



Justice Appropriations Subcommittee

**Monday, February 5, 2024
2:30 PM – 5:30 PM
17 HOB (Morris Hall)**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Justice Appropriations Subcommittee

Start Date and Time: Monday, February 05, 2024 02:30 pm

End Date and Time: Monday, February 05, 2024 05:30 pm

Location: Morris Hall (17 HOB)

Duration: 3.00 hrs

Consideration of the following bill(s):

CS/HB 449 Motor Vehicle Racing Penalties by Criminal Justice Subcommittee, Michael, Bankson

CS/HB 453 Forensic Genetic Genealogy Grants by Criminal Justice Subcommittee, Anderson

CS/HB 1171 Communications Fraud by Criminal Justice Subcommittee, Steele

HB 1179 Litigation Financing by Gregory, Overdorf

CS/HB 1255 Notaries Public by Civil Justice Subcommittee, Porras

HB 1393 Court Interpreter Services by Tuck

HB 1425 Juvenile Justice by Yarkosky

CS/HB 1545 Child Exploitation Offenses by Criminal Justice Subcommittee, Baker

CS/HB 1653 Duties and Prohibited Acts Associated with Death by Criminal Justice Subcommittee,
Giallombardo

HB 1657 Criminal Offenses Against Law Enforcement Officers and Other Personnel by Baker

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 02/01/2024 4:16PM by RSD

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 449 Motor Vehicle Racing Penalties
SPONSOR(S): Criminal Justice Subcommittee, Michael and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N, As CS	Butcher	Hall
2) Justice Appropriations Subcommittee		Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Florida law prohibits the following racing activities on highways, roadways, or parking lots, unless sanctioned by the proper authorities: driving a motor vehicle, including a motorcycle, in any: race; street takeover; stunt driving; speed competition or contest; drag race; test of physical endurance; or exhibition of speed or acceleration or for making a speed record; participating in, coordinating, facilitating, collecting money, filming or recording, or carrying fuel, for any such race; knowingly riding as a passenger in any such race; or purposefully stopping or slowing traffic movement for any such race.

Generally, a racing violation is a first degree misdemeanor and being a spectator at a race is punishable as a noncriminal traffic infraction.

CS/HB 449 amends s. 316.191, F.S., to:

- Increase the amount to be fined for a violation of s. 316.191(2), F.S., from a range of not less than \$500 and not more than \$1,000, to a range of not less than \$1,500 and not more than \$2,500.
- Decrease the time period during which a second violation of s. 316.191(2), F.S., will result in an enhanced penalty, from within *five years* after the date of a prior violation that resulted in conviction, to within *one year* of such violation; and
 - Increase the penalty for such a violation from a first degree misdemeanor to a third degree felony.
 - Increase the amount to be fined for such a violation from a range of not less than \$1,000 and not more than \$3,000, to a range of not less than \$5,000 and not more than \$7,500.
- Create a third degree felony for any person who violates s. 316.191(2), F.S., and, in the course of committing the offense, knowingly impedes, obstructs, or interferes with an authorized emergency vehicle, as defined in s. 316.003(1), that is on call and responding to an emergency other than a violation of s. 316.191(2), F.S.
- Create a second degree felony, in addition to a four year driver license revocation, for a second or subsequent violation of the above described offense.
- Increase the penalty for a third or subsequent violation of s. 316.191(2), F.S., within five years after the date of a prior violation that resulted in a conviction, from a first degree misdemeanor to a third degree felony, and increase the amount to be fined from a range of not less than \$2,000 and not more than \$5,000, to a range of not less than \$7,500 and not more than \$10,000.
- Increase the spectator fine under s. 316.191(4), F.S., from \$65 to \$250.

The bill may have a positive indeterminate impact on jail and prison beds by increasing the penalty for specified racing offenses from a misdemeanor to a felony, and by creating a new felony racing offense if a person knowingly impedes, obstructs, or interferes with an authorized emergency vehicle that is on call and responding to an emergency. The bill may also have an indeterminate, yet positive impact on state and local revenues by increasing fines relating to specified racing and spectator offenses.

The bill provides an effective date of July 1, 2024.

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

STORAGE NAME: h0449a.JUA

DATE: 2/2/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Street-racing involves cars, motorcycles, and other motor vehicles engaging in prearranged or spontaneous competitions on roadways. The practice endangers participants, bystanders, and property. In addition to street-racing, another dangerous activity which has recently grown in popularity across the country is known as a “street takeover.”¹ Street takeovers occur when large numbers of cars and occupants gather at a predetermined site, typically a large intersection. Vehicles are then parked in a manner which blocks the intersection to make a space for other cars to perform donuts, drifting, burn-outs and other dangerous vehicular maneuvers.² Due to the large size of these gatherings, law enforcement may experience difficulty responding to and controlling these events because of the time it takes to assemble appropriate law enforcement resources to address the crowd. Typically, by the time law enforcement presence is detected, the vehicles participating in the street takeover flee the location, along with the many bystanders who were present to watch the cars.³

In Jacksonville, street takeover participants acknowledged that their meet-ups have anywhere from 300 to thousands of people in attendance,⁴ and residents nearby indicate that these events are dangerous and often continue until well past midnight.⁵ In 2023, the Orange County Sheriff's Office made 157 arrests, issued 1,290 citations, and seized 54 vehicles related to dangerous and illegal street racing.⁶ In Miami, police arrested a suspect accused of organizing street races and intersection takeovers in South Florida dating back to 2022.⁷ According to the Florida Department of Highway Safety and Motor Vehicles, between 2018 and 2022, there were 6,641 citations issued under s. 316.191, F.S, for either street racing and stunt driving, or for actively participating as a spectator, with the majority of citations issued to persons between 16 and 29 years old.⁸

Racing Offenses

Under s. 316.191(1)(g), F.S., a “race” means the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor

¹ Erin Myers, *Car that crashed into Van Nuys building, killing 1, was being followed by police after doing donuts in street takeover* (October 25, 2021), ktla.com, <https://ktla.com/news/local-news/car-that-crashed-into-van-nuys-building-killing-1-was-being-followed-by-police-after-doing-donuts-in-street-takeover/> (last visited Jan. 30, 2024).

² Elizabeth Fuller, *What's a Street "Takeover" and Why Should You Be Concerned?*, Larchmont Buzz (Sept. 21, 2020), <https://www.larchmontbuzz.com/featured-stories-larchmont-village/whats-a-street-takeover-and-why-you-should-be-concerned/> (last visited Jan. 30, 2024).

³ Thom Taylor, *Street Takeovers Are Turning More Deadly*, MotorBiscuit (Nov. 15, 2021), <https://www.motorbiscuit.com/street-takeovers-turning-more-deadly/> (last visited Jan. 30, 2024).

⁴ Corley Peel, *I-TEAM: Local car group speaks following street takeover complaints*, News4Jax (Jan. 17, 2022), <https://www.news4jax.com/news/local/2022/01/16/local-car-group-speaks-following-street-takeover-complaints/> (last visited Jan. 30, 2024).

⁵ Scott Johnson, *I-TEAM: Complaints continue over car groups driving erratically in vacant parking lots*, News4Jax (Jan. 13, 2022), <https://www.news4jax.com/news/local/2022/01/13/i-team-complaints-continue-over-dangerous-driving-in-vacant-parking-lots/> (last visited Jan. 30, 2024).

⁶ Aurielle Eady, *2 men clocked going 199 mph while street racing on Florida Turnpike, deputies say*, Fox 35 Orlando (Jan. 23, 2024), <https://www.fox35orlando.com/news/2-men-clocked-going-199-mph-while-street-racing-on-florida-turnpike-deputies-say> (last visited Jan. 30, 2024).

⁷ Brian Hamacher, *Alleged main organizer of Miami-Dade street races and intersection takeovers arrested*, NBC Miami (Jan. 18, 2024), <https://www.nbcmiami.com/news/local/alleged-main-organizer-of-miami-dade-street-races-and-intersection-takeovers-arrested/3209953/> (last visited Jan. 30, 2024).

⁸ *Street Racing/Takeovers, Stunt Driving*, FLHSMV, <https://www.flhsmv.gov/safety-center/driving-safety/stop-racing/> (last visited Jan. 30, 2024).

vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race.

A “drag race” is a specific type of race involving:

- Two⁹ or more motor vehicles driven side-by-side at accelerating speeds in a competitive attempt to outdistance each other; or
- One or more motor vehicles driven over a common selected course, from the same starting point to the same ending point, for the purpose of comparing the relative speed or power of acceleration of such motor vehicle or vehicles within a certain distance or time limit.¹⁰

A “street takeover” is the taking over of a portion of a highway, roadway, or parking lot by blocking or impeding the regular flow of traffic to perform a race, drag race, burnout, doughnut, drifting, wheelie, or other stunt driving.¹¹

“Stunt driving” means to perform or engage in any burnouts, doughnuts, drifting, wheelies, or other dangerous motor vehicle activity on a highway, roadway, or parking lot as part of a street takeover.¹²

Florida law prohibits the following racing activities on any highway, roadway, or parking lot, unless sanctioned by the proper authorities:¹³

- Driving a motor vehicle, including a motorcycle, in a:
 - Race;
 - Street takeover;
 - Stunt driving;
 - Speed competition or contest;
 - Drag race or acceleration contest;
 - Test of physical endurance; or
 - Exhibition of speed or acceleration for the purpose of making a speed record;¹⁴
- Participating in, coordinating, facilitating, or collecting money at a race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition;
- Knowingly riding as a passenger in a race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition;
- Purposefully causing the movement of traffic, including pedestrian traffic, to slow, stop, or be impeded in any way for any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition;
- Operating a motor vehicle for the purpose of filming or recording the activities of participants in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition, not including bona fide members of the news media; or
- Operating a motor vehicle carrying any amount of fuel for the purposes of fueling a motor vehicle involved in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition.¹⁵

⁹ Drag racing most commonly involves two motor vehicles operating side-by-side. National Hot Rod Association, *Basics of Drag Racing*, <http://www.nhra.com/nhra101/basics.aspx> (last visited Jan. 30, 2024).

¹⁰ S. 316.191(1)(d), F.S.

¹¹ S. 316.191(1)(i), F.S.

¹² S. 316.191(1)(j), F.S.

¹³ S. 316.191(7), F.S.

¹⁴ S. 316.191(2), F.S.

¹⁵ *Id.*

A racing violation is a first degree misdemeanor,¹⁶ punishable by up to one year in county jail.¹⁷ Additionally, a court must impose the following penalties:

- For a violation with no prior convictions in the preceding five years, a fine of \$500 up to \$1,000 and a one year driver license suspension.
- For a second violation within five years of a prior violation resulting in a conviction, a fine of \$1,000 up to \$3,000 and a two year driver license suspension.
- For a third or subsequent violation within five years of a prior violation resulting in a conviction, a fine of \$2,000 up to \$5,000 and a four year driver license suspension.¹⁸

In addition to the criminal penalties provided, a person who commits a racing violation must pay a \$65 penalty.¹⁹ Monies collected pursuant to this additional penalty are remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health to be used to ensure the availability and accessibility of trauma services throughout the state as provided in s. 316.192, F.S.

Section 316.191, F.S., also prohibits a person from being a spectator at a drag race. To be considered a spectator, a person must knowingly be present at and view a drag race or street takeover, when such presence is the result of an affirmative choice to attend or participate in the event. For purposes of determining whether or not an individual is a spectator, the finder of fact must consider the relationship between the motor vehicle operator and the individual, evidence of gambling or betting on the outcome of the event, filming or recording the event, posting the event on social media, and any other factor that would tend to show knowing attendance or participation. Being a spectator at a drag race is a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S.²⁰

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code²¹ are listed in a single offense severity ranking chart (OSRC),²² which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{23,24} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{25,26} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.²⁷

¹⁶ *Id.*

¹⁷ S. 775.082, F.S.

¹⁸ S. 316.191(3), F.S.

¹⁹ S. 318.18(20), F.S.

²⁰ S. 316.191(4), F.S.

²¹ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

²² S. 921.0022, F.S.

²³ S. 921.0022(2), F.S.

²⁴ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

²⁵ Ss. 921.0022 and 921.0024, F.S.

²⁶ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

²⁷ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

Effect of Proposed Changes

CS/HB 449 amends s. 316.191, F.S., to:

- Increase the amount to be fined for a violation of s. 316.191(2), F.S., from a range of not less than \$500 and not more than \$1,000, to a range of not less than \$1,500 and not more than \$2,500.
- Decrease the time period during which a second violation of s. 316.191(2), F.S., will result in an enhanced penalty, from within *five years* after the date of a prior violation that resulted in conviction, to within *one year* of such violation; and
 - Increase the penalty for such a violation from a first degree misdemeanor to a third degree felony.²⁸
 - Increase the amount to be fined for such a violation from a range of not less than \$1,000 and not more than \$3,000, to a range of not less than \$5,000 and not more than \$7,500.
- Create a third degree felony for any person who violates s. 316.191(2), F.S., and, in the course of committing the offense, knowingly impedes, obstructs, or interferes with an authorized emergency vehicle, as defined in s. 316.003(1), F.S., that is on call and responding to an emergency other than a violation of s. 316.191(2), F.S.
- Create a second degree felony,²⁹ in addition to a four year driver license revocation, for a second or subsequent violation of the above described offense.
- Increase the penalty for a third or subsequent violation of s. 316.191(2), F.S., within five years after the date of a prior violation that resulted in a conviction, from a first degree misdemeanor to a third degree felony, and increase the amount to be fined from a range of not less than \$2,000 and not more than \$5,000, to a range of not less than \$7,500 to not more than \$10,000.
- Increase the spectator fine under s. 316.191(4), F.S., from \$65 to \$250.

Under the bill, an authorized emergency vehicle is a vehicle of the fire department (fire patrol), a police vehicle, and such ambulance and emergency vehicles of municipal departments, volunteer ambulance services, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Health, the Department of Transportation, and the Department of Corrections as are designated or authorized by their respective departments or the chief of police of an incorporated city or any sheriff of any of the various counties.³⁰

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.191, F.S., relating to racing on highways, street takeovers, and stunt driving.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate, yet positive impact on state revenues by increasing fines and fees for specified racing offenses, in addition to broadening the scope under which such fines and fees may be levied.

²⁸ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

²⁹ A second degree felony is punishable by up to 15 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

³⁰ S. 316.003(1), F.S.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate, yet positive impact on local revenues by increasing the amount fined for a noncriminal traffic infraction for being a spectator at a race or street takeover from \$65 to \$250.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by increasing the penalty for specified racing offenses from a misdemeanor to a felony, in addition to creating a new felony racing offense if a person knowingly impedes, obstructs, or interferes with an authorized emergency vehicle that is on call and responding to an emergency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Removed changes to s. 782.071, F.S., relating to vehicular homicide.
- Applied uniform penalties for violations of s. 316.191(2), F.S., instead of separate penalties for violations of s. 316.191(2)(a), F.S., and violations of other paragraphs in s. 316.191(2), F.S.
- Kept a standard violation s. 316.191(2), F.S., as a first degree misdemeanor, but increased the fine.
- Reduced the time period between specified offenses, during which a second violation will result in an enhanced penalty, from five years to one year, and increased the applicable fine.
- Increased the fine for a third or subsequent violation of s. 316.191(2), F.S., within five years.
- Increased the “spectator” fine under s. 316.191(4)(b), F.S.
- Created a new third degree felony for any person who violates s. 316.191(2), F.S., and, in the course of committing the offense, knowingly impedes, obstructs, or interferes with an authorized emergency vehicle that is on call and responding to an emergency, and created a second degree felony for a second or subsequent offense.

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

26 Section 1. Subsection (3), and paragraph (b) of subsection
 27 (4) of section 316.191, Florida Statutes, are amended, and
 28 subsection (2) and paragraph (a) of subsection (4) of that
 29 section are republished, to read:

30 316.191 Racing on highways, street takeovers, and stunt
 31 driving.—

32 (2) A person may not:

33 (a) Drive any motor vehicle in any street takeover, stunt
 34 driving, race, speed competition or contest, drag race or
 35 acceleration contest, test of physical endurance, or exhibition
 36 of speed or acceleration or for the purpose of making a speed
 37 record on any highway, roadway, or parking lot;

38 (b) In any manner participate in, coordinate through
 39 social media or otherwise, facilitate, or collect moneys at any
 40 location for any such race, drag race, street takeover, stunt
 41 driving, competition, contest, test, or exhibition;

42 (c) Knowingly ride as a passenger in any such race, drag
 43 race, street takeover, stunt driving, competition, contest,
 44 test, or exhibition;

45 (d) Purposefully cause the movement of traffic, including
 46 pedestrian traffic, to slow, stop, or be impeded in any way for
 47 any such race, drag race, street takeover, stunt driving,
 48 competition, contest, test, or exhibition;

49 (e) Operate a motor vehicle for the purpose of filming or
 50 recording the activities of participants in any such race, drag

51 race, street takeover, stunt driving, competition, contest,
52 test, or exhibition. This paragraph does not apply to bona fide
53 members of the news media; or

54 (f) Operate a motor vehicle carrying any amount of fuel
55 for the purposes of fueling a motor vehicle involved in any such
56 race, drag race, street takeover, stunt driving, competition,
57 contest, test, or exhibition.

58 (3) (a) 1. Except as provided in subparagraphs 2. and 3. and
59 paragraph (b), any person who violates subsection (2) commits a
60 misdemeanor of the first degree, punishable as provided in s.
61 775.082 or s. 775.083. Any person who violates subsection (2)
62 shall pay a fine of not less than \$1,500 ~~\$500~~ and not more than
63 \$2,500 ~~\$1,000~~, and the department shall revoke the driver
64 license of a person so convicted for 1 year. A hearing may be
65 requested pursuant to s. 322.271.

66 2. (b) Any person who commits a second violation of
67 subsection (2) within 1 year ~~5 years~~ after the date of a prior
68 violation that resulted in a conviction for a violation of
69 subsection (2) commits a felony of the third degree ~~misdemeanor~~
70 ~~of the first degree~~, punishable as provided in s. 775.082, ~~or~~ s.
71 775.083, or s. 775.084, and shall pay a fine of not less than
72 \$5,000 ~~\$1,000~~ and not more than \$7,500 ~~\$3,000~~. The department
73 shall also revoke the driver license of that person for 2 years.
74 A hearing may be requested pursuant to s. 322.271.

75 3. (e) Any person who commits a third or subsequent

76 violation of subsection (2) within 5 years after the date of a
77 prior violation that resulted in a conviction for a violation of
78 subsection (2) commits a felony ~~misdemeanor~~ of the third ~~first~~
79 degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or
80 s. 775.084, and shall pay a fine of not less than \$7,500 ~~\$2,000~~
81 and not more than \$10,000 ~~\$5,000~~. The department shall also
82 revoke the driver license of that person for 4 years. A hearing
83 may be requested pursuant to s. 322.271.

84 (b)1. Except as provided in subparagraph 2., any person
85 who violates subsection (2) and, in the course of committing the
86 offense, knowingly impedes, obstructs, or interferes with an
87 authorized emergency vehicle, as defined in s. 316.003(1), that
88 is on call and responding to an emergency other than a violation
89 of this section, commits a felony of the third degree,
90 punishable as provided in subparagraph(a)2.

91 2. Any person who commits a second or subsequent violation
92 of subparagraph 1. commits a felony of the second degree,
93 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
94 The department shall also revoke the driver license of that
95 person for 4 years. A hearing may be requested pursuant to s.
96 322.271.

97 (c)-(d) In any case charging a violation of subsection (2),
98 the court shall be provided a copy of the driving record of the
99 person charged and may obtain any records from any other source
100 to determine if one or more prior convictions of the person for

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101 a violation of subsection (2) have occurred within a specified
102 period ~~5 years~~ before the charged offense.

103 (4) (a) A person may not be a spectator at any race, drag
104 race, or street takeover prohibited under subsection (2).

105 (b) A person who violates paragraph (a) commits a
106 noncriminal traffic infraction, punishable by a fine of \$250 ~~as~~
107 ~~a moving violation as provided in chapter 318.~~

108 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 453 Forensic Genetic Genealogy Grants

SPONSOR(S): Criminal Justice Subcommittee, Anderson

TIED BILLS: **IDEN./SIM. BILLS:** SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee		Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Historically, the most common form of DNA analysis used to match samples and test for identification in forensic laboratories analyzes only certain parts of DNA, known as short tandem repeats (STRs). In the early 1990s, the Federal Bureau of Investigation (FBI) chose 13 STRs as the basis for a DNA identification profile, and the 13 STRs became known as the Combined DNA Index System (CODIS), which is now the general term used to describe the FBI's program of support for local, state, and national criminal justice DNA databases. When a suspect's identity is unknown, a crime laboratory may upload a forensic profile into CODIS to compare against additional DNA profiles uploaded by other federal, state, or local laboratories.

In contrast to traditional methods of DNA comparison using STR profiles in CODIS, investigative genetic genealogy (IGG) utilizes single nucleotide polymorphism (SNP)-based DNA matching combined with family tree research to produce investigative leads in criminal investigations and missing persons cases. IGG differs from the traditional STR DNA matching utilized on CODIS in the technology employed, the nature of the databases utilized, the genetic markers involved, and the algorithms run. Information and data derived from IGG is not, and cannot be, uploaded, searched, or retained in any CODIS DNA Index.

The Florida Department of Law Enforcement (FDLE) has established a Forensic Investigative Genetic Genealogy (FIGG) Program which utilizes the FDLE Genetic Genealogy Team to work with local law enforcement agencies to develop investigative leads based on DNA matches to relatives found in public genealogy databases. The FIGG Program, which is currently funded internally, accepts cases when a CODIS-eligible DNA profile has been developed but no further leads are available.

CS/HB 453 creates s. 943.327, F.S., to establish the Forensic Investigative Genetic Genealogy Grant Program within FDLE to annually award grants, from any funds specifically appropriated to the grant program, to statewide and local law enforcement agencies and medical examiner's offices to cover expenses related to using forensic investigative genetic genealogy to generate investigative leads for criminal investigations of violent crimes and unidentified human remains. The bill requires the grant funds be used only for certain limited purposes.

The bill requires each grant recipient to provide a report, including certain required information, to the executive director of FDLE no later than one year after receipt of funds under the grant program.

The grant program established in the bill is subject to legislative appropriation. If an appropriation is provided by the Legislature, the bill may have an indeterminate fiscal impact on state and local governments to the extent that local law enforcement agencies may receive grant funding from FDLE. The bill may also impact private entities to the extent that testing funded through the program may be outsourced to them.

The bill provides an effective date of July 1, 2024.

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

STORAGE NAME: h0453b.JUA

DATE: 2/2/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

FBI's Combined DNA Index System (CODIS)

Deoxyribonucleic acid (DNA) is hereditary material existing in the cells of all living organisms. A DNA profile may be created by testing the DNA in a person's cells. Similar to fingerprints, a person's DNA profile is a unique identifier, except for identical twins, who have the exact same DNA profile. DNA evidence may be collected from any biological material, such as hair, teeth, bones, skin cells, blood, semen, saliva, urine, feces, and other bodily substances.¹ "It is a fundamental principle of genetics that individuals who are closely related will share DNA from their common ancestors; and the more distant the relationship, the less DNA is shared."²

Historically, the most common form of DNA analysis used to match samples and test for identification in forensic laboratories analyzes only certain parts of DNA, known as short tandem repeats (STRs).³ In the early 1990s, the Federal Bureau of Investigation (FBI) chose 13 STRs as the basis for a DNA identification profile, and the 13 STRs became known as the Combined DNA Index System (CODIS).⁴ CODIS is now the general term used to describe the FBI's program of support for local, state, and national criminal justice DNA databases, as well as the software used to run these databases.⁵

When a suspect's identity is unknown, a participating crime laboratory may upload a forensic profile into CODIS to compare against additional DNA profiles uploaded by other federal, state, or local participating laboratories. If a match is identified, the laboratories involved exchange information to verify the match and establish coordination between the two agencies. This match can provide probable cause for law enforcement to obtain a warrant to collect a biological reference sample from an offender. A laboratory can then perform DNA analysis on the known biological sample and present the analysis as evidence in court.⁶

Investigative Genetic Genealogy (IGG)

In contrast to traditional methods of DNA comparison using STR profiles in CODIS, investigative genetic genealogy (IGG), also known as forensic genetic genealogical DNA analysis and searching⁷ or forensic genetic genealogy,⁸ utilizes single nucleotide polymorphism (SNP)⁹-based DNA matching combined with family tree research to produce investigative leads in criminal investigations and missing

¹ FindLaw, *How DNA Evidence Works*, <https://criminal.findlaw.com/criminal-procedure/how-dna-evidence-works.html> (last visited Jan. 29, 2024).

² Daniel Kling, Christopher Phillips, Debbie Kennett, and Andreas Tillmar, *Investigative genetic genealogy: Current methods, knowledge and practice*, Vol. 52, FSI Genetics, p. 1, (May 2021), [https://www.fsigenetics.com/article/S1872-4973\(21\)00013-2/fulltext](https://www.fsigenetics.com/article/S1872-4973(21)00013-2/fulltext) (last visited Jan. 29, 2024).

³ Kelly Lowenberg, *Applying the Fourth Amendment when DNA Collected for One Purpose is Tested for Another*, 79 U. Cin. L. Rev. 1289, 1293 (2011), <https://law.stanford.edu/wp-content/uploads/2011/11/APPLYING-THE-FOURTH-AMENDMENT-WHEN-DNA-COLLECTED-FOR-ONE-PURPOSE.pdf> (last visited Jan. 29, 2024).

⁴ *Id.*

⁵ Federal Bureau of Investigation, *Frequently Asked Questions on CODIS and NDIS*, <https://www.fbi.gov/how-we-can-help-you/dna-fingerprint-act-of-2005-expungement-policy/codis-and-ndis-fact-sheet> (last visited Jan. 29, 2024).

⁶ *Id.*

⁷ U.S. Department of Justice, *Interim Policy: Forensic Genetic Genealogical DNA Analysis and Searching*, <https://www.justice.gov/olp/page/file/1204386/download> (last visited Jan. 29, 2024).

⁸ *Supra* note 2, at 2.

⁹ Each SNP represents a variation in a single DNA building block. Medline Plus, National Library of Medicine, *What are single nucleotide polymorphisms (SNPs)?*, <https://medlineplus.gov/genetics/understanding/genomicresearch/snp/> (last visited Jan. 29, 2024).

persons cases.¹⁰ IGG differs from the traditional STR DNA matching utilized on CODIS in the technology employed, the nature of the databases utilized, the genetic markers involved, and the algorithms run. Information and data derived from IGG is not, and cannot be, uploaded, searched, or retained in any CODIS DNA Index.¹¹

IGG examines more than half a million SNP DNA markers which replace the STR DNA markers typically analyzed.¹² Based on the nature of SNP markers scientists are able to identify shared blocks of DNA between a forensic sample and the sample donor's potential relatives.¹³ SNP markers have been identified as being more stable than STR markers and allow for increased accuracy in identifying potential familial connections.¹⁴

The technology to conduct SNP testing became readily available to the general public in 2007 through direct-to-consumer testing companies (DTCs). Consumers purchase test kits and provide DNA samples to the companies who then generate genetic data using SNP microarrays^{15, 16} that produce 600,000 to 700,000 SNP markers. The companies can then analyze the SNP markers for purposes such as:

- Biogeographical ancestry information;
- Identifying potential genetic relatives; and
- Health, wellness, and trait conditions and predispositions.¹⁷

When the purpose is to search for potential genetic relatives, the SNP DNA profile is compared against genetic profiles of individuals who have voluntarily submitted their biological samples to these databases. A computer algorithm then evaluates potential familial relationships between the sample donor and service users.¹⁸

There are four principal DTCs: Ancestry, FamilyTreeDNA (FTDNA), MyHeritage, and 23andMe. As of August 2020, the four principal DTCs have tested over 36 million people. Many DTC genetic testing providers maintain their customers' SNP data in a database. However, the DTCs permit customers to retrieve their data to personally maintain, control, and share their SNP file. Individuals can share their SNP file with researchers and third-party services, such as GEDmatch, that offer to interpret their SNP data.¹⁹

In addition to the four principal DTCs there are also two frequently-utilized third-party services: GEDmatch and DNASolves. GEDmatch does not provide genetic testing services but instead provides a central location for users to upload and share their SNP file. GEDmatch allows users to search for matches with people who have tested on different platforms at different testing companies and have subsequently shared their SNP file with GEDmatch.²⁰ GEDmatch is also able to accept raw data from both microarrays and whole genome sequencing (WGS) and can be used for law enforcement

¹⁰ *Supra* note 2, at 2.

¹¹ *Supra* note 7, at 3-4.

¹² *Supra* note 7, at 3.

¹³ *Supra* note 7, at 3.

¹⁴ Alasdair Macdonald and Graham Holton, *What is STR and SNP DNA?*, Who Do You Think You Are?, <https://www.whodoyouthinkyouaremagazine.com/tutorials/dna/what-is-str-and-snp-dna/> (last visited Jan. 29, 2024).

¹⁵ A microarray tool is used to determine whether DNA from a particular individual contains a mutation in genes. National Human Genome Research Institute, *DNA Microarray Technology Fact Sheet*, <https://www.genome.gov/about-genomics/fact-sheets/DNA-Microarray-Technology> (last visited Jan. 29, 2024).

¹⁶ Whole genome sequencing (WGS) is another way to create SNP datasets that mirrors microarray technology and has been widely adopted to ensure sensitivity to challenging forensic sampling. *Supra* note 2.

¹⁷ Scientific Working Group DNA Analysis Methods, *Overview of Investigative Genetic Genealogy*, https://www.swgdam.org/files/ugd/4344b0_6cc9e7c82ccc4fc0b5d10217af64e31b.pdf (last visited Jan. 29, 2024).

¹⁸ *Supra* note 7, at 3.

¹⁹ *Supra* note 17, at 2.

²⁰ *Id.*

matching.²¹ Similarly, DNASolves does not provide genetic testing services, but does accept user-uploaded SNP data from the four principal DTCs.²²

Law enforcement agencies have begun opting to utilize IGG over more traditional searches on CODIS because the profiles uploaded on CODIS use far fewer STR genetic markers than the hundreds of thousands of SNP markers available on genetic genealogy companies' databases.

U.S. Department of Justice (DOJ) Interim Policy on IGG

In response to the increase in the utilization of IGG, the DOJ issued an Interim Policy on IGG. The Policy provides that law enforcement agencies may initiate the IGG process when a case involves an unsolved violent crime or unidentified human remains. The Policy provides guidelines for the IGG process including:

- Before the IGG process may be initiated an agency must have developed a STR DNA profile from a collected crime scene sample and uploaded the sample into CODIS.
- The agency must pursue all reasonable and viable investigative leads, including through a CODIS search.²³
- If a CODIS search fails to produce a probative and confirmed DNA match, the agency may utilize IGG.
- If the case is properly postured to use IGG, the agency must develop, generally through a third-party vendor, a SNP DNA profile from the collected sample and then upload the DNA profile to DTCs and other third-party genetic genealogy companies (collectively referred to as "GG" companies) to identify potential genetic relatives in the database.
- The agency must identify themselves as law enforcement to GG companies and enter and search SNP DNA profiles only in those GG company databases that provide explicit notice to their service users and the public that law enforcement may use their service sites to investigate crimes or to identify unidentified human remains.
- If the search results in one or more genetic associations, the GG company provides law enforcement with a list of genetically associated²⁴ service user names along with an estimated relationship.
- The agency may not arrest a suspect based solely on a genetic association generated by a GG company.
- The agency must treat this information as an investigate lead only and must utilize traditional genealogy research and other investigative work to determine the true nature of the genetic association, including creating a STR DNA profile of the new suspect and comparing it to the forensic profile previously uploaded to CODIS.
- If a suspect is arrested and charged with a criminal offense the agency must direct the GG company to remove from its databases and return the SNP DNA profile and all associated information to the agency.
- Biological samples and SNP DNA profiles may not be used to determine the donor's genetic predisposition for disease or any other medical condition or psychological trait.²⁵

²¹ *Supra* note 2, at 13.

²² *Supra* note 2, at 15.

²³ "Reasonable investigative leads" are credible, case-specific facts, information, or circumstances that would lead a reasonably cautious investigator to believe that their pursuit would have a fair probability of identifying a suspect. *Supra* note 7, at 5.

²⁴ A genetic association means that the donor of the sample *may* be related to the service user. *Supra* note 7, at 4.

²⁵ *Supra* notes 7 and 17.

DTCs and Third-Party Companies and Law Enforcement Access

Of the four principal commercial companies only FTDNA allows law enforcement matching within the opted in section of its database. Law enforcement agencies that want to use the FTDNA database are required to register all forensic samples and genetic files prior to uploading. FTDNA may grant permission to use the database only after the required documentation is submitted, reviewed, and approved. Even if permission is granted, access is limited for the purposes of identifying remains of deceased individuals and identifying perpetrators of homicide, sexual assault, or abduction.²⁶ FTDNA allows users to opt out of law enforcement searches.²⁷

GEDmatch, a citizen science website founded in 2010, proved crucial to the initial development of IGG. GEDmatch allows DNA profiles to be uploaded from a wide variety of sources, including law enforcement agencies. GEDmatch launched a dedicated law enforcement portal in December 2020. GEDmatch allows samples of unidentified human remains to be compared against the entire database, while profiles uploaded to identify the perpetrator of a violent crime²⁸ may only be matched against the opt in portion of the database. GEDmatch users are automatically opted out of law enforcement searches but may choose to opt in.²⁹

DNASolves was setup in December 2019 and is intended to be a dedicated SNP database for law enforcement use. Users on DNASolves contribute data solely to solve crime, there is no public-facing search and users cannot be matched with relatives. Users may voluntarily submit their name, date of birth, and their parents' names to assist investigators.³⁰

Florida Department of Law Enforcement (FDLE) Genetic Genealogy Team

FDLE has established a Forensic Investigative Genetic Genealogy (FIGG) Program which utilizes the FDLE Genetic Genealogy Team. The Genetic Genealogy Team is composed of experts in genetic genealogy, analytical research, forensics, and investigations who work with local law enforcement agencies to develop investigative leads based on DNA matches to relatives found in public genealogy databases.³¹ The FIGG Program accepts cases when a CODIS-eligible DNA profile has been developed but no further leads are available. FDLE currently uses internal funds to administer this program.³²

Effect of Proposed Changes

CS/HB 453 creates s. 943.327, F.S., to establish the Forensic Investigative Genetic Genealogy Grant Program within FDLE to annually award grants, from any funds specifically appropriated to the grant program, to statewide and local law enforcement agencies and medical examiner's offices to cover expenses related to using forensic investigative genetic genealogy to generate investigative leads for criminal investigations of violent crimes and unidentified human remains.

