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# Judiciary Committee

**Wednesday, February 21, 2024  
8:00 AM - 1:00 PM  
404 HOB**

**Meeting Packet**

**Paul Renner  
Speaker**

**Tommy Gregory  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

(AMENDED 2/19/2024 4:29:31PM)

Amended(1)

### Judiciary Committee

**Start Date and Time:** Wednesday, February 21, 2024 08:00 am

**End Date and Time:** Wednesday, February 21, 2024 01:00 pm

**Location:** Sumner Hall (404 HOB)

**Duration:** 5.00 hrs

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

CS/HB 17 Expiration of the Mandatory Waiting Period for Firearm Purchases by Criminal Justice Subcommittee, Rudman  
CS/CS/HB 45 Hope Cards for Persons Issued Orders of Protection by Justice Appropriations Subcommittee, Civil Justice Subcommittee, Gottlieb, Koster  
CS/HB 365 Representation by Counsel in Hearings on Petitions for Risk Protection Orders by Criminal Justice Subcommittee, Sirois  
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  
HB 485 Return of Weapons and Arms Following an Arrest by Brackett, Barnaby  
CS/HB 607 Retention of Sexual Offense Evidence by Criminal Justice Subcommittee, Plakon  
CS/HB 651 Civil Liability for the Wrongful Death of an Unborn Child by Civil Justice Subcommittee, Persons-Mulicka  
CS/HB 757 Defamation, False Light, and Unauthorized Publication of Name or Likenesses by Civil Justice Subcommittee, Andrade  
CS/HB 1123 Unlawful Sale Of Alcoholic Beverages by Regulatory Reform & Economic Development Subcommittee, Bankson, Yarkosky  
CS/HB 1133 Violations Against Vulnerable Road Users by Criminal Justice Subcommittee, Redondo, Smith  
CS/HB 1135 Lewd or Lascivious Grooming by Criminal Justice Subcommittee, Yarkosky, Bankson  
CS/HB 1167 Attorney Fees and Costs in Property Rights Disputes by Local Administration, Federal Affairs & Special Districts Subcommittee, Yarkosky  
HB 1223 Minimum Age for Firearm Purchase or Transfer by Payne, Sirois  
CS/HB 1337 Department of Corrections by Criminal Justice Subcommittee, Stark, Jacques  
HB 1443 Electronic Access to Official Records by Persons-Mulicka  
CS/HB 189 Gaming Control by Regulatory Reform & Economic Development Subcommittee, Salzman  
HB 1449 Reclassification of Criminal Penalties by Michael  
CS/CS/HB 1459 Advanced Technology by Appropriations Committee, Commerce Committee, McFarland  
CS/HB 1461 Pub. Rec./Investigations by the Department of Legal Affairs by Commerce Committee, McFarland  
CS/HB 6017 Relief/Marcus Button/Pasco County School Board by Civil Justice Subcommittee, Andrade

#### Consideration of the following proposed committee substitute(s):

PCS for CS/HB 473 -- Cybersecurity Incident Liability  
PCS for CS/HB 621 -- Property Rights  
PCS for CS/HB 979 -- Estoppel Certificates  
PCS for CS/HB 1049 -- Flood Disclosure in the Sale of Real Property  
PCS for CS/HB 1171 -- Schemes to Defraud

**NOTICE FINALIZED on 02/19/2024 4:29PM by Ramirez.Julia**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

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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](http://www.myfloridahouse.gov).

**NOTICE FINALIZED on 02/19/2024 4:29PM by Ramirez.Julia**





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 17 Expiration of the Mandatory Waiting Period for Firearm Purchases

**SPONSOR(S):** Criminal Justice Subcommittee, Rudman and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 5 N, As CS	Padgett	Hall
2) Judiciary Committee		Padgett	Kramer

### SUMMARY ANALYSIS

Both state and Federal law regulate the purchase of firearms, which can either be made through a federal firearms licensee (FFL) or through a private sale. The sale of a firearm by an FFL is generally subject to greater restrictions than those imposed on a sale by a private citizen. Under Federal law, subject to limited exceptions, an FFL is prohibited from transferring a firearm to a purchaser unless the purchaser has successfully completed a background check. If the background check is not completed within three business days, the FFL may transfer a firearm to a purchaser by default unless a state law provides otherwise.

Article I, section 8(b) of the Florida Constitution requires a mandatory waiting period of three days, excluding weekends and holidays, between the purchase and delivery at retail of any handgun. The mandatory waiting period does not apply if the purchaser holds a concealed weapons license or if the transaction involves the trade in of a handgun. The waiting period in the Florida Constitution was mirrored in s. 790.0655, F.S., until 2018. In that year, subject to limited exceptions, Florida expanded the statutory three day waiting period imposed between the purchase and delivery of a handgun from an FFL to apply to all firearms. In addition, Florida also prohibited an FFL from transferring a firearm to a purchaser unless the purchaser had successfully completed a background check confirming that he or she was not prohibited from purchasing a firearm under state or Federal law, regardless of the length of time required to complete the background check.

