The state prisoner may not be
 31 transported to the status hearing. At the status hearing, the
 32 state attorney shall inform the court as to whether there is an
 33 unserved violation of probation warrant or an unserved violation
 34 of community control warrant for the arrest of the state
 35 prisoner. If a warrant for either violation exists, the court
 36 must enter an order within 30 days after the status hearing for
 37 the transport of the state prisoner to the county jail of the
 38 county that issued the warrant for prosecution of the violation
 39 and the court shall send the order to the county sheriff for
 40 execution.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 6013 Breach of the Peace
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Hall <i>WH</i>	White <i>W</i>

SUMMARY ANALYSIS

Section 933.14, F.S., requires law enforcement to retain a pistol or firearm until a court orders its return when the pistol or firearm was taken either:

- Pursuant to a search warrant; or
- Without a search warrant, by an officer upon viewing a breach of the peace.

Florida law classifies a breach of the peace broadly. Section 877.03, F.S., prohibits a breach of the peace as a second degree misdemeanor. Additionally, other Florida Statutes include provisions relating to a "breach of the peace," without defining the term. When not defined by statute, Florida courts have looked to the common law meaning of the term finding it is a generic term including all violations of the public peace, order, or decorum.

Some law enforcement agencies have cited to the authority under s. 933.14, F.S., to retain firearms seized pursuant to a Baker Act (Florida's Mental Health Act), in the absence of a criminal arrest or charges. In 2016, a Florida court held that s. 933.14, F.S., did not require *or permit* law enforcement agencies to retain firearms taken in response to a safety call that did not result in a criminal investigation or charges. The court determined that the behavior of exhibiting mental health symptoms does not qualify as a violation of law constituting a breach of the peace.

The bill repeals s. 933.14(3), F.S., requiring a court order prior to the return of a pistol or firearm that was taken without a warrant, upon viewing a breach of the peace. Law enforcement will no longer have the authority to retain firearms impounded upon viewing a breach of the peace, unless a different law independently provides the authority for the firearm's retention.

The bill provides it is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Law Enforcement Retention of Firearms

In Florida, law enforcement agencies are required to take possession of any firearms found on a person pursuant to an arrest and must retain the firearm until after the disposition of the case.¹ If the person is later acquitted or the charges against them are dismissed, the person is entitled to the return of his or her firearm.² If a person has been arrested for committing or attempting to commit a felony offense while carrying, displaying, using, threatening, or attempting to use a firearm,³ the firearm is automatically forfeited to the state if the person is later convicted of the offense.⁴

Additionally, s. 933.14, F.S., requires law enforcement to retain firearms that have been confiscated under other specific circumstances. A firearm must be retained by law enforcement until there is a court order for its return when the weapon was taken either:

- Pursuant to a search warrant; or
- Without a search warrant, by an officer upon viewing a breach of the peace.

Florida law classifies a breach of the peace broadly. Section 877.03, F.S., criminalizes a breach of the peace⁵ as a second degree misdemeanor.⁶ Additionally, other Florida statutes include provisions relating to a “breach of the peace,” without defining the term.⁷ When not defined by statute, Florida courts have looked to the common law meaning of the term finding it is a “generic term including all violations of the public peace, order or decorum.”⁸

Some law enforcement agencies have cited to s. 933.14, F.S., to retain the firearms of persons they encounter related to an involuntary commitment under Florida’s Baker Act.⁹ In 2009, the Florida Attorney General’s Office issued an advisory opinion addressing law enforcement’s authority to retain firearms taken from a person sent for evaluation under the Baker Act.¹⁰ The opinion concluded that if a person is taken for an evaluation under the Baker Act, but is not arrested or charged for a criminal offense of any kind, a law enforcement agency is *not* authorized to retain firearms taken from that person.

Firearms Preemption

In the state of Florida, except as expressly provided in the Constitution or general law, the Legislature occupies the whole field of the regulation of firearms.¹¹ As such, no county, city, town, or municipal

¹ “Every officer making an arrest under s. 790.07, or under any other law or municipal ordinance within the state, shall take possession of any weapons, electric weapons or devices, or arms mentioned in s. 790.07 found upon the person arrested and deliver them to the sheriff of the county, or the chief of police of the municipality wherein the arrest is made, who shall retain the same until after the trial of the person arrested.” s. 790.08(1), F.S.

² s. 790.08(3), F.S.

³ See s. 790.07(2), F.S.

⁴ s. 790.08(2), F.S.