²⁶ *Supra* note 2, at 12.

²⁷ *Supra* note 17, at 3.

²⁸ GEDmatch defines "violent crime" as murder, non-negligent manslaughter, aggravated rape, robbery, and aggravated assault. *Supra* note 17, at 3.

²⁹ *Supra* note 17, at 4.

³⁰ *Supra* note 2, at 15.

³¹ Florida Department of Law Enforcement, *Forensic/Investigative Genetic Genealogy*, <https://www.fdle.state.fl.us/Forensics/Disciplines/Genetic-Genealogy.aspx> (last visited Jan. 29, 2024).

³² Florida Department of Law Enforcement, Agency Analysis of 2024 House Bill 453, p. 2 (Dec. 22, 2023).

The bill requires the grant funds be limited to the following purposes:

- The analysis of DNA samples to generate profiles that have a minimum of 100,000 markers and that are compatible with genetic genealogical databases that permit law enforcement use and searching.
- The use of forensic investigative genetic genealogy to solve violent crimes and to identify unidentified human remains.

The bill requires each grant recipient to provide a report to the executive director of FDLE no later than one year after receipt of funds under the grant program. The report must include all of the following:

- The amount of funding received.
- The number and type of cases pursued using forensic investigative genetic genealogy.
- The type of forensic investigative genetic genealogical methods used, including the name of the laboratory to which any testing was outsourced, if applicable, the technology employed, the name of the genetic genealogy database used, and the identity of the entity conducting any genetic genealogical research.
- The result of the DNA testing including whether or not testing was sufficiently successful to permit genetic genealogy database searching and the results of any such searching and any additional genealogical research, such as decedent identification, perpetrator identification, or no identification.
- The amount of time it took to make an identification or to determine no identification could be made.

The bill defines “forensic investigative genetic genealogy” to mean the combined application of laboratory testing, genetic genealogy, and law enforcement investigative techniques.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 943.327, F.S., relating to Forensic Investigative Genetic Genealogy Grant Program.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive impact on state revenues as FDLE and other statewide law enforcement agencies may receive grant funds.

2. Expenditures:

The bill may have an indeterminate impact on state expenditures to the extent the bill authorizes FDLE to distribute funds specifically appropriated for the grant program. Any such impact is subject to legislative appropriation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate positive impact on local government revenues to the extent that some local law enforcement agencies and medical examiner’s offices may receive future grant funding.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive impact on the private sector to the extent that the bill authorizes recipients of grant funds to cover expenses related to using certain DNA testing to generate investigative leads for specified criminal investigations, which may require outsourcing to a private entity.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides FDLE with rulemaking authority pursuant to ss. 120.536(1) and 120.54, F.S., to implement and administer the Forensic Investigative Genetic Genealogy Grant Program and to establish the process for the allocation of grant funds.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified that grant funds may be awarded to both statewide and local law enforcement agencies.
- Clarified that grant funds may only be used in:
 - The analysis of DNA samples to generate profiles that have a minimum of 100,000 markers and that are compatible with genetic genealogical databases that permit law enforcement use and searching.
 - The use of forensic investigative genetic genealogy to solve violent crimes and to identify unidentified human remains.
- Added additional reporting requirements for grant recipients.
- Provided rulemaking authority to FDLE to implement the grant program and to establish the process for the allocation of grant funds.
- Removed the definition of “forensic genetic genealogy methods” and added a definition for “forensic investigative genetic genealogy.”

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

1 A bill to be entitled
 2 An act relating to the forensic genetic genealogy
 3 grants; creating s. 943.327, F.S.; providing
 4 definitions; creating the Forensic Investigative
 5 Genetic Genealogy Grant Program within the Department
 6 of Law Enforcement; specifying potential recipients;
 7 providing purposes for the grants; requiring a report
 8 from each recipient within a certain timeframe;
 9 specifying contents of the report; providing
 10 rulemaking authority; providing an effective date.

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

13
 14 Section 1. Section 943.327, Florida Statutes, is created
 15 to read:

16 943.327 Forensic Investigative Genetic Genealogy Grant
 17 Program.—

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

19 (a) "Forensic investigative genetic genealogy" means the
 20 combined application of laboratory testing, genetic genealogy,
 21 and law enforcement investigative techniques.

22 (b) "Genetic genealogy" has the same meaning as in s.
 23 119.071(2)(r)1.

24 (2) There is created within the department the Forensic
 25 Investigative Genetic Genealogy Grant Program to award grants to

26 statewide and local law enforcement agencies and medical
27 examiner's offices to support those agencies and offices in the
28 processing of DNA samples and in conducting any associated
29 genetic genealogy research as specified under subsection (4).

30 (3) The department shall annually award to statewide and
31 local law enforcement agencies and medical examiner's offices
32 any funds specifically appropriated for the grant program to
33 cover expenses related to using forensic investigative genetic
34 genealogy to generate investigative leads for criminal
35 investigations of violent crimes and to aid in the
36 identification of unidentified human remains.

37 (4) Grants may be used in accordance with department rule
38 for any of the following purposes:

39 (a) The analysis of DNA samples to generate profiles that
40 have a minimum of 100,000 markers and that are compatible with
41 genetic genealogical databases that permit law enforcement use
42 and searching.

43 (b) The use of forensic investigative genetic genealogy to
44 solve violent crimes and to identify unidentified human remains.

45 (5) Each grant recipient must provide to the executive
46 director a report no later than 1 year after receipt of funding
47 under the grant program. This report must include all of the
48 following:

49 (a) The amount of funding received.

50 (b) The number and type of cases pursued using forensic

51 investigative genetic genealogy.

52 (c) The type of forensic investigative genetic genealogy
 53 methods used, including the name of the laboratory to which any
 54 testing was outsourced, if applicable, the technology employed,
 55 the name of the genetic genealogy database used, and the
 56 identity of the entity conducting any genetic genealogical
 57 research.

58 (d) The results of the DNA testing including whether or
 59 not testing was sufficiently successful to permit genetic
 60 genealogy database searching and the results of any such
 61 searching and any additional genealogical research, such as
 62 decendent identification, perpetrator identification, or no
 63 identification.

64 (e) The amount of time it took to make an identification
 65 or to determine no identification could be made.

66 (6) The department may adopt rules pursuant to ss.
 67 120.536(1) and 120.54 to implement and administer this section
 68 and to establish the process for the allocation of grant funds.

69 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1171 Communications Fraud
SPONSOR(S): Criminal Justice Subcommittee, Steele
TIED BILLS: **IDEN./SIM. BILLS:** SB 1220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee		Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 817.034, F.S., prohibits a person from committing organized fraud by engaging in a scheme to defraud and obtaining property thereby. A "scheme to defraud" is a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act. Under s. 817.034, F.S., if the amount of property obtained has an aggregate value of:

- \$50,000 or more, the offender commits a first-degree felony;
- \$20,000 or more, but less than \$50,000, the offender commits a second-degree felony; or
- Less than \$20,000, the offender commits a third-degree felony.

Section 817.034, F.S., also prohibits a person from committing communications fraud by engaging in a scheme to defraud and, in furtherance of that scheme, communicating with any person with intent to obtain property from that person. If the value of the property obtained or endeavored to be obtained by the communication is valued at:

- \$300 or more, the offender commits a third-degree felony; or
- Less than \$300, the offender commits a first-degree misdemeanor.

Section 540.08, F.S., prohibits the unauthorized publication of the name or likeness of a person. If proper consent is not obtained prior to publication, specified persons may bring a civil cause of action to enjoin the unauthorized use and recover damages, including an amount that would have been a reasonable royalty.

CS/HB 1171 amends s. 817.034, F.S., to prohibit a person from committing organized fraud by engaging in a scheme to defraud by utilizing false or fraudulent endorsements of nonconsenting parties; and from committing communications fraud by engaging in a scheme to defraud by utilizing false or fraudulent endorsements of nonconsenting parties and, in furtherance of that scheme, communicating with any person with the intent to obtain property from that person.

The bill reclassifies organized fraud and communications fraud offenses that are committed against a person 65 years of age or older, a minor, or a person with a mental or physical disability. Under the bill, such offenses will be reclassified as follows:

- A misdemeanor of the first-degree is reclassified to a felony of the third-degree.
- A felony of the third-degree is reclassified to a felony of the second-degree.
- A felony of the second-degree is reclassified to a felony of the first-degree.
- A felony of the first-degree is reclassified to a life felony.

The bill also provides for a civil cause of action for any person whose image or likeness was used without consent in a scheme to defraud and authorizes the person to recover an amount for damages caused by the use of his or her image or likeness.

The bill may have a positive indeterminate impact on jail and prison beds. See Fiscal Comments.

The bill provides an effective date of October 1, 2024.

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

STORAGE NAME: h1171b.JUA

DATE: 2/2/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Communications Fraud Act

Organized Fraud

Section 817.034, F.S., prohibits a person from committing organized fraud by engaging in a scheme to defraud and obtaining¹ property thereby.²

A “scheme to defraud” is a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act.³

Under s. 817.034, F.S., if the amount of property obtained has an aggregate value of:

- \$50,000 or more, the offender commits a first-degree felony;^{4,5}
- \$20,000 or more, but less than \$50,000, the offender commits a second-degree felony;^{6,7} or
- Less than \$20,000, the offender commits a third-degree felony.^{8,9,10}

Communications Fraud

Section 817.034, F.S., also prohibits a person from committing communications fraud by engaging in a scheme to defraud and, in furtherance of that scheme, communicating¹¹ with any person with intent to obtain property from that person.¹²

If the value of the property obtained or endeavored to be obtained by the communication is valued at:

- \$300 or more, the offender commits a third-degree felony;¹³ or
- Less than \$300, the offender commits a first-degree misdemeanor.¹⁴

Notwithstanding any other provisions of law:

- Separate judgments and sentences for organized fraud and for each offense of communications fraud may be imposed when all such offenses involve the same scheme to defraud.¹⁵

¹ Section 817.034(3)(b), F.S., defines “obtain” to mean temporarily or permanently depriving any person of the right to property or a benefit therefrom, or to appropriate the property to one’s own use or to the use of any other person not entitled thereto.

² S. 817.034(4)(a), F.S.

³ S. 817.034(3)(d), F.S.

⁴ A first-degree felony is punishable by up to 30 years’ imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁵ Ranked as a level 7 offense on the Criminal Punishment Code’s offense severity ranking chart (OSRC) under s. 921.0022, F.S.

⁶ A second-degree felony is punishable by up to 15 years’ imprisonment and a \$10,000 fine. *Id.*

⁷ Ranked as a level 5 offense on the OSRC.

⁸ A third-degree felony is punishable by up to 5 years’ imprisonment and a \$5,000 fine. *Id.*

⁹ Ranked as a level 3 offense on the OSRC.

¹⁰ S. 817.034(4)(a)(1.-3.), F.S.

¹¹ Section 817.034(3)(a), F.S., defines “communicate” to mean transmitting or transferring or causing another to transmit or transfer signs, signals, writing, images, sounds, data, or intelligences of any nature in whole or in part by mail, or by wire, radio, electromagnetic, photoelectronic, or photo-optical system.

¹² S. 817.034(4)(b), F.S.

¹³ This offense is unranked on the OSRC, and as such, defaults to the statutorily assigned level as described in s. 921.0023, F.S. Accordingly, because the offense is punishable as a third-degree felony it is ranked as a level 1 offense on the OSRC.

¹⁴ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁵ S. 817.034(4)(c), F.S.

- A criminal action or civil action or proceeding under s. 817.034, F.S., may be commenced at any time within five years after the cause of action accrues; however, in a criminal proceeding under this section, the period of limitation does not run during any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state, but the period of limitation otherwise applicable may not be extended by more than one year.¹⁶

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code¹⁷ are listed in a single offense severity ranking chart (OSRC),¹⁸ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{19, 20} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{21, 22} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.²³

Evidencing Prejudice While Committing an Offense

Section 775.085, F.S., reclassifies the penalty for any felony or misdemeanor to the next highest degree if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, homeless status, or advanced age²⁴ of the victim, as follows:

- A misdemeanor of the second-degree is reclassified to a misdemeanor of the first-degree;
- A misdemeanor of the first-degree is reclassified to a felony of the third-degree;
- A felony of the third-degree is reclassified to a felony of the second-degree;
- A felony of the second-degree is reclassified to a felony of the first-degree' and
- A felony of the first-degree is reclassified to a life felony.²⁵

The offender must have perceived, known, or have had reasonable grounds to perceive or know that the victim was within one of the classes delineated above for the penalty reclassification to apply.²⁶

Civil Cause of Action

Additionally, a person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of s. 775.085, F.S., has a civil cause of action for

¹⁶ S. 817.034(4)(d), F.S.

¹⁷ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

¹⁸ S. 921.0022, F.S.

¹⁹ S. 921.0022(2), F.S.

²⁰ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

²¹ Ss. 921.0022 and 921.0024, F.S.

²² A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

²³ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

²⁴ Section 775.085(1)(b)1., F.S., defines "advanced age" to mean that the victim is older than 65 years of age.

²⁵ S. 775.085(1)(a), F.S.

²⁶ S. 775.085(3), F.S.

treble damages,²⁷ an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorney fees and costs.²⁸

Evidencing Prejudice While Committing an Offense Against a Person with a Mental or Physical Disability

Section 775.0863, F.S., reclassifies the penalty for any felony or misdemeanor to the next highest degree if the commission of the offense evidences prejudice based on a mental or physical disability²⁹ of the victim, as follows:

- A misdemeanor of the second-degree is reclassified to a misdemeanor of the first-degree.
- A misdemeanor of the first-degree is reclassified to a felony of the third-degree.
- A felony of the third-degree is reclassified to a felony of the second-degree.
- A felony of the second-degree is reclassified to a felony of the first-degree.
- A felony of the first-degree is reclassified to a life felony.³⁰

The offender must have perceived, known, or have had reasonable grounds to perceive or know that the victim was within the class delineated above for the penalty reclassification to apply.³¹

Civil Cause of Action

Additionally, a person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of s. 775.0863, F.S., has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorney fees and costs.³²

Unauthorized Publication of Name or Likeness

Florida courts recognize the common law tort of unauthorized publication of another's name or likeness (sometimes referred to as "appropriation").³³ Florida law also codifies this tort in s. 540.08, F.S., providing generally the same elements as the common law tort.³⁴ Specifically, s. 540.08, F.S., prohibits a person from publishing, printing, displaying, or otherwise publicly using for purposes of trade or for any commercial or advertising purpose³⁵ the name, photograph, or other likeness of any natural person without the express written or oral consent to such use given by:

- The natural person whose name or likeness is to be used;³⁶
- Any other person authorized in writing by such person to license the commercial use of his or her name or likeness; or
- If such person is deceased:
 - Any person authorized in writing to license the commercial use of the decedent's name or likeness; or

²⁷ "Treble damages" are damages that, by statute, are three times the amount that the fact-finder determines is owed. Black's Law Dictionary (3d pocket ed. 2006).

²⁸ S. 775.085(2), F.S.

²⁹ Section 775.0863, F.S., defines "mental or physical disability" to mean a condition of mental or physical incapacitation due to a developmental disability, organic brain damage, or mental illness, and one or more mental or physical limitations that restrict a person's ability to perform the normal activities of daily living.

³⁰ S. 775.0863(1)(a), F.S.

³¹ S. 775.0863(3), F.S.

³² S. 775.0863(2), F.S.

³³ *Coton v. Televised Visual X-Ography, Inc.*, 740 F. Supp.2d 1299 (M.D. Fla. 2010).

³⁴ A plaintiff may plead an unauthorized publication cause of action under both the statutory and common law remedies. A cause of action may exist under the common law tort regardless of whether the unauthorized publication was for trade, commercial, or advertising purposes as required by statute. *Lane v. MRA Holdings, LLC*, 242 F. Supp. 2d 1205 (M.D. Fla. 2002).

³⁵ A "commercial or advertising purpose" does not include publications which do not directly promote a product or service. It is not enough that a publication is offered for sale; rather, the liability inquiry turns on whether the plaintiff's name or likeness is associated with something else within the publication. *Tyne v. Time Warner Entertainment Co., L.P.*, 901 So. 2d 802 (Fla. 2005); *Loft v. Fuller*, 408 So. 2d 619 (Fla. 4th DCA 1981); *Valentine v. CBS, Inc.*, 698 F. 2d 430 (11th Cir. 1983).

³⁶ Consent may only be given on behalf of a minor by his or her parent or guardian. S. 540.08(6), F.S.

- If no person is so authorized, then by the decedent's surviving spouse or any one of his or her surviving children.³⁷

If proper consent is not obtained, the person whose name or likeness was appropriated, or any person authorized to consent to the commercial use of the name or likeness, may sue under the statutory cause of action to enjoin the unauthorized use and recover damages, including an amount that would have been a reasonable royalty.^{38, 39} The court may also impose a civil penalty of up to \$1,000 per violation if the person whose name or likeness was appropriated is a member of the armed forces.⁴⁰ However, only the individual whose privacy was invaded may sue for unauthorized publication at common law.⁴¹

Further, the statutory cause of action does not apply to, and Florida courts generally recognize common law exceptions for:

- The publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes;
- The use of a name or likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other merchandise or property where the person has consented to the use of his or her name or likeness on or in connection with the initial sale or distribution of the items; or
- Any photograph of a person solely as a member of the public, where such person is not named or otherwise identified in or in connection with the use of such photograph.⁴²

Additionally, the statutory cause of action is not applicable to any publication, printing, display, or other public use of the name or likeness of a person occurring after the expiration of 40 years from the death of such person.⁴³

The statutory remedies provided for shall be in addition to and not in limitation of the remedies and rights of any person under the common law against the invasion of his or her privacy.⁴⁴

Fake Reviews and Other Misleading Endorsements

In October 2021, the Federal Trade Commission (FTC) sent a Notice of Penalty Offenses⁴⁵ to more than 700 companies placing them on notice that they could incur significant civil penalties, of up to \$43,792 per violation, if they use endorsements in ways that run counter to prior FTC administrative

³⁷ A person's "surviving spouse" is the person's surviving spouse under the law of his or her domicile at the time of his or her death, whether or not the spouse has later remarried, and a person's "surviving children" are his or her immediate offspring and any children legally adopted by the person. S. 540.08(1) and (6), F.S.

³⁸ S. 540.08(2), F.S.; *Coton*, 740 F. Supp. 2d at 1312.

³⁹ A claim for unauthorized publication of name or likeness is subject to the four-year catch-all statute of limitations. S. 95.11(3)(o), F.S.; *Miller v. Anheuser Busch, Inc.*, 591 F.Supp.2d 1377 (S.D. Fla. 2008).

⁴⁰ "Member of the armed forces" means an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, Space Force, Coast Guard of the United States, the Florida National Guard, or the United States Reserve Forces, and includes any officer or enlisted member who died due to injuries sustained in the line of duty. S. 540.08(2) and (3), F.S.; *Coton*, 740 F. Supp. 2d at 1312.

⁴¹ *Loft*, 408 So. at 623-625.

⁴² S. 540.08(4), F.S.; see, e.g., *Jacova v. S. Radio & Television Co.*, 83 So. 2d 34 (Fla. 1955); *Zim v. W. Publ'g Co.*, 573 F. 2d 1318 (5th Cir. 1978).

⁴³ S. 540.08(5), F.S.

⁴⁴ S. 540.08(7), F.S.

⁴⁵ Federal Trade Commission (FTC), *Notice of Penalty Offenses Concerning Deceptive or Unfair Conduct around Endorsements and Testimonials*, https://www.ftc.gov/system/files/attachments/penalty-offenses-concerning-endorsements/notice-penalty_offenses-endorsements.pdf (last visited Jan. 30, 2024).

cases.⁴⁶ FTC has determined a number of practices related to endorsements to be unfair or deceptive in prior administrative cases including, but not limited to:

- Falsely claiming an endorsement by a third party;
- Misrepresenting whether an endorser is an actual, current, or recent user;
- Using an endorsement to make deceptive performance claims;
- Failing to disclose an unexpected material connection with an endorser; and
- Misrepresenting that the experience of endorsers represents consumers' typical or ordinary experience.⁴⁷

FTC cites the rise of social media as the catalyst for increasingly blurred lines between authentic content and advertising, leading to an explosion in deceptive endorsements, including fake online reviews, across the global online marketplace.⁴⁸

Effect of Proposed Changes

CS/HB 1171 amends s. 817.034, F.S., to prohibit a person from committing organized fraud by engaging in a scheme to defraud by utilizing false or fraudulent endorsements of nonconsenting parties. The bill also prohibits a person from committing communications fraud by engaging in a scheme to defraud by utilizing false or fraudulent endorsements of nonconsenting parties and, in furtherance of that scheme, communicating with any person with the intent to obtain property from that person.

The bill reclassifies organized fraud and communications fraud offenses that are committed against a person 65 years of age or older, a minor, or a person with a mental or physical disability, as defined in s. 775.0863(1)(b), F.S. Under the bill, such offenses will be reclassified as follows:

- A misdemeanor of the first-degree is reclassified to a felony of the third-degree.
- A felony of the third-degree is reclassified to a felony of the second-degree.
- A felony of the second-degree is reclassified to a felony of the first-degree.
- A felony of the first-degree is reclassified to a life felony.

The bill also provides for a civil cause of action for any person whose image or likeness was used without consent in a scheme to defraud and authorizes the person to recover an amount for damages caused by the use of his or her image or likeness. However, the bill specifies that the remedies provided within are in addition to and not in limitation of the remedies available to any person under the common law or any other law.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 817.034, F.S., relating to Florida Communications Fraud Act.

Section 2: Provides an effective date of October 1, 2024.

⁴⁶ FTC, *Penalty Offenses Concerning Endorsements*, <https://www.ftc.gov/enforcement/notices-penalty-offenses/penalty-offenses-concerning-endorsements> (last visited Jan. 30, 2024) (see for a list of FTC administrative decisions establishing penalty offenses concerning endorsements).

⁴⁷ FTC, *FTC Puts Hundreds of Businesses on Notice about Fake Reviews and Other Misleading Endorsements*, (Oct. 13, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-puts-hundreds-businesses-notice-about-fake-reviews-other-misleading-endorsements> (last visited Jan. 30, 2024).

⁴⁸ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate impact on the private sector as it creates a new civil cause of action, which may allow any person whose image or likeness is used without consent in a scheme to defraud to recover monetary damages from any entity or individual party to the suit.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by increasing the scope of activities which constitute communications fraud. The bill also creates new misdemeanor and felony offenses, in addition to reclassifying existing felony offenses to higher degrees of offense for engaging in a scheme to defraud by false or fraudulent endorsements of nonconsenting parties, if the offense is perpetrated against a person 65 years of age or older, a minor, or a person with a mental or physical disability. This may result in more jail and prison admissions and longer terms of incarceration.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that the civil cause of action provided in the bill is in addition to and not in limitation of other remedies available to a person under the common law or any other law.
- Changed the effective date from July 1, 2024, to October 1, 2024.
- Made other technical changes.

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

26 obtains property thereby commits ~~is guilty of~~ organized fraud,
 27 punishable as follows:

28 1. If the amount of property obtained has an aggregate
 29 value of \$50,000 or more, the person commits ~~violator is guilty~~
 30 ~~of~~ a felony of the first degree, punishable as provided in s.
 31 775.082, s. 775.083, or s. 775.084.

32 2. If the amount of property obtained has an aggregate
 33 value of \$20,000 or more, but less than \$50,000, the person
 34 commits ~~violator is guilty of~~ a felony of the second degree,
 35 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

36 3. If the amount of property obtained has an aggregate
 37 value of less than \$20,000, the person commits ~~violator is~~
 38 ~~guilty of~~ a felony of the third degree, punishable as provided
 39 in s. 775.082, s. 775.083, or s. 775.084.

40 (b) Any person who engages in a scheme to defraud and, in
 41 furtherance of that scheme, communicates with any person with
 42 intent to obtain property from that person commits ~~is guilty,~~
 43 for each such act of communication, ~~of~~ communications fraud,
 44 punishable as follows:

45 1. If the value of property obtained or endeavored to be
 46 obtained by the communication is valued at \$300 or more, the
 47 person commits ~~violator is guilty of~~ a third degree felony,
 48 punishable as set forth in s. 775.082, s. 775.083, or s.
 49 775.084.

50 2. If the value of the property obtained or endeavored to

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51 | be obtained by the communication is valued at less than \$300,
52 | the person commits ~~violation~~ ~~is guilty of~~ a misdemeanor of the
53 | first degree, punishable as set forth in s. 775.082 or s.
54 | 775.083.

55 | (c) The penalty for committing an offense specified in
56 | paragraph (a) or paragraph (b) against a person age 65 years or
57 | older, against a minor, or against a person with a mental or
58 | physical disability, as defined in s. 775.0863(1)(b), shall be
59 | reclassified as follows:

60 | 1. A misdemeanor of the first degree is reclassified to a
61 | felony of the third degree.

62 | 2. A felony of the third degree is reclassified to a
63 | felony of the second degree.

64 | 3. A felony of the second degree is reclassified to a
65 | felony of the first degree.

66 | 4. A felony of the first degree is reclassified to a life
67 | felony.

68 | (d) A person whose image or likeness was used without his
69 | or her consent in a scheme to defraud may file a civil action in
70 | a court of competent jurisdiction to recover damages caused by
71 | the use of his or her image or likeness. The remedies provided
72 | for in this paragraph shall be in addition to and not in
73 | limitation of the remedies available to any person under the
74 | common law or any other law.

75 | (e)-(e) Notwithstanding any contrary provisions of law,

76 separate judgments and sentences for organized fraud under
77 paragraph (a) and for each offense of communications fraud under
78 paragraph (b) may be imposed when all such offenses involve the
79 same scheme to defraud.

80 (f)~~(d)~~ Notwithstanding any other ~~provision of~~ law, a
81 criminal action or civil action or proceeding under this section
82 may be commenced at any time within 5 years after the cause of
83 action accrues; however, in a criminal proceeding under this
84 section, the period of limitation does not run during any time
85 when the defendant is continuously absent from this ~~the~~ state or
86 is without a reasonably ascertainable place of abode or work
87 within this ~~the~~ state, but in no case shall this extend the
88 period of limitation otherwise applicable by more than 1 year.

89 Section 2. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1179 Litigation Financing
SPONSOR(S): Gregory and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 7 N	Mawn	Jones
2) Justice Appropriations Subcommittee		Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Litigation financing is a non-recourse transaction in which a litigation financier provides funds to a party to a civil lawsuit, or an attorney thereof, in exchange for a right to receive a portion of any monetary recovery awarded to the party. Litigation financiers invest in a variety of lawsuits based on the lawsuit's particular risk profile and the financier's available capital. An unscrupulous litigation financier may invest in lawsuits for reasons other than a return on investment, and may impermissibly attempt to control or direct the lawsuit to maximize the potential return or to further a goal unrelated to the right of financial recovery. Reputable litigation financiers, on the other hand, may implement a demanding due diligence process to ensure their investment in a particular lawsuit is financially sound.

Unlike with a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to pay, a litigation financier typically weighs the strength of the claim underlying the civil action, considering the likelihood that the party seeking funding will prevail and the potential damages which may be awarded. In doing so, a litigation financier typically reviews the evidence available in the lawsuit for which litigation financing is sought; depending on the lawsuit's nature, this could result in the litigation financier obtaining proprietary information or information affecting national security interests.

HB 1179 defines litigation financing as an agreement to provide financing to an attorney or party in a civil action in exchange for a right to receive payment, which right is contingent in any respect on the outcome of such action or of any matter within a portfolio that includes such action and involves the same counsel or affiliated counsel, and regulates its practice by:

- Exempting from regulation certain specified types of financing, including financing provided to or for a party to a civil action to pay the party's personal expenses during the pendency of the action.
- Prohibiting a litigation financier from engaging in specified conduct, including making or directing any decision with respect to the funded civil action or recovering more than the plaintiff recovers.
- Requiring that certain parties to a funded civil action make certain disclosures to specified parties, generally including the court, opposing counsel, and the opposing parties, in specified situations.
- Requiring a litigation financing agreement to indemnify the plaintiff to the civil action for certain costs.
- Providing that a litigation financing agreement executed in violation of the bill is void and unenforceable, and providing enforcement mechanisms.

The bill may have an indeterminate fiscal impact on the offices of the state attorneys and the Department of Legal Affairs within the Office of the Attorney General. See Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Litigation Financing

Litigation financing is a non-recourse transaction in which a litigation financier provides funds to a party to a civil lawsuit, or an attorney thereof, in exchange for a right to receive a portion of any monetary recovery awarded; in other words, the litigation financier only gets paid if the case resolves in the funded party's favor.¹ This can be a powerful tool for a party to a civil action who, without such funding, might have been forced to abandon the lawsuit or else find an attorney with sufficient financial reserves to front the costs of litigation.² Where the opposing party or his or her attorney has significant financial resources, litigation financing may level the playing field.³

Litigation financiers invest in a variety of lawsuits based on the lawsuit's particular risk profile and the financier's available capital.⁴ An unscrupulous litigation financier may invest in lawsuits for reasons other than a pure return on investment, and may impermissibly attempt to control or direct the lawsuit to maximize the potential return or to further a goal unrelated to the right to financial recovery.⁵ Reputable litigation financiers, on the other hand, may implement a demanding due diligence process to ensure their investment in a particular lawsuit is financially sound.⁶ Unlike with a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to repay the loan, a litigation financier typically looks at the strength of the claim underlying the civil action, considering the likelihood that the party or attorney seeking funding will prevail and the potential damages which may be awarded.⁷

In weighing the strength of the claim, a litigation financier typically reviews the evidence available in the lawsuit for which litigation financing is sought.⁸ Depending on the lawsuit's nature, this could result in a litigation financier obtaining proprietary information or information affecting national security interests.

¹ Giugi Carminati, *Litigation Finance: A Modern Financial Tool for Corporate Counsel*, American Bar Association: Business Law Today (Dec. 2022), https://www.americanbar.org/groups/business_law/resources/business-law-today/2022-december/a-modern-financial-tool-for-corporate-counsel/ (last visited Jan. 25, 2024).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See, e.g., *Bollea v. Gawker Media*, LLC, 913 F. Supp. 2d 1325 (M.D. Fla. 2012). Therein, Terry Bollea (known professionally as Hulk Hogan) sued Gawker Media for publishing on its website a video of Bollea engaging in sexual relations with a married woman. The lawsuit gained national attention for several reasons, among them the fact that billionaire and PayPal co-founder Peter Thiel had secretly funded Bollea's lawsuit; significantly, Gawker had published a piece outing Thiel as gay in 2007, and, many viewed Thiel's decision to fund Bollea's lawsuit as Thiel's revenge against Gawker (a charge which Thiel denied). The jury ultimately found Gawker liable and awarded Bollea \$115 million in compensatory damages and \$25 million in punitive damages; a few months later, Gawker filed for Chapter 11 bankruptcy and sold several of its media outlets before settling with Bollea for \$31 million. John Freund, *The 6th Anniversary of the Peter Thiel/Hulk Hogan/Gawker Case: What Have We Learned*, Litigation Finance Journal (Mar. 17, 2022), <https://litigationfinancejournal.com/the-6th-anniversary-of-the-peter-thiel-hulk-hogan-gawker-case-what-have-we-learned/> (last visited Jan. 25, 2024); see also, e.g., *Sysco Corp. v. Glaz LLC, et al.*, Case 1:23-cv-01451 (N.D. Ill. 2023). Therein, Sysco sued subsidiaries of Burford Capital Limited, a litigation financier from which Sysco had obtained financing for antitrust litigation, for preventing Sysco from accepting reasonable settlement offers in said litigation in order to increase Burford Capital's return and thereby forcing Sysco to continue litigating against its will. Sysco later settled the matter, ceding control over its lawsuits to Burford Capital. Emily R. Siegel, *Bloomberg Law*, <https://news.bloomberglaw.com/business-and-practice/everybody-wins-as-sysco-hands-burford-control-of-lawsuits> (last visited Jan. 25, 2024).

⁶ Carminati, *supra* note 1.

⁷ Paige Marta Skiba and Jean Xiao, *Consumer Litigation Funding: Just Another Form of Payday Lending?*, Law and Contemporary Problems Vol. 80 No. 117 (Nov. 3, 2017), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4840&context=lcp> (last visited Jan. 25, 2024).