CS/HB 17 amends s. 790.0655, F.S., to require the mandatory waiting period for all firearm purchases made from an FFL to expire three days after the purchase of a firearm, excluding weekends and legal holidays, regardless of whether a background check has been completed. Under the bill, and in compliance with s. 790.065, F.S., and Federal law, if the Florida Department of Law Enforcement (FDLE) is unable to determine whether a person is prohibited from purchasing a firearm from an FFL within the three day period, FDLE must issue a conditional approval authorizing a purchaser to take delivery of a firearm. If FDLE subsequently determines that a purchaser is not authorized to possess a firearm, FDLE is required to notify the Federal Bureau of Alcohol, Tobacco, and Firearms and a local law enforcement agency, who are responsible for retrieving the firearm.

The bill retains exceptions to the three day waiting period in current law for a firearm purchase from an FFL by a person who holds a concealed weapons license under s. 790.06, F.S.; to the trade-in of another firearm; or to the purchase of a rifle or shotgun by a law enforcement officer, correctional officer, or person who has successfully completed a specified hunter safety course or is exempt from such requirements.

The bill also deletes the provision in current law that prohibits an FFL from transferring a firearm to a purchaser prior to the successful completion of a background check. Under the bill, and in compliance with s. 790.065, F.S., if the Florida Department of Law Enforcement (FDLE) is unable to determine whether a person is prohibited from purchasing a firearm from an FFL within 24 *working* hours, FDLE must issue a conditional approval authorizing a purchaser to take delivery of a firearm. If FDLE subsequently determines that a purchaser is not authorized to possess a firearm, FDLE is required to notify a local law enforcement agency to retrieve the firearm.

FDLE estimates that the bill will have minimal fiscal impact and that any increase in workload will be absorbed within existing resources.

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:** h0017a.JDC

**DATE:** 2/19/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Purchase and Sale of Firearms

###### *Federal Firearms Licensee*

A person may not engage in the business of importing, manufacturing, or dealing in firearms unless he or she is licensed by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).<sup>1</sup> A federal firearms licensee (FFL) must comply with both state and Federal law when selling a firearm.<sup>2</sup> Thus, if a state imposes requirements for the purchase or possession of a firearm which are *greater* than Federal law, such as requiring a mandatory waiting period between the purchase and delivery of a firearm, an FFL may not sell or deliver a firearm to a prospective purchaser unless he or she satisfies the more restrictive state requirements. If a state imposes requirements on the purchase or possession of a firearm that is less restrictive than Federal law, Federal law applies. In sum, Federal law relating to the purchase and sale of a firearm acts as the “floor,” but states may impose more restrictive requirements if they choose to do so.

###### *Private Transaction*

A person may also purchase a firearm through a private transaction (i.e. purchasing a firearm from a person who is a private citizen and *not* an FFL). Many of the requirements that apply to the sale of a firearm by an FFL do not apply to a private transaction. A seller in a private transaction is not explicitly required to complete a background check,<sup>3</sup> verify a purchaser’s age,<sup>4</sup> or comply with any mandatory waiting periods prior to transferring a firearm to a purchaser.

##### Background Checks

To verify that a purchaser meets state and federal eligibility requirements to purchase a firearm, an FFL must submit a firearm purchaser’s identifying information to the Florida Department of Law Enforcement (FDLE), which conducts a state background check.<sup>5</sup> FDLE also submits the purchaser’s identifying information to the Federal Bureau of Investigation’s National Instant Criminal Background Check System (NICS) to conduct a national background check.<sup>6</sup>

Under 18 U.S.C. s. 922(g), a person is disqualified from purchasing a firearm if the person:

- Is convicted of a crime punishable by imprisonment exceeding one year;
- Is a fugitive from justice;
- Is an unlawful user or addicted to any controlled substance as defined in 21 U.S.C s. 802;
- Has been adjudicated as a mental defective or has been committed to any mental institution;
- Is an illegal alien;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced his or her U.S. citizenship;
- Is subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or child of the intimate partner; or
- Has been convicted of a misdemeanor crime of domestic violence.

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<sup>1</sup> 18 U.S.C. § 922(a)(1)(A).

<sup>2</sup> 18 U.S.C. §922(b)(2).

<sup>3</sup> A private seller may not sell or dispose of a firearm to any person if the seller knows, or has reasonable cause to know, is prohibited from purchasing a firearm due to his or her prior criminal history, immigration status, or mental condition. 18 U.S.C. § 922.