⁵ “Whoever commits such acts as are of a nature to corrupt the public morals; or outrage the sense of public decency; or affect the peace and quiet of persons who may witness them; or engages in brawling or fighting; or engages in such conduct as to constitute a breach of the peace or disorderly conduct commits a second degree misdemeanor.” s. 877.03, F.S.

⁶ A second degree misdemeanor is punishable by up to 60 days in the county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁷ For example, ss. 870.02 and 790.02, F.S., relating to unlawful assemblies and an officers right to arrest without a warrant and upon probable cause, respectively, prohibit certain conduct related to a breach of the peace.

⁸ *Edwards v. State*, 462 So. 2d 581, 583 (Fla. 4th 1985).

⁹ Also known as “The Florida Mental Health Act”, it provides for emergency service and temporary detention for evaluation when required. s. 394.453(1)(b)(1), F.S.

¹⁰ *Op. Att’y Gen. Fla.* 09-04, 2009 Fla. AG LEXIS 5 (2009).

¹¹ s. 790.33(1), F.S.

ordinances or administrative regulations or rules may be adopted by local or state government relating to the regulation of firearms. If such entities enact or enforce a local ordinance or an administrative rule or regulation that impinges upon the Legislature's occupation of this field they may be fined up to \$5,000,¹² and such a violation may be cause for termination from employment.¹³ Section 790.33, F.S., also permits any person who is adversely affected by any policy promulgated in violation of the law to file suit against the entity enforcing such a policy for declaratory and injunctive relief and for actual damages.¹⁴

Dougan v. Bradshaw

This appeal resulted from a trial court's dismissal of a lawsuit brought under s. 790.33, F.S., challenging a local Sheriff's policy of retaining firearms taken as a result of a safety check.¹⁵ Following the safety check in this case, the appellant was not arrested, nor was he involuntarily committed or taken for an examination pursuant to the Baker Act. Nevertheless, his lawfully owned firearm was taken by law enforcement who later declined to return it without a court order, citing to the purported authority of s. 933.14, F.S.

Relying on the legislative intent of the Baker Act,¹⁶ as well as the Florida Attorney General opinion discussed *supra*, the court found that persons do not commit a breach of the peace constituting a violation of the law simply for exhibiting symptoms related to mental health issues.¹⁷ The court further held that s. 933.14, F.S., did not require *or permit* law enforcement agencies to retain firearms that were taken "in response to a safety call which did not result in a criminal investigation or charges."¹⁸ The trial court's dismissal was reversed because the appellant had sufficiently alleged that the local Sheriff's policy of retaining firearms was not authorized by existing statute and had been enforced against him, sufficiently pleading a cause of action under s. 790.33, F.S.

Effect of Bill

The bill repeals s. 933.14(3), F.S., requiring a court order before the return of a pistol or firearm that was taken without a warrant, upon viewing a breach of the peace. Law enforcement will no longer have the authority to retain weapons taken upon viewing a breach of the peace, unless a different law independently provides the authority for the firearm's retention.

The bill provides it takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amending s. 933.14, F.S., relating to return of property taken under search warrant.

Section 2: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: It does not appear that this bill will have an impact on state government revenues.

¹² s. 790.33(3)(c), F.S.

¹³ s. 790.33(3)(e), F.S.

¹⁴ Section 790.33(3)(f)2., F.S., authorizes the recovery of actual damages incurred, but not more than \$100,000.

¹⁵ *Dougan v. Bradshaw*, 198 So. 3d 878, 880 (Fla. 4th 2016).

¹⁶ The court relied on portions of the Baker Act which direct that procedures, facilities, vehicles, and restraining devices used in connection with those accused of a crime shall not be used in connection with those who have a mental illness, except for the protection of the patient or others. s. 394.459(1), F.S.

¹⁷ *Dougan v. Bradshaw*, 198 So. 3d 878, 882 (Fla. 4th 2016).

¹⁸ *Id.*

2. Expenditures: It does not appear that the bill will have an impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: It does not appear that the bill will have an impact on local government revenues.

2. Expenditures: It does not appear that this bill will have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: None.

2. Other: None.

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

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled

An act relating to breach of the peace; amending s. 933.14, F.S.; deleting a provision requiring a court to order the return of a pistol or firearm when the pistol or firearm is taken by an officer upon viewing a breach of the peace; providing an effective date.

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

Section 1. Subsection (3) of section 933.14, Florida Statutes, is amended to read:

933.14 Return of property taken under search warrant.-
~~(3) No pistol or firearm taken by any officer with a search warrant or without a search warrant upon a view by the officer of a breach of the peace shall be returned except pursuant to an order of a trial court judge.~~

Section 2. This act shall take effect upon becoming a law.