⁸ Carminati, *supra* note 1

Concern has been expressed that:

- Where the litigation financier is a foreign actor, the foreign actor could use such information to advance its strategic interests against the United States.⁹
- Where a foreign actor provides litigation financing, the foreign actor obtains a financial interest in the financed lawsuit's outcome, which interest may be used to attempt to influence the lawsuit's direction and other decisions related thereto for purposes which may be adverse to the interests of the United States.¹⁰

Class Action Lawsuits

A "class action" is a procedural device that allows one or more plaintiffs to file and prosecute a lawsuit on behalf of a large group of individuals (the "class") who have suffered the same wrong at the hands of the defendant.¹¹ Practically speaking, a class action allows courts to manage lawsuits that would be otherwise unmanageable if each class member were required to join in the lawsuit as a named plaintiff.¹² Such actions also protect the defendant from inconsistent judgments and facilitate the spreading of litigation costs among numerous litigants.¹³

A class action lawsuit may be brought in federal court and, in certain instances, in state court; in either case, the judgment or any settlement is binding on all class members, who are thereafter generally prohibited from filing their own individual lawsuits raising the same claim.¹⁴ However, a defined class, rather uniquely, may include a person harmed by the defendant in the same manner as the other class members without such person ever receiving notice of the action.¹⁵ Thus, courts must be particularly careful to ensure that a lawsuit can be fairly adjudicated as a class action.¹⁶

Consolidated Actions

When civil actions involving a common question of law or fact are pending before a Florida court, the Florida Rules of Civil Procedure authorize the court to order a joint hearing or trial of any or all of the matters in issue in the actions; to consolidate all the actions into one action; and to make such orders about proceedings therein to avoid unnecessary costs or delay.¹⁷ However, in determining whether to consolidate civil actions, the court must consider whether:

- The trial process will be accelerated due to the consolidation;
- Unnecessary costs and delays can be avoided by consolidation;
- There is otherwise the possibility for inconsistent verdicts;
- Consolidation would eliminate duplicative trials involving substantially the same operative facts and questions of law; and
- Consolidation would deprive a party of a substantive right.¹⁸

⁹ U.S. Chamber of Commerce, *Institute for Legal Reform, Bipartisan Federal Legislation Tackles Foreign Influence in Third Party Litigation Funding*, <https://instituteforlegalreform.com/blog/bipartisan-federal-legislation-tackles-foreign-influence-in-third-party-litigation-funding/> (last visited Jan. 25, 2024).

¹⁰ *Id.*

¹¹ Class actions are often appropriate to address environmental harms (such as for oil spills or the release of toxic chemicals); large-scale consumer fraud (such as for misleading or false advertising); anti-trust violations (such as the artificial raising or fixing of prices for goods or services); product defects (where the entire line is defective, such as for defective airbags or contaminated food items); data breaches (such as those for the release of personal and payment information); civil rights violations (such as was evidenced in the *Brown v. Board of Education* lawsuit) and dangerous pharmaceuticals (such as was evidenced in the opioid crisis litigation). Legal Information Institute, *Class Action*, https://www.law.cornell.edu/wex/class_action (last visited Jan. 25, 2024).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*; see Fed. R. Civ. P. 23.; s. 768.734, F.S.

¹⁵ Legal Information Institute, *supra* note 12.

¹⁶ *Id.*

¹⁷ Fla. R. Civ. Pro. 1.270(a).

¹⁸ *State Farm Fla. Ins. Co. v. Bonham*, 886 So. 2d 1072 (Fla. 5th DCA 2004).

Indemnification

“Indemnification” occurs when one person compensates (that is, “indemnifies”) another person for damages or losses the indemnified person incurred or will incur related to a particular event or incident.¹⁹ Typically, indemnification is voluntarily provided for in a written contract executed between the person who will indemnify and the person who will be indemnified.²⁰ However, indemnification may also be required by law in certain circumstances.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) prohibits unfair methods of competition, and unconscionable, unfair, or deceptive acts or practices in the conduct of any trade or commerce.²¹ FDUTPA operates for the purposes of:²²

- Simplifying, clarifying, and modernizing the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices;
- Protecting the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce; and
- Making state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

FDUTPA provides investigative and enforcement authority to a state attorney if a violation occurs in or affects the judicial circuit under the office’s jurisdiction, and to the Department of Legal Affairs (“DLA”) within the Office of the Attorney General if a violation occurs in or affects more than one judicial circuit, or if a state attorney defers to DLA or fails to act within 90 days.²³ An enforcing authority may, within four years after a violation occurs or within two years after the last payment in a transaction involved in a violation, bring an action:

- To obtain a declaratory judgment that an act or practice violates FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA; or
- On behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.²⁴

Additionally, an enforcing authority may collect a civil penalty of up to \$10,000 per violation plus reasonable attorney fees and costs for a willful violation and up to a \$15,000 penalty plus reasonable attorney fees and costs for a willful violation involving a senior citizen, a disabled person, a military servicemember, or the spouse or dependent child of a military servicemember.²⁵ DLA may also issue a cease and desist order if such order would be in the public’s interest.²⁶

FDUTPA also creates a private cause of action for any person aggrieved by a violation of FDUTPA to:

- Obtain a declaratory judgement that an act or practice violates FDUTPA;
- Enjoin a person who has violated, is violating, or is otherwise likely to violate this part; and
- Recover actual damages plus reasonable attorney fees and costs.²⁷

¹⁹ Legal Information Institute, *Indemnify*, <https://www.law.cornell.edu/wex/indemnify> (last visited Jan. 25, 2024).

²⁰ *Id.*

²¹ The term “trade or commerce” is defined as advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. The term includes the conduct of any trade or commerce including any nonprofit or not-for-profit person or activity. Ss. 501.203(8) and 501.204(1), F.S.

²² S. 501.202, F.S.

²³ Ss. 501.203(2), 501.206, and 501.207, F.S.

²⁴ S. 501.207(1) and (5), F.S.

²⁵ Ss. 501.2075, 501.2077, and 501.2105, F.S.

²⁶ S. 501.208(1), F.S.

²⁷ Ss. 501.2105 and 501.211, F.S.

Effect of Proposed Changes

HB 1179 creates the Litigation Investment Safeguards and Transparency Act in Part II of Chapter 69, F.S., to regulate certain types of litigation financing in Florida.

Definitions

The bill creates s. 69.101, F.S., to provide definitions. Specifically, the bill defines “litigation financing agreement” or “litigation financing” as a transaction in which a litigation financier agrees to provide financing to an attorney or party in a civil action in exchange for a right to receive payment, which right is contingent in any respect on the outcome of such action or on the outcome of any matter within a portfolio that includes such action and involves the same counsel or affiliated counsel. However, under the bill, the terms do not apply to:

- An agreement in which funds are provided for or to a party to a civil action for such person’s use in paying his or her costs of living or other personal or familial expenses while the action is pending, if such funds are not used to finance the action itself or other legal costs.
- An agreement in which an attorney consents to provide legal services on a contingency fee basis or to advance his or her client’s legal costs.
- An entity (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to a civil action.
- A health insurer that has paid, or is obligated to pay, any sums for health care for an injured person under the terms of a health insurance plan or agreement.
- The repayment of a financial institution for loans made to a party to a civil action, when repayment of the loan is not contingent upon such lawsuit’s outcome.
- Funding provided to a nonprofit legal organization funded by private donors that represents clients on a pro bono basis, if the nonprofit legal organization seeks only injunctive relief on behalf of its clients.

The bill also defines:

- “Foreign person” to mean a person that is not:
 - A United States citizen;
 - An alien lawfully admitted for permanent United States residence;
 - An unincorporated association, a majority of members of which are United States citizens or aliens lawfully admitted for permanent United States residence; or
 - A corporation that is incorporated in the United States.
- “Foreign principal” to mean:
 - The government or a government official of a foreign country;
 - A political subdivision or political party of a foreign country; or
 - A partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country whose shares or other ownership interest is owned by the government, a government official, a political subdivision, or a political party of a foreign country.
- “Health care practitioner” to mean any person licensed under any of the following chapters of the Florida Statutes: 457; 458; 459; 460; 461; 462; 463; 464; 465; 466; 467; part I, part II, part III, part V, part X, part XIII, or part XIV of 468; 478; 480; part I, part II, or part III of 483; 484; 486; 490; or 491.
- “Litigation financier” to mean a person engaged in the business of providing litigation financing.
- “National security interest” to mean those interests relating to the national defense, foreign intelligence and counterintelligence, international and domestic security, and foreign relations.
- “Proprietary information” to mean information developed, created, or discovered by a person, or which became known by or was conveyed to the person, which has commercial value in the person’s business (such as trade secrets, schematics, algorithms, or business research).
- “Sovereign wealth fund” to mean an investment fund owned or controlled by a foreign principal or an agent thereof.

Representation of Client Interests

The bill creates s. 69.103, F.S., to authorize a court to take a litigation financing agreement's existence into account in the following situations:

- In a class action lawsuit brought in Florida courts when determining whether a class representative or class counsel would adequately and fairly represent the class's interests.
- In actions involving a common question of law or fact pending before the court which may be or have been consolidated when determining whether the lead counsel or any co-lead counsel would adequately and fairly represent the interests of the parties to such actions.

Prohibited Conduct

The bill creates s. 69.105, F.S., to prohibit a litigation financier from:

- Directing, or making any decision with respect to, the course of any civil action for which the litigation financier has provided financing, or any settlement or other disposition thereof. Under the bill, all rights to make decisions with respect to the course and settlement or other disposition of the subject civil action remain solely with the parties thereto and their attorneys.
- Contracting for or receiving a larger share of the proceeds of a financed civil action than the share of the proceeds collectively recovered by the plaintiffs to any such action after the payment of attorney fees and costs.
- Paying or offering to pay a commission, referral fee, or other consideration to any person for referring someone to the litigation financier.
- Assigning or securitizing a litigation financing agreement in whole or in part.
- Being assigned rights to or in a civil action, other than the right to receive a share of the proceeds thereof under the litigation financing agreement.

Required Disclosures

Disclosure of Litigation Financing Agreements

The bill creates s. 69.107, F.S., to provide that a litigation financing agreement is discoverable and to require that specified disclosures relating to a litigation financing agreement be made to certain parties. Specifically, the bill requires:

- An attorney who obtains litigation financing to disclose the financing agreement's existence and deliver a copy thereof to his or her client within 30 days after being retained as counsel by such client or entering into the agreement, whichever is earlier.
- A party to a civil action or the attorney thereof who obtains litigation financing to, except as otherwise stipulated to by the parties to the action or as otherwise ordered by a court of competent jurisdiction, disclose the financing agreement's existence and deliver a copy thereof within 30 days after the action's commencement to:
 - All parties to the civil action;
 - The court in which the action is pending; and
 - Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the action.
- The class counsel of a putative class for which litigation financing is obtained to disclose any legal, financial, or other relationship between the class counsel and the litigation financier that exists separate and apart from the litigation financing agreement itself within 30 days after commencement of such action or the litigation financing agreement's execution, whichever is earlier, to:
 - All parties to the civil action;
 - The court in which the civil action is pending; and
 - Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the civil action.

- The class counsel in a class action or putative class action lawsuit for which litigation financing is obtained to, upon a class member's request, disclose and deliver a copy of the litigation financing agreement to the class member.
- The lead counsel and co-lead counsel, if any, for civil actions consolidated in Florida courts to disclose the existence of a litigation financing agreement entered into in connection with any of the consolidated actions and deliver a copy thereof to:
 - All parties to the civil actions;
 - The court in which the civil actions are pending; and
 - Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the civil actions.

Disclosure of Foreign Financial Interests

Section 69.107, F.S., also requires that specified disclosures of certain foreign financial and related interests be made to certain parties. Specifically, the bill requires a party to a civil action or his or her attorney to, except as otherwise stipulated to by the parties to the action or as otherwise ordered by a court of competent jurisdiction, disclose the name, address, and citizenship or country of incorporation or registration of any foreign person, foreign principal, or sovereign wealth fund that, with respect to the civil action:

- Obtained or will obtain a right to receive payment that is contingent upon the action's outcome or on the outcome of any matter within a portfolio that includes the action and involves the same counsel or affiliated counsel;
- Provided or will provide funds, whether directly or indirectly, which funds have been or will be used to satisfy any term of a litigation financing agreement into which the party or his or her attorney has entered to finance the action; or
- Has received or is entitled to receive proprietary information or information affecting national security interests obtained as a result of the financing of the action by a litigation financing agreement entered into by the party or his or her attorney.

Under the bill, such a disclosure must be made to the following persons:

- All parties to the civil action;
- The court in which the action is pending;
- Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the action;
- The Florida Department of Financial Services; and
- The Office of the Florida Attorney General.

Nature of Disclosure Obligations

Under the bill, the disclosure obligations described above are ongoing obligations. Thus, where a party to a civil action or his or her attorney:

- Enters into or amends a litigation financing agreement after commencing the action, the party or attorney has 30 days after the date of agreement execution or amendment to comply with any applicable disclosure obligations.
- Obtains information relating to the interests of a foreign person, foreign principal, or sovereign wealth fund after commencing the action, the party or attorney has 30 days from the date of obtaining such information to comply with any applicable disclosure obligations.

Indemnification by Litigation Financiers

The bill creates s. 69.109, F.S., to require a litigation financier to agree, in any litigation financing agreement, to indemnify the plaintiffs to the funded civil action or their attorneys against any adverse costs, attorney fees, damages, or sanctions that may be ordered or awarded against such persons in such action. However, under the bill, indemnification is not required for those adverse costs, attorney

fees, damages, or sanctions which the litigation financier can show resulted from the intentional misconduct of such plaintiffs or their attorneys.

Violations and Enforcement

The bill creates s. 69.111, F.S., to provide that a litigation financing agreement executed in violation of the Litigation Investment Safeguards and Transparency Act is void and unenforceable. Further, under the bill:

- A violation of the bill's prohibited conduct or indemnification provisions is a FDUTPA violation.
- A court may impose fines or any other sanction it deems appropriate upon any person who violates the bill's disclosure obligations.

Severability

The bill provides for severability. Specifically, the bill provides that, if any portion of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provisions.

Applicability

The bill generally applies to a litigation financing agreement entered into on or after July 1, 2024. However, the disclosure obligations created by the bill apply to any civil action pending or commenced on or after July 1, 2024. The bill gives any party to a civil action or the attorney thereof who would have been required to make a disclosure under s. 69.107, F.S., had it been in effect at the time the relevant action occurred, 30 days from July 1, 2024, to comply with the disclosure obligations or else face the possibility of court-imposed sanctions.

Effective Date

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Provides a short title.

Section 2: Designates ss. 69.011-69.081, F.S., as Part I of chapter 69, F.S., relating to general provisions.

Section 3: Creates ss. 69.101-69.109, F.S., relating to litigation financing.

Section 4: Provides for severability.

Section 5: Provides applicability of the disclosure obligations.

Section 6: Provides general applicability.

Section 7: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector to the extent that it shields persons from specified actions of unscrupulous litigation financiers, which actions would have had a negative financial impact on such persons, or allows a person to recover his or her actual damages resulting from a litigation financier's violation of the Act.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on the offices of the state attorneys and on DLA to the extent that it may increase the number of FDUTPA claims they enforce. However, to the extent that such entities can likely absorb any additional costs resulting from the bill within existing resources, and that they may recover civil fines and attorney fees under FDUTPA, the fiscal impact to such entities may be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Equal Protection

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part, that “[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws.” Though the Constitution does distinguish between citizens and non-citizens in certain respects, this clause, known as the Equal Protection Clause, makes no such distinction; thus, the United States Supreme Court has long interpreted it to apply to all persons within the territorial jurisdiction of the United States, without regard to their national origin.²⁸ Where a law discriminates between persons on the basis of national origin or other “suspect classifications,” courts assess the law under a heightened scrutiny standard, requiring the enacting government to have a compelling interest justifying the discrimination, which discrimination must be carefully tailored to serve such interest.²⁹

The bill creates additional disclosure requirements where a foreign person, foreign principal, or sovereign wealth fund has a specified financial interest in or obtains certain information as a result of a civil action, which requirements do not apply where the litigation financier or the entity that obtains such information is a domestic entity. Whether or not the imposition of such additional requirements in this manner violates the Equal Protection Clause is for the courts to decide; however, the State

²⁸ *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

²⁹ The National Constitution Center, *The Equal Protection Clause*, <https://constitutioncenter.org/the-constitution/amendments/amendment-xiv/clauses/702> (last visited Jan. 25, 2024).

may have a compelling interest in requiring disclosures related to a foreign person, foreign principal, or sovereign wealth fund as contemplated by the bill.

B. RULE-MAKING AUTHORITY:

The bill requires that certain disclosures be made to DFS and the OAG but does not provide either agency with rule-making authority related to such disclosures.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to litigation financing; providing a
3 short title; designating ss. 69.011-69.081, F.S., as
4 part I of ch. 69, F.S.; creating part II of ch. 69,
5 F.S., relating to litigation financing; creating s.
6 69.101, F.S.; providing definitions; creating s.
7 69.103, F.S.; requiring a court's consideration of
8 potential conflicts of interest which may arise from
9 the existence of a litigation financing agreement in
10 specified circumstances; creating s. 69.105, F.S.;
11 prohibiting specified acts by litigation financiers;
12 creating s. 69.107, F.S.; requiring certain
13 disclosures related to litigation financing agreements
14 and the involvement of foreign persons, foreign
15 principals, or sovereign wealth funds; providing for
16 discovery related to litigation financing agreements;
17 creating s. 69.109, F.S.; requiring the
18 indemnification of specified fees, costs, and
19 sanctions by a litigation financier in specified
20 circumstances; creating s. 69.111, F.S.; providing
21 that a litigation financing agreement is void in
22 specified circumstances; providing for enforcement of
23 specified violations under the Florida Deceptive and
24 Unfair Trade Practices Act; providing severability;
25 providing applicability; providing an effective date.

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

Section 1. This act may be cited as the "Litigation Investment Safeguards and Transparency Act."

Section 2. Sections 69.011, 69.021, 69.031, 69.041, 69.051, 69.061, 69.071, and 69.081, Florida Statutes, are designated as part I of chapter 69, Florida Statutes, and entitled "General Provisions."

Section 3. Part II of chapter 69, Florida Statutes, consisting of ss. 69.101, 69.103, 69.105, 69.107, 69.109, and 69.111, Florida Statutes, is created to read:

PART II

LITIGATION FINANCING

69.101 Definitions.—As used in this part, the term:

(1) "Foreign person" means a person or an entity that is not:

(a) A citizen of the United States;

(b) An alien lawfully admitted for permanent residence in the United States;

(c) An unincorporated association, a majority of members of which are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

(d) A corporation that is incorporated in the United

51 States.

52 (2) "Foreign principal" means:

53 (a) The government or a government official of any country
54 other than the United States;

55 (b) A political subdivision or political party of a
56 country other than the United States; or

57 (c) A partnership, association, corporation, organization,
58 or other combination of persons organized under the laws of or
59 having its principal place of business in a country other than
60 the United States whose shares or other ownership interest is
61 owned by the government or a government official of a country
62 other than the United States or owned by a political subdivision
63 or political party of a country other than the United States.

64 (3) "Health care practitioner" has the same meaning as
65 provided in s. 456.001.

66 (4) "Litigation financier" means a person engaged in the
67 business of providing litigation financing.

68 (5) "Litigation financing agreement" or "litigation
69 financing" means a transaction in which a litigation financier
70 agrees to provide financing to a person who is a party to or
71 counsel of record for a civil action, administrative proceeding,
72 claim, or other legal proceeding in exchange for a right to
73 receive payment, which right is contingent in any respect on the
74 outcome of such action, claim, or proceeding or on the outcome
75 of any matter within a portfolio that includes such action,

76 claim, or proceeding and involves the same counsel or affiliated
77 counsel. However, the terms do not apply to:

78 (a) An agreement wherein funds are provided for or to a
79 party to a civil action, administrative proceeding, claim, or
80 other legal proceeding for such person's use in paying his or
81 her costs of living or other personal or familial expenses
82 during the pendency of such action, claim, or proceeding and
83 where such funds are not used to finance any litigation or other
84 legal costs.

85 (b) An agreement wherein an attorney consents to provide
86 legal services on a contingency fee basis or to advance his or
87 her client's legal costs, and where such services or costs are
88 provided by the attorney in accordance with the Florida Rules of
89 Professional Conduct.

90 (c) An entity with a preexisting contractual obligation to
91 indemnify or defend a party to a civil action, administrative
92 proceeding, claim, or other legal proceeding.

93 (d) A health insurer that has paid, or is obligated to
94 pay, any sums for health care for an injured person under the
95 terms of a health insurance plan or agreement.

96 (e) The repayment of a financial institution, as defined
97 in s. 655.005, for loans made directly to a party to a civil
98 action, administrative proceeding, claim, or other legal
99 proceeding or such party's attorney when repayment of the loan
100 is not contingent upon the outcome of such action, claim, or

101 proceeding or on the outcome of any matter within a portfolio
 102 that includes such action, claim, or proceeding and involves the
 103 same counsel or affiliated counsel.

104 (f) Funding provided to a nonprofit legal organization
 105 funded by private donors that represents clients on a pro bono,
 106 no-cost basis, if the nonprofit legal organization seeks only
 107 injunctive relief on behalf of its clients. This part does not
 108 affect the award of costs or attorney fees to a nonprofit legal
 109 organization in the pro bono, no-cost pursuit of injunctive
 110 relief.

111 (6) "National security interests" means those interests
 112 relating to the national defense, foreign intelligence and
 113 counterintelligence, international, and domestic security, and
 114 foreign relations.

115 (7) "Proprietary information" means information developed,
 116 created, or discovered by a person, or which became known by or
 117 was conveyed to the person, which has commercial value in the
 118 person's business. The term includes, but is not limited to,
 119 domain names, trade secrets, copyrights, ideas, techniques,
 120 inventions, regardless of whether patentable, and other
 121 information of any type relating to designs, configurations,
 122 documentation, recorded data, schematics, circuits, mask works,
 123 layouts, source code, object code, master works, master
 124 databases, algorithms, flow charts, formulae, works of
 125 authorship, mechanisms, research, manufacture, improvements,

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126 assembly, installation, intellectual property including patents
127 and patent applications, and information concerning the person's
128 actual or anticipated business, research, or development or
129 received in confidence by or for the person from any other
130 source.

131 (8) "Sovereign wealth fund" means an investment fund owned
132 or controlled by a foreign principal or an agent thereof.

133 69.103 Litigation financing agreement; representation of
134 client interests.—A court may take the existence of a litigation
135 financing agreement into account:

136 (1) In a class action lawsuit brought in the courts of
137 this state when determining whether a class representative or
138 class counsel would adequately and fairly represent the
139 interests of the class.

140 (2) In actions involving a common question of law or fact
141 pending before the court which may be or have been consolidated
142 when determining whether the lead counsel or any co-lead counsel
143 would adequately and fairly represent the interests of the
144 parties to such actions.

145 69.105 Prohibited conduct.—A litigation financier may not:

146 (1) Direct, or make any decisions with respect to, the
147 course of any civil action, administrative proceeding, claim, or
148 other legal proceeding for which the litigation financier has
149 provided financing, or any settlement or other disposition
150 thereof. This prohibition includes, but is not limited to,

151 decisions in appointing or changing counsel, choice or use of
152 expert witnesses, and litigation strategy. All rights to make
153 decisions with respect to the course and settlement or other
154 disposition of the subject civil action, administrative
155 proceeding, claim, or other legal proceeding remain solely with
156 the parties to such action, claim, or proceeding and their
157 counsel of record.

158 (2) Contract for or receive, whether directly or
159 indirectly, a larger share of the proceeds of a civil action,
160 administrative proceeding, claim, or other legal proceeding
161 financed by a litigation financing agreement than the share of
162 the proceeds collectively recovered by the plaintiffs to any
163 such action, claim, or proceeding after the payment of any
164 attorney fees and costs owed in connection to such action,
165 claim, or proceeding.

166 (3) Pay or offer to pay a commission, referral fee, or
167 other consideration to any person, including an attorney, law
168 firm, or health care practitioner, for referring a person to the
169 litigation financier.

170 (4) Assign or securitize a litigation financing agreement
171 in whole or in part.

172 (5) Be assigned rights to or in a civil action,
173 administrative proceeding, claim, or other legal proceeding for
174 which the litigation financier provided financing, other than
175 the right to receive a share of the proceeds of such action,

176 claim, or proceeding pursuant to the litigation financing
 177 agreement.

178 69.107 Required disclosures; discovery obligations.—

179 (1) An attorney who enters into a litigation financing
 180 agreement must disclose the existence and deliver a copy of the
 181 agreement to the client he or she represents in the civil
 182 action, administrative proceeding, claim, or other legal
 183 proceeding financed by the agreement within 30 days after being
 184 retained as counsel by such client, or within 30 days after
 185 entering into the litigation financing agreement, whichever is
 186 earlier.

187 (2) Except as otherwise stipulated to by the parties to a
 188 civil action, administrative proceeding, claim, or other legal
 189 proceeding, or as otherwise ordered by a court of competent
 190 jurisdiction, a party to or counsel of record for a civil
 191 action, administrative proceeding, claim, or other legal
 192 proceeding who enters into a litigation financing agreement with
 193 respect to such action, claim, or proceeding must, without
 194 awaiting a discovery request and within 30 days after
 195 commencement of such action, claim, or proceeding, disclose the
 196 existence and deliver to the following parties a copy of the
 197 litigation financing agreement:

198 (a) All parties to the civil action, administrative
 199 proceeding, claim, or other legal proceeding.

200 (b) The court, agency, or tribunal in which the civil

201 action, administrative proceeding, claim, or other legal
202 proceeding is pending.

203 (c) Any known person, including an insurer, with a
204 preexisting contractual obligation to indemnify or defend a
205 party to the civil action, administrative proceeding, claim, or
206 other legal proceeding.

207 (3) In addition to complying with subsections (1) and (2),
208 the class counsel of a putative class in a class action lawsuit
209 for which litigation financing is obtained must disclose to the
210 following persons the existence of any legal, financial, or
211 other relationship between the class counsel and the litigation
212 financier that exists separate and apart from the litigation
213 financing agreement itself within 30 days after commencement of
214 such action or of the execution of the litigation financing
215 agreement, whichever is earlier:

216 (a) All parties to the civil action, administrative
217 proceeding, claim, or other legal proceeding.

218 (b) The court, agency, or tribunal in which the civil
219 action, administrative proceeding, claim, or other legal
220 proceeding is pending.

221 (c) Any known person, including an insurer, with a
222 preexisting contractual obligation to indemnify or defend a
223 party to the civil action, administrative proceeding, claim, or
224 other legal proceeding.

225 (4) The class counsel in a class action or putative class

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226 action lawsuit for which litigation financing is obtained must,
227 upon the request of a class member, disclose and deliver a copy
228 of the litigation financing agreement to the class member.

229 (5) In addition to complying with subsections (1) and (2),
230 the lead counsel and co-lead counsel, if any, for civil actions
231 consolidated in the courts of this state must disclose to the
232 following parties the existence of and deliver a copy of any
233 litigation financing agreement entered into in connection with
234 any of the consolidated actions:

235 (a) All parties to the consolidated civil actions.

236 (b) The court, agency, or tribunal in which the civil
237 actions are pending.

238 (c) Any known person, including an insurer, with a
239 preexisting contractual obligation to indemnify or defend a
240 party to the civil actions.

241 (6)(a) A party to a civil action, administrative
242 proceeding, claim, or other legal proceeding, or such party's
243 counsel of record, must, except as otherwise stipulated to by
244 the parties to such action, claim, or proceeding, or as
245 otherwise ordered by a court of competent jurisdiction, disclose
246 as prescribed in paragraph (b) the name, address, and
247 citizenship or country of incorporation or registration of any
248 foreign person, foreign principal, or sovereign wealth fund
249 that, with respect to the action, claim, or proceeding:

250 1. Obtained or will obtain a right to receive any payment

251 that is contingent in any respect on the outcome of such civil
 252 action, administrative proceeding, claim, or other legal
 253 proceeding, or on the outcome of any matter within a portfolio
 254 that includes such civil action, administrative proceeding,
 255 claim, or other legal proceeding and involves the same counsel
 256 or affiliated counsel;

257 2. Provided or will provide funds, whether directly or
 258 indirectly, which funds have been or will be used to satisfy any
 259 term of a litigation financing agreement into which the party or
 260 the party's counsel of record has entered to finance such civil
 261 action, administrative proceeding, claim, or other legal
 262 proceeding; or

263 3. Has received or is entitled to receive proprietary
 264 information or information affecting national security interests
 265 obtained as a result of the financing of such civil action,
 266 administrative proceeding, claim, or other legal proceeding by a
 267 litigation financing agreement entered into by the party or the
 268 party's counsel of record.

269 (b) The disclosures required in paragraph (a) must be made
 270 to the following persons:

271 1. All parties to the civil action, administrative
 272 proceeding, claim, or other legal proceeding.

273 2. The court, agency, or tribunal in which the civil
 274 action, administrative proceeding, claim, or other legal
 275 proceeding is pending.

276 3. Any known person, including an insurer, with a
 277 preexisting contractual obligation to indemnify or defend a
 278 party to the civil action, administrative proceeding, claim, or
 279 other legal proceeding.

280 4. The Department of Financial Services.

281 5. The Office of the Attorney General.

282 (7) The fact of the existence of a litigation financing
 283 agreement and the identities of all parties to the agreement are
 284 discoverable in any civil action, administrative proceeding,
 285 claim, or other legal proceeding financed by such an agreement,
 286 unless the court, for good cause shown, determines otherwise.

287 (8) The disclosure obligations in this section are ongoing
 288 obligations. Thus, when a party to a civil action,
 289 administrative proceeding, claim, or other legal proceeding, or
 290 his or her counsel of record:

291 (a) Enters into or amends a litigation financing agreement
 292 after the commencement of such action, claim, or proceeding, the
 293 party or attorney has 30 days after the date of entering into or
 294 amending the litigation financing agreement to comply with the
 295 disclosure obligations established herein.

296 (b) Obtains information on the involvement of a foreign
 297 person, foreign principal, or sovereign wealth fund after the
 298 commencement of such action, claim, or proceeding, which
 299 involvement would require disclosure under this section, the
 300 party or attorney has 30 days after the date of obtaining the

301 information to comply with the disclosure obligations
 302 established herein.

303 69.109 Indemnification by litigation financiers.—In any
 304 litigation financing agreement, the litigation financier must
 305 agree to indemnify the plaintiffs to the civil action,
 306 administrative proceeding, claim, or other legal proceeding
 307 funded in the agreement and such plaintiffs' counsel of record
 308 against any adverse costs, attorney fees, damages, or sanctions
 309 that may be ordered or awarded against such persons in such
 310 action, claim, or proceeding. However, indemnification is not
 311 required for those adverse costs, attorney fees, damages, or
 312 sanctions that the litigation financier can show resulted from
 313 the intentional misconduct of such plaintiffs or plaintiffs'
 314 counsel of record.

315 69.111 Violations; enforcement.—

316 (1) A litigation financing agreement executed in violation
 317 of this part is void and unenforceable.

318 (2) A violation of s. 69.105 or s. 69.109 is a deceptive
 319 and unfair trade practice actionable under part II of chapter
 320 501.

321 (3) A court, agency, or tribunal of competent jurisdiction
 322 may impose fines or any other sanction it deems appropriate upon
 323 any person who violates s. 69.107.

324 Section 4. If any provision of this act or its application
 325 to any person or circumstance is held invalid, the invalidity

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326 does not affect other provisions or applications of the act
327 which can be given effect without the invalid provision or
328 application, and to this end the provisions of this act are
329 severable.

330 Section 5. The disclosure requirements in s. 69.107,
331 Florida Statutes, as created by this act apply to any civil
332 action, administrative proceeding, claim, or other legal
333 proceeding pending or commenced on or after July 1, 2024. Any
334 party to or counsel of record for a civil action, administrative
335 proceeding, claim, or other legal proceeding pending on July 1,
336 2024, who would have been required to make a disclosure under s.
337 69.107, Florida Statutes, had it been in effect at the time the
338 relevant action occurred must make the disclosure under that
339 section within 30 days after July 1, 2024. Failure to do so is
340 sanctionable as provided in s. 69.111, Florida Statutes.

341 Section 6. Except as otherwise provided herein, this act
342 applies to a litigation financing agreement entered into on or
343 after July 1, 2024.

344 Section 7. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1255 Notaries Public
SPONSOR(S): Civil Justice Subcommittee, Porras and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N, As CS	Mawn	Jones
2) Justice Appropriations Subcommittee		Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

The law considers many documents to be of such importance that they must be signed in the presence of a notary public to prevent fraud. A notary public is a public officer appointed and commissioned by the Governor whose function is to take acknowledgements, administer oaths or affirmations, attest to the trueness of photocopies of certain documents, and perform other duties as specified by Florida law.

A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public must produce a notarial certificate for each notarial act performed, and must certify in the notarial certificate the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying to verify the principal's identity. In the case of an online notarization, the online notary public must also comply with the requirements set forth in ch. 117, part II, F.S.

A notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public; who falsely or fraudulently makes a notarial certificate as a notary public; or who falsely takes or receives an acknowledgment of the signature on a written instrument commits a third-degree felony. A notary public is also prohibited from engaging in specified conduct, including notarizing a signature on a document if the person whose signature is being notarized does not appear before the notary public either in person or by means of audio-video communication technology at the time the signature is notarized. Any notary public who violates this prohibition commits a civil infraction, punishable by a fine of up to \$5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties. Further, it is no defense to the civil infraction that the notary public acted without intent to defraud; however, a notary public who commits such infraction with the intent to defraud makes a false or fraudulent acknowledgement and commits a third-degree felony.

CS/HB 1255:

- Increases the criminal penalties associated with a false or fraudulent acknowledgement by a notary public where the document notarized pertains to a real estate transaction or other real property transfer.
- Creates criminal penalties for the commission of a prohibited act by a notary public, which penalties are increased where the document notarized is committed with an intent to defraud or pertains to a real estate transaction or other real property transfer.
- Removes a provision providing a civil penalty for the commission of a specified prohibited act by a notary public.

The bill may have an indeterminate fiscal impact on state and local governments. See Fiscal Comments.

The bill provides an effective date of July 1, 2024.