<sup>4</sup> A private seller is prohibited from selling, delivering, or otherwise transferring a handgun to a person who the transferor knows or has reasonable cause to believe is under 18 years of age. 18 U.S.C. §922(x)(1)(A).

<sup>5</sup> S. 790.065(1)(a)3., F.S.

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

Section 790.065(2), F.S., disqualifies a person from purchasing a firearm if the person:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.;
- Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;
- Has had a withhold of adjudication or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other court set conditions have been fulfilled or an expunction has occurred;
- Has been adjudicated mentally defective, or has been committed to a mental institution by a court or by voluntary admission to a mental institution after having been involuntarily examined where additional criteria are met;
- Has been indicted or had an information filed against her or him for a felony offense;
- Has had an injunction for protection against domestic violence under s. 741.30, F.S., entered against him or her;
- Has had an injunction for protection against repeat violence under s. 784.046, F.S., entered against him or her;
- Has been arrested for a dangerous crime as specified in s. 907.041(4)(a), F.S.; or
- Has been arrested for any of the offenses enumerated in s. 790.065(2)(c)1., F.S.

#### *Federal Law*

18 U.S.C. §922(t), prohibits, with limited exceptions,<sup>7</sup> an FFL from transferring a firearm to a purchaser unless the purchaser has successfully completed a background check. Under Federal law, if the background check is not completed within three business days, the FFL may transfer a firearm to a purchaser by default unless a state law provides otherwise.<sup>8</sup>

#### *Florida Law*

In Florida, an FFL is prohibited from transferring a firearm to a purchaser until he or she receives confirmation from FDLE that the prospective purchaser is *not* prohibited from purchasing a firearm.<sup>9</sup> According to FDLE, 98 percent of firearm background checks are completed “within minutes of being received,” with 96 percent of such background checks resulting in approval and 2 percent resulting in non-approval.<sup>10</sup> For the remaining 2 percent of pending background checks that are unresolved, FDLE conducts additional research to determine whether a person is disqualified from purchasing a firearm. Under current law, there is no “default” provision that authorizes an FFL in Florida to transfer a firearm after a specified time period if a background check remains unresolved.

Prior to 2018,<sup>11</sup> FDLE had 24 working hours<sup>12</sup> (i.e. three business days) to determine whether a person was prohibited from purchasing a firearm, identical to the requirement under Federal law. If FDLE was unable to determine whether a person was prohibited from purchasing a firearm within 24 working hours, FDLE was required to provide an FFL with a conditional approval, which authorized the FFL to transfer a firearm to a purchaser. If FDLE determined, subsequent to the firearm transfer, that a person was actually prohibited from purchasing a firearm, FDLE was required to revoke the conditional approval and send a “weapons retrieval” notification of such revocation to ATF and local law

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<sup>7</sup> A person who holds a permit to possess or acquire a firearm from certain states is exempt from Federal background check requirements. 18 U.S.C. §922(t)(3).

<sup>8</sup> 18 U.S.C. §922(t). If a purchaser is under 21 and a background check identifies a potentially disqualifying juvenile offense, an FFL must wait 10 business days prior to transferring a firearm by default if the status of the potentially disqualifying offense is not resolved.

<sup>9</sup> S. 790.0655(1)(a), F.S.

<sup>10</sup> Florida Department of Law Enforcement, *Firearm Transaction Decisions*, <https://www.fdle.state.fl.us/FPP/FAQs3.aspx> (last visited Feb. 14, 2024).

<sup>11</sup> See Ch. 2018-3, Laws of Fla.

<sup>12</sup> “Working hours” means the hours from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. S. 790.065(2)(c)2., F.S.

enforcement agencies with jurisdiction over the purchaser.<sup>13</sup> The ATF or local law enforcement agency was then required to retrieve the firearm from the purchaser.<sup>14</sup>

## Mandatory Waiting Period

### *Federal Law*

Federal law does *not* require a minimum waiting period between the purchase and delivery of a firearm from an FFL. Under Federal law, an FFL may transfer a firearm to a purchaser as soon as he or she successfully completes a background check.<sup>15</sup> As noted above, under Federal law, if the background check is not completed within three business days, the FFL may transfer a firearm to a purchaser by default unless a state law provides otherwise.<sup>16</sup>

### *Florida Law*

#### **Florida Constitution**

Article I, section 8(b) of the Florida Constitution requires a mandatory waiting period of three days, excluding weekends and legal holidays, between the purchase<sup>17</sup> and delivery at retail of any handgun.<sup>18</sup> The mandatory waiting period does *not* apply if the purchaser of a handgun holds a concealed weapons license or if the transaction involves the trade in of a handgun.<sup>19</sup> The Florida Constitution does *not* require a mandatory waiting period for the retail purchase of a long gun, such as a rifle or shotgun.