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

STORAGE NAME: h1255a.JUA

DATE: 2/2/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Notary Public: General Provisions

The law considers many documents to be of such importance that they must be signed in the presence of a notary public to prevent fraud. A notary public is a public officer appointed and commissioned by the Governor whose function is to take acknowledgements, administer oaths or affirmations, attest to the trueness of photocopies of certain documents, and perform other duties specified by Florida law.¹

Appointment

The Governor is authorized to appoint as many notaries public as he deems necessary; however, a person so appointed must be at least 18 years of age, a legal Florida resident, and have the ability to read, write, and understand English.² An application for appointment as a notary public must be signed and sworn to by the applicant and accompanied by specified fees.³

An applicant must also, before executing the duties of the office and throughout the term of office, give bond, payable to any individual harmed as a result of the notary's breach of duty while acting in his or her official capacity, in the amount of \$7,500, conditioned for the due discharge of the office.⁴ The bond must be approved and filed with the Department of State (DOS) and executed by a surety company authorized to do business in Florida.⁵ Further, an applicant must take an oath that he or she will honestly, diligently, and faithfully discharge the duties of the notary public; as part of the oath, the applicant must also swear that he or she has read ch. 117, F.S., and knows the duties, responsibilities, limitations, and powers of a notary public.⁶

Once appointed, a notary may serve for four years, and no person may be automatically reappointed as a notary; instead, the application process must be completed regardless of whether an applicant has previously served as a notary.⁷ Further, the Governor may suspend a notary public on the grounds of any malfeasance, misfeasance, or neglect of duty, which grounds include, but are not limited to:⁸

- A material false statement on the application.
- A complaint found to have merit by the Governor.
- Failure to cooperate in or respond to an investigation regarding a complaint about a notary.
- Official misconduct.
- False or misleading advertising of notary public services.
- Unauthorized practice of law.
- Failure to timely report a change in business or home address or telephone number, or failure to timely submit documentation to request an amended commission after a lawful name change.
- Commission of fraud, misrepresentation, or any intentional violation of ch. 117, F.S.
- Charging fees in excess of the statutorily-authorized fees.
- Failure to maintain the required bond.

¹ Executive Office of the Governor, *Governor's Reference Manual for Notaries Public*, https://www.flgov.com/wp-content/uploads/Notary_Reference_Manual_12.13.16.pdf (last visited Jan. 29, 2024).

² S. 117.01, F.S.

³ S. 117.01, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Duties of a Notary Public

Florida law specifies the duties of a notary public. Specifically, a notary public may:

- Administer oaths and affirmations;
- Take acknowledgments;
- Attest to photocopies of certain documents;
- Solemnize marriages;
- Verify vehicle identification numbers; and
- Certify the contents of a safe-deposit box.⁹

However, a notary public may not charge a fee of more than \$10 for any one notarial act.¹⁰

Notarial Certificates

When notarizing a signature, a notary public must complete a notarial certificate.¹¹ Such certificate must identify:

- The location of the notarization;
- The type of notarial act performed;
- A statement that the signer personally appeared physically before the notary public or by online notarization at the time of the notarization;
- The exact date of the notarial act;
- The name of the person whose signature is being notarized;
- The type of identification the notary public relied upon;
- The notary's official signature;
- The notary's name, which must be typed, printed, or stamped below the signature; and
- The notary's official seal¹² affixed below or to either side of the notary's signature.¹³

A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument.¹⁴ A notary public must certify in the notarial certificate the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying to verify the signatory's identity, and, in the case of an online notarization, the online notary public must comply with the requirements set forth in ch. 117, part II, F.S.¹⁵

Electronic Notarizations

Any document requiring notarization may be notarized electronically.¹⁶ When notarizing a document electronically, a notary public must use an electronic signature that is:

- Unique to the notary public;
- Capable of independent verification;
- Retained under the notary public's sole control; and
- Attached to or logically associated with the electronic document so that any subsequent alteration to the electronic document displays alteration evidence.¹⁷

⁹ Executive Office of the Governor, *supra* note 1; ch. 117, F.S.

¹⁰ S. 117.05(2), F.S.

¹¹ S. 117.05(4), F.S.

¹² The notary seal must be a rubber stamp that includes the words "Notary Public – State of Florida." It must also include the name of the notary public, the date of expiration of the notary's commission, and the notary's commission number. S. 117.05(3), F.S.

¹³ S. 117.05(12), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ S. 117.021, F.S.

¹⁷ *Id.*

When a signature must be accompanied by a notary public's seal, the seal requirement is satisfied when the electronic signature of the notary public contains the minimum information required.¹⁸ An electronic signature may be any letters, characters, or symbols, manifested by electronic means, executed or adopted by a party with an intent to authenticate a writing; and a writing is electronically signed if an electronic signature is logically associated with such writing.¹⁹

However, in performing electronic notarizations, a notary must reasonably ensure the security, reliability, and uniformity of such notarizations.²⁰ To this end, the notary may use an authentication procedure (such as a password, token, card, or biometric) to protect access to the notary's electronic signature or the means for affixing the signature.²¹

False or Fraudulent Acknowledgements

A notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public; who falsely or fraudulently makes a certificate as a notary public; or who falsely takes or receives an acknowledgment of the signature on a written instrument commits a third-degree felony.²²

Prohibited Acts

Florida law prohibits a notary public from:²³

- Using a name or initial in signing certificates other than that by which the notary public is commissioned.
- Signing notarial certificates using a facsimile signature stamp unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to DOS with an exemplar of the facsimile signature stamp.
- Affixing his or her signature to a blank form of affidavit or certificate of acknowledgment and delivering that form to another person with the intent that it be used as an affidavit or acknowledgment.
- Taking the acknowledgment of or administering an oath to a person whom the notary public actually knows to have been adjudicated mentally incapacitated by a court of competent jurisdiction, where the acknowledgment or oath necessitates the exercise of a right that has been removed pursuant to s. 744.3215(2) or (3), F.S., pertaining to the rights of persons deems incapacitated, and where the person has not been restored to capacity as a matter of record.
- Notarizing a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization.
- Taking the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand.
- Changing anything in a written instrument after it has been signed by anyone.
- Amending a notarial certificate after the notarization is complete.
- Notarizing a signature on a document if the document is incomplete or blank.
- Notarizing a signature on a document if the person whose signature is to be notarized is the spouse, son, daughter, mother, or father of the notary public.
- Notarizing a signature on a document if the notary public has a financial interest in or is a party to the underlying transaction.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.; S. 117.105, F.S.

²³ S. 117.107, F.S.

Further, Florida law prohibits a notary from notarizing a signature on a document if the person whose signature is being notarized does not appear before the notary public either in person or by means of audio-video communication technology at the time the signature is notarized.²⁴ Any notary public who violates this prohibition commits a civil infraction, punishable by penalty not exceeding \$5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties.²⁵ Further, it is no defense to the civil infraction that the notary public acted without intent to defraud.²⁶ However, a notary public who violates this prohibition with the intent to defraud makes a false or fraudulent acknowledgement and commits a third-degree felony.²⁷

Online Notarization

Registration

A notary public may register as an online notary public with DOS if he or she:

- Holds a current commission as a notary public;
- Submits a copy of such commission with the registration;
- Certifies that the notary public registering as an online notary public has completed a course covering the online notary public duties, obligations, and technology requirements;
- Pays a notary public registration fee;²⁸
- Identifies the Remote Online Notary (RON) service provider²⁹ whose audio-video communication and identity proofing technologies the registrant intends to use for online notarizations, and confirms that such technology and processes satisfy statutory requirements;
- Provides evidence that the registrant has obtained a \$25,000 bond, payable to any individual harmed as a result of the registrant's breach of duty as an online notary public; and
- Provides evidence that the registrant acting in his or her capacity as an online notary public is covered by a minimum \$25,000 errors and omissions insurance policy.³⁰

Once registered, an online notary public may perform an online notarization, regardless of the physical location of the principal at the time of the notarial act, as long as the notary public is physically located in Florida while performing the online notarization and the online notary public complies with both the general notarization and electronic notarization requirements provided in law.³¹ Further, an online notary public may perform any function as an online notarization authorized under ch. 117, F.S., with the exception of solemnizing matrimony rites,³² and if a notarization requires a principal³³ to appear before the online notary public, the principal may appear by means of audio-video communication technology.

Technology Standards for Online Notarization

Florida law establishes minimum requirements for online notarization technology standards, as follows:

- *Identity proofing.*³⁴ The security characteristics, at a minimum, must present the principal with five or more questions with a minimum of five possible answer choices per question. Each question must be:

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*; s. 117.105, F.S.

²⁸ S. 113.01, F.S.

²⁹ A RON service provider is a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries public for the purpose of directly facilitating their performance of online notarizations.

³⁰ S. 117.225, F.S.

³¹ S. 117.209, F.S.

³² S. 117.209, F.S.

³³ A principal is an individual whose electronic signature is acknowledged, witnessed, or attested to in an online notarization or who takes an oath or affirmation from the online notary public.

³⁴ Identity proofing is a process by which a third party confirms the identity of an individual through use of public or proprietary data sources, which may include knowledge-based authentication or biometric verification. S. 117.201, F.S.

- Drawn from a third-party provider of public and proprietary data sources;
- Identifiable to the principal; and
- Subjected to a two-minute time constraint, with the principal answering at least 80 percent correct.³⁵
- *Credential analysis.*³⁶ An online notary must use commercially available credential analysis automated software or a hardware process that:
 - Is consistent with sound commercial practices;
 - Aids the notary public in verifying the authenticity of the credential to ensure it is not fraudulent or inappropriately modified; and
 - Uses information held by the issuing or authoritative agency to confirm the validity of credential details.³⁷
- *Audio-video communication technology.*³⁸ The technology must:
 - Be secure from interception or access by anyone other than the participants communicating; and
 - Provide sufficient audio clarity and video resolution to enable the notary to communicate with the principal and to confirm the identity of the principal.³⁹

With respect to online notarization, a notary must protect an electronic signature through the use of passwords or codes under the notary's control.⁴⁰ The notary may not allow another person to use the notary's electronic journal, seal, or signature, and notaries must also reasonably ensure that any device used to create their electronic signature is current and secure.⁴¹

Online Notarization Procedures

In performing an online notarization, an online notary public must verify the identity of a principal at the time the signature is taken through the use of audio-video communication technology.⁴² The notary must record the entire audio-video conference session between the notary public and the principal and any subscribing witnesses, and a principal may not serve as a witness for an online notarization.⁴³

In performing an online notarization for a principal not located in Florida, an online notary public must confirm that the principal desires for the notarial act to be performed by a Florida notary public and under Florida law. An online notary public must confirm the identity of the principal and any witness by personal knowledge, or by:

- Remote presentation of a government-issued identification credential by each individual;
- Credential analysis of each government-issued identification credential; and
- The identity proofing of each individual, in the form of knowledge-based authentication or another legal method of identity proofing.⁴⁴

If an online notary fails to comply with the online notarization procedures, such failure does not automatically impair the validity of the notarial act or the electronic record.⁴⁵ However, such failure may be introduced as evidence to establish violations of ch. 117, F.S., or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.⁴⁶

³⁵ S. 117.295, F.S.

³⁶ Credential analysis is a process by which a third party aids a public notary in affirming the validity of a government-issued identification credential and data thereon through review of public or proprietary data sources. S. 117.201, F.S.

³⁷ S. 117.295, F.S.

³⁸ Audio-video communication technology is technology in compliance with applicable law which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another. S. 117.201, F.S.

³⁹ S. 117.295, F.S.

⁴⁰ S. 117.021, F.S.

⁴¹ *Id.*; s. 117.225, F.S.

⁴² S. 117.265, F.S.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

Electronic Journal and Electronic Records

An online notary public must keep a secure electronic journal of electronic records he or she has notarized.⁴⁷ For each online notarization, the electronic journal entry must contain the:

- Date and time of the notarization;
- Type of notarial act;
- Type, title, or description of the electronic record or proceeding;
- Identity evidence for each principal involved in the transaction or proceeding;
- Indication that the principal passed the identity proofing;
- Indication that the government-issued identity credential satisfied the credential analysis; and
- Fee charged for the online notarization.⁴⁸

Identity evidence for each principal may be a:

- Statement that the person is personally known to the online notary public; or
- Notation of the type of identification document provided to the online notary public.⁴⁹

An online notary public must also retain an unedited and uninterrupted recording of a remote notarization audio-video communication, which recording must include:

- Appearances by the principal and each witness before the online notary public;
- Identity confirmation of the principal and each witness;
- A general description of the records to be signed;
- A principal's declaration that his or her signature is knowingly and voluntarily made; and
- All of the actions and spoken words of the principal, notary public, and each required witness during the entire online notarization.⁵⁰

The notary must attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner capable of independent verification using tamper-evident technology.⁵¹ The electronic journal and a backup record thereof must be maintained for at least ten years after the date of the notarial act, and a notary must immediately notify an appropriate law enforcement agency and DOS of the electronic journal's, electronic signature's, or electronic seal's unauthorized use.⁵²

Effect of Proposed Changes

False or Fraudulent Acknowledgements

CS/HB 1255 amends s. 117.105, F.S., to make any false or fraudulent acknowledgement under this section a second-degree felony⁵³ where the document notarized pertains to a real estate transaction or any other real property transfer.

⁴⁷ S. 117.245, F.S.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ S. 117.255, F.S.

⁵² *Id.*

⁵³ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

Prohibited Acts

The bill amends s. 117.07, F.S., to provide that a notary public who knowingly and willfully commits a prohibited act under this section commits a first-degree misdemeanor;⁵⁴ or, if the act is committed knowingly and willfully and with an intent to defraud, a third-degree felony. However, if the act is committed knowingly and willfully and with an intent to defraud, and pertains to a real estate transaction or any other real property transfer, the bill provides that the notary public commits a second-degree felony.

The bill also removes language providing a civil penalty for one of the prohibited acts, which under the bill is now at least a misdemeanor.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 117.105, F.S., relating to false or fraudulent acknowledgement; penalty.

Section 2: Amends s. 117.07, F.S., relating to prohibited acts.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector to the extent that it may reduce fraudulent real estate transactions or other fraudulent real estate transfers.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by creating new misdemeanor and felony offenses, and enhancing criminal penalties under specified circumstances.

⁵⁴ A first-degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Civil Justice Subcommittee passed a proposed committee substitute ("PCS") and reported the bill favorably. The PCS differed from the original bill in that it:

- Removed a provision modifying the notarial certificate requirements.
- Removed a provision requiring a notary to keep a tangible journal, and provisions related thereto.
- Restored to current law what constitutes a false or fraudulent acknowledgement or a prohibited notarial act.
- Provided an intent element for the crimes created by the bill.

This analysis is drafted to the PCS as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to notaries public; amending s.
 3 117.105, F.S.; revising criminal penalties for false
 4 or fraudulent acknowledgements; amending s. 117.107,
 5 F.S.; deleting a civil penalty relating to a provision
 6 that prohibits a notary public from notarizing a
 7 signature on a document of a person who is not, at the
 8 time of the notarial act, physically present or
 9 present by means of audio-video communication
 10 technology; providing criminal penalties; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:
 14

15 Section 1. Section 117.105, Florida Statutes, is amended
 16 to read:

17 117.105 False or fraudulent acknowledgments; penalties for
 18 prohibited acts ~~penalty.~~-

19 (1) A notary public may not: ~~who~~

20 (a) Falsely or fraudulently take ~~takes~~ an acknowledgment
 21 of an instrument as a notary public. ~~or~~

22 (b) ~~Who~~ Falsely or fraudulently make ~~makes~~ a certificate
 23 as a notary public. ~~or~~

24 (c) ~~Who~~ Falsely or fraudulently take or receive ~~takes or~~
 25 ~~receives~~ an acknowledgment of the signature on a written or

26 ~~electronic document instrument is guilty of a felony of the~~
 27 ~~third degree, punishable as provided in s. 775.082, s. 775.083,~~
 28 ~~or s. 775.084.~~

29 (2) A notary public who knowingly and willfully violates
 30 subsection (1) commits a felony of the third degree, punishable
 31 as provided in s. 775.082, s. 775.083, or s. 775.084. A notary
 32 public who knowingly and willfully violates subsection (1)
 33 commits a felony of the second degree, punishable as provided in
 34 s. 775.082, s. 775.083, or s. 775.084, if the document notarized
 35 pertains to a real estate transaction or any other transfer of
 36 real property.

37 Section 2. Subsection (9) of section 117.107, Florida
 38 Statutes, is amended, and subsection (13) is added to that
 39 section, to read:

40 117.107 Prohibited acts; penalty.—

41 (9) A notary public may not notarize a signature on a
 42 document if the person whose signature is being notarized does
 43 not appear before the notary public either by means of physical
 44 presence or by means of audio-video communication technology as
 45 authorized under part II of this chapter at the time the
 46 signature is notarized. ~~Any notary public who violates this~~
 47 ~~subsection is guilty of a civil infraction, punishable by~~
 48 ~~penalty not exceeding \$5,000, and such violation constitutes~~
 49 ~~malfeasance and misfeasance in the conduct of official duties.~~
 50 ~~It is no defense to the civil infraction specified in this~~

51 ~~subsection that the notary public acted without intent to~~
52 ~~defraud. A notary public who violates this subsection with the~~
53 ~~intent to defraud is guilty of violating s. 117.105.~~

54 (13) A notary public who knowingly and willfully violates
55 this section commits a misdemeanor of the first degree,
56 punishable as provided in s. 775.082 or s. 775.083. A notary
57 public who knowingly and willfully violates this section with
58 the intent to defraud commits a felony of the third degree,
59 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
60 A notary public who knowingly and willfully violates this
61 section with the intent to defraud commits a felony of the
62 second degree, punishable as provided in s. 775.082, s. 775.083,
63 or s. 775.084, if the violation pertains to a real estate
64 transaction or any other transfer of real property.

65 Section 3. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1393 Court Interpreter Services
SPONSOR(S): Tuck
TIED BILLS: **IDEN./SIM. BILLS:** SB 468

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N	Mathews	Jones
2) Justice Appropriations Subcommittee		Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Pursuant to article V, section 14, of the Florida Constitution, all funding for the offices of the clerks of the circuit court and county courts performing court-related functions shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for court-related functions. However, where the requirements of the United States Constitution or the Florida Constitution preclude the imposition of filing fees and charges, the state shall provide those funds as determined by the Legislature.

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. In certain circumstances, failing to ensure that a person with limited or no English proficiency (LEP individual) can effectively participate in or benefit from federally-assisted programs or activities may violate Title VI's prohibition against national origin discrimination; this is often true of failing to ensure that a LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods. To promote such access, the Florida Evidence Code and the Florida Rules of Judicial Administration require an interpreter's appointment for judicial proceedings in specified situations. An interpreter may also be necessary for depositions, mediations, and other case-related proceedings and to give a LEP individual access to points of public contact for the court system, which may include the offices of the clerks of the circuit court.

HB 1393 amends s. 29.0185, F.S., to authorize the state court system to use state funds to provide court-appointed interpreting services to non-indigent individuals. Such funds may be used if they are available in the fiscal year appropriation for due process services and if such interpreting services are provided as prescribed by the Supreme Court.

The bill also amends s. 29.0195, F.S., to remove the requirement that a trial court administrator recover funds utilized for court interpreter services from those individuals who have the present ability to pay.

The bill may have an indeterminate fiscal impact on state and local governments. See Fiscal Analysis & Economic Impact Statement.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Court Funding

Pursuant to article V, section 14, of the Florida Constitution, all funding for the offices of the clerks of the circuit court and county courts performing court-related functions shall be provided by adequate and appropriate filing fees for judicial proceedings and services charges and costs for court-related functions. However, where the requirements of the United States Constitution or the Florida Constitution preclude the imposition of filing fees and charges, the state shall provide those funds as determined by the legislature.¹

Further, pursuant to s. 29.001, F.S., for the purpose of interpreting art. V, sec. 14 of the Florida Constitution, the state courts system includes the Supreme Court, district courts of appeal, circuit courts, county courts, and certain supports thereto.² Funding for the state courts system is provided from state revenues.³ Additionally, section 29.004(5), F.S., provides that funding for court foreign language services and translators essential to comply with constitutional requirements be provided from state revenues.⁴

Interpretation and Translation Services

Although the terms “interpreter” and “translator” are often used interchangeably, there are significant differences between the two roles. An interpreter works with spoken language, by listening to a speaker speak in one language and repeating what the speaker said in another language.⁵ Interpreters use one of two modes interpreting, consecutive⁶ or simultaneous,⁷ depending on the context.⁸ Translators work with written documents and take text written in the source language and translate it into text in the target language (i.e. taking a document written in Spanish and translating the document into English).⁹

According to data from the United States Census Bureau, over 60,000,000 people living in the United States who are over the age of five speak a language other than English at home.¹⁰ Of these, over 25,000,000 speak English “less than very well.”¹¹ In Florida alone, nearly 30 percent of the state’s population over the age of five speaks a language other than English at home.¹²

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. In certain circumstances, failing to ensure that a person with

¹ Art. 5, sec. 14(b), Fla. Const.

² S. 29.001(1), F.S.

³ *Id.*

⁴ S. 29.004(5), F.S.

⁵ American Translators Association, *What’s the Difference Between a Translator and an Interpreter?*, (Feb. 1, 2023), <https://www.atanet.org/client-assistance/whats-the-difference-between-a-translator-and-an-interpreter/> (last visited Jan. 30, 2024).

⁶ Consecutive interpreting involves listening to a speaker and repeating what has been said after the speaker stops talking. *Supra* note 11.

⁷ Simultaneous interpreting involves listening to a speaker and simultaneously repeating their speech in the target language on a slight delay. *Supra* note 11.

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. Census Bureau, *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013*, <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html> (last visited Jan. 30, 2024).

¹¹ *Id.*

¹² U.S. Census Bureau, *Quick Facts: Florida*, <https://www.census.gov/quickfacts/fact/table/FL/POP815221> (last visited Jan. 30, 2024).

limited or no English proficiency (LEP individual) can effectively participate in or benefit from federally-assisted programs or activities may violate Title VI's prohibition against national origin discrimination; this is often true of failing to ensure that a LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods.¹³

The Florida Evidence Code provides that, when a judge determines that a witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood, a duly-qualified interpreter must be sworn in to interpret for the witness, at no cost to the witness.¹⁴ Similarly, the Florida Rules of Judicial Administration require an interpreter's appointment free of charge to the person needing the interpreter's services:

- In any criminal or juvenile delinquency proceeding in which a LEP individual is the:
 - Accused; or
 - Victim, unless the court finds that he or she does not require an interpreter; and
- In all other proceedings in which a LEP individual is a litigant, if the court determines that:
 - The litigant's inability to comprehend English deprives him or her of an understanding of the court proceedings;
 - A fundamental interest is at stake;¹⁵ and
 - No alternative to an interpreter's appointment exists.¹⁶

The Office of the State Courts Administrator manages and administers the Court Interpreter Certification and Regulation Program and maintains a registry of certified,¹⁷ language-skilled,¹⁸ provisionally approved,¹⁹ and registered²⁰ court interpreters.²¹ Generally, the court must appoint an interpreter to provide interpretation services in the following order of preference:²²

- A certified or language-skilled interpreter.
- A provisionally-approved interpreter.
- A registered interpreter.
- An interpreter who is not certified, language-skilled, provisionally-approved, or registered, if the court finds good cause (such as preventing burdensome delay or the LEP individual's consent).

Parties to litigation may, for proceedings for which no interpreter is appointed, contract for the services of an interpreter at their own expense, but must observe the same preferences when retaining an interpreter as do the courts when appointing them.²³ However, the United States Department of Justice has noted that interpreters are not just necessary for court appearances; an interpreter may also be necessary to give a LEP individual access to points of public contact for the court system, which may include information desks and filing offices, including the offices of the clerks of the circuit court.²⁴

¹³ U.S. Dept. of Justice, *Working with State Courts to Remove Language Barriers to Justice*, <https://www.justice.gov/archives/opa/blog/working-state-courts-remove-language-barriers-justice> (last visited Jan. 30, 2024).

¹⁴ S. 90.606, F.S.

¹⁵ A fundamental interest may include civil commitment, termination of parental rights, paternity, or dependency proceedings.

¹⁶ R. 2.560, F.R.J.A.

¹⁷ A "certified" designation is the highest-qualified state-level interpreter designation for languages for which there is a state-level certification examination. Currently, these languages are Amharic, Arabic, Bosnian/Serbian/Croatian, Cantonese, Filipino (Tagalog), French, Haitian Creole, Hmong, Khmer, Korean, Mandarin, Polish, Portuguese, Russian, Spanish, Turkish, and Vietnamese. Office of the State Courts Administrator, *Find an Interpreter*, <https://www.flcourts.gov/Resources-Services/Court-Services/Court-Interpreting/Find-an-Interpreter> (last visited Jan. 30, 2024).

¹⁸ The "language-skilled" designation is the highest-qualified state-level interpreter designation for languages for which there is no state-level certification examination. *Id.*

¹⁹ The "provisionally approved" designation is the next highest qualified state-level interpreter designation below the certified and language-skilled designations. Such an interpreter may be utilized when no certified or language-skilled interpreter is available. *Id.*

²⁰ Registration is the initial step towards obtaining an official state-level designation, and "registered" refers to interpreters who have satisfied general prerequisites but who have yet to qualify for an official designation. Such an interpreter may be utilized when there is no certified, language-skilled, or provisionally approved interpreter available. *Id.*

²¹ *Id.*; Office of the State Courts Administrator, *Court Services*, <https://www.flcourts.gov/Resources-Services/Court-Services> (last visited Jan. 30, 2024).

²² R. 2.560, F.R.J.A.

²³ R. 2.565, F.R.J.A.

²⁴ Letter from the U.S. Dept. of Justice, Civil Rights Division, to Chief Justices/State Court Administrators (August 2010), <https://www.justice.gov/file/1250731/download> (last visited Jan. 30, 2024).

United States Department of Justice

In 2010, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, the U.S. Department of Justice (DOJ) issued a letter of guidance to state courts regarding the obligation to provide language access services to individuals with limited proficiency in the English language.²⁵ The DOJ's letter specifically emphasized the following concerns about state courts' policies and practices which:

- Limit the types of proceedings for which qualified interpreter services were being provided by the court;
- Charge interpreter costs to one or more parties;
- Restrict language services to courtrooms; and
- Fail to ensure effective communication with court-appointed or supervised personnel.²⁶

The DOJ continues to monitor state courts' efforts related to the provision of interpreting services as part of the department's responsibilities under Title VI of the Civil Rights Act of 1964.²⁷

State's Commission on Trial Court Performance and Accountability

To gain greater compliance with the DOJ's priorities, the state's Commission on Trial Court Performance and Accountability, in coordination with the Trial Court Budget Commission, has been tasked with evaluating the ability of trial courts to expand the provision of court interpreting services without cost to court participants and without regard to an individual's financial status.²⁸ The Commission recommended a phased approach to the expansion of state-funded court interpreter services.²⁹

In March 2023, the Commission submitted a revised report to the Court which recommended an initial expansion of interpreter services, without cost and regardless of indigency status to the following types of proceedings:

- Child support;
- Uniform Interstate Family Support Act;
- Simplified Dissolution of Marriage;
- Evictions; and
- Small Claims.³⁰

The Florida Supreme Court approved the Commission's revised report, including the expansion of state-funded court interpreter services for the recommended proceedings.³¹

Effect of Proposed Changes

HB 1393 amends s. 29.0185, F.S., to authorize the state court system to use state funds to provide court-appointed interpreting services to non-indigent individuals. Such funds may be used if they are available in the fiscal year appropriation for due process services and if such interpreting services are provided as prescribed by the Supreme Court.

²⁵ U.S. Dept. of Justice, *Department of Justice Guidance Letter Regarding the Obligation to Provide Language Access* (Aug. 17, 2010), <https://www.justice.gov/file/1250731/download> (last visited Jan. 30, 2024).

²⁶ *Id.* at 2.

²⁷ Office of the State Courts Administrator, *2024 Judicial Impact Statement on SB 468* (Jan. 17, 2024), on file with the House of Representatives' Civil Justice Subcommittee.

²⁸ *Id.* at 3, *citing to* Fla. Admin. Order No. AOSC20-56 (June 24, 2020).

²⁹ *Id.*

³⁰ *Id.* at 4.

³¹ *Id.*

Additionally, the bill amends s. 29.0195, F.S., to repeal the requirement that a trial court administrator recover funds utilized for court interpreter services from those individuals who have the present ability to pay. The bill retains in current law the requirement that a trial court administrator must attempt to recover expenditures for translation services from non-indigent individuals. Under the bill, any such provision of state-funded court interpreting services to non-indigent participants would be subject to the availability of funds.

However, if those expenditures were for translation services, the trial court administrator is required to seek reimbursement from the non-indigent individual. Further, the bill clarifies that it does not authorize the recovery of costs for interpreter services from the state attorney, indigent defendants, or court-appointed defense counsel for indigent defendants.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 29.0185, F.S., relating to the provision of state-funded due process services to individuals.

Section 2: Amends s. 29.0195, F.S., relating to the recovery of expenditures for state-funded services.

Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an insignificant negative fiscal impact on state revenues by eliminating the cost-recovery provision for court interpreting services. The annual amount collected from such services is minimal. For the current fiscal year, the State Court System has collected \$3,820 from court interpreting related costs.³²

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on state expenditures. However, expenditures are contingent upon the expansion and provision of court interpreting services as defined by court rule and will be subject to annual appropriation. The Office of the State Courts Administrator indicates that filling currently authorized vacant positions will help facilitate the trial courts' ability to absorb any additional workload impact.³³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

³² Office of the State Courts Administrator, Agency Bill Analysis of 2024 House Bill 1393, p. 5 (Jan. 27, 2024).

³³ *Id.* at 6.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The potential expansion of court interpretation services to non-indigent individuals may have a positive economic impact on court participants who are not proficient in the English language.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

HB 1393

2024

1 A bill to be entitled
 2 An act relating to court interpreter services;
 3 amending s. 29.0185, F.S.; authorizing the state
 4 courts system to use state revenues, if available, to
 5 provide court-appointed interpreting services to
 6 nonindigent individuals; requiring such services to be
 7 provided as prescribed by the Supreme Court; amending
 8 s. 29.0195, F.S.; repealing the cost recovery
 9 requirement for court-appointed interpreting services;
 10 providing an exception; providing an effective date.

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

13
 14 Section 1. Section 29.0185, Florida Statutes, is amended
 15 to read:

16 29.0185 Provision of state-funded due process services to
 17 individuals.—

18 (1) Due process services may not be provided with state
 19 revenues to an individual unless the individual on whose behalf
 20 the due process services are being provided is eligible for
 21 court-appointed counsel under s. 27.40, based upon a
 22 determination of indigency under s. 27.52, regardless of whether
 23 such counsel is appointed or the individual on whose behalf the
 24 due process services are being provided is eligible for court-
 25 appointed counsel under s. 27.40 and has been determined

26 indigent for costs pursuant to s. 27.52.

27 (2) Notwithstanding subsection (1), state revenues may be
 28 used by the state courts system to provide court-appointed
 29 interpreting services to nonindigent individuals if funds are
 30 available in the fiscal year appropriation for due process
 31 services and if interpreting services are provided as prescribed
 32 by the Supreme Court.

33 Section 2. Section 29.0195, Florida Statutes, is amended
 34 to read:

35 29.0195 Recovery of expenditures for state-funded
 36 services.-

37 (1) The trial court administrator of each circuit shall
 38 recover expenditures for state-funded services when those
 39 services have been furnished to a user of the state court system
 40 who possesses the present ability to pay. The rate of
 41 compensation for such services is ~~shall be~~ the actual cost of
 42 the services, including the cost of recovery. The trial court
 43 administrator shall deposit moneys recovered under this section
 44 in the Administrative Trust Fund within the state courts system.
 45 The trial court administrator shall recover the costs of court
 46 reporter services and transcription; translations ~~court~~
 47 ~~interpreter services, including translation;~~ and any other
 48 service for which state funds were used to provide a product or
 49 service within the circuit.

50 (2) This section does not authorize cost recovery for

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51 | court-appointed interpreting services, except translations, or
52 | cost recovery from entities described in ss. 29.005-29.007.

53 | Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1425 Juvenile Justice
SPONSOR(S): Yarkosky
TIED BILLS: **IDEN./SIM. BILLS:** SB 1352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 2 N	Leshko	Hall
2) Justice Appropriations Subcommittee		Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 1425 amends several statutes relating to the Department of Juvenile Justice (DJJ). Specifically, the bill:

- Amends ss. 330.41, 553.865, 943.0515, 985.02, 985.03, 985.039, 985.126, 985.17, 985.27, 985.441, 985.455, 985.465, and 985.601, F.S., to make changes to juvenile commitment restrictiveness level classifications and terms, to replace the terms “gender-specific” and “gender” with “sex-specific” and “sex,” respectively, as those terms are defined in s. 553.865, F.S., and to strike an obsolete reporting date.
- Amends s. 381.887, F.S., to include any DJJ personnel and any DJJ contracted provider with direct contact with youth in the care of DJJ to the list of persons who are authorized to possess, store, and administer emergency opioid antagonists and who are immune from any civil or criminal liability as a result of administering an emergency opioid antagonist.
- Amends ss. 790.22, 938.17, 948.51, 985.664, 985.668, and 985.676, F.S., to remove and redistribute certain duties from the juvenile justice circuit advisory boards to other entities and to simplify the role of such boards.
- Amends s. 985.115, F.S., to prohibit a person who has taken a child into custody from releasing a child to a juvenile assessment center if the child is suffering from a serious physical condition which requires prompt diagnosis or treatment, is believed to be mentally ill, or appears to be intoxicated and has threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse.
- Amends s. 985.26, F.S., to authorize the initiation of a transfer to or from secure detention care or supervised release detention care upon a court’s own motion; a motion of the child; or a motion of the state. The bill requires a court to consider any information provided by DJJ regarding a child’s adjustment to detention supervision.
- Amends s. 985.601, F.S., to authorize DJJ to use state or federal funds to purchase and distribute promotional and educational materials for specified purposes.
- Amends ss. 1001.42, 1003.51, and 1003.52, F.S., to make conforming changes to align current education statutes with the controlling provisions of the Florida Scholars Academy adopted in 2023.

The bill does not change currently authorized resources or expenditures, and is not anticipated to have any fiscal impacts.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Commitment

Background

The court that has jurisdiction of an adjudicated delinquent child may commit the child to a Department of Juvenile Justice (DJJ) minimum-risk nonresidential, nonsecure residential, high-risk residential, or maximum-risk residential program.¹ Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, monitoring for substance abuse, electronic monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program.²

Restrictiveness Levels

Minimum-risk nonresidential programs work with youth who remain in and have full access to the community and participate at least five days a week in a day treatment program.³

Nonsecure residential programs are residential but may allow youth to have supervised access to the community. Facilities at this commitment level are either environmentally secure, staff secure, or are hardware-secure with walls, fencing, or locking doors.⁴

High-risk residential programs are residential and do not allow youth to have access to the community, except that temporary release providing community access for up to 72 continuous hours may be approved by a court for a youth who has made successful progress in his or her program in order for the youth to attend a family emergency or, during the final 60 days of his or her placement, to visit his or her home, enroll in school or a career and technical education program, complete a job interview, or participate in a community service project. High-risk residential facilities are hardware-secure with perimeter fencing and locking doors.⁵

Maximum-risk residential programs include juvenile correctional facilities and juvenile prisons. The programs at this commitment level are long-term residential and do not allow youth to have access to the community. Facilities at this commitment level are maximum-custody, hardware-secure with perimeter security fencing and locking doors.⁶

24-hour awake supervision, custody, care, and treatment of residents is provided for all levels of residential commitment.⁷

According to DJJ, in practice some of the restrictiveness level classifications and terms are contradictory, unclear, or are better served through alternative means as follows:

- “Minimum-risk nonresidential” programs present a contradiction as typically a youth who is committed to DJJ is removed from the community and housed in a secure facility; however, the nature of minimum-risk nonresidential programs complicates the line between community probation and traditional commitment. DJJ asserts that the goal of these programs is better accomplished through probation instead of any kind of commitment.

¹ Ss. 985.441(1)(b) and 985.03(44), F.S.

² S. 985.441(1)(b), F.S.

³ S. 985.03(44)(a), F.S.

⁴ S. 985.03(44)(b), F.S.

⁵ S. 985.03(44)(c), F.S.

⁶ S. 985.03(44)(d), F.S.

⁷ S. 985.03(44), F.S.

- The term “nonsecure residential” programs is contradictory as it is used to describe programs where youth are *securely* housed with both staff and hardware-secure.
- The term “maximum-risk residential” is commonly used interchangeably with “juvenile prison” and “juvenile correctional facility” without proper cross-reference, and in practice DJJ and other stakeholders typically refer to all three as “maximum-risk residential.”

Additionally, DJJ provides housing and treatment services for youth based on their “sex,” which is currently undefined in DJJ statutes.⁸

Effect of Proposed Changes – Juvenile Commitment

The bill amends ss. 330.41, 553.865, 943.0515, 985.02, 985.03, 985.039, 985.126, 985.17, 985.27, 985.441, 985.455, 985.465, and 985.601, F.S., as follows:

- Removes “minimum-risk nonresidential” as a restrictiveness level for committed youth and all references to “minimum-risk nonresidential” programs.
- Renames all references to “nonsecure residential” programs to “moderate-risk” programs.
- Removes all references to “juvenile prison” and “juvenile correctional facilities” and replaces them with “maximum-risk residential.”
- Replaces the terms “gender-specific” and “gender” with “sex-specific” and “sex,” respectively, and defines “sex” as it is defined in s. 553.865, F.S.⁹
- Strikes an obsolete reporting date.

Emergency Opioid Antagonist Authorization and Immunity

Background

Section 381.887, F.S., generally governs the prescribing, ordering, and dispensing of emergency opioid antagonists to patients and caregivers and governs who is authorized to store, possess, and administer such antagonists. This section specifically delineates persons who are authorized to possess, store, and administer emergency opioid antagonists as clinically indicated and who are immune from any civil liability or criminal liability as a result of administering such an antagonist to include the following:

- Emergency responders;
- Crime laboratory personnel for the statewide criminal analysis laboratory system; and
- Law enforcement personnel or personnel of another agency, including, but not limited to, correctional probation officers and child protective investigators who, while acting within the scope or course of employment, come into contact with a controlled substance or persons at risk of experiencing an opioid overdose.^{10, 11}

Effect of Proposed Changes – Emergency Opioid Antagonist Authorization and Immunity

The bill amends s. 381.887, F.S., to include any DJJ personnel and any DJJ contracted provider with direct contact with youth in the care of DJJ, as authorized under chs. 984¹² and 985, F.S.,¹³ to the list of persons who are authorized to possess, store, and administer emergency opioid antagonists as

⁸ Department of Juvenile Justice, Agency Analysis of 2024 House Bill 1425, p. 3 (Jan. 12, 2024).

⁹ Section 553.865(l), F.S., defines “sex” to mean the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person’s sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth. Additionally, s. 553.865(f) and (h), F.S., define “female” to mean a person belonging, at birth, to the biological sex which has the specific reproductive role of producing eggs, and “male” to mean a person belonging, at birth, to the biological sex which has the specific reproductive rule of producing sperm, respectively.

¹⁰ S. 381.887(4), F.S.

¹¹ Section 381.887(7), F.S., does not limit any existing immunities for any emergency responders, crime laboratory personnel, or law enforcement personnel, or personnel of another agency which may be provided in other applicable provisions of law.

¹² Chapter 984 relates to children and families in need of services.

¹³ Chapter 985 relates to juvenile justice and the interstate compact on juveniles.

clinically indicated and who are immune from any civil liability or criminal liability as a result of administering an emergency opioid antagonist.

Juvenile Justice Circuit Advisory Boards

Background

Section 985.664, F.S., authorizes a juvenile justice circuit advisory board (CAB) to be established in each of the 20 judicial circuits. The purpose of such boards is to provide advice and direction to DJJ in the development and implementation of juvenile justice programs and to work collaboratively with DJJ in seeking program improvements and policy changes to address the emerging and changing needs of Florida's youth who are at risk of delinquency.¹⁴ All CAB memberships must be approved by the Secretary of DJJ, with limited exceptions, and must include:

- The state attorney or his or her designee.
- The public defender or his or her designee.
- The chief judge or his or her designee.
- A representative of the corresponding circuit or regional entity of the Department of Children and Families.
- The sheriff or his or her designee from each county in the circuit.
- A police chief or his or her designee from each county in the circuit.
- A county commissioner or his or her designee from each county in the circuit.
- The superintendent of each school district in the circuit or his or her designee.
- A representative from the workforce organization of each county in the circuit.
- A representative of the business community.
- A youth representative who has had an experience with the juvenile justice system and is not older than 21 years of age.
- A representative of the faith community.
- A health services representative who specializes in mental health care, victim-service programs, or victims of crime.
- A parent or family member of a youth who has been involved with the juvenile justice system.
- Up to five representatives from any of the following who are not otherwise represented:
 - Community leaders.
 - Youth-serving coalitions.¹⁵

The duties of CABs include, but are not limited to:

- Developing a comprehensive plan for the circuit.
- Participating in the facilitation of interagency cooperation and information sharing.
- Providing recommendations for public or private grants to be administered by one of the community partners that support one or more components of the comprehensive circuit plan.
- Providing recommendations to DJJ in the evaluation of prevention and early intervention grant programs.
- Providing an annual report to DJJ describing the board's activities.¹⁶

Except in single-county circuits, each CAB has a county organization representing each of the counties in the circuit that reports directly to the CAB on the juvenile justice needs of county.¹⁷

¹⁴ S. 985.664(1), F.S.

¹⁵ S. 985.664(4), F.S.

¹⁶ S. 985.664(3), F.S.

¹⁷ S. 985.664(1), F.S.

Effect of Proposed Changes – Juvenile Justice Circuit Advisory Boards

The bill amends ss. 790.22, 938.17, 948.51, 985.664, 985.668, and 985.676, F.S., to remove and redistribute certain duties from the CABs to DJJ and other entities and to simplify the role of such boards, as follows:

- Transfers the responsibility of establishing appropriate community service programs available to the alternative sanctions coordinators of the circuit courts from CABs to DJJ.
- Requires a sheriff's office that receives funds to operate a juvenile assessment center to provide an annual written financial report accounting for all funds to DJJ instead of to a CAB.
- Requires the public safety coordinating council of a county to collaborate with DJJ rather than a CAB when developing a comprehensive public safety plan that includes programs and services for juveniles.
- Requires CABs to work with the chief probation officer of the circuit in using data to inform policy and practice that will improve the juvenile justice continuum.
- Removes authorization for county organizations.
- Removes the following duties from CABs:
 - Developing a comprehensive plan.
 - Participating in interagency cooperation and information sharing.
 - Providing recommendations for public and private grants.
 - Providing an annual report of the board's activities.
- Requires membership of the board to be approved by the chief probation officer of the circuit and reduces the number of members on the board by two, by reducing the number of community leader or youth-serving coalition members required from five to three.
- Requires the chief probation officer of the circuit to serve as the chair of the board.
- Removes provisions relating to procedures to fill a vacant chair position, board membership terms, bylaw, quorum, and voting requirements, establishment of an executive committee, and requirements that CABs are subject to the code of ethics for public officers and employees.
- Requires the chief probation officer in each circuit to submit proposals for innovation zones rather than boards.
- Removes requirements for the boards to review applications for community juvenile justice partnership grants.
- Allows for recommendations from community stakeholders to direct which grant proposals should be given priority.
- Removes requirement that grant recipients submit an annual evaluation report to a CAB.

Juvenile Assessment Centers

Background

Section 985.115, F.S., generally governs to where or to whom a child may be released after being taken into custody. Unless otherwise ordered by a court or there is a need to hold a child, the person who has taken a child into custody must attempt to release the child to specified persons or entities contingent upon specific circumstances, including release as follows:

- If a child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, to a law enforcement officer who shall deliver the child to a hospital for necessary evaluation and treatment.
- If the child is believed to be mentally ill,¹⁸ to a law enforcement officer who shall take the child to a designated public receiving facility¹⁹ for involuntary examination.²⁰
- If the child appears to be intoxicated and has threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse, to a law enforcement

¹⁸ For the purposes of s. 985.115, F.S., a person is mentally ill if they meet the criteria in s. 394.463(1), F.S.

¹⁹ Section 394.455, F.S., defines "public facility" to mean a facility that has contracted with the Department of Children and Families to provide mental health services to all persons, regardless of ability to pay, and is receiving state funds for such purpose.

²⁰ S. 394.463, F.S.

officer who shall deliver the child to a hospital, addictions receiving facility, or treatment resource.

- If available, to a juvenile assessment center²¹ equipped and staffed to assume custody of the child for the purpose of assessing the needs of the child in custody. The center may then release or deliver the child under this section with a copy of the assessment.²²

Effect of Proposed Changes – Juvenile Assessment Centers

The bill amends s. 985.115, F.S., to prohibit a person who has taken a child into custody from releasing a child to a juvenile assessment center, or such centers from receiving a child, if the child is suffering from a serious physical condition which requires prompt diagnosis or treatment, is believed to be mentally ill, or appears to be intoxicated and has threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse. This change clarifies existing law and may prevent practical complications when a law enforcement officer attempts to release a medically vulnerable youth to an assessment center that is not equipped to handle the needs of the youth in his or her current state.

Transfer Between Secure Detention Care and Supervised Release Detention Care

Background

Section 985.26, F.S., controls the time period for which a court can order a child to be placed in detention care. A court may order a child to be placed on supervised release detention care²³ or secure detention care.²⁴ Generally, a court may order a child to be placed on supervised release detention care for up to 60 days before a hearing must be conducted to determine the need for continued supervised release detention care.²⁵ However, the court may only order a child to be held in secure detention care for 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or unless the court finds good cause to extend the child's length of detention.²⁶

Additionally, the court may transition a child to and from secure detention care and supervised release detention care, including electronic monitoring, if the court finds such a transfer in placement is necessary, certain detention care is no longer necessary, to preserve public safety, or to ensure the child's safety, appearance in court, or compliance with a court order. Each period of secure or supervised release detention care counts toward the time limitations whether served consecutively or nonconsecutively.²⁷

Effect of Proposed Changes – Transfer Between Secure Detention Care and Supervised Release Detention Care

The bill amends s. 985.26, F.S., to authorize the initiation of a transfer to or from secure detention care or supervised release detention care upon:

- A court's own motion;
- A motion of the child; or
- A motion of the state.

²¹ A juvenile assessment center is comprised of community operated facilities and programs which provide collocated central intake and screening services for youth referred to DJJ. S. 985.135(1), F.S.

²² S. 985.115(2)(c)–(f), F.S.

²³ Section 985.03(18)(b), F.S., defines "supervised release detention care" to mean temporary, noncustody care of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of DJJ staff pending adjudication or disposition.

²⁴ Section 985.03(18)(a), F.S., defines "secure detention care" to mean temporary custody of a child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.

²⁵ S. 985.26(2)(a)1., F.S.

²⁶ S. 985.26(2)(a)2., F.S.

²⁷ S. 985.26(2)(a)3., F.S.

The bill requires a court to consider any information provided by DJJ regarding a child's adjustment to detention supervision.

Authorized Use of State or Federal Funds

Background

Section 985.601, F.S., generally provides guidance on administering the services and programs within the juvenile justice continuum. The juvenile justice continuum includes all: children-in-need-of-services programs; families-in-need-of-services programs; other prevention, early intervention, and diversion programs; detention centers and related programs and facilities; community-based residential commitment and nonresidential programs; and delinquency institutions provided or funded by DJJ.²⁸

Effect of Proposed Changes – Authorized Use of State or Federal Funds

The bill amends s. 985.601, F.S., to authorize DJJ to use state or federal funds to purchase and distribute promotional and educational materials for the following purposes:

- Educating youth and families about the juvenile justice continuum, including education on local prevention programs or community services available for participation or enrollment.
- Educating youth and families on youth-specific public safety issues, including, but not limited to, safe storage of adult-owned firearms, consequences of youth firearm offenses, human trafficking, and drug and alcohol abuse.
- Staff recruitment at job fairs, career fairs, community events, and technical education program, community college, or state college campuses.

DJJ Education

Background

The Department of Education (DOE) serves as the lead agency providing coordination and oversight of juvenile justice education programs,²⁹ curriculum, support services, and resources. Students who do not attend a local public school due to their placement in a DJJ detention, prevention, residential, or day treatment program are provided educational programs by the local school district in which the DJJ facility is located or by a provider through a contract with the local school district.³⁰ The district school board makes provisions for each student to participate in basic, career and professional education (CAPE), and exceptional student programs, as appropriate. Each student must have access to the appropriate courses and instruction to prepare them for the high school equivalency examination. School districts are required to provide the high school equivalency examination exit option for all juvenile justice education programs.³¹

Section 985.619, F.S., was created in 2023 to require DJJ to establish the Florida Scholars Academy (Academy) to deliver educational opportunities to students served in residential commitment programs. DJJ is required to contract with an education service provider with a proven track record of success to operate, provide, or supplement full-time instruction and instructional support services for educational pathways including a K-12 education, high school equivalency diploma, career and technical education credential pursuant to s. 1003.4282(10), F.S.,³² and enrollment in a degree program at a state college or university, with an emphasis on attaining an industry-recognized credential of value from the Master

²⁸ S. 20.316(1)(a)–(b), F.S.

²⁹ Juvenile justice education programs or schools operate for the purpose of providing educational services to youth in DJJ programs for a school year comprised of 250 days of instruction distributed over 12 months. S. 1003.01(14)(a), F.S.

³⁰ Juvenile justice education programs are subject to the rules of the State Board of Education. S. 1003.52(2), F.S.

³¹ S. 1003.52(3)(a)–(c), F.S.

³² A student is eligible to complete an alternative pathway to earning a standard high school diploma through the Career and Technical Education (CTE) pathway option. The CTE pathway option requires the student to complete at least 18 credits with a cumulative grade point average of 2.0 and meet other coursework requirements. S. 1003.4282(10), F.S.

Credentials List under s. 445.004(4)(h), F.S.³³ The contracted education service provider is responsible for the administration of all educational services to students enrolled in the Academy.

Educational services through the Academy will begin July 1, 2024 and the amendment of certain current education statutes is necessary to conform current education policy with the controlling provisions related to the Academy ahead of the 2024 school year.³⁴

Effect of Proposed Changes – DJJ Education

The bill amends ss. 1001.42, 1003.51, and 1003.52, F.S., to make conforming changes to align current education statutes with the controlling provisions of the Academy adopted in 2023. The conforming changes are as follows:

- Removes references to education being provided by local school districts for students in DJJ residential programs.
- Removes a requirement that academic assessments be completed within the first 10 school days after a student enters a program.
- Requires virtual education be provided by an entity accredited by an accrediting body approved by DOE.
- Removes the DJJ educational accountability system as detention, prevention, and day treatment programs will follow the same accountability process as alternative schools and residential program educational accountability will be provided through the Academy's accountability measures.³⁵
- Replaces certain references to CAPE with "career and technical education."

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 330.41, F.S., relating to Unmanned Aircraft Systems Act.

Section 2: Amends s. 381.887, F.S., relating to emergency treatment for suspected opioid overdose.

Section 3: Amends s. 553.865, F.S., relating to private spaces.

Section 4: Amends s. 790.22, F.S., relating to use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.

Section 5: Amends s. 938.17, F.S., relating to county delinquency prevention; juvenile assessment centers and school board suspension programs.

Section 6: Amends 943.0515, F.S., relating to retention of criminal history records of minors.

Section 7: Amends s. 948.51, F.S., relating to community corrections assistance to counties or county consortiums.

Section 8: Amends s. 985.02, F.S., relating to legislative intent for the juvenile justice system.

Section 9: Amends s. 985.03, F.S., relating to definitions.

Section 10: Amends s. 985.039, F.S., relating to cost of supervision; cost of care.

Section 11: Amends s. 985.115, F.S., relating to release or delivery from custody.

Section 12: Amends s. 985.126, F.S., relating to diversion programs; data collection; denial of participation or expunged record.

Section 13: Amends s. 985.17, F.S., relating to prevention services.

Section 14: Amends s. 985.26, F.S., relating to length of detention.

Section 15: Amends s. 985.27, F.S., relating to postdisposition detention while awaiting residential commitment placement.

Section 16: Amends s. 985.441, F.S., relating to commitment.

³³ Credentials included are: registered apprenticeship programs, industry certifications, licenses, advanced technical certificates, college credit certificates, career certificates, applied technology diplomas, associate degrees, baccalaureate degrees, and graduate degrees. S. 445.004(4)(h), F.S.

³⁴ DJJ, *supra* at note 8.

³⁵ *Id.*

Section 17: Amends s. 985.455, F.S., relating to other dispositional issues.

Section 18: Amends s. 985.465, F.S., relating to juvenile correctional facilities or juvenile prison.

Section 19: Amends s. 985.601, F.S., relating to administering the juvenile justice continuum.

Section 20: Amends s. 985.664, F.S., relating to juvenile justice circuit advisory boards.

Section 21: Amends s. 985.668, F.S., relating to innovation zones.

Section 22: Amends s. 985.676, F.S., relating to community juvenile justice partnership grants.

Section 23: Amends s. 1003.51, F.S., relating to other public educational services.

Section 24: Amends s. 1003.52, F.S., relating to educational services in Department of Juvenile Justice programs.

Section 25: Amends s. 1001.42, F.S., relating to powers and duties of district school board.

Section 26: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not make changes to currently authorized resources or expenditures. It authorizes DJJ to use available state or federal funds for specified educational materials, but does not appropriate any additional funding. DJJ reports that the bill is not anticipated to have a fiscal impact.³⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

³⁶ DJJ, *supra* at note 8.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to juvenile justice; amending s.
3 330.41, F.S.; conforming provisions to changes made by
4 the act; amending s. 381.887, F.S.; authorizing
5 certain employees of Department of Juvenile Justice
6 and contracted providers to possess and administer
7 opioid antagonists; providing immunity from liability
8 for administration; amending ss. 553.865, 790.22,
9 938.17, 943.0515, and 948.51, F.S.; conforming
10 provisions to changes made by the act; amending s.
11 985.02, F.S.; replacing the term "gender-specific"
12 with "sex-specific"; conforming provisions; amending
13 s. 985.03, F.S.; eliminating the minimum-risk
14 nonresidential restrictiveness level; redesignating
15 the nonsecure residential restrictiveness level as the
16 "moderate-risk residential level"; revising the
17 components of the maximum-risk residential
18 restrictiveness level; defining "sex"; amending s.
19 985.039, F.S.; conforming provisions to changes made
20 by the act; amending s. 985.115, F.S.; providing that
21 juvenile assessment centers are not facilities that
22 are permitted to receive certain children; amending
23 ss. 985.126 and 985.17, F.S.; conforming provisions to
24 changes made by the act; amending s. 985.26, F.S.;
25 revising provisions concerning transitioning a child

26 to and from secure detention care and supervised
 27 release detention care; amending ss. 985.27, 985.441,
 28 and 985.455, F.S.; conforming provisions to changes
 29 made by the act; amending s. 985.465, F.S.; replacing
 30 the term "juvenile correctional facility or juvenile
 31 prison" with "maximum-risk residential facilities";
 32 amending s. 985.601, F.S.; authorizing the purchase of
 33 promotional and educational materials for specified
 34 purposes; amending s. 985.664, F.S.; substantially
 35 revising provisions relating to juvenile justice
 36 circuit advisory boards; amending ss. 985.668 and
 37 985.676, F.S.; conforming provisions to changes made
 38 by the act; amending s. 1003.51, F.S.; revising
 39 provisions concerning education programs for students
 40 in Department of Juvenile Justice programs; amending
 41 s. 1003.52, F.S.; deleting provisions concerning
 42 certain performance measures; deleting provisions
 43 concerning CAPE programs; amending s. 1001.42, F.S.;
 44 revising a cross-reference; providing an effective
 45 date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Paragraph (a) of subsection (2) of section
 50 330.41, Florida Statutes, is amended to read:

51 330.41 Unmanned Aircraft Systems Act.—
 52 (2) DEFINITIONS.—As used in this act, the term:
 53 (a) "Critical infrastructure facility" means any of the
 54 following, if completely enclosed by a fence or other physical
 55 barrier that is obviously designed to exclude intruders, or if
 56 clearly marked with a sign or signs which indicate that entry is
 57 forbidden and which are posted on the property in a manner
 58 reasonably likely to come to the attention of intruders:
 59 1. A power generation or transmission facility,
 60 substation, switching station, or electrical control center.
 61 2. A chemical or rubber manufacturing or storage facility.
 62 3. A water intake structure, water treatment facility,
 63 wastewater treatment plant, or pump station.
 64 4. A mining facility.
 65 5. A natural gas or compressed gas compressor station,
 66 storage facility, or natural gas or compressed gas pipeline.
 67 6. A liquid natural gas or propane gas terminal or storage
 68 facility.
 69 7. Any portion of an aboveground oil or gas pipeline.
 70 8. A refinery.
 71 9. A gas processing plant, including a plant used in the
 72 processing, treatment, or fractionation of natural gas.
 73 10. A wireless communications facility, including the
 74 tower, antennae, support structures, and all associated ground-
 75 based equipment.

76 11. A seaport as listed in s. 311.09(1), which need not be
 77 completely enclosed by a fence or other physical barrier and
 78 need not be marked with a sign or signs indicating that entry is
 79 forbidden.

80 12. An inland port or other facility or group of
 81 facilities serving as a point of intermodal transfer of freight
 82 in a specific area physically separated from a seaport.

83 13. An airport as defined in s. 330.27.

84 14. A spaceport territory as defined in s. 331.303(18).

85 15. A military installation as defined in 10 U.S.C. s.
 86 2801(c)(4) and an armory as defined in s. 250.01.

87 16. A dam as defined in s. 373.403(1) or other structures,
 88 such as locks, floodgates, or dikes, which are designed to
 89 maintain or control the level of navigable waterways.

90 17. A state correctional institution as defined in s.
 91 944.02 or a private correctional facility authorized under
 92 chapter 957.

93 18. A secure detention center or facility as defined in s.
 94 985.03, or a moderate-risk ~~nonscore~~ residential facility, a
 95 high-risk residential facility, or a maximum-risk residential
 96 facility as those terms are described in s. 985.03(44).

97 19. A county detention facility as defined in s. 951.23.

98 20. A critical infrastructure facility as defined in s.
 99 692.201.

100 Section 2. Paragraph (d) is added to subsection (4) of

101 section 381.887, Florida Statutes, to read:

102 381.887 Emergency treatment for suspected opioid
103 overdose.—

104 (4) The following persons are authorized to possess,
105 store, and administer emergency opioid antagonists as clinically
106 indicated and are immune from any civil liability or criminal
107 liability as a result of administering an emergency opioid
108 antagonist:

109 (d) Personnel of the Department of Juvenile Justice and of
110 any contracted provider with direct contact with youth
111 authorized under chapters 984 and 985.

112 Section 3. Paragraphs (c) and (j) of subsection (3),
113 paragraph (a) of subsection (10), and paragraph (f) of
114 subsection (12) of section 553.865, Florida Statutes, are
115 amended to read:

116 553.865 Private spaces.—

117 (3) As used in this section, the term:

118 (c) "Covered entity" means any:

- 119 1. Correctional institution;
- 120 2. Detention facility;
- 121 3. Educational institution;

122 4. Maximum risk residential facility ~~Juvenile correctional~~
123 ~~facility or juvenile prison~~ as described in s. 985.465, any
124 detention center or facility designated by the Department of
125 Juvenile Justice to provide secure detention as defined in s.

126 985.03(18) (a), and any facility used for a residential program
 127 as described in s. 985.03(44) ~~985.03(44) (b), (c), or (d)~~; or

128 5. Public building.

129 (j) "Public building" means a building comfort-conditioned
 130 for occupancy which is owned or leased by the state, a state
 131 agency, or a political subdivision. The term does not include a
 132 correctional institution, a detention facility, an educational
 133 institution, a maximum risk residential facility ~~juvenile~~
 134 ~~correctional facility or juvenile prison~~ as described in s.
 135 985.465, a detention center or facility designated by the
 136 Department of Juvenile Justice to provide secure detention as
 137 defined in s. 985.03(18) (a), or any facility used for a
 138 residential program as described in s. 985.03(44) ~~985.03(44) (b),~~
 139 ~~(c), or (d)~~.

140 (10) (a) Each maximum risk residential facility ~~juvenile~~
 141 ~~correctional facility or juvenile prison~~ as described in s.
 142 985.465, each detention center or facility designated by the
 143 Department of Juvenile Justice to provide secure detention as
 144 defined in s. 985.03(18) (a), and each facility used for a
 145 residential program as described in s. 985.03(44) ~~985.03(44) (b),~~
 146 ~~(c), or (d)~~ shall establish disciplinary procedures for any
 147 juvenile as defined in s. 985.03(7) who willfully enters, for a
 148 purpose other than those listed in subsection (6), a restroom or
 149 changing facility designated for the opposite sex in such
 150 maximum risk residential facility ~~juvenile correctional~~

151 ~~facility, juvenile prison,~~ secure detention center or facility,
 152 or residential program facility and refuses to depart when asked
 153 to do so by delinquency program staff, detention staff, or
 154 residential program staff.

155 (12) A covered entity that is:

156 (f) A maximum risk residential facility ~~juvenile~~
 157 ~~correctional facility or juvenile prison~~ as described in s.
 158 985.465, a detention center or facility designated by the
 159 Department of Juvenile Justice to provide secure detention as
 160 defined in s. 985.03(18)(a), or a facility used for a
 161 residential program as described in s. 985.03(44) ~~985.03(44)(b),~~
 162 ~~(c), or (d)~~ shall submit documentation to the Department of
 163 Juvenile Justice regarding compliance with subsections (4) and
 164 (5), as applicable, within 1 year after being established or, if
 165 such institution or facility was established before July 1,
 166 2023, no later than April 1, 2024.

167 Section 4. Paragraph (c) of subsection (4) of section
 168 790.22, Florida Statutes, is amended to read:

169 790.22 Use of BB guns, air or gas-operated guns, or
 170 electric weapons or devices by minor under 16; limitation;
 171 possession of firearms by minor under 18 prohibited; penalties.-

172 (4)

173 (c) The ~~juvenile justice circuit advisory boards or the~~
 174 Department of Juvenile Justice shall establish appropriate
 175 community service programs to be available to the alternative

176 sanctions coordinators of the circuit courts in implementing
 177 this subsection. The boards or department shall propose the
 178 implementation of a community service program in each circuit,
 179 and may submit a circuit plan, to be implemented upon approval
 180 of the circuit alternative sanctions coordinator.

181 Section 5. Subsection (4) of section 938.17, Florida
 182 Statutes, is amended to read:

183 938.17 County delinquency prevention; juvenile assessment
 184 centers and school board suspension programs.—

185 (4) A sheriff's office that receives proceeds pursuant to
 186 s. 939.185 shall account for all funds annually by August 1 in a
 187 written report to the Department of Juvenile Justice ~~juvenile~~
 188 ~~justice circuit advisory board~~ if funds are used for assessment
 189 centers, and to the district school board if funds are used for
 190 suspension programs.

191 Section 6. Subsection (1) of section 943.0515, Florida
 192 Statutes, is amended to read:

193 943.0515 Retention of criminal history records of minors.—

194 (1)(a) The Criminal Justice Information Program shall
 195 retain the criminal history record of a minor who is classified
 196 as a serious or habitual juvenile offender or committed to a
 197 maximum risk residential facility ~~juvenile correctional facility~~
 198 ~~or juvenile prison~~ under chapter 985 for 5 years after the date
 199 the offender reaches 21 years of age, at which time the record
 200 shall be expunged unless it meets the criteria of paragraph

201 (2) (a) or paragraph (2) (b).

202 (b)1. If the minor is not classified as a serious or
203 habitual juvenile offender or committed to a maximum risk
204 residential facility ~~juvenile correctional facility or juvenile~~
205 ~~prison~~ under chapter 985, the program shall retain the minor's
206 criminal history record for 2 years after the date the minor
207 reaches 19 years of age, at which time the record shall be
208 expunged unless it meets the criteria of paragraph (2) (a) or
209 paragraph (2) (b).

210 2. A minor described in subparagraph 1. may apply to the
211 department to have his or her criminal history record expunged
212 before the minor reaches 21 years of age. To be eligible for
213 expunction under this subparagraph, the minor must be 18 years
214 of age or older and less than 21 years of age and have not been
215 charged by the state attorney with or found to have committed
216 any criminal offense within the 5-year period before the
217 application date. The only offenses eligible to be expunged
218 under this subparagraph are those that the minor committed
219 before the minor reached 18 years of age. A criminal history
220 record expunged under this subparagraph requires the approval of
221 the state attorney for each circuit in which an offense
222 specified in the criminal history record occurred. A minor
223 seeking to expunge a criminal history record under this
224 subparagraph shall apply to the department for expunction in the
225 manner prescribed by rule. An application for expunction under

226 | this subparagraph shall include:

227 | a. A processing fee of \$75 to the department for placement
228 | in the Department of Law Enforcement Operating Trust Fund,
229 | unless such fee is waived by the executive director.

230 | b. A full set of fingerprints of the applicant taken by a
231 | law enforcement agency for purposes of identity verification.

232 | c. A sworn, written statement from the minor seeking
233 | relief that he or she is no longer under court supervision
234 | applicable to the disposition of the arrest or alleged criminal
235 | activity to which the application to expunge pertains and that
236 | he or she has not been charged with or found to have committed a
237 | criminal offense, in any jurisdiction of the state or within the
238 | United States, within the 5-year period before the application
239 | date. A person who knowingly provides false information on the
240 | sworn statement required by this sub-subparagraph commits a
241 | misdemeanor of the first degree, punishable as provided in s.
242 | 775.082 or s. 775.083.

243 | 3. A minor who applies, but who is not approved for early
244 | expunction in accordance with subparagraph 2., shall have his or
245 | her criminal history record expunged at age 21 if eligible under
246 | subparagraph 1.

247 | Section 7. Subsection (2) of section 948.51, Florida
248 | Statutes, is amended to read:

249 | 948.51 Community corrections assistance to counties or
250 | county consortiums.—

251 (2) ELIGIBILITY OF COUNTIES AND COUNTY CONSORTIUMS.—A
 252 county, or a consortium of two or more counties, may contract
 253 with the Department of Corrections for community corrections
 254 funds as provided in this section. In order to enter into a
 255 community corrections partnership contract, a county or county
 256 consortium must have a public safety coordinating council
 257 established under s. 951.26 and must designate a county officer
 258 or agency to be responsible for administering community
 259 corrections funds received from the state. The public safety
 260 coordinating council shall prepare, develop, and implement a
 261 comprehensive public safety plan for the county, or the
 262 geographic area represented by the county consortium, and shall
 263 submit an annual report to the Department of Corrections
 264 concerning the status of the program. In preparing the
 265 comprehensive public safety plan, the public safety coordinating
 266 council shall cooperate with the Department of Juvenile Justice
 267 ~~juvenile justice circuit advisory board established under s.~~
 268 ~~985.664~~ in order to include programs and services for juveniles
 269 in the plan. To be eligible for community corrections funds
 270 under the contract, the initial public safety plan must be
 271 approved by the governing board of the county, or the governing
 272 board of each county within the consortium, and the Secretary of
 273 Corrections based on the requirements of this section. If one or
 274 more other counties develop a unified public safety plan, the
 275 public safety coordinating council shall submit a single

276 application to the department for funding. Continued contract
277 funding shall be pursuant to subsection (5). The plan for a
278 county or county consortium must cover at least a 5-year period
279 and must include:

280 (a) A description of programs offered for the job
281 placement and treatment of offenders in the community.

282 (b) A specification of community-based intermediate
283 sentencing options to be offered and the types and number of
284 offenders to be included in each program.

285 (c) Specific goals and objectives for reducing the
286 projected percentage of commitments to the state prison system
287 of persons with low total sentencing scores pursuant to the
288 Criminal Punishment Code.

289 (d) Specific evidence of the population status of all
290 programs which are part of the plan, which evidence establishes
291 that such programs do not include offenders who otherwise would
292 have been on a less intensive form of community supervision.

293 (e) The assessment of population status by the public
294 safety coordinating council of all correctional facilities owned
295 or contracted for by the county or by each county within the
296 consortium.

297 (f) The assessment of bed space that is available for
298 substance abuse intervention and treatment programs and the
299 assessment of offenders in need of treatment who are committed
300 to each correctional facility owned or contracted for by the

301 county or by each county within the consortium.