Additionally, article VIII, section 5(b) of the Florida Constitution authorizes each county to require a criminal history records check and a three to five day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this section, the term “sale” means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access.<sup>20</sup> A person who holds a concealed weapons license is not subject to such a mandatory waiting period imposed by a county.<sup>21</sup>

#### **Florida Statute**

##### *Section 790.0655, F.S.*

Section 790.0655, F.S., requires a mandatory waiting period between the purchase<sup>22</sup> and delivery of a firearm<sup>23</sup> from an FFL of at least three days, excluding weekends and legal holidays, or until the completion of a background check, *whichever occurs later*. The three day waiting period does not apply:

- When a firearm is being purchased by a holder of a concealed weapons or concealed firearms license issued under s. 790.06, F.S.;
- To a trade-in of another firearm;

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<sup>13</sup> S. 790.065(2)(c)7.b., F.S. Florida Department of Law Enforcement, Agency Analysis of HB 17, p.2 (Oct.12, 2023).

<sup>14</sup> Prior to 2018, FDLE issued an average of 311 firearm retrieval orders annually. Since 2018, FDLE issued an average of 15 fire arm retrieval orders annually. Florida Department of Law Enforcement, Agency Analysis of 2024 House Bill 17, p. 5 (Oct. 12, 2023).

<sup>15</sup> 18 U.S.C. § 922(t)(1).

<sup>16</sup> *Id.* If a purchaser is under 21 and a background check identifies a potentially disqualifying juvenile offense, an FFL must wait 10 business days prior to transferring a firearm by default if the status of the potentially disqualifying offense is not resolved.

<sup>17</sup> “Purchase” means the transfer of money or other valuable consideration to the retailer. Art. I, s. 8(b), Fla. Const.

<sup>18</sup> “Handgun” means a firearm capable of being carried and used by one hand, such as a pistol or revolver. *Id.*

<sup>19</sup> Art. I, s. 8(b) and (d), Fla. Const.

<sup>20</sup> Art. VIII, s. 5(b), Fla. Const.

<sup>21</sup> *Id.*

<sup>22</sup> “Purchase” means the transfer of money or other valuable consideration to the retailer. S. 790.0655(1)(a), F.S.

<sup>23</sup> “Firearm” means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term “firearm” does not include an antique firearm unless the antique firearm is used in the commission of a crime. S. 790.001(9), F.S.

- To the purchase of a rifle or shotgun, if a person:
  - Successfully completes a 16 hour hunter safety course and possesses a hunter safety certification card issued under s. 379.3581, F.S., or
  - Is exempt from the hunter safety course requirements under s. 379.3581, F.S., and holds a valid Florida hunting license; or
- When a rifle or shotgun is being purchased by a law enforcement officer or correctional officer, as those terms are defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S., or a servicemember as defined in s. 250.01, F.S.<sup>24</sup>

Under current law, it is a third degree felony:<sup>25</sup>

- For any retailer,<sup>26</sup> or any employee or agent of a retailer, to deliver a firearm before the expiration of the waiting period, subject to the statutory exceptions; or
- For a purchaser to obtain delivery of a firearm by fraud, false pretense, or false representation.<sup>27</sup>

## Effect of Proposed Changes

CS/HB 17 amends s. 790.0655, F.S., to require the mandatory waiting period for all firearm purchases made from an FFL to expire three days after the purchase of a firearm, excluding weekends and legal holidays, regardless of whether a background check has been completed. Under the bill, and in compliance with s. 790.065, F.S., and Federal law, if the FDLE is unable to determine whether a person is prohibited from purchasing a firearm from an FFL within the three day period, FDLE must issue a conditional approval authorizing a purchaser to take delivery of a firearm. If FDLE subsequently determines that a purchaser is not authorized to possess a firearm, FDLE is required to notify ATF and a local law enforcement agency to retrieve the firearm.

The bill retains exceptions to the three day waiting period in current law for a firearm purchase from an FFL by a person who holds a concealed weapons license under s. 790.06, F.S.; to the trade-in of another firearm; or to the purchase of a rifle or shotgun by a law enforcement officer, correctional officer, or person who has successfully completed a specified hunter safety course or who is exempt from such requirements.

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

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 790.0655, F.S., relating to purchase and delivery of firearms; mandatory waiting period; exceptions; penalties.

**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:

<sup>24</sup> S. 790.0655(2), F.S.

<sup>25</sup> 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.

<sup>26</sup> "Retailer" means and includes a licensed importer, licensed manufacturer, or licensed dealer engaged in the business of making firearm sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13), F.S.

<sup>27</sup> S. 790.0655(3), F.S.

FDLE estimates that the bill will have a minimal fiscal impact and that any increase in workload will be absorbed within existing resources.

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

1. Revenues:

None.

2. Expenditures:

The bill may have a fiscal impact on local governments since it may require local law enforcement agencies to conduct more firearm retrievals.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive fiscal impact on FFLs as it authorizes an FFL to complete a firearm transaction in a specified time period of 24 working hours.

**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 a 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 30, 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 in that it required a mandatory three day waiting period for all firearms, rather than authorizing a firearm to be released upon completion of a background check or three days, whichever occurs earlier.

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 expiration of the mandatory waiting  
 3           period for firearm purchases; amending s. 790.0655,  
 4           F.S.; removing a provision authorizing the mandatory  
 5           waiting period to expire upon completion of a records  
 6           check; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Paragraph (a) of subsection (1) of section  
 11           790.0655, Florida Statutes, is amended to read:

12           790.0655 Purchase and delivery of firearms; mandatory  
 13           waiting period; exceptions; penalties.—

14           (1)(a) A mandatory 3-day waiting period, excluding  
 15           weekends and legal holidays, is imposed between the purchase and  
 16           delivery at retail of a firearm. ~~The mandatory waiting period is~~  
 17           ~~3 days, excluding weekends and legal holidays, or expires upon~~  
 18           ~~the completion of the records checks required under s. 790.065,~~  
 19           ~~whichever occurs later.~~ "Purchase" means the transfer of money  
 20           or other valuable consideration to the retailer. "Retailer" has  
 21           the same meaning as in s. 212.02(13), ~~means~~ and includes a  
 22           licensed importer, licensed manufacturer, or licensed dealer  
 23           engaged in the business of making firearm sales at retail or for  
 24           distribution, or use, or consumption, or storage to be used or  
 25           consumed in this state, ~~as defined in s. 212.02(13).~~

CS/HB 17

2024

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 45 Hope Cards for Persons Issued Orders of Protection

**SPONSOR(S):** Justice Appropriations Subcommittee, Civil Justice Subcommittee, Gottlieb and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 86

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N, As CS	Mathews	Jones
2) Justice Appropriations Subcommittee	13 Y, 0 N, As CS	Smith	Keith
3) Judiciary Committee		Mathews	Kramer

### SUMMARY ANALYSIS

Pursuant to s. 741.28, F.S., domestic violence means any assault, aggravated assault, battery, aggravated battery, sexual assault, aggravated sexual assault, stalking, aggravated stalking, kidnapping, false imprisonment, or any other criminal offense resulting in physical injury or death of one family or household member by another family or household member. To protect himself or herself from abuse or threats of abuse, a domestic violence victim may petition for a protective injunction.

In certain matters, a court may grant civil “injunctive relief” to prohibit a person from committing certain actions. For example, a victim of domestic violence may petition the court for protection against domestic violence enjoining the respondent from being near the petitioner.

Chapter 741, F.S., provides a process for an alleged victim to seek protection from domestic violence. Generally, a petitioner files a sworn notarized petition with the circuit court seeking a protective order or injunction for protection against domestic violence. Upon review of the petition and any supporting documents by a judge, one of three ex parte actions generally occurs:

- The petition for injunction is denied, and the judge must provide written findings detailing the reasons for the denial;
- A temporary injunction is issued and a return hearing is set to be held within 15 days as a final hearing on the matter; or
- The injunction is denied but a return hearing is set for the matter to be heard in court with both parties having the opportunity to be present and to present testimony and evidence.

Following a hearing, the court may either issue a final injunction or deny the petition and close the case. A final injunction may be issued for a set period of time or may remain in place indefinitely. The terms of an injunction remain in effect until it expires, is modified, or is dissolved by court order.

CS/CS/HB 45 creates s. 741.311, F.S., establishing the Hope Card Program to provide a wallet-sized card to a person issued a final injunction for protection by a county or circuit court in Florida. The bill directs the clerks of the court to develop and implement the program in consultation with the Attorney General. Under the bill, a person who has been issued a final injunction for protection against domestic violence, stalking, repeat violence, sexual violence, dating violence, or abuse or exploitation of an elderly person or disabled adult may apply for a Hope Card with the clerk of the court where the petition was originally filed.

The bill provides specifications for the form and content of the card and imposes time limitations on when the card must be produced and provided to the applicant. Under the bill, a Hope Card is valid for up to two years after its issuance but may be renewed if the injunction remains in effect. The bill provides a criminal penalty for the intentional misuse of a Hope Card or a document purporting to be a Hope Card.