302 (g) A description of program costs and sources of funds
 303 for each community corrections program, including community
 304 corrections funds, loans, state assistance, and other financial
 305 assistance.

306 Section 8. Paragraph (h) of subsection (1) and subsection
 307 (7) of section 985.02, Florida Statutes, are amended to read:

308 985.02 Legislative intent for the juvenile justice
 309 system.—

310 (1) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of
 311 the Legislature that the children of this state be provided with
 312 the following protections:

313 (h) Sex-specific ~~Gender-specific~~ programming and sex-
 314 specific ~~gender-specific~~ program models and services that
 315 comprehensively address the needs of either sex ~~a targeted~~
 316 ~~gender group~~.

317 (7) SEX-SPECIFIC ~~GENDER-SPECIFIC~~ PROGRAMMING.—

318 (a) The Legislature finds that the needs of children
 319 served by the juvenile justice system are sex-specific ~~gender-~~
 320 ~~specific~~. A sex-specific ~~gender-specific~~ approach is one in
 321 which programs, services, and treatments comprehensively address
 322 the unique developmental needs of either sex ~~a targeted gender~~
 323 ~~group~~ under the care of the department. Young women and men have
 324 different pathways to delinquency, display different patterns of
 325 offending, and respond differently to interventions, treatment,

326 and services.

327 (b) Sex-specific ~~Gender-specific~~ interventions focus on
 328 the differences between young females' and young males' social
 329 roles and responsibilities, access to and use of resources,
 330 history of trauma, and reasons for interaction with the juvenile
 331 justice system. Sex-specific ~~Gender-specific~~ programs increase
 332 the effectiveness of programs by making interventions more
 333 appropriate to the specific needs of young women and men and
 334 ensuring that these programs do not unknowingly create,
 335 maintain, or reinforce sex ~~gender~~ roles or relations that may be
 336 damaging.

337 Section 9. Subsections (46) through (54) of section
 338 985.03, Florida Statutes, are renumbered as subsections (47)
 339 through (55), respectively, subsections (14) and (44) and
 340 present subsection (50) are amended, and a new subsection (46)
 341 is added to that section, to read:

342 985.03 Definitions.—As used in this chapter, the term:

343 (14) "Day treatment" means a nonresidential, community-
 344 based program designed to provide therapeutic intervention to
 345 youth who are served by the department, or placed on probation
 346 or conditional release, ~~or committed to the minimum-risk~~
 347 ~~nonresidential level~~. A day treatment program may provide
 348 educational and career and technical education services and
 349 shall provide case management services; individual, group, and
 350 family counseling; training designed to address delinquency risk

351 factors; and monitoring of a youth's compliance with, and
352 facilitation of a youth's completion of, sanctions if ordered by
353 the court. Program types may include, but are not limited to,
354 career programs, marine programs, juvenile justice alternative
355 schools, training and rehabilitation programs, and sex-specific
356 ~~gender-specific~~ programs.

357 (44) "Restrictiveness level" means the level of
358 programming and security provided by programs that service the
359 supervision, custody, care, and treatment needs of committed
360 children. Sections 985.601(10) and 985.721 apply to children
361 placed in programs at any residential commitment level. The
362 restrictiveness levels of commitment are as follows:

363 ~~(a) Minimum-risk nonresidential.—Programs or program~~
364 ~~models at this commitment level work with youth who remain in~~
365 ~~the community and participate at least 5 days per week in a day~~
366 ~~treatment program. Youth assessed and classified for programs at~~
367 ~~this commitment level represent a minimum risk to themselves and~~
368 ~~public safety and do not require placement and services in~~
369 ~~residential settings. Youth in this level have full access to,~~
370 ~~and reside in, the community. Youth who have been found to have~~
371 ~~committed delinquent acts that involve firearms, that are sexual~~
372 ~~offenses, or that would be life felonies or first degree~~
373 ~~felonies if committed by an adult may not be committed to a~~
374 ~~program at this level.~~

375 (a)-(b) Moderate-risk Nonsecure residential.—Programs or

376 program models at this commitment level are residential but may
377 allow youth to have supervised access to the community.
378 Facilities at this commitment level are either environmentally
379 secure, staff secure, or are hardware-secure with walls,
380 fencing, or locking doors. Residential facilities at this
381 commitment level shall have no more than 90 beds each, including
382 campus-style programs, unless those campus-style programs
383 include more than one treatment program using different
384 treatment protocols, and have facilities that coexist separately
385 in distinct locations on the same property. Facilities at this
386 commitment level shall provide 24-hour awake supervision,
387 custody, care, and treatment of residents. Youth assessed and
388 classified for placement in programs at this commitment level
389 represent a low or moderate risk to public safety and require
390 close supervision. The staff at a facility at this commitment
391 level may seclude a child who is a physical threat to himself or
392 herself or others. Mechanical restraint may also be used when
393 necessary.

394 (b) ~~(c)~~ High-risk residential.—Programs or program models
395 at this commitment level are residential and do not allow youth
396 to have access to the community, except that temporary release
397 providing community access for up to 72 continuous hours may be
398 approved by a court for a youth who has made successful progress
399 in his or her program in order for the youth to attend a family
400 emergency or, during the final 60 days of his or her placement,

401 to visit his or her home, enroll in school or a career and
402 technical education program, complete a job interview, or
403 participate in a community service project. High-risk
404 residential facilities are hardware-secure with perimeter
405 fencing and locking doors. Residential facilities at this
406 commitment level shall have no more than 90 beds each, including
407 campus-style programs, unless those campus-style programs
408 include more than one treatment program using different
409 treatment protocols, and have facilities that coexist separately
410 in distinct locations on the same property. Facilities at this
411 commitment level shall provide 24-hour awake supervision,
412 custody, care, and treatment of residents. Youth assessed and
413 classified for this level of placement require close supervision
414 in a structured residential setting. Placement in programs at
415 this level is prompted by a concern for public safety that
416 outweighs placement in programs at lower commitment levels. The
417 staff at a facility at this commitment level may seclude a child
418 who is a physical threat to himself or herself or others.
419 Mechanical restraint may also be used when necessary. The
420 facility may provide for single cell occupancy, except that
421 youth may be housed together during prerelease transition.

422 (c)~~(d)~~ Maximum-risk residential. ~~Programs or program~~
423 ~~models at this commitment level include juvenile correctional~~
424 ~~facilities and juvenile prisons.~~ The programs at this commitment
425 level are long-term residential and do not allow youth to have

426 access to the community. Facilities at this commitment level are
 427 maximum-custody, hardware-secure with perimeter security fencing
 428 and locking doors. Residential facilities at this commitment
 429 level shall have no more than 90 beds each, including campus-
 430 style programs, unless those campus-style programs include more
 431 than one treatment program using different treatment protocols,
 432 and have facilities that coexist separately in distinct
 433 locations on the same property. Facilities at this commitment
 434 level shall provide 24-hour awake supervision, custody, care,
 435 and treatment of residents. The staff at a facility at this
 436 commitment level may seclude a child who is a physical threat to
 437 himself or herself or others. Mechanical restraint may also be
 438 used when necessary. Facilities at this commitment level shall
 439 provide for single cell occupancy, except that youth may be
 440 housed together during prerelease transition. Youth assessed and
 441 classified for this level of placement require close supervision
 442 in a maximum security residential setting. Placement in a
 443 program at this level is prompted by a demonstrated need to
 444 protect the public.

445 (46) "Sex" means has the same meaning as provided in s.
 446 553.865(3).

447 (51)-(50) "Temporary release" means the terms and
 448 conditions under which a child is temporarily released from a
 449 residential commitment facility or allowed home visits. If the
 450 temporary release is from a moderate-risk ~~nonsecure~~ residential

451 facility, a high-risk residential facility, or a maximum-risk
 452 residential facility, the terms and conditions of the temporary
 453 release must be approved by the child, the court, and the
 454 facility.

455 Section 10. Paragraph (a) of subsection (1) of section
 456 985.039, Florida Statutes, is amended to read:

457 985.039 Cost of supervision; cost of care.—

458 (1) Except as provided in subsection (3) or subsection
 459 (4):

460 (a) When any child is placed into supervised release
 461 detention, probation, or other supervision status with the
 462 department, ~~or is committed to the minimum-risk nonresidential~~
 463 ~~restrictiveness level~~, the court shall order the parent of such
 464 child to pay to the department a fee for the cost of the
 465 supervision of such child in the amount of \$1 per day for each
 466 day that the child is in such status.

467 Section 11. Paragraph (f) of subsection (2) of section
 468 985.115, Florida Statutes, is amended to read:

469 985.115 Release or delivery from custody.—

470 (2) Unless otherwise ordered by the court under s. 985.255
 471 or s. 985.26, and unless there is a need to hold the child, a
 472 person taking a child into custody shall attempt to release the
 473 child as follows:

474 (f) If available, to a juvenile assessment center equipped
 475 and staffed to assume custody of the child for the purpose of

476 assessing the needs of the child in custody. The center may then
 477 release or deliver the child under this section with a copy of
 478 the assessment. A juvenile assessment center is not to be
 479 considered a facility that is permitted to receive a child as
 480 described in paragraph (c), paragraph (d), or paragraph (e).

481 Section 12. Paragraphs (a) and (b) of subsection (3) and
 482 subsection (4) of section 985.126, Florida Statutes, are amended
 483 to read:

484 985.126 Diversion programs; data collection; denial of
 485 participation or expunged record.—

486 (3) (a) ~~Beginning October 1, 2018,~~ Each diversion program
 487 shall submit data to the department which identifies for each
 488 minor participating in the diversion program:

489 1. The race, ethnicity, sex ~~gender~~, and age of that minor.

490 2. The offense committed, including the specific law
 491 establishing the offense.

492 3. The judicial circuit and county in which the offense
 493 was committed and the law enforcement agency that had contact
 494 with the minor for the offense.

495 4. Other demographic information necessary to properly
 496 register a case into the Juvenile Justice Information System
 497 Prevention Web, as specified by the department.

498 (b) ~~Beginning October 1, 2018,~~ Each law enforcement agency
 499 shall submit to the department data that identifies for each
 500 minor who was eligible for a diversion program, but was instead

501 referred to the department, provided a notice to appear, or
 502 arrested:

- 503 1. The data required pursuant to paragraph (a).
- 504 2. Whether the minor was offered the opportunity to
 505 participate in a diversion program. If the minor was:
 - 506 a. Not offered such opportunity, the reason such offer was
 507 not made.
 - 508 b. Offered such opportunity, whether the minor or his or
 509 her parent or legal guardian declined to participate in the
 510 diversion program.

511 (4) ~~Beginning January 1, 2019,~~ The department shall
 512 compile and semiannually publish the data required by subsection
 513 (3) on the department's website in a format that is, at a
 514 minimum, sortable by judicial circuit, county, law enforcement
 515 agency, race, ethnicity, sex ~~gender~~, age, and offense committed.

516 Section 13. Paragraph (a) of subsection (3) of section
 517 985.17, Florida Statutes, is amended to read:

518 985.17 Prevention services.—

519 (3) The department's prevention services for youth at risk
 520 of becoming delinquent should:

- 521 (a) Focus on preventing initial or further involvement of
 522 such youth in the juvenile justice system by including services
 523 such as literacy services, sex-specific ~~gender-specific~~
 524 programming, recreational services, and after-school services,
 525 and should include targeted services to troubled, truant,

526 | ungovernable, abused, trafficked, or runaway youth. To decrease
527 | the likelihood that a youth will commit a delinquent act, the
528 | department should use mentoring and may provide specialized
529 | services addressing the strengthening of families, job training,
530 | and substance abuse.

531 | Section 14. Paragraph (a) of subsection (2) of section
532 | 985.26, Florida Statutes, is amended to read:

533 | 985.26 Length of detention.—

534 | (2)(a)1. A court may order a child to be placed on
535 | supervised release detention care for any time period until an
536 | adjudicatory hearing is completed. However, if a child has
537 | served 60 days on supervised release detention care, the court
538 | must conduct a hearing within 15 days after the 60th day, to
539 | determine the need for continued supervised release detention
540 | care. At the hearing, and upon good cause being shown that the
541 | nature of the charge requires additional time for the
542 | prosecution or defense of the case or that the totality of the
543 | circumstances, including the preservation of public safety,
544 | warrants an extension, the court may order the child to remain
545 | on supervised release detention care until the adjudicatory
546 | hearing is completed.

547 | 2. Except as provided in paragraph (b) or paragraph (c), a
548 | child may not be held in secure detention care under a special
549 | detention order for more than 21 days unless an adjudicatory
550 | hearing for the case has been commenced in good faith by the

551 court.

552 3. This section does not prohibit a court from
 553 transitioning a child to and from secure detention care and
 554 supervised release detention care, including electronic
 555 monitoring, when the court finds such a placement necessary, or
 556 no longer necessary, to preserve public safety or to ensure the
 557 child's safety, appearance in court, or compliance with a court
 558 order. Such transfer may be upon the court's own motion, or upon
 559 motion of the child or the state, and after considering any
 560 information provided by the department regarding the child's
 561 adjustment to detention supervision. Each period of secure
 562 detention care or supervised release detention care counts
 563 toward the time limitations in this subsection whether served
 564 consecutively or nonconsecutively.

565 Section 15. Section 985.27, Florida Statutes, is amended
 566 to read:

567 985.27 Postdisposition detention while awaiting
 568 residential commitment placement.—The court must place all
 569 children who are adjudicated and awaiting placement in a
 570 moderate-risk ~~nonsecure~~, high-risk, or maximum-risk residential
 571 commitment program in secure detention care until the placement
 572 or commitment is accomplished.

573 Section 16. Subsection (2) of section 985.441, Florida
 574 Statutes, is amended to read:

575 985.441 Commitment.—

576 (2) Notwithstanding subsection (1), the court having
 577 jurisdiction over an adjudicated delinquent child whose offense
 578 is a misdemeanor, or a child who is currently on probation for a
 579 misdemeanor, may not commit the child for any misdemeanor
 580 offense or any probation violation that is technical in nature
 581 and not a new violation of law at a restrictiveness level other
 582 than minimum-risk nonresidential. However, the court may commit
 583 such child to a moderate-risk ~~nonsecure~~ residential placement
 584 if:

585 (a) The child has previously been adjudicated or had
 586 adjudication withheld for a felony offense;

587 (b) The child has previously been adjudicated or had
 588 adjudication withheld for three or more misdemeanor offenses
 589 within the previous 18 months;

590 (c) The child is before the court for disposition for a
 591 violation of s. 800.03, s. 806.031, or s. 828.12; or

592 (d) The court finds by a preponderance of the evidence
 593 that the protection of the public requires such placement or
 594 that the particular needs of the child would be best served by
 595 such placement. Such finding must be in writing.

596 Section 17. Subsection (3) of section 985.455, Florida
 597 Statutes, is amended to read:

598 985.455 Other dispositional issues.—

599 (3) Any commitment of a delinquent child to the department
 600 must be for an indeterminate period of time, which may include

601 periods of temporary release; however, the period of time may
602 not exceed the maximum term of imprisonment that an adult may
603 serve for the same offense, ~~except that the duration of a~~
604 ~~minimum-risk nonresidential commitment for an offense that is a~~
605 ~~misdemeanor of the second degree, or is equivalent to a~~
606 ~~misdemeanor of the second degree, may be for a period not to~~
607 ~~exceed 6 months.~~ The duration of the child's placement in a
608 commitment program of any restrictiveness level shall be based
609 on objective performance-based treatment planning. The child's
610 treatment plan progress and adjustment-related issues shall be
611 reported to the court quarterly, unless the court requests
612 monthly reports. If the child is under the jurisdiction of a
613 dependency court, the court may receive and consider any
614 information provided by the Guardian Ad Litem Program or the
615 child's attorney ad litem, if appointed. The child's length of
616 stay in a commitment program may be extended if the child fails
617 to comply with or participate in treatment activities. The
618 child's length of stay in the program shall not be extended for
619 purposes of sanction or punishment. Any temporary release from
620 such program must be approved by the court. Any child so
621 committed may be discharged from institutional confinement or a
622 program upon the direction of the department with the
623 concurrence of the court. The child's treatment plan progress
624 and adjustment-related issues must be communicated to the court
625 at the time the department requests the court to consider

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626 releasing the child from the commitment program. The department
627 shall give the court that committed the child to the department
628 reasonable notice, in writing, of its desire to discharge the
629 child from a commitment facility. The court that committed the
630 child may thereafter accept or reject the request. If the court
631 does not respond within 10 days after receipt of the notice, the
632 request of the department shall be deemed granted. This section
633 does not limit the department's authority to revoke a child's
634 temporary release status and return the child to a commitment
635 facility for any violation of the terms and conditions of the
636 temporary release.

637 Section 18. Section 985.465, Florida Statutes, is amended
638 to read:

639 985.465 Maximum-risk residential facilities ~~Juvenile~~
640 ~~correctional facilities or juvenile prison.~~ -A maximum risk
641 facility ~~juvenile correctional facility or juvenile prison~~ is a
642 physically secure residential commitment program with a
643 designated length of stay from 18 months to 36 months, primarily
644 serving children 13 years of age to 19 years of age or until the
645 jurisdiction of the court expires. Each child committed to this
646 level must meet one of the following criteria:

647 (1) The child is at least 13 years of age at the time of
648 the disposition for the current offense and has been adjudicated
649 on the current offense for:

650 (a) Arson;

- 651 (b) Sexual battery;
- 652 (c) Robbery;
- 653 (d) Kidnapping;
- 654 (e) Aggravated child abuse;
- 655 (f) Aggravated assault;
- 656 (g) Aggravated stalking;
- 657 (h) Murder;
- 658 (i) Manslaughter;
- 659 (j) Unlawful throwing, placing, or discharging of a
- 660 destructive device or bomb;
- 661 (k) Armed burglary;
- 662 (l) Aggravated battery;
- 663 (m) Carjacking;
- 664 (n) Home-invasion robbery;
- 665 (o) Burglary with an assault or battery;
- 666 (p) Any lewd or lascivious offense committed upon or in
- 667 the presence of a person less than 16 years of age; or
- 668 (q) Carrying, displaying, using, threatening to use, or
- 669 attempting to use a weapon or firearm during the commission of a
- 670 felony.
- 671 (2) The child is at least 13 years of age at the time of
- 672 the disposition, the current offense is a felony, and the child
- 673 has previously been committed three or more times to a
- 674 delinquency commitment program.
- 675 (3) The child is at least 13 years of age and is currently

676 committed for a felony offense and transferred from a moderate-
 677 risk or high-risk residential commitment placement.

678 (4) The child is at least 13 years of age at the time of
 679 the disposition for the current offense, the child is eligible
 680 for prosecution as an adult for the current offense, and the
 681 current offense is ranked at level 7 or higher on the Criminal
 682 Punishment Code offense severity ranking chart pursuant to s.
 683 921.0022.

684 Section 19. Subsection (12) is added to section 985.601,
 685 Florida Statutes, and paragraph (a) of subsection (3) of that
 686 section is amended, to read:

687 985.601 Administering the juvenile justice continuum.—

688 (3)(a) The department shall develop or contract for
 689 diversified and innovative programs to provide rehabilitative
 690 treatment, including early intervention and prevention,
 691 diversion, comprehensive intake, case management, diagnostic and
 692 classification assessments, trauma-informed care, individual and
 693 family counseling, family engagement resources and programs,
 694 sex-specific ~~gender-specific~~ programming, shelter care,
 695 diversified detention care emphasizing alternatives to secure
 696 detention, diversified probation, halfway houses, foster homes,
 697 community-based substance abuse treatment services, community-
 698 based mental health treatment services, community-based
 699 residential and nonresidential programs, mother-infant programs,
 700 and environmental programs. The department may pay expenses in

701 support of innovative programs and activities that address
702 identified needs and the well-being of children in the
703 department's care or under its supervision, subject to the
704 requirements of chapters 215, 216, and 287. Each program shall
705 place particular emphasis on reintegration and conditional
706 release for all children in the program.

707 (12) The department may use state or federal funds to
708 purchase and distribute promotional and educational materials
709 consistent with the dignity and integrity of the state for the
710 purposes of:

711 (a) Educating youth and families about the juvenile
712 justice continuum, including local prevention programs or
713 community services available for participation or enrollment.

714 (b) Staff recruitment at job fairs, career fairs,
715 community events, and technical education program, community
716 college, or state college campuses.

717 (c) Educating youth and families on youth-specific public
718 safety issues, including, but not limited to, safe storage of
719 adult-owned firearms, consequences of youth firearm offenses,
720 human trafficking, and drug and alcohol abuse.

721 Section 20. Section 985.664, Florida Statutes, is amended
722 to read:

723 985.664 Juvenile justice circuit advisory boards.—

724 (1) Each circuit shall have a juvenile justice circuit
725 advisory board. The board shall work with the chief probation

726 officer of the circuit to use data to inform policy and practice
727 which improves the juvenile justice continuum.

728 ~~(1) There is authorized a juvenile justice circuit~~
729 ~~advisory board to be established in each of the 20 judicial~~
730 ~~circuits. Except in single-county circuits, each juvenile~~
731 ~~justice circuit advisory board shall have a county organization~~
732 ~~representing each of the counties in the circuit. The county~~
733 ~~organization shall report directly to the juvenile justice~~
734 ~~circuit advisory board on the juvenile justice needs of the~~
735 ~~county. The purpose of each juvenile justice circuit advisory~~
736 ~~board is to provide advice and direction to the department in~~
737 ~~the development and implementation of juvenile justice programs~~
738 ~~and to work collaboratively with the department in seeking~~
739 ~~program improvements and policy changes to address the emerging~~
740 ~~and changing needs of Florida's youth who are at risk of~~
741 ~~delinquency.~~

742 ~~(2) The duties and responsibilities of a juvenile justice~~
743 ~~circuit advisory board include, but are not limited to:~~

744 ~~(a) Developing a comprehensive plan for the circuit. The~~
745 ~~initial circuit plan shall be submitted to the department no~~
746 ~~later than December 31, 2014, and no later than June 30 every 3~~
747 ~~years thereafter. The department shall prescribe a format and~~
748 ~~content requirements for the submission of the comprehensive~~
749 ~~plan.~~

750 ~~(b) Participating in the facilitation of interagency~~

751 ~~cooperation and information sharing.~~

752 ~~(c) Providing recommendations for public or private grants~~
753 ~~to be administered by one of the community partners that support~~
754 ~~one or more components of the comprehensive circuit plan.~~

755 ~~(d) Providing recommendations to the department in the~~
756 ~~evaluation of prevention and early intervention grant programs,~~
757 ~~including the Community Juvenile Justice Partnership Grant~~
758 ~~program established in s. 985.676 and proceeds from the Invest~~
759 ~~in Children license plate annual use fees.~~

760 ~~(e) Providing an annual report to the department~~
761 ~~describing the board's activities. The department shall~~
762 ~~prescribe a format and content requirements for submission of~~
763 ~~annual reports. The annual report must be submitted to the~~
764 ~~department no later than August 1 of each year.~~

765 ~~(2)-(3)~~ Each juvenile justice circuit advisory board shall
766 have a minimum of 14 ~~16~~ members. The membership of each board
767 must reflect:

768 (a) The circuit's geography and population distribution.

769 (b) Diversity in the judicial circuit.

770 ~~(3)-(4)~~ Each member of the juvenile justice circuit
771 advisory board must be approved by the chief probation officer
772 of the circuit ~~Secretary of Juvenile Justice~~, except those
773 members listed in paragraphs (a), (b), (c), (e), (f), (g), and
774 (h). Each ~~The~~ juvenile justice circuit advisory board ~~boards~~
775 ~~established under subsection (1)~~ must include as members:

- 776 (a) The state attorney or his or her designee.
- 777 (b) The public defender or his or her designee.
- 778 (c) The chief judge or his or her designee.
- 779 (d) A representative of the corresponding circuit or
- 780 regional entity of the Department of Children and Families.
- 781 (e) The sheriff or the sheriff's designee from each county
- 782 in the circuit.
- 783 (f) A police chief or his or her designee from each county
- 784 in the circuit.
- 785 (g) A county commissioner or his or her designee from each
- 786 county in the circuit.
- 787 (h) The superintendent of each school district in the
- 788 circuit or his or her designee.
- 789 (i) A representative from the workforce organization of
- 790 each county in the circuit.
- 791 (j) A representative of the business community.
- 792 (k) A youth representative who has had an experience with
- 793 the juvenile justice system and is not older than 21 years of
- 794 age.
- 795 (l) A representative of the faith community.
- 796 (m) A health services representative who specializes in
- 797 mental health care, victim-service programs, or victims of
- 798 crimes.
- 799 (n) A parent or family member of a youth who has been
- 800 involved with the juvenile justice system.

801 (o) Up to three ~~five~~ representatives from the community.
802 ~~any of the following who are not otherwise represented in this~~
803 ~~subsection:~~

804 1. ~~Community leaders.~~

805 2. ~~Youth-serving coalitions.~~

806 (4) The chief probation officer in each circuit shall
807 serve as the chair of the juvenile justice circuit advisory
808 board for that circuit.

809 ~~(5) When a vacancy in the office of the chair occurs, the~~
810 ~~juvenile justice circuit advisory board shall appoint a new~~
811 ~~chair, who must meet the board membership requirements in~~
812 ~~subsection (4). The chair shall appoint members to vacant seats~~
813 ~~within 45 days after the vacancy and submit the appointments to~~
814 ~~the department for approval. The chair shall serve at the~~
815 ~~pleasure of the Secretary of Juvenile Justice.~~

816 ~~(6) A member may not serve more than three consecutive 2-~~
817 ~~year terms, except those members listed in paragraphs (4)(a),~~
818 ~~(b), (c), (e), (f), (g), and (h). A former member who has not~~
819 ~~served on the juvenile justice circuit advisory board for 2~~
820 ~~years is eligible to serve on the juvenile justice circuit~~
821 ~~advisory board again.~~

822 ~~(7) At least half of the voting members of the juvenile~~
823 ~~justice circuit advisory board constitutes a quorum. A quorum~~
824 ~~must be present in order for the board to vote on a measure or~~
825 ~~position.~~

826 ~~(8) In order for a juvenile justice circuit advisory board~~
827 ~~measure or position to pass, it must receive more than 50~~
828 ~~percent of the vote.~~

829 ~~(9) Each juvenile justice circuit advisory board must~~
830 ~~provide for the establishment of an executive committee of not~~
831 ~~more than 10 members. The duties and authority of the executive~~
832 ~~committee must be addressed in the bylaws.~~

833 ~~(10) Each juvenile justice circuit advisory board shall~~
834 ~~have bylaws. The department shall prescribe a format and content~~
835 ~~requirements for the bylaws. All bylaws must be approved by the~~
836 ~~department. The bylaws shall address at least the following~~
837 ~~issues: election or appointment of officers; filling of vacant~~
838 ~~positions; meeting attendance requirements; and the~~
839 ~~establishment and duties of an executive committee.~~

840 ~~(11) Members of juvenile justice circuit advisory boards~~
841 ~~are subject to part III of chapter 112.~~

842 Section 21. Paragraph (a) of subsection (1) of section
843 985.668, Florida Statutes, is amended to read:

844 985.668 Innovation zones.—The department shall encourage
845 each of the juvenile justice circuit boards to propose at least
846 one innovation zone within the circuit for the purpose of
847 implementing any experimental, pilot, or demonstration project
848 that furthers the legislatively established goals of the
849 department. An innovation zone is a defined geographic area such
850 as a circuit, commitment region, county, municipality, service

851 delivery area, school campus, or neighborhood providing a
 852 laboratory for the research, development, and testing of the
 853 applicability and efficacy of model programs, policy options,
 854 and new technologies for the department.

855 (1) (a) The chief probation officer in each circuit
 856 ~~juvenile justice circuit board~~ shall submit a proposal for an
 857 innovation zone to the secretary. If the purpose of the proposed
 858 innovation zone is to demonstrate that specific statutory goals
 859 can be achieved more effectively by using procedures that
 860 require modification of existing rules, policies, or procedures,
 861 the proposal may request the secretary to waive such existing
 862 rules, policies, or procedures or to otherwise authorize use of
 863 alternative procedures or practices. Waivers of such existing
 864 rules, policies, or procedures must comply with applicable state
 865 or federal law.

866 Section 22. Subsection (2) of section 985.676, Florida
 867 Statutes, is amended to read:

868 985.676 Community juvenile justice partnership grants.—

869 (2) GRANT APPLICATION PROCEDURES.—

870 (a) Each entity wishing to apply for an annual community
 871 juvenile justice partnership grant, which may be renewed for a
 872 maximum of 2 additional years for the same provision of
 873 services, shall submit a grant proposal for funding or continued
 874 funding to the department. The department shall establish the
 875 grant application procedures. In order to be considered for

876 funding, the grant proposal shall include the following
877 assurances and information:

878 ~~1. A letter from the chair of the juvenile justice circuit~~
879 ~~board confirming that the grant application has been reviewed~~
880 ~~and found to support one or more purposes or goals of the~~
881 ~~juvenile justice plan as developed by the board.~~

882 1.2. A rationale and description of the program and the
883 services to be provided, including goals and objectives.

884 2.3. A method for identification of the juveniles most
885 likely to be involved in the juvenile justice system who will be
886 the focus of the program.

887 3.4. Provisions for the participation of parents and
888 guardians in the program.

889 4.5. Coordination with other community-based and social
890 service prevention efforts, including, but not limited to, drug
891 and alcohol abuse prevention and dropout prevention programs,
892 that serve the target population or neighborhood.

893 5.6. An evaluation component to measure the effectiveness
894 of the program in accordance with s. 985.632.

895 6.7. A program budget, including the amount and sources of
896 local cash and in-kind resources committed to the budget. The
897 proposal must establish to the satisfaction of the department
898 that the entity will make a cash or in-kind contribution to the
899 program of a value that is at least equal to 20 percent of the
900 amount of the grant.

901 ~~7.8.~~ The necessary program staff.

902 (b) The department shall consider the recommendations of
 903 community stakeholders ~~the juvenile justice circuit advisory~~
 904 ~~board~~ as to the priority that should be given to proposals
 905 submitted by entities within a circuit in awarding such grants.

906 (c) The department shall make available, to anyone wishing
 907 to apply for such a grant, information on all of the criteria to
 908 be used in the selection of the proposals for funding pursuant
 909 to the provisions of this subsection.

910 (d) The department shall review all program proposals
 911 submitted. Entities submitting proposals shall be notified of
 912 approval not later than June 30 of each year.

913 (e) Each entity that is awarded a grant as provided for in
 914 this section shall submit an annual evaluation report to the
 915 department and, ~~the circuit juvenile justice manager, and the~~
 916 ~~juvenile justice circuit advisory board~~, by a date subsequent to
 917 the end of the contract period established by the department,
 918 documenting the extent to which the program objectives have been
 919 met, the effect of the program on the juvenile arrest rate, and
 920 any other information required by the department. The department
 921 shall coordinate and incorporate all such annual evaluation
 922 reports with s. 985.632. Each entity is also subject to a
 923 financial audit and a performance audit.

924 (f) The department may establish rules and policy
 925 provisions necessary to implement this section.

926 Section 23. Paragraphs (q), (s), and (t) of subsection (2)
 927 section 1003.51, Florida Statutes, are redesignated as
 928 paragraphs (p), (q), and (r), respectively, and present
 929 paragraphs (g), (h), (p), and (r) of subsection (2) of that
 930 section are amended, to read:

931 1003.51 Other public educational services.—

932 (2) The State Board of Education shall adopt rules
 933 articulating expectations for effective education programs for
 934 students in Department of Juvenile Justice programs, including,
 935 but not limited to, education programs in juvenile justice
 936 prevention, day treatment, residential, and detention programs.
 937 The rule shall establish policies and standards for education
 938 programs for students in Department of Juvenile Justice programs
 939 and shall include the following:

940 (g) Assessment procedures, which:

941 1. For prevention and, day treatment, ~~and residential~~
 942 programs, include appropriate academic and career assessments
 943 administered at program entry and exit that are selected by the
 944 Department of Education in partnership with representatives from
 945 the Department of Juvenile Justice, district school boards, and
 946 education providers. ~~Assessments must be completed within the~~
 947 ~~first 10 school days after a student's entry into the program.~~

948 2. Provide for determination of the areas of academic need
 949 and strategies for appropriate intervention and instruction for
 950 each student in a detention facility within 5 school days after

951 the student's entry into the program and administer a research-
952 based assessment that will assist the student in determining his
953 or her educational and career options and goals within 22 school
954 days after the student's entry into the program.

955

956 The results of these assessments, together with a portfolio
957 depicting the student's academic and career accomplishments,
958 shall be included in the discharge packet assembled for each
959 student.

960 (h) Recommended instructional programs, including, but not
961 limited to:

962 1. Secondary education.

963 2. High school equivalency examination preparation.

964 3. Postsecondary education.

965 4. Career and professional education (CAPE).

966 5. Job preparation.

967 6. Virtual education that:

968 a. Provides competency-based instruction that addresses
969 the unique academic needs of the student through delivery by an
970 entity accredited by an accrediting body approved by the
971 Department of Education ~~Advanced or the Southern Association of~~
972 ~~Colleges and Schools.~~

973 b. Confers certifications and diplomas.

974 c. Issues credit that articulates with and transcripts
975 that are recognized by secondary schools.

976 d. Allows the student to continue to access and progress
 977 through the program once the student leaves the juvenile justice
 978 system.