The bill has an indeterminate negative fiscal impact on the clerks of court; however, it is anticipated that any impact can be absorbed within existing resources. 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:** h0045d.JDC

**DATE:** 2/19/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Domestic Violence

Domestic violence means any criminal offense resulting in the physical injury or death of one family or household member<sup>1</sup> by another family or household member,<sup>2</sup> including:

- Assault;<sup>3</sup>
- Aggravated assault;<sup>4</sup>
- Battery;<sup>5</sup>
- Aggravated battery;<sup>6</sup>
- Sexual assault;<sup>7</sup>
- Sexual battery;<sup>8</sup>
- Stalking;<sup>9</sup>
- Aggravated stalking;<sup>10</sup>
- Kidnapping;<sup>11</sup> and
- False imprisonment.<sup>12</sup>

In 2020, the last statistical report provided by the Florida Department of Law Enforcement indicated Florida law enforcement agencies received 106,615 domestic violence reports,<sup>13</sup> resulting in 63,345 arrests.<sup>14</sup> During fiscal year 2021-2022, Florida's 41 certified domestic violence shelters<sup>15</sup> admitted 11,811 victims to a residential services program and 38,630 victims to a non-residential outreach

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<sup>1</sup> "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. S. 741.28(3), F.S.

<sup>2</sup> S. 741.28(2), F.S.

<sup>3</sup> "Assault" means an intentional, unlawful threat by word or act to do violence to another, coupled with an apparent ability to do so, creating a well-founded fear in such other person that violence is imminent. S. 784.011, F.S.

<sup>4</sup> "Aggravated assault" means an assault with a deadly weapon without intent to kill, or an assault with intent to commit a felony. S. 784.021, F.S.

<sup>5</sup> "Battery" means the actual and intentional touching or striking of another against his or her will or intentionally causing bodily harm to another. S. 784.03, F.S.

<sup>6</sup> "Aggravated battery" means a battery in which the offender intentionally or knowingly caused great bodily harm, permanent disability, or permanent disfigurement; used a deadly weapon; or victimized a person the offender knew or should have known was pregnant. S. 784.045, F.S.

<sup>7</sup> "Sexual assault" has the same meaning as sexual battery.

<sup>8</sup> "Sexual battery" means oral, anal, or vaginal penetration by, or in union with, the sexual organ of another or the anal or vaginal penetration of another by any object, but does not include an act done for a bona fide medical purpose. S. 794.011(1)(h), F.S.

<sup>9</sup> "Stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another. S. 784.048(2), F.S.

<sup>10</sup> "Aggravated stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another and making a credible threat to that person. S. 784.048(3), F.S.

<sup>11</sup> "Kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another against his or her will and without lawful authority with the intent to hold for ransom or reward or as a shield or hostage; commit or facilitate a felony; inflict bodily harm upon or terrorize another; or interfere with the performance of any governmental or political function. S. 787.01(1), F.S.

<sup>12</sup> "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. S. 787.02(1), F.S.

<sup>13</sup> Florida Department of Law Enforcement, *Statewide Reported Domestic Violence Offenses in Florida, 1992-2020*, [https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/02/DV\\_Offenses\\_by\\_Type.aspx](https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/02/DV_Offenses_by_Type.aspx) (last visited Jan. 22, 2024).

<sup>14</sup> Florida Department of Law Enforcement, *Florida's County and Jurisdictional Domestic Violence Related Arrests, 2020*, [https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/07/DV\\_Jurisdiction\\_Arrests\\_2020.aspx](https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/07/DV_Jurisdiction_Arrests_2020.aspx) (last visited Jan. 22, 2024).

<sup>15</sup> "Domestic violence shelter" means an agency providing services to domestic violence victims as its primary mission. The Florida Department of Children and Families operates the statewide Domestic Violence Program, responsible for certifying domestic violence centers. Section 39.905, F.S., and ch. 65H-1, F.A.C., set forth the minimum domestic violence center certification standards.

services program.<sup>16</sup> During the same year, the domestic violence centers answered 81,357 crisis hotline calls, completed 171,008 safety plans with survivors, and provided 380,040 direct service information and referrals to survivors, family members, and individuals seeking services.<sup>17</sup>

### Repeat Violence, Sexual Violence, and Dating Violence

Pursuant to s. 784.046, F.S., “sexual violence” means any one of the following incidents, regardless of whether criminal charges were filed, reduced, or dismissed:

- Sexual battery, as defined under ch. 794, F.S.;
- A lewd or lascivious act committed upon or in the presence of a person under 16 years of age;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted.