979 ~~(p) Performance expectations for providers and district~~
 980 ~~school boards, including student performance measures by type of~~
 981 ~~program, education program performance ratings, school~~
 982 ~~improvement, and corrective action plans for low-performing~~
 983 ~~programs.~~

984 ~~(r) A series of graduated sanctions for district school~~
 985 ~~boards whose educational programs in Department of Juvenile~~
 986 ~~Justice programs are considered to be unsatisfactory and for~~
 987 ~~instances in which district school boards fail to meet standards~~
 988 ~~prescribed by law, rule, or State Board of Education policy.~~
 989 ~~These sanctions shall include the option of requiring a district~~
 990 ~~school board to contract with a provider or another district~~
 991 ~~school board if the educational program at the Department of~~
 992 ~~Juvenile Justice program is performing below minimum standards~~
 993 ~~and, after 6 months, is still performing below minimum~~
 994 ~~standards.~~

995 Section 24. Section 1003.52, Florida Statutes, is amended
 996 to read:

997 1003.52 Educational services in Department of Juvenile
 998 Justice programs.—

999 (1) The Department of Education shall serve as the lead
 1000 agency for juvenile justice education programs, curriculum,

1001 support services, and resources. To this end, the Department of
 1002 Education and the Department of Juvenile Justice shall each
 1003 designate a Coordinator for Juvenile Justice Education Programs
 1004 to serve as the point of contact for resolving issues not
 1005 addressed by district school boards and to provide each
 1006 department's participation in the following activities:

1007 (a) Training, collaborating, and coordinating with
 1008 district school boards, local workforce development boards, and
 1009 local youth councils, educational contract providers, and
 1010 juvenile justice providers, whether state operated or
 1011 contracted.

1012 (b) Collecting information on the academic, career and
 1013 technical ~~professional~~ education ~~(CAPE)~~, and transition
 1014 performance of students in juvenile justice programs and
 1015 reporting on the results.

1016 (c) Developing academic and career and technical education
 1017 ~~CAPE~~ protocols that provide guidance to district school boards
 1018 and juvenile justice education providers in all aspects of
 1019 education programming, including records transfer and
 1020 transition.

1021 (d) Implementing a joint accountability, program
 1022 performance, and program improvement process.

1023
 1024 Annually, a cooperative agreement and plan for juvenile justice
 1025 education service enhancement shall be developed between the

1026 Department of Juvenile Justice and the Department of Education
 1027 and submitted to the Secretary of Juvenile Justice and the
 1028 Commissioner of Education by June 30. The plan shall include, at
 1029 a minimum, each agency's role regarding educational program
 1030 accountability, technical assistance, training, and coordination
 1031 of services.

1032 (2) Students participating in Department of Juvenile
 1033 Justice education programs pursuant to chapter 985 which are
 1034 sponsored by a community-based agency or are operated or
 1035 contracted for by the Department of Juvenile Justice shall
 1036 receive education programs according to rules of the State Board
 1037 of Education. These students shall be eligible for services
 1038 afforded to students enrolled in programs pursuant to s. 1003.53
 1039 and all corresponding State Board of Education rules.

1040 (3) The district school board of the county in which the
 1041 juvenile justice education prevention, day treatment,
 1042 ~~residential,~~ or detention program is located shall provide or
 1043 contract for appropriate educational assessments and an
 1044 appropriate program of instruction and special education
 1045 services.

1046 (a) All contracts between a district school board desiring
 1047 to contract directly with juvenile justice education programs to
 1048 provide academic instruction for students in such programs must
 1049 be in writing. Unless both parties agree to an extension of
 1050 time, the district school board and the juvenile justice

1051 education program shall negotiate and execute a new or renewal
 1052 contract within 40 days after the district school board provides
 1053 the proposal to the juvenile justice education program. The
 1054 Department of Education shall provide mediation services for any
 1055 disputes relating to this paragraph.

1056 (b) District school boards shall satisfy invoices issued
 1057 by juvenile justice education programs within 15 working days
 1058 after receipt. If a district school board does not timely issue
 1059 a warrant for payment, it must pay to the juvenile justice
 1060 education program interest at a rate of 1 percent per month,
 1061 calculated on a daily basis, on the unpaid balance until such
 1062 time as a warrant is issued for the invoice and accrued interest
 1063 amount. The district school board may not delay payment to a
 1064 juvenile justice education program of any portion of funds owed
 1065 pending the district's receipt of local funds.

1066 (c) The district school board shall make provisions for
 1067 each student to participate in basic career and technical
 1068 education, ~~CAPE~~, and exceptional student programs as
 1069 appropriate. Students served in Department of Juvenile Justice
 1070 education programs shall have access to the appropriate courses
 1071 and instruction to prepare them for the high school equivalency
 1072 examination. Students participating in high school equivalency
 1073 examination preparation programs shall be funded at the basic
 1074 program cost factor for Department of Juvenile Justice programs
 1075 in the Florida Education Finance Program. Each program shall be

1076 conducted according to applicable law providing for the
1077 operation of public schools and rules of the State Board of
1078 Education. School districts shall provide the high school
1079 equivalency examination exit option for all juvenile justice
1080 education programs.

1081 (d) The Department of Education, with the assistance of
1082 the school districts and juvenile justice education providers,
1083 shall select a common student assessment instrument and protocol
1084 for measuring student learning gains and student progression
1085 while a student is in a juvenile justice education program. The
1086 Department of Education and the Department of Juvenile Justice
1087 shall jointly review the effectiveness of this assessment and
1088 implement changes as necessary.

1089 (4) Educational services shall be provided at times of the
1090 day most appropriate for the juvenile justice program. School
1091 programming in juvenile justice detention, prevention or, day
1092 ~~treatment, and residential~~ programs shall be made available by
1093 the local school district during the juvenile justice school
1094 year, as provided in s. 1003.01(14). In addition, students in
1095 juvenile justice education programs shall have access to courses
1096 offered pursuant to ss. 1002.37, 1002.45, and 1003.498. The
1097 Department of Education and the school districts shall adopt
1098 policies necessary to provide such access.

1099 (5) The educational program shall provide instruction
1100 based on each student's individualized transition plan, assessed

1101 educational needs, and the education programs available in the
 1102 school district in which the student will return. Depending on
 1103 the student's needs, educational programming may consist of
 1104 remedial courses, academic courses required for grade
 1105 advancement, ~~CAPE courses,~~ high school equivalency examination
 1106 preparation, or exceptional student education curricula and
 1107 related services which support the transition goals and reentry
 1108 and which may lead to completion of the requirements for receipt
 1109 of a high school diploma or its equivalent. Prevention and day
 1110 treatment juvenile justice education programs, at a minimum,
 1111 shall provide career readiness and exploration opportunities as
 1112 well as truancy and dropout prevention intervention services.
 1113 ~~Residential juvenile justice education programs with a~~
 1114 ~~contracted minimum length of stay of 9 months shall provide CAPE~~
 1115 ~~courses that lead to preapprentice certifications and industry~~
 1116 ~~certifications. Programs with contracted lengths of stay of less~~
 1117 ~~than 9 months may provide career education courses that lead to~~
 1118 ~~preapprentice certifications and CAPE industry certifications.~~
 1119 ~~If the duration of a program is less than 40 days, the~~
 1120 ~~educational component may be limited to tutorial remediation~~
 1121 ~~activities, career employability skills instruction, education~~
 1122 ~~counseling, and transition services that prepare students for a~~
 1123 ~~return to school, the community, and their home settings based~~
 1124 ~~on the students' needs.~~

1125 (6) Participation in the program by students of compulsory

1126 school-attendance age as provided for in s. 1003.21 shall be
1127 mandatory. All students of noncompulsory school-attendance age
1128 who have not received a high school diploma or its equivalent
1129 shall participate in the educational program, unless the student
1130 files a formal declaration of his or her intent to terminate
1131 school enrollment as described in s. 1003.21 and is afforded the
1132 opportunity to take the high school equivalency examination and
1133 attain a Florida high school diploma before release from a
1134 juvenile justice education program. A student who has received a
1135 high school diploma or its equivalent and is not employed shall
1136 participate in workforce development or other CAPE education or
1137 Florida College System institution or university courses while
1138 in the program, subject to available funding.

1139 (7) An individualized progress monitoring plan shall be
1140 developed for all students not classified as exceptional
1141 education students upon entry in a juvenile justice education
1142 program and upon reentry in the school district. These plans
1143 shall address academic, literacy, and career and technical
1144 skills and shall include provisions for intensive remedial
1145 instruction in the areas of weakness.

1146 (8) Each district school board shall maintain an academic
1147 record for each student enrolled in a juvenile justice education
1148 program as prescribed by s. 1003.51. Such record shall delineate
1149 each course completed by the student according to procedures in
1150 the State Course Code Directory. The district school board shall

1151 include a copy of a student's academic record in the discharge
 1152 packet when the student exits the program.

1153 (9) Each district school board shall make provisions for
 1154 high school level students to earn credits toward high school
 1155 graduation while in ~~residential and nonresidential~~ juvenile
 1156 justice detention, prevention, or day treatment ~~education~~
 1157 programs. Provisions must be made for the transfer of credits
 1158 and partial credits earned.

1159 (10) School districts and juvenile justice education
 1160 providers shall develop individualized transition plans during
 1161 the course of a student's stay in a juvenile justice education
 1162 program to coordinate academic, career and technical, and
 1163 secondary and postsecondary services that assist the student in
 1164 successful community reintegration upon release. Development of
 1165 the transition plan shall be a collaboration of the personnel in
 1166 the juvenile justice education program, reentry personnel,
 1167 personnel from the school district where the student will
 1168 return, the student, the student's family, and the Department of
 1169 Juvenile Justice ~~personnel for committed students~~.

1170 (a) Transition planning must begin upon a student's
 1171 placement in the program. The transition plan must include, at a
 1172 minimum:

- 1173 1. Services and interventions that address the student's
- 1174 assessed educational needs and postrelease education plans.
- 1175 2. Services to be provided during the program stay and

1176 services to be implemented upon release, including, but not
 1177 limited to, continuing education in secondary school, ~~CAPE~~
 1178 ~~programs~~, postsecondary education, or employment, based on the
 1179 student's needs.

1180 3. Specific monitoring responsibilities to determine
 1181 whether the individualized transition plan is being implemented
 1182 and the student is provided access to support services that will
 1183 sustain the student's success by individuals who are responsible
 1184 for the reintegration and coordination of these activities.

1185 (b) For the purpose of transition planning and reentry
 1186 services, representatives from the school district and the one-
 1187 stop center where the student will return shall participate as
 1188 members of the local Department of Juvenile Justice reentry
 1189 teams. The school district, upon return of a student from a
 1190 juvenile justice education program, must consider the individual
 1191 needs and circumstances of the student and the transition plan
 1192 recommendations when reenrolling a student in a public school. A
 1193 local school district may not maintain a standardized policy for
 1194 all students returning from a juvenile justice program but place
 1195 students based on their needs and their performance in the
 1196 juvenile justice education program, including any virtual
 1197 education options.

1198 (c) The Department of Education and the Department of
 1199 Juvenile Justice shall provide oversight and guidance to school
 1200 districts, education providers, and reentry personnel on how to

1201 implement effective educational transition planning and
1202 services.

1203 (11) The district school board shall recruit and train
1204 teachers who are interested, qualified, or experienced in
1205 educating students in juvenile justice programs. Students in
1206 juvenile justice programs shall be provided a wide range of
1207 education programs and opportunities including textbooks,
1208 technology, instructional support, and resources commensurate
1209 with resources provided to students in public schools, including
1210 textbooks and access to technology. If the district school board
1211 operates a juvenile justice education program at a juvenile
1212 justice facility, the district school board, in consultation
1213 with the director of the juvenile justice facility, shall select
1214 the instructional personnel assigned to that program. The
1215 Secretary of Juvenile Justice or the director of a juvenile
1216 justice program may request that the performance of a teacher
1217 assigned by the district to a juvenile justice education program
1218 be reviewed by the district and that the teacher be reassigned
1219 based upon an evaluation conducted pursuant to s. 1012.34 or for
1220 inappropriate behavior. Juvenile justice education programs
1221 shall have access to the substitute teacher pool used by the
1222 district school board.

1223 (12) District school boards may contract with a private
1224 provider for the provision of education programs to students
1225 placed in juvenile justice detention, prevention, or day

1226 treatment programs with the Department of Juvenile Justice and
1227 shall generate local, state, and federal funding, including
1228 funding through the Florida Education Finance Program for such
1229 students. The district school board's planning and budgeting
1230 process shall include the needs of Department of Juvenile
1231 Justice education programs in the district school board's plan
1232 for expenditures for state categorical and federal funds.

1233 (13) (a) Eligible students enrolled in juvenile justice
1234 education programs shall be funded the same as students enrolled
1235 in traditional public schools funded in the Florida Education
1236 Finance Program and as specified in s. 1011.62 and the General
1237 Appropriations Act.

1238 (b) Juvenile justice education programs to receive the
1239 appropriate FEFP funding for Department of Juvenile Justice
1240 education programs shall include those operated through a
1241 contract with the Department of Juvenile Justice.

1242 (c) Consistent with the rules of the State Board of
1243 Education, district school boards shall request an alternative
1244 FTE survey for Department of Juvenile Justice education programs
1245 experiencing fluctuations in student enrollment.

1246 (d) FTE count periods shall be prescribed in rules of the
1247 State Board of Education and shall be the same for programs of
1248 the Department of Juvenile Justice as for other public school
1249 programs. The summer school period for students in Department of
1250 Juvenile Justice education programs shall begin on the day

1251 immediately following the end of the regular school year and end
1252 on the day immediately preceding the subsequent regular school
1253 year. Students shall be funded for no more than 25 hours per
1254 week of direct instruction.

1255 (e) Each juvenile justice education program must receive
1256 all federal funds for which the program is eligible.

1257 (14) Each district school board shall negotiate a
1258 cooperative agreement with the Department of Juvenile Justice on
1259 the delivery of educational services to students in juvenile
1260 justice detention, prevention, or day treatment programs under
1261 the jurisdiction of the Department of Juvenile Justice. Such
1262 agreement must include, but is not limited to:

1263 (a) Roles and responsibilities of each agency, including
1264 the roles and responsibilities of contract providers.

1265 (b) Administrative issues including procedures for sharing
1266 information.

1267 (c) Allocation of resources including maximization of
1268 local, state, and federal funding.

1269 (d) Procedures for educational evaluation for educational
1270 exceptionalities and special needs.

1271 (e) Curriculum and delivery of instruction.

1272 (f) Classroom management procedures and attendance
1273 policies.

1274 (g) Procedures for provision of qualified instructional
1275 personnel, whether supplied by the district school board or

1276 provided under contract by the provider, and for performance of
 1277 duties while in a juvenile justice setting.

1278 (h) Provisions for improving skills in teaching and
 1279 working with students referred to juvenile justice education
 1280 programs.

1281 (i) Transition plans for students moving into and out of
 1282 juvenile justice education programs.

1283 (j) Procedures and timelines for the timely documentation
 1284 of credits earned and transfer of student records.

1285 (k) Methods and procedures for dispute resolution.

1286 (l) Provisions for ensuring the safety of education
 1287 personnel and support for the agreed-upon education program.

1288 (m) Strategies for correcting any deficiencies found
 1289 through the accountability and evaluation system and student
 1290 performance measures.

1291 (15) Nothing in this section or in a cooperative agreement
 1292 requires the district school board to provide more services than
 1293 can be supported by the funds generated by students in the
 1294 juvenile justice programs.

1295 ~~(16) The Department of Education, in consultation with the~~
 1296 ~~Department of Juvenile Justice, district school boards, and~~
 1297 ~~providers, shall adopt rules establishing:~~

1298 ~~(a) Objective and measurable student performance measures~~
 1299 ~~to evaluate a student's educational progress while participating~~
 1300 ~~in a prevention, day treatment, or residential program. The~~

1301 ~~student performance measures must be based on appropriate~~
1302 ~~outcomes for all students in juvenile justice education~~
1303 ~~programs, taking into consideration the student's length of stay~~
1304 ~~in the program. Performance measures shall include outcomes that~~
1305 ~~relate to student achievement of career education goals,~~
1306 ~~acquisition of employability skills, receipt of a high school~~
1307 ~~diploma or its equivalent, grade advancement, and the number of~~
1308 ~~CAPE industry certifications earned.~~

1309 ~~(b) A performance rating system to be used by the~~
1310 ~~Department of Education to evaluate the delivery of educational~~
1311 ~~services within each of the juvenile justice programs. The~~
1312 ~~performance rating shall be primarily based on data regarding~~
1313 ~~student performance as described in paragraph (a).~~

1314 ~~(c) The timeframes, procedures, and resources to be used~~
1315 ~~to improve a low-rated educational program or to terminate or~~
1316 ~~reassign the program.~~

1317 ~~(d) The Department of Education, in partnership with the~~
1318 ~~Department of Juvenile Justice, shall develop a comprehensive~~
1319 ~~accountability and program improvement process. The~~
1320 ~~accountability and program improvement process shall be based on~~
1321 ~~student performance measures by type of program and shall rate~~
1322 ~~education program performance. The accountability system shall~~
1323 ~~identify and recognize high-performing education programs. The~~
1324 ~~Department of Education, in partnership with the Department of~~
1325 ~~Juvenile Justice, shall identify low-performing programs. Low-~~

1326 ~~performing education programs shall receive an onsite program~~
 1327 ~~evaluation from the Department of Juvenile Justice. School~~
 1328 ~~improvement, technical assistance, or the reassignment of the~~
 1329 ~~program shall be based, in part, on the results of the program~~
 1330 ~~evaluation. Through a corrective action process, low-performing~~
 1331 ~~programs must demonstrate improvement or the programs shall be~~
 1332 ~~reassigned.~~

1333 (16)~~(17)~~ The department, in collaboration with the
 1334 Department of Juvenile Justice, shall collect data and report on
 1335 ~~commitment~~, day treatment, prevention, and detention programs.
 1336 The report shall be submitted to the President of the Senate,
 1337 the Speaker of the House of Representatives, and the Governor by
 1338 February 1 of each year. The report must include, at a minimum:

- 1339 (a) The number and percentage of students who:
- 1340 1. Return to an alternative school, middle school, or high
 - 1341 school upon release and the attendance rate of such students
 - 1342 before and after participation in juvenile justice education
 - 1343 programs.
 - 1344 2. Receive a standard high school diploma or a high school
 - 1345 equivalency diploma.
 - 1346 3. Receive industry certification.
 - 1347 4. Enroll in a postsecondary educational institution.
 - 1348 5. Complete a juvenile justice education program without
 - 1349 reoffending.
 - 1350 6. Reoffend within 1 year after completion of a day

1351 treatment ~~or residential commitment~~ program.

1352 7. Remain employed 1 year after completion of a day
1353 treatment ~~or residential commitment~~ program.

1354 8. Demonstrate learning gains pursuant to paragraph
1355 (3) (d).

1356 (b) The following cost data for each juvenile justice
1357 education program:

1358 1. The amount of funding provided by district school
1359 boards to juvenile justice programs and the amount retained for
1360 administration, including documenting the purposes of such
1361 expenses.

1362 2. The status of the development of cooperative
1363 agreements.

1364 3. Recommendations for system improvement.

1365 4. Information on the identification of, and services
1366 provided to, exceptional students, to determine whether these
1367 students are properly reported for funding and are appropriately
1368 served.

1369 ~~(17)-(18)~~ The district school board shall not be charged
1370 any rent, maintenance, utilities, or overhead on such
1371 facilities. Maintenance, repairs, and remodeling of existing
1372 facilities shall be provided by the Department of Juvenile
1373 Justice.

1374 ~~(18)-(19)~~ When additional facilities are required for
1375 juvenile justice detention, prevention, or day treatment

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1376 programs, the district school board and the Department of
1377 Juvenile Justice shall agree on the appropriate site based on
1378 the instructional needs of the students. When the most
1379 appropriate site for instruction is on district school board
1380 property, a special capital outlay request shall be made by the
1381 commissioner in accordance with s. 1013.60. When the most
1382 appropriate site is on state property, state capital outlay
1383 funds shall be requested by the Department of Juvenile Justice
1384 provided by s. 216.043 and shall be submitted as specified by s.
1385 216.023. Any instructional facility to be built on state
1386 property shall have educational specifications jointly developed
1387 by the district school board and the Department of Juvenile
1388 Justice and approved by the Department of Education. The size of
1389 space and occupant design capacity criteria as provided by State
1390 Board of Education rules shall be used for remodeling or new
1391 construction whether facilities are provided on state property
1392 or district school board property.

1393 (19)~~(20)~~ The parent of an exceptional student shall have
1394 the due process rights provided for in this chapter.

1395 (20)~~(21)~~ The State Board of Education shall adopt rules
1396 necessary to implement this section. Such rules must require the
1397 minimum amount of paperwork and reporting.

1398 ~~(22) The Department of Juvenile Justice and the Department~~
1399 ~~of Education, in consultation with CareerSource Florida, Inc.,~~
1400 ~~the statewide Workforce Development Youth Council, district~~

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1401 ~~school boards, Florida College System institutions, providers,~~
1402 ~~and others, shall jointly develop a multiagency plan for CAPE~~
1403 ~~which describes the funding, curriculum, transfer of credits,~~
1404 ~~goals, and outcome measures for career education programming in~~
1405 ~~juvenile commitment facilities, pursuant to s. 985.622. The plan~~
1406 ~~must be reviewed annually.~~

1407 Section 25. Paragraph (c) of subsection (18) of section
1408 1001.42, Florida Statutes, is amended to read:

1409 1001.42 Powers and duties of district school board.—The
1410 district school board, acting as a board, shall exercise all
1411 powers and perform all duties listed below:

1412 (18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—
1413 Maintain a system of school improvement and education
1414 accountability as provided by statute and State Board of
1415 Education rule. This system of school improvement and education
1416 accountability shall be consistent with, and implemented
1417 through, the district's continuing system of planning and
1418 budgeting required by this section and ss. 1008.385, 1010.01,
1419 and 1011.01. This system of school improvement and education
1420 accountability shall comply with the provisions of ss. 1008.33,
1421 1008.34, 1008.345, and 1008.385 and include the following:

1422 (c) Public disclosure.—The district school board shall
1423 provide information regarding the performance of students and
1424 educational programs as required pursuant to ss. 1008.22 and
1425 1008.385 and implement a system of school reports as required by

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1426 | statute and State Board of Education rule which shall include
1427 | schools operating for the purpose of providing educational
1428 | services to students in Department of Juvenile Justice programs,
1429 | and for those schools, report on the elements specified in s.
1430 | 1003.52(16) ~~1003.52(17)~~. Annual public disclosure reports shall
1431 | be in an easy-to-read report card format and shall include the
1432 | school's grade, high school graduation rate calculated without
1433 | high school equivalency examinations, disaggregated by student
1434 | ethnicity, and performance data as specified in state board
1435 | rule.

1436 | Section 26. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1545 Child Exploitation Offenses
SPONSOR(S): Criminal Justice Subcommittee, Baker
TIED BILLS: **IDEN./SIM. BILLS:** SB 1656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Butcher	Hall
2) Justice Appropriations Subcommittee		Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Felony offenses which are subject to the Criminal Punishment Code are listed in a single offense severity ranking chart (OSRC) in s. 921.0022, F.S., which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense. A person’s primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense. The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.

Section 827.071, F.S., prohibits specified child exploitation offenses, including:

- Section 827.071(2), F.S., prohibiting a person from using a child in a sexual performance as a second degree felony and a Level 6 offense.
- Section 827.071(3), F.S., prohibiting a person from promoting a sexual performance by a child as a second degree felony and a Level 6 offense.
- Section 827.071(4), F.S., prohibiting a person from possessing child pornography with the intent to promote as a second degree felony and a Level 5 offense.
- Section 827.071(5), F.S., prohibiting a person from possessing or intentionally viewing child pornography as a third degree felony and a Level 5 offense.

CS/HB 1545 amends s. 921.0022, F.S., to increase the OSRC rankings for specified child exploitation offenses:

Violation	Current OSRC Ranking	New OSRC Ranking
Using a child in or promoting a child sexual performance under s. 827.071(2) or (3), F.S.	Level 6	Level 7
Possessing child pornography with intent to promote under s. 827.071(4), F.S.	Level 5	Level 7
Possessing or intentionally viewing child pornography under s. 827.071(5), F.S.	Level 5	Level 6

The bill may have a positive indeterminate impact on jail and prison beds by increasing the OSRC ranking for specified child exploitation offenses, which may result in increased admissions or longer terms of incarceration for persons convicted of such offenses.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code¹ are listed in a single offense severity ranking chart (OSRC),² which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{3,4} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{5,6} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.⁷

Child Exploitation Offenses

Using a Child in a Sexual Performance

Section 827.071(2), F.S., prohibits a person from, knowing the character and content thereof, employing, authorizing, or inducing a child to engage in a sexual performance; or being a parent, legal guardian, or custodian of such child, consenting to the participation by such child in a sexual performance. A violation for using a child in a sexual performance is a second degree felony⁸ and the offense is ranked as a Level 6 offense on the OSRC.

Promoting a Sexual Performance by a Child

Under s. 827.071(3), F.S., a person commits a second degree felony if, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child. The offense is ranked as a Level 6 offense on the OSRC.

Possessing Child Pornography with Intent to Promote

Under s. 827.071(4), F.S., a person commits a second degree felony if he or she possesses with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child pornography. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. The offense is ranked as a Level 5 offense on the OSRC.

¹ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

² S. 921.0022, F.S.

³ S. 921.0022(2), F.S.

⁴ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

⁵ Ss. 921.0022 and 921.0024, F.S.

⁶ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

⁷ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

Possessing or Intentionally Viewing Child Pornography

Section 827.071(5), F.S., prohibits a person from knowingly possessing, controlling, or intentionally viewing a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include child pornography. A violation of the prohibition is a third degree felony⁹ and the offense is ranked as a Level 5 offense on the OSRC.

Additionally, s. 827.071(5), F.S., specifies that the possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense, and if such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes child pornography depicting more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense.¹⁰

Section 827.071, F.S., defines the following relevant terms:

- “Child pornography” means any image depicting a minor engaged in sexual conduct, or any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.¹¹
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.¹²
- “Sexual performance” means any performance or part thereof which includes sexual conduct by a child.¹³

Reclassification of Specified Child Exploitation Offenses

Under s. 775.0847, F.S., a violation of s. 827.071, F.S., must be reclassified to the next higher degree if the offender possesses 10 or more images of any form of child pornography regardless of content, and the content of at least one image contains one or more of the following:

- A child who is younger than the age of five;
- Sadomasochistic abuse¹⁴ involving a child;
- Sexual battery¹⁵ involving a child;
- Sexual bestiality¹⁶ involving a child; or

⁹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁰ This does not apply to any material possessed, controlled, or intentionally viewed as part of a law enforcement investigation. S. 827.071(5)(b), F.S.

¹¹ S. 827.071(1)(b), F.S.

¹² A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.” S. 827.071(1)(l), F.S.

¹³ “Performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience. S. 827.071(1)(m) and (g), F.S.

¹⁴ “Sadomasochistic abuse” means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself. S. 827.071(1)(i), F.S.

¹⁵ “Sexual battery” means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, “sexual battery” does not include an act done for a bona fide medical purpose. S. 827.071(1)(j), F.S.

¹⁶ “Sexual bestiality” means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other. S. 827.071(1)(k), F.S.

- Any motion picture, film, video, or computer-generated motion picture, film, or video involving a child, regardless of length and regardless of whether the motion picture, film, video, or computer-generated motion picture, film, or video contains sound.

This section reclassifies both the felony and OSRC level for a qualifying offense. For example, a third degree felony that is ranked as a Level 5 offense on the OSRC would be reclassified as a second degree felony that is ranked as a Level 6 offense on the OSRC, if the offense meets the requirements under s. 775.0847, F.S.

Effect of Proposed Changes

CS/HB 1545 amends s. 921.0022, F.S., to increase the OSRC rankings for specified child exploitation offenses as follows:¹⁷

Violation	Current OSRC Ranking	New OSRC Ranking
Using a child in or promoting a child sexual performance under 827.071(2) or (3), F.S.	Level 6	Level 7
Possessing child pornography with intent to promote under s. 827.071(4), F.S.	Level 5	Level 7
Possessing or intentionally viewing child pornography under s. 827.071(5), F.S.	Level 5	Level 6

By increasing the offense severity ranking of specified child exploitation offenses, the bill may increase the minimum sentence to which a person convicted of such an offense may be sentenced and may increase a term of incarceration required to be imposed as part of that sentence.

Under s. 921.0024(2), F.S., if a person scores *more than 44 points*, the lowest permissible sentence to which he or she may be sentenced is a specified term of months in state prison, determined by a formula, and if a person scores *44 points or fewer*, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control.

Under s. 921.0024(1), F.S., which specifies the method for calculating an offender’s scoresheet total, a Level 6 offense scores 36 points and a Level 7 offense scores 54 points. Thus, by increasing the OSRC ranking for specified child exploitation offenses, persons convicted of such offenses may be eligible for a minimum prison sentence as a result of that conviction.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 2: Provides an effective date of October 1, 2024.

¹⁷ The bill retains the current felony levels for ss. 827.071(2), (3), (4), and (5), F.S.
STORAGE NAME: h1545b.JUA
DATE: 2/2/2024

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by increasing the OSRC ranking for specified child exploitation offenses, which may result in increased prison admissions or longer terms of incarceration for persons convicted of such offenses.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the ranking of an offense under s. 827.071(5), F.S., that is already subject to reclassification on the OSRC under s. 775.0847, F.S., and made another technical change.

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

1 A bill to be entitled
 2 An act relating to child exploitation offenses;
 3 amending s. 921.0022, F.S.; revising the ranking of
 4 specified child exploitation offenses for purposes of
 5 the offense severity ranking chart of the Criminal
 6 Punishment Code; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraphs (e), (f), and (g) of subsection (3)
 11 of section 921.0022, Florida Statutes, are amended to read:

12 921.0022 Criminal Punishment Code; offense severity
 13 ranking chart.—

14 (3) OFFENSE SEVERITY RANKING CHART

15
 16 (e) LEVEL 5

17

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

18
 19

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20	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
21	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
22	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
23	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap

			tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
24	379.367 (4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
25	379.407 (5) (b) 3.	3rd	Possession of 100 or more undersized spiny lobsters.
26	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
27	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
28	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
29	440.381 (2)	3rd	Submission of false,

			misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
30	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
31	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
32	790.01 (3)	3rd	Unlawful carrying of a concealed firearm.
33	790.162	2nd	Threat to throw or discharge destructive device.
34	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
35	790.221 (1)	2nd	Possession of short-barreled

36			shotgun or machine gun.
	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
37			
	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
38			
	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
39			
	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
40			
	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
41			
	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

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42	812.015 (8) (a) & (c) - (e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
43	812.015 (8) (f)	3rd	Retail theft; multiple thefts within specified period.
44	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
45	812.081 (3)	2nd	Trafficking in trade secrets.
46	812.131 (2) (b)	3rd	Robbery by sudden snatching.
47	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
48	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
49	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
50			

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51	817.2341(1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
52	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
53	817.611 (2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
54	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

55	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
56	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes child pornography.
57	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography.
58	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
	836.14(4)	2nd	Person who willfully promotes for financial gain a sexually explicit image of an identifiable person without consent.

59	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
60	843.01(1)	3rd	Resist officer with violence to person; resist arrest with violence.
61	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
62	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
63	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
64	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent

65	874.05(2)(a)	2nd	offense. Encouraging or recruiting person under 13 years of age to join a criminal gang.
66	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
67	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
68			

69	893.13(1)(d)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.</p>
70	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.</p>
71	893.13(1)(f)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of public housing facility.</p>

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72	893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
73	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
74	(f) LEVEL 6		
75	Florida Statute	Felony Degree	Description
76	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
77	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
78	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
79	499.0051(2)	2nd	Knowing forgery of transaction

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			history, transaction information, or transaction statement.
80	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
81	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
82	775.0875(1)	3rd	Taking firearm from law enforcement officer.
83	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
84	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
85	784.041	3rd	Felony battery; domestic battery by strangulation.
86	784.048(3)	3rd	Aggravated stalking; credible

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			threat.
87	784.048 (5)	3rd	Aggravated stalking of person under 16.
88	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
89	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
90	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
91	784.081 (2)	2nd	Aggravated assault on specified official or employee.
92	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
93	784.083 (2)	2nd	Aggravated assault on code inspector.
94			

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95	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
96	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
97	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
98	790.164 (1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
99	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity

			by custodial adult.
100	794.05(1)	2nd	Unlawful sexual activity with specified minor.
101	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
102	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
103	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
104	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
105	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
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107	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
108	812.014 (2) (c) 5.	3rd	Grand theft; third degree; firearm.
109	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
110	812.015 (9) (a)	2nd	Retail theft; property stolen \$750 or more; second or subsequent conviction.
111	812.015 (9) (b)	2nd	Retail theft; aggregated property stolen within 30 days is \$3,000 or more; coordination of others.
112	812.015 (9) (d)	2nd	Retail theft; multiple thefts within specified period.
	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

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113	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
114	817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
115	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
116	817.5695(3)(b)	2nd	Exploitation of person 65 years of age or older, value \$10,000 or more, but less than \$50,000.
117	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
118	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
119	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.

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120	825.103 (3) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
121	827.03 (2) (c)	3rd	Abuse of a child.
122	827.03 (2) (d)	3rd	Neglect of a child.
123	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
124	<u>827.071 (5)</u>	<u>3rd</u>	<u>Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography.</u>
125	828.126 (3)	3rd	Sexual activities involving animals.
126	836.05	2nd	Threats; extortion.
127	836.10	2nd	Written or electronic threats

			to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
128	843.12	3rd	Aids or assists person to escape.
129	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
130	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
131	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
132	893.131	2nd	Distribution of controlled substances resulting in overdose or serious bodily injury.
133			

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134	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
135	918.13(2) (b)	2nd	Tampering with or fabricating physical evidence relating to a capital felony.
136	944.35(3) (a) 2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
137	944.40	2nd	Escapes.
138	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
139	944.47(1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
	951.22(1) (i)	3rd	Firearm or weapon introduced

into county detention facility.

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(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027 (2) (c)	1st	Accident involving death, failure to stop; leaving scene.
316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.
316.1935 (3) (b)	1st	Causing serious bodily injury or death to another person; 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.
327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.

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148	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
149	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
150	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
151	456.065 (2)	3rd	Practicing a health care profession without a license.
152	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
153	458.327 (1)	3rd	Practicing medicine without a license.
	459.013 (1)	3rd	Practicing osteopathic medicine

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without a license.