“Dating violence” is violence between two people who have had or continue to have a significant relationship of a romantic or intimate nature.<sup>18</sup> Unlike with domestic violence, there is no requirement that the alleged victim and aggressor reside together in the same home. Further, the existence of dating violence is proven based on a consideration of the following factors:<sup>19</sup>

- A dating relationship must have existed within the past 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

“Repeat violence” means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed at the petitioner, or the petitioner’s immediate family member.<sup>20</sup>

### Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults

Section 825.103, F.S., prohibits specified exploitation of elderly persons or disabled adults and provides criminal penalties for a violation. Under s. 825.101(4), F.S., an elderly person is defined as a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired. A disabled adult is defined as a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.<sup>21</sup>

Under s. 825.103, F.S., exploitation of an elderly person or disabled adult (EPDA) means:

- Knowingly obtaining or using, or endeavoring to obtain or use, an EPDA’s funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA, by a person who:
  - Stands in a position of trust and confidence with the EPDA; or
  - Has a business relationship with the EPDA.<sup>22</sup>

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<sup>16</sup> Florida Department of Children and Families, 2022 *Domestic Violence Annual Report* [https://www.myflfamilies.com/sites/default/files/2023-02/Domestic\\_Violence\\_Annual\\_Report\\_2021-22.pdf](https://www.myflfamilies.com/sites/default/files/2023-02/Domestic_Violence_Annual_Report_2021-22.pdf) (last visited Jan. 22, 2024).

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

<sup>18</sup> S. 784.046(1)(d), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> S. 784.046(1)(b), F.S.

<sup>21</sup> S. 825.101(3), F.S.

<sup>22</sup> S. 825.103(1)(a), F.S.

- Obtaining or using, or endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA's funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA, by a person who knows or reasonably should know that the EPDA lacks the capacity<sup>23</sup> to consent.<sup>24</sup>
- Breach of a fiduciary duty to an EPDA by the person's guardian, trustee, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, kickback,<sup>25</sup> or receipt of an improper benefit.<sup>26</sup> An unauthorized appropriation occurs when the EPDA does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates a specified duty.<sup>27</sup>
- Misappropriating, misusing, or transferring without authorization money belonging to an EPDA from an account<sup>28</sup> in which the EPDA placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer.<sup>29</sup>
- Intentionally and negligently failing to effectively use an EPDA's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the EPDA.<sup>30</sup>
- Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA's funds, assets, property, or estate through intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the EPDA without:
  - A court order which authorizes the modification or alteration;
  - A written instrument executed by the EPDA, sworn to and witnessed by two persons who would be competent as witnesses to a will, which authorizes the modification or alteration; or
  - Action of an agent under a valid power of attorney which authorizes the modification or alteration.<sup>31</sup>

## Injunctions for Protection

### *Domestic Violence Injunctions*

An injunction is a court order prohibiting a person from doing a specified act or commanding a person to undo some wrong or injury.<sup>32</sup> An injunction for protection against domestic violence ("domestic violence injunction") may be sought by a family or household member.<sup>33</sup> The parties do not need to be married before a person can seek relief from domestic violence, and a party's right to seek relief is not affected by leaving the residence or household to avoid domestic violence.<sup>34</sup>

Once a petition for an injunction has been filed with the court, one of three events takes place:

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<sup>23</sup> "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property. S. 825.101(10), F.S.

<sup>24</sup> S. 825.103(1)(b), F.S.

<sup>25</sup> "Kickback" means a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense. S. 456.054(1), F.S.

<sup>26</sup> "Improper benefit" means any remuneration or payment, by or on behalf of any service provider or merchant of goods, to any person as an incentive or inducement to refer customers or patrons for past or future services or goods. S. 825.101(8), F.S.

<sup>27</sup> S. 825.103(1)(c), F.S.

<sup>28</sup> This type of exploitation only applies to the following types of accounts: personal accounts; joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to monies deposited into such account; or convenience accounts created in accordance with s. 655.80, F.S. S. 825.103(d)(1.-3.), F.S.

<sup>29</sup> S. 825.103(1)(d), F.S.

<sup>30</sup> S. 825.103(1)(e), F.S.

<sup>31</sup> S. 825.103(1)(f), F.S.

<sup>32</sup> Black's Law Dictionary 540 (6th ed. 1995).

<sup>33</sup> S. 741.30(1)(e), F.S.

<sup>34</sup> S. 741.30(1)(d) and (e), F.S.

- The court determines the petition has no merit and denies the petition, providing written findings for the denial;
- The court grants an ex parte temporary injunction and simultaneously sets a return hearing within 15 days; or
- The injunction is denied but a return hearing is scheduled so that both parties have the opportunity to present their issues and evidence before the court for further evaluation.