154

460.411 (1) 3rd Practicing chiropractic
medicine without a license.

155

461.012 (1) 3rd Practicing podiatric medicine
without a license.

156

462.17 3rd Practicing naturopathy without
a license.

157

463.015 (1) 3rd Practicing optometry without a
license.

158

464.016 (1) 3rd Practicing nursing without a
license.

159

465.015 (2) 3rd Practicing pharmacy without a
license.

160

466.026 (1) 3rd Practicing dentistry or dental
hygiene without a license.

161

467.201 3rd Practicing midwifery without a
license.

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162	468.366	3rd	Delivering respiratory care services without a license.
163	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
164	483.901 (7)	3rd	Practicing medical physics without a license.
165	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
166	484.053	3rd	Dispensing hearing aids without a license.
167	494.0018 (2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
168	560.123 (8) (b) 1.	3rd	Failure to report currency or

payment instruments exceeding \$300 but less than \$20,000 by a money services business.

169

560.125 (5) (a) 3rd

Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

170

655.50 (10) (b) 1. 3rd

Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

171

775.21 (10) (a) 3rd

Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.

172

775.21 (10) (b) 3rd

Sexual predator working where children regularly congregate.

173

775.21 (10) (g) 3rd

Failure to report or providing

false information about a sexual predator; harbor or conceal a sexual predator.

174

782.051(3)

2nd

Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

175

782.07(1)

2nd

Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

176

782.071

2nd

Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).

177

782.072

2nd

Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

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178	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
179	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
180	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
181	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
182	784.048 (7)	3rd	Aggravated stalking; violation of court order.
183	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
184	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
185	784.08 (2) (a)	1st	Aggravated battery on a person

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65 years of age or older.

186

784.081(1) 1st Aggravated battery on specified official or employee.

187

784.082(1) 1st Aggravated battery by detained person on visitor or other detainee.

188

784.083(1) 1st Aggravated battery on code inspector.

189

787.06(3)(a)2. 1st Human trafficking using coercion for labor and services of an adult.

190

787.06(3)(e)2. 1st Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.

191

790.07(4) 1st Specified weapons violation subsequent to previous conviction of s. 790.07(1) or

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(2).

192

790.16(1) 1st Discharge of a machine gun
under specified circumstances.

193

790.165(2) 2nd Manufacture, sell, possess, or
deliver hoax bomb.

194

790.165(3) 2nd Possessing, displaying, or
threatening to use any hoax
bomb while committing or
attempting to commit a felony.

195

790.166(3) 2nd Possessing, selling, using, or
attempting to use a hoax weapon
of mass destruction.

196

790.166(4) 2nd Possessing, displaying, or
threatening to use a hoax
weapon of mass destruction
while committing or attempting
to commit a felony.

197

790.23 1st, PBL Possession of a firearm by a
person who qualifies for the

			penalty enhancements provided for in s. 874.04.
198	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
199	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
200	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
201	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
202	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age

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or older.

203

800.04(5)(e) 1st Lewd or lascivious molestation;
victim 12 years of age or older
but younger than 16 years;
offender 18 years or older;
prior conviction for specified
sex offense.

204

806.01(2) 2nd Maliciously damage structure by
fire or explosive.

205

810.02(3)(a) 2nd Burglary of occupied dwelling;
unarmed; no assault or battery.

206

810.02(3)(b) 2nd Burglary of unoccupied
dwelling; unarmed; no assault
or battery.

207

810.02(3)(d) 2nd Burglary of occupied
conveyance; unarmed; no assault
or battery.

208

810.02(3)(e) 2nd Burglary of authorized
emergency vehicle.

209

812.014 (2) (a) 1. 1st Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.

210

812.014 (2) (b) 2. 2nd Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.

211

812.014 (2) (b) 3. 2nd Property stolen, emergency medical equipment; 2nd degree grand theft.

212

812.014 (2) (b) 4. 2nd Property stolen, law enforcement equipment from authorized emergency vehicle.

213

812.014 (2) (f) 2nd Grand theft; second degree; firearm with previous conviction of s. 812.014 (2) (c) 5.

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214	812.0145(2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
215	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
216	812.131(2) (a)	2nd	Robbery by sudden snatching.
217	812.133(2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
218	817.034(4) (a)1.	1st	Communications fraud, value greater than \$50,000.
219	817.234(8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
220	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
221			

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222	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
223	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
224	817.418 (2) (a)	3rd	Offering for sale or advertising personal protective equipment with intent to defraud.
225	817.504 (1) (a)	3rd	Offering or advertising a vaccine with intent to defraud.
226	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
	817.611 (2) (b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.

227	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
228	825.103 (3) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
229	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
230	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
231	<u>827.071 (2) & (3)</u>	<u>2nd</u>	<u>Use or induce a child in a sexual performance, or promote or direct such performance.</u>
232	<u>827.071 (4)</u>	<u>2nd</u>	<u>Possess with intent to promote any photographic material,</u>

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motion picture, etc., which
includes child pornography.

233	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
234	838.015	2nd	Bribery.
235	838.016	2nd	Unlawful compensation or reward for official behavior.
236	838.021(3)(a)	2nd	Unlawful harm to a public servant.
237	838.22	2nd	Bid tampering.
238	843.0855(2)	3rd	Impersonation of a public officer or employee.
239	843.0855(3)	3rd	Unlawful simulation of legal process.
240	843.0855(4)	3rd	Intimidation of a public officer or employee.

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241	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
242	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
243	872.06	2nd	Abuse of a dead human body.
244	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
245	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
246	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.)

within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

247

893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine or other drug prohibited under s.

893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5., within 1,000 feet of property used for religious services or a specified business site.

248

893.13(4)(a) 1st Use or hire of minor; deliver to minor other controlled substance.

249

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

250

893.135 1st Trafficking in cocaine, more

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251	(1) (b) 1.a.		than 28 grams, less than 200 grams.
	893.135	1st	Trafficking in illegal drugs,
	(1) (c) 1.a.		more than 4 grams, less than 14 grams.
252			
	893.135	1st	Trafficking in hydrocodone, 28
	(1) (c) 2.a.		grams or more, less than 50 grams.
253			
	893.135	1st	Trafficking in hydrocodone, 50
	(1) (c) 2.b.		grams or more, less than 100 grams.
254			
	893.135	1st	Trafficking in oxycodone, 7
	(1) (c) 3.a.		grams or more, less than 14 grams.
255			
	893.135	1st	Trafficking in oxycodone, 14
	(1) (c) 3.b.		grams or more, less than 25 grams.
256			
	893.135	1st	Trafficking in fentanyl, 4
	(1) (c) 4.b. (I)		grams or more, less than 14

grams.

257 893.135 1st Trafficking in phencyclidine,
 (1) (d) 1.a. 28 grams or more, less than 200
 grams.

258 893.135 (1) (e) 1. 1st Trafficking in methaqualone,
 200 grams or more, less than 5
 kilograms.

259 893.135 (1) (f) 1. 1st Trafficking in amphetamine, 14
 grams or more, less than 28
 grams.

260 893.135 1st Trafficking in flunitrazepam, 4
 (1) (g) 1.a. grams or more, less than 14
 grams.

261 893.135 1st Trafficking in gamma-
 (1) (h) 1.a. hydroxybutyric acid (GHB), 1
 kilogram or more, less than 5
 kilograms.

262 893.135 1st Trafficking in 1,4-Butanediol,
 (1) (j) 1.a. 1 kilogram or more, less than 5

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kilograms.

263 893.135 1st Trafficking in Phenethylamines,
 (1) (k) 2.a. 10 grams or more, less than 200
 grams.

264 893.135 1st Trafficking in synthetic
 (1) (m) 2.a. cannabinoids, 280 grams or
 more, less than 500 grams.

265 893.135 1st Trafficking in synthetic
 (1) (m) 2.b. cannabinoids, 500 grams or
 more, less than 1,000 grams.

266 893.135 1st Trafficking in n-benzyl
 (1) (n) 2.a. phenethylamines, 14 grams or
 more, less than 100 grams.

267 893.1351(2) 2nd Possession of place for
 trafficking in or manufacturing
 of controlled substance.

268 896.101(5)(a) 3rd Money laundering, financial
 transactions exceeding \$300 but
 less than \$20,000.

269	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
270	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
271	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
272	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
273	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

274	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
275	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
276	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
277	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
278	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

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279

985.4815(10) 3rd Sexual offender; failure to submit to the taking of a digitized photograph.

280

985.4815(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

281

985.4815(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

282

283

Section 2. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1653 Duties and Prohibited Acts Associated with Death
SPONSOR(S): Criminal Justice Subcommittee, Giallombardo
TIED BILLS: IDEN./SIM. **BILLS:** SB 768

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee		Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Generally, s. 406.11, F.S., requires a district medical examiner to determine the cause of death of a deceased human being in specified circumstances, including when a person's cause of death is not obvious, when a death may implicate criminal activity, or when a death impacts public health and safety. Section 406.12, F.S., requires a person who becomes aware of the death of any person under circumstances described in s. 406.11, F.S., to report such a death and the circumstances surrounding the death to the district medical examiner. Any person who knowingly fails or refuses to report such a death or the circumstances surrounding the death, who refuses to make available prior medical or other information pertinent to the death investigation, or who, without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death, commits a first degree misdemeanor.

CS/HB 1653 amends s. 406.12, F.S., to require a person who becomes aware of the death of any person under the circumstances described in s. 406.11, F.S., to report such a death and the circumstances surrounding the death to *either* the district medical examiner *or* to a law enforcement agency having jurisdiction over the location.

The bill retains the first degree misdemeanor offense in current law if a person knowingly fails or refuses to report a death under the circumstances described in s. 406.11, F.S., or refuses to make available prior medical or other information pertinent to a death investigation, and creates a new offense, punishable as a third degree felony, if a person fails to make such a report or fails to make such specified information available with the intent to conceal the death or to alter the circumstances surrounding the death.

The bill *increases* the penalty if a person, without an order from the office of the district medical examiner, willfully touches, removes or disturbs a body, clothing, or any article upon or near the body, with the intent to conceal the death or alter the evidence or circumstances surrounding the death, from a first degree misdemeanor to a third degree felony.

The bill may have an indeterminate positive impact on prison and jail beds by creating a new felony offense and increasing the penalty for a specified violation of s. 406.12, F.S., from a first degree misdemeanor to a third degree felony, which may lead to increased admissions and longer terms of incarceration in such facilities.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

District Medical Examiner

The Governor is required to appoint a district medical examiner, who must be a physician who practices in pathology, for each medical examiner district in the state.¹ Currently, there are 25 medical examiner districts in Florida.² Section 406.11, F.S., requires a district medical examiner to determine the cause of death of a deceased human being in the following circumstances:

- When any person dies in this state:
 - Of criminal violence.
 - By accident.
 - By suicide.
 - Suddenly, when in apparent good health.
 - Unattended by a practicing physician or other recognized practitioner.
 - In any prison or penal institution.
 - In police custody.
 - In any suspicious or unusual circumstance.
 - By criminal abortion.
 - By poison.
 - By disease constituting a threat to public health.
 - By disease, injury, or toxic agent resulting from employment.
- When a dead body is brought into this state without proper medical certification.
- When a body is to be cremated, dissected, or buried at sea.³

To determine the cause of death, a medical examiner may perform examinations, investigations, and autopsies as he or she deems necessary or as requested by the state attorney.⁴

Duty to Report

Section 406.12, F.S., requires a person who becomes aware of the death of any person under circumstances described in s. 406.11, F.S., to report such a death and the circumstances surrounding the death to the district medical examiner. Any person who knowingly fails or refuses to report such a death or the circumstances surrounding the death, who refuses to make available prior medical or other information pertinent to the death investigation, or who, without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death, commits a first degree misdemeanor.^{5, 6}

Effect of Proposed Changes

CS/HB 1653 amends s. 406.12, F.S., to require a person who becomes aware of the death of any person under the circumstances described in s. 406.11, F.S., to report such a death and the

¹ S. 406.06(1)(a), F.S.

² Florida Department of Law Enforcement, *Coverage Map – Florida Medical Examiner Districts*, <https://www.fdle.state.fl.us/MEC/Maps/Documents/Coverage-Map.aspx> (last visited Jan. 30, 2024).

³ S. 406.11(1), F.S.

⁴ *Id.*

⁵ S. 406.12, F.S.

⁶ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

circumstances surrounding the death to *either* the district medical examiner *or* to a law enforcement agency having jurisdiction over the location.

The bill retains the first degree misdemeanor offense in current law if a person knowingly fails or refuses to report a death under the circumstances described in s. 406.11, F.S., or refuses to make available prior medical or other information pertinent to a death investigation, and creates a new offense, punishable as a third degree felony,⁷ if a person fails to make such a report or fails to make such specified information available with the intent to conceal the death or to alter the circumstances surrounding the death.

The bill *increases* the penalty if a person, without an order from the office of the district medical examiner, willfully touches, removes or disturbs a body, clothing, or any article upon or near the body, with the intent to conceal the death or alter the evidence or circumstances surrounding the death, from a first degree misdemeanor to a third degree felony.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 406.12, F.S., relating to duty to report; prohibited acts.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive impact on prison and jail beds by creating a new felony offense and increasing the penalty for a specified violation of s. 406.12, F.S., from a first degree misdemeanor to a third degree felony, which may lead to increased admissions and longer terms of incarceration in such facilities.

⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Required a person who becomes aware of the death of any person under the circumstances described in s. 406.11, F.S., to report such a death and the circumstances surrounding the death to *either* the district medical examiner *or* to a law enforcement agency having jurisdiction over the location.
- Created a third degree felony offense if a person, with the intent to conceal the death or to alter the circumstances surrounding the death, fails or refuses to report the death of any person under circumstances described in s. 406.11, F.S., or fails to make available prior medical or other information pertinent to a death investigation.
- Increased the penalty if a person, without an order from the office of the district medical examiner, willfully touches, removes or disturbs a body, clothing, or any article upon or near the body, with the intent to conceal the death or alter the evidence or circumstance surrounding the death, from a first degree misdemeanor to a third degree felony.

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

1 A bill to be entitled
2 An act relating to duties and prohibited acts
3 associated with death; amending s. 406.12, F.S.;
4 authorizing a report regarding specified deaths and
5 circumstances to be made to a law enforcement agency
6 in addition to the medical examiner; increasing the
7 criminal penalty for failing or refusing to report a
8 death or for refusing to make available certain
9 information with the intent to conceal the death or
10 alter the evidence and circumstances surrounding the
11 death; increasing the criminal penalty for willfully
12 touching, removing, or disturbing a body without an
13 order from the office of the district medical examiner
14 with the intent to conceal the death or alter the
15 evidence and circumstances surrounding the death;
16 providing an effective date.

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

19
20 Section 1. Section 406.12, Florida Statutes, is amended to
21 read:

22 406.12 Duty to report; prohibited acts.—

23 (1) It is the duty of any person in the district where a
24 death occurs, including all municipalities and unincorporated
25 and federal areas, who becomes aware of the death of any person

26 | occurring under the circumstances described in s. 406.11 to
27 | report such death and circumstances forthwith to the district
28 | medical examiner or to a law enforcement agency having
29 | jurisdiction over the location.

30 | (2) Any person who knowingly fails or refuses to report
31 | such death and circumstances as required under subsection (1)
32 | or, who refuses to make available prior medical or other
33 | information pertinent to the death investigation commits a
34 | misdemeanor of the first degree, punishable as provided in s.
35 | 775.082 or s. 775.083.

36 | (3) Any person, or who, with the intent to conceal such
37 | death or to alter the evidence or circumstances surrounding such
38 | death:

39 | (a) Violates subsection (2); or

40 | (b) Without an order from the office of the district
41 | medical examiner, willfully touches, removes, or disturbs the
42 | body, clothing, or any article upon or near the body, with the
43 | intent to alter the evidence or circumstances surrounding the
44 | death, shall be guilty of a misdemeanor of the first
45 | commits a felony of the third degree, punishable as provided in
46 | s. 775.082, or s. 775.083, or s. 775.084.

48 | Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1657 Criminal Offenses Against Law Enforcement Officers and Other Personnel
SPONSOR(S): Criminal Justice Subcommittee, Baker
TIED BILLS: **IDEN./SIM. BILLS:** SB 1092

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 3 N	Butcher	Hall
2) Justice Appropriations Subcommittee		Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 776.051, F.S., prohibits specified instances of use of force. Under s. 776.051, F.S.:

- A person is not justified in using or threatening to use force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.
- A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in using force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

Under s. 782.065, F.S., a court must sentence a defendant to life imprisonment without eligibility for release if the defendant committed a specified murder offense and the victim was a law enforcement or correctional officer engaged in the lawful performance of a legal duty. Under s. 782.07(1), F.S., manslaughter is generally punishable as a second degree felony but may be enhanced to a first degree felony if a person causes the death, through culpable negligence, of a law enforcement officer or other specified personnel who is performing duties that are within the course of his or her employment. Manslaughter under s. 782.07(1), F.S., is not included under s. 782.065, F.S., as an offense for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

HB 1657 amends ss. 776.051 (use of force in resisting or making arrest), 782.065 (murder of law enforcement officer or other specified personnel), 784.07, F.S. (assault or battery of law enforcement officer or other specified personnel), and 843.01, F.S. (resisting a legally authorized person with violence), to change the current requirement for a law enforcement officer or other specified personnel to *be engaged in the lawful performance of a legal duty* to a requirement that a law enforcement officer or other specified personnel *be acting in the performance of his or her official duties* as described in s. 943.10, F.S.

The bill repeals s. 776.051(2), F.S., which currently provides that a law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

The bill amends s. 782.065, F.S., to add manslaughter under s. 782.07(1), F.S., when committed against a law enforcement officer, to the list of offenses for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

The bill may have a positive indeterminate impact on jail and prison beds by expanding and enhancing specified offenses when committed against a law enforcement officer, which may result in increased admissions or longer sentences to such facilities.

The bill provides an effective date of October 1, 2024.

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

STORAGE NAME: h1657b.JUA

DATE: 2/2/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Use of Force in Resisting Arrest or Making an Arrest or in the Execution of a Legal Duty

Section 776.051, F.S., prohibits specified instances of use of force. Under s. 776.051, F.S.:

- A person is not justified in using or threatening to use force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is *engaged in the execution of a legal duty*, if the law enforcement officer was *acting in good faith* and he or she is known, or reasonably appears, to be a law enforcement officer.¹
- A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in using force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.²

A person may lawfully resist an illegal arrest without force or violence.³ Under s. 776.012, F.S.,⁴ a person may lawfully use force to resist a law enforcement officer's use of *excessive force*.⁵ Accordingly, Florida's Standard Criminal Jury Instructions for the justifiable use of deadly and non-deadly force provide:

- A person is not justified in using force or threatening to use force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is *engaged in the execution of a legal duty*, if the law enforcement officer is *acting in good faith* and he or she is known, or reasonably appears, to be a law enforcement officer.
- However, if an officer uses excessive force to make an arrest, then a person is justified in the use or threatened use of reasonable force to defend himself, herself, or another, but only to the extent he or she reasonably believes such force or threat of force is necessary.⁶

Assault and Battery of a Law Enforcement Officer

Section 784.07, F.S., reclassifies⁷ the offenses of assault or battery to assault or battery of a law enforcement officer or other specified personnel if the victim was a specified officer *engaged in the lawful performance of his or her duties*.

¹ Courts apply the legal standards governing the duty undertaken by a law enforcement officer to determine whether he or she was lawfully executing a legal duty. *Tillman v. State*, 934 So. 2d 1263, 1271 (Fla. 2006) (superseded by statute). When determining whether an officer was performing a legal duty, courts have noted that there is a valid distinction between a police officer in the lawful execution of a legal duty and a police officer who is "merely on the job." See *Jay v. State*, 731 So. 2d 774, 775 (Fla. 4th DCA 1999).

² The Legislature amended s. 776.051, F.S., in response to *Tillman*, which held that the statute only prohibited the use of force to resist an arrest, notwithstanding the illegality of an officer's actions, in situations involving an *actual arrest* rather than during other police-citizen encounters.

³ See, e.g., *K.Y.E. v. State*, 557 So. 2d 956, 957 (Fla. 1st DCA 1990) (citations omitted).

⁴ Section 776.012, F.S., provides that (1) a person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the 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 accordance with this subsection does not have a duty to retreat before using or threatening to use such force. Additionally, 2) a person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

⁵ *Jackson v. State*, 463 So. 2d 372, 374 (Fla. 5th DCA 1985).

⁶ Fla. Std. Jury Instr. 3.6(f) and 3.6(g) (Crim).

⁷ Reclassification under s. 784.07, F.S., occurs as follows: a) in the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree; b) in the case of battery, from a misdemeanor of the first degree to a felony of the third degree; c) in the case of aggravated assault, from a felony of the third degree to a felony of the second degree, and any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of three years; and d) in the

For purposes of determining whether a person commits assault or battery:

- 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, punishable as a second degree misdemeanor.⁸
- A person commits a “battery” if he or she actually and intentionally touches or strikes another person against the will of the other, or intentionally causes bodily harm to another person, generally punishable as a first degree misdemeanor.⁹

Florida’s Standard Criminal Jury Instructions for assault/battery and aggravated assault/aggravated battery of a law enforcement officer or other specified personnel require the victim to have been *engaged in the lawful performance of his or her duty*.¹⁰

Resisting a Law Enforcement Officer with Violence

Section 843.01, F.S., prohibits a person from willfully resisting, obstructing, or opposing an officer or other specified personnel in the execution of legal process or in the *lawful execution of any legal duty*, by offering or doing violence to such person, punishable as a third degree felony.^{11,12}

Florida’s Standard Criminal Jury Instructions for resisting an officer with violence¹³ require that an officer was *engaged in the lawful execution of a legal duty* or the execution of legal process. When a defendant raises self-defense to a charge under s. 843.01, F.S., the court must provide:

- A special instruction incorporating s. 776.051(1), F.S., when the defense claims the officer was acting unlawfully.
- A special instruction incorporating instructions 3.6(f); 3.6(g); and/or 3.6(h) when the defense claims the police used excessive force.

Offenses Requiring a Sentence of Life Imprisonment

Under s. 782.065, F.S., a court must sentence a defendant to life imprisonment without eligibility for release if:

- The defendant committed first degree murder under s. 782.04(1), F.S., and a death sentence was not imposed; second or third degree murder under s. 782.04(2), (3), or (4); attempted first or second degree murder under s. 782.04(1)(a)1. or (2); or attempted felony murder under s. 782.051, F.S.; and
- The victim was a law enforcement officer, part-time law enforcement officer, auxiliary law enforcement officer, correctional officer, part-time correctional officer, auxiliary correctional officer, correctional probation officer, part-time correctional probation officer, or auxiliary correctional probation officer, as those terms are defined in s. 943.10, F.S., *engaged in the lawful performance of a legal duty*.

The Florida Supreme Court has held that s. 782.065, F.S., is a reclassification statute that creates a substantive offense, and accordingly, the trial judge must add the following elements to jury instructions relating to specified murder offenses:¹⁴

case of aggravated battery, from a felony of the second degree to a felony of the first degree, and any person convicted of aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of five years.

⁸ S. 784.011, F.S. A second degree misdemeanor is punishable by up to six months in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁹ S. 784.03, F.S. A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹⁰ Fla. Std. Jury Instr. 8.10, 8.11, 8.12, and 8.13 (Crim).

¹¹ Section 843.02, F.S., similarly prohibits a person from resisting, obstructing, or opposing an officer or other specified personnel in the execution of legal process or in the lawful execution of any legal duty, *without* offering or doing violence to such person, and is punishable as a first degree misdemeanor.

¹² A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹³ Fla. Std. Jury Instr. 21.1 (Crim). *See also supra* note 6.

- The victim was a specified officer;
- The defendant knew that the victim was a specified officer; and
- The victim was *engaged in the lawful performance of a legal duty*.

Manslaughter

Under s. 782.07, F.S., manslaughter is the unlawful killing of a human being by the act, procurement, or culpable negligence¹⁵ of another, without lawful justification according to the provisions of chapter 776. Generally, manslaughter is punishable as a second degree felony.¹⁶

Under s. 782.07(4), F.S., manslaughter may be enhanced to a first degree felony¹⁷ if a person causes the death, through culpable negligence, of a law enforcement officer or other specified personnel who is *performing duties that are within the course of his or her employment*.

Currently, manslaughter under s. 782.07(1), F.S., when committed against a law enforcement officer, is not included under s. 782.065, F.S., as an offense for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

Effect of Proposed Changes

Use of Force in Resisting Arrest or Making an Arrest or in the Execution of a Legal Duty

HB 1657 amends ss. 776.051 (use of force in resisting or making arrest), 782.065 (murder of law enforcement officer or other specified personnel), 784.07, F.S. (assault or battery of law enforcement officer or other specified personnel), and 843.01, F.S. (resisting a legally authorized person with violence), to change the current requirement for a law enforcement officer or other specified personnel to *be engaged in the lawful performance of a legal duty* to a requirement that a law enforcement officer or other specified personnel *be acting in the performance of his or her official duties* as described in s. 943.10, F.S.¹⁸

The bill repeals s. 776.051(2), F.S., which currently provides that a law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

¹⁴ See Fla. Std. Jury Instr. 7.2 (first degree murder), 7.3 (first degree felony murder), 7.4 (second degree murder), 7.5 (second degree felony murder), and 7.6 (third degree felony murder) (Crim). See also Fla. Std. Jury Instr. 7.13 (Crim), which clarifies that reclassification under s. 782.065, F.S., does not apply to manslaughter.

¹⁵ According to Fla. Std. Jury Instr. 7.7(a) (Crim), “culpable negligence” is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights. The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

¹⁶ A second degree felony is punishable by up to 15 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁷ A first degree felony is punishable by up to 30 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁸ Under s. 943.10(1), F.S., “law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, F.S.

Offenses Requiring a Sentence of Life Imprisonment

The bill amends s. 782.065, F.S., to add manslaughter under s. 782.07(1), F.S., when committed against a law enforcement officer, to the list of offenses for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Provides the act may be cited as the “Officer Jason Raynor Act.”

Section 2: Amends s. 776.051, F.S., relating to use or threatened use of force in resisting arrest or making an arrest or in the execution of a legal duty; prohibition.

Section 3: Amends s. 782.065, F.S., relating to murder; law enforcement officer, correctional officer, correctional probation officer.

Section 4: Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers and other specified personnel; reclassification of offenses; minimum sentences.

Section 5: Amends s. 843.01, F.S., relating to resisting, obstructing, or opposing by offering or doing violence to legally authorized person, police canine, or police horse.

Section 6: Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by expanding and enhancing specified offenses when committed against a law enforcement officer, which may result in increased admissions or longer sentences to such facilities. To the extent that some offenders may be sentenced differently as a result of the bill's changes, its impact is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to criminal offenses against law
 3 enforcement officers and other personnel; amending s.
 4 776.051, F.S.; revising a prohibition on the use or
 5 threatened use of force to resist arrest or detention;
 6 amending s. 782.065, F.S.; providing for enhanced
 7 punishment for additional offenses when committed
 8 against specified officers; revising applicability;
 9 amending s. 784.07, F.S.; revising the definition of
 10 the term "law enforcement officer"; revising
 11 provisions concerning assault or battery upon
 12 specified officers; amending s. 843.01, F.S.; revising
 13 a provision concerning resisting, obstructing, or
 14 opposing specified officers; providing an effective
 15 date.

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

18
 19 Section 1. This act may be cited as the "Officer Jason
 20 Raynor Act."

21 Section 2. Section 776.051, Florida Statutes, is amended
 22 to read:

23 776.051 Use or threatened use of force in resisting arrest
 24 or detention ~~making an arrest or in the execution of a legal~~
 25 ~~duty~~; prohibition.—

26 ~~(1)~~ A person is not justified in the use or threatened use
 27 of force to resist a lawful or an unlawful ~~an~~ arrest or
 28 detention by a law enforcement officer, or to resist a law
 29 enforcement officer who was acting in the performance of his or
 30 her official duties as described in s. 943.10(1), if ~~who is~~
 31 ~~engaged in the execution of a legal duty, if the law enforcement~~
 32 ~~officer was acting in good faith and he or she is known, or~~
 33 reasonably appears, to be a law enforcement officer.

34 ~~(2)~~ A law enforcement officer, or any person whom the
 35 officer has summoned or directed to assist him or her, is not
 36 justified in the use of force if the arrest or execution of a
 37 legal duty is unlawful and known by him or her to be unlawful.

38 Section 3. Section 782.065, Florida Statutes, is amended
 39 to read:

40 782.065 Murder; law enforcement officer, correctional
 41 officer, correctional probation officer.—Notwithstanding ss.
 42 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant
 43 shall be sentenced to life imprisonment without eligibility for
 44 release upon findings by the trier of fact that, beyond a
 45 reasonable doubt:

46 (1) The defendant committed murder in the first degree in
 47 violation of s. 782.04(1) and a death sentence was not imposed;
 48 murder in the second or third degree in violation of s.
 49 782.04(2), (3), or (4); attempted murder in the first or second
 50 degree in violation of s. 782.04(1)(a)1. or (2); ~~or~~ attempted

51 felony murder in violation of s. 782.051; or manslaughter in
 52 violation of s. 782.07(1); and

53 (2) The victim of any offense described in subsection (1)
 54 was a law enforcement officer, part-time law enforcement
 55 officer, auxiliary law enforcement officer, correctional
 56 officer, part-time correctional officer, auxiliary correctional
 57 officer, correctional probation officer, part-time correctional
 58 probation officer, or auxiliary correctional probation officer,
 59 as those terms are defined in s. 943.10, who was acting in the
 60 performance of his or her official duties as described in s.
 61 943.10 engaged in the lawful performance of a legal duty.

62 Section 4. Paragraph (e) of subsection (1) and subsection
 63 (2) of section 784.07, Florida Statutes, are amended to read:

64 784.07 Assault or battery of law enforcement officers and
 65 other specified personnel; reclassification of offenses; minimum
 66 sentences.—

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

68 (e) "Law enforcement officer" includes a law enforcement
 69 officer, a correctional officer, a correctional probation
 70 officer, a part-time law enforcement officer, a part-time
 71 correctional officer, an auxiliary law enforcement officer, and
 72 an auxiliary correctional officer, as those terms are
 73 respectively defined in s. 943.10, and any county probation
 74 officer; an employee or agent of the Department of Corrections
 75 who supervises or provides services to inmates; an officer of

76 | the Florida Commission on Offender Review; a federal law
77 | enforcement officer as defined in s. 901.1505; and law
78 | enforcement personnel of the Fish and Wildlife Conservation
79 | Commission, the Department of Environmental Protection, or the
80 | Department of Law Enforcement. The duties and responsibilities
81 | of these respective positions are described in s. 943.10.

82 | (2) Whenever any person is charged with knowingly
83 | committing an assault or battery upon a law enforcement officer,
84 | a firefighter, an emergency medical care provider, hospital
85 | personnel, a railroad special officer, a traffic accident
86 | investigation officer as described in s. 316.640, a nonsworn law
87 | enforcement agency employee who is certified as an agency
88 | inspector, a blood alcohol analyst, or a breath test operator
89 | while such employee is in uniform and engaged in processing,
90 | testing, evaluating, analyzing, or transporting a person who is
91 | detained or under arrest for DUI, a law enforcement explorer, a
92 | traffic infraction enforcement officer as described in s.
93 | 316.640, a parking enforcement specialist as defined in s.
94 | 316.640, a person licensed as a security officer as defined in
95 | s. 493.6101 and wearing a uniform that bears at least one patch
96 | or emblem that is visible at all times that clearly identifies
97 | the employing agency and that clearly identifies the person as a
98 | licensed security officer, or a security officer employed by the
99 | board of trustees of a community college, while the officer,
100 | firefighter, emergency medical care provider, hospital

101 personnel, railroad special officer, traffic accident
 102 investigation officer, traffic infraction enforcement officer,
 103 inspector, analyst, operator, law enforcement explorer, parking
 104 enforcement specialist, public transit employee or agent, or
 105 security officer who was acting in the performance of his or her
 106 official duties ~~is engaged in the lawful performance of his or~~
 107 ~~her duties~~, the offense for which the person is charged shall be
 108 reclassified as follows:

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

111 (b) In the case of battery, from a misdemeanor of the
 112 first degree to a felony of the third degree. Notwithstanding
 113 any other provision of law, a person convicted of battery upon a
 114 law enforcement officer committed in furtherance of a riot or an
 115 aggravated riot prohibited under s. 870.01 shall be sentenced to
 116 a minimum term of imprisonment of 6 months.

117 (c) In the case of aggravated assault, from a felony of
 118 the third degree to a felony of the second degree.
 119 Notwithstanding any other provision of law, any person convicted
 120 of aggravated assault upon a law enforcement officer shall be
 121 sentenced to a minimum term of imprisonment of 3 years.

122 (d) In the case of aggravated battery, from a felony of
 123 the second degree to a felony of the first degree.
 124 Notwithstanding any other provision of law, any person convicted
 125 of aggravated battery of a law enforcement officer shall be

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

127 Section 5. Subsection (1) of section 843.01, Florida
 128 Statutes, is amended to read:

129 843.01 Resisting, obstructing, or opposing by offering or
 130 doing violence to legally authorized person, police canine, or
 131 police horse.—

132 (1) Whoever knowingly and willfully resists, obstructs, or
 133 opposes any officer as defined in s. 943.10(1), (2), (3), (6),
 134 (7), (8), or (9); member of the Florida Commission on Offender
 135 Review or any administrative aide or supervisor employed by the
 136 commission; parole and probation supervisor; county probation
 137 officer; personnel or representative of the Department of Law
 138 Enforcement; or other person legally authorized to execute
 139 process in the execution of legal process or acting in the
 140 performance of his or her official duties as described in s.
 141 943.10 in the lawful execution of any legal duty, by offering or
 142 doing violence to the person of such officer or legally
 143 authorized person, commits a felony of the third degree,
 144 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

145 Section 6. This act shall take effect October 1, 2024.