If, upon the initial review of the contents of the petition for an injunction, the court finds the petitioner is in immediate and present danger of domestic violence, it may grant a temporary injunction in an ex parte proceeding,<sup>35</sup> pending a full hearing, and grant relief including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the temporary exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence; and
- Providing to the petitioner a temporary parenting plan,<sup>36</sup> including a timesharing schedule,<sup>37</sup> which may award the petitioner up to 100 percent of the timesharing.<sup>38</sup>

A temporary injunction is effective only for up to 15 days, and a full hearing must be set for a date prior to the injunction's expiration.<sup>39</sup>

In determining whether reasonable cause exists that the petitioner is in imminent danger exists, the court must consider ten specific factors:<sup>40</sup>

1. The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.
2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.
3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.
4. Whether the respondent has intentionally injured or killed a family pet.
5. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.
6. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.
7. Whether the respondent has a criminal history involving violence or the threat of violence.
8. The existence of a verifiable injunction for protection issued previously or from another jurisdiction.
9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.
10. Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

Following a final evidentiary hearing, if the court determines that the petitioner is either a domestic violence victim or has reasonable cause to believe he or she is in imminent danger of becoming a domestic violence victim, it may issue a permanent domestic violence injunction.<sup>41</sup> However, if, after hearing evidence and testimony from the parties, the court finds no merit in the petitioner's case, the court may deny the injunction and dismiss the case.

<sup>35</sup> "Ex parte," Latin for "from one party," refers to motions for orders that can be granted without waiting for a response from the other side. These are generally orders that are in place only until further hearings can be held. Legal Information Institute, *Ex Parte*, [https://www.law.cornell.edu/wex/ex\\_parte](https://www.law.cornell.edu/wex/ex_parte) (last visited Nov. 28, 2023).

<sup>36</sup> A "parenting plan" governs the relationship between parents relating to decisions that must be made regarding the minor child and must contain a timesharing schedule for the parents and child. S. 61.046(14), F.S.

<sup>37</sup> "Timesharing schedule" means a timetable that must be included in a parenting plan that specifies the time, including overnights and holidays, which a minor child will spend with each parent. S. 61.046(23), F.S.

<sup>38</sup> S. 741.30(5)(a), F.S.

<sup>39</sup> S. 741.30(5)(a), F.S.

<sup>40</sup> S. 741.30(6)(b), F.S.

<sup>41</sup> *Id.*

A court issuing a permanent domestic violence injunction may grant relief including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence;
- Providing the petitioner with 100 percent of the timesharing in a parenting plan;
- Establishing temporary support for a minor child or for the petitioner;
- Ordering the respondent to participate in treatment, intervention, or counseling services;
- Referring a petitioner to a certified domestic violence center; and
- Ordering relief it deems necessary to protect a domestic violence victim.<sup>42</sup>

The terms of a permanent domestic violence injunction remain in effect until the defined period of the injunction expires, or the injunction is modified or dissolved, and either party may move at any time for modification or dissolution.<sup>43</sup>

#### *Injunction for Protection from Repeat Violence, Sexual Violence, or Dating Violence*

Separate and apart from the criminal actions established relating to domestic violence, Florida recognizes repeat violence, sexual violence, and dating violence as offenses for which a victim may seek civil injunctive protection. Pursuant to s. 784.046(2), F.S., there is a separate cause of action for an injunction for protection in cases of repeat violence,<sup>44</sup> sexual violence, and dating violence. Under s. 784.046, F.S., any person who is the victim of repeat violence, sexual violence, or dating violence, as well as the parent or guardian of a minor who is living at home and is the victim of such violence, may file a sworn petition for an injunction for protection with the circuit court.<sup>45</sup>

Once a petition has been filed, the court must set a hearing to be held as soon as possible.<sup>46</sup> If, after reviewing the petition, the court believes that an immediate and present danger of violence exists, the court may grant a temporary ex parte injunction. The temporary injunction is only valid for 15 days unless it is continued by the court.

Similar to an injunction for protection against domestic violence, a court may grant an ex parte temporary injunction in response to a petitioner's petition for injunction for protection against repeat violence, sexual violence, or dating violence. Upon proper notice and a final evidentiary hearing, the court may grant such relief as it deems appropriate, including the issuance of a final injunction.<sup>47</sup>

#### *Injunction for Protection from Stalking*

In addition to the criminal actions covered by an injunction for protection against domestic violence, Florida recognizes stalking as an offense for which a victim may seek civil injunctive protection. Pursuant to s. 784.0485(1), F.S., civil injunctive protection against stalking includes protection against offenses of cyberstalking as defined under s. 784.048(1)(d), F.S. A protective injunction against stalking under s. 784.0485, F.S., is available to a broader group of victims than the traditional domestic violence injunction, which, generally, is limited in its availability to members of the same household or family. Any person who is the victim of stalking or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child has standing to file a sworn petition for such an injunction.<sup>48</sup>

Similar to an injunction for protection against domestic violence, a court may:

- Deny the petition and provide written findings explaining the denial; or

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<sup>42</sup> S. 741.30(6)(a), F.S.

<sup>43</sup> S. 741.30(6)(c), F.S.

<sup>44</sup> "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed at the petitioner, or the petitioner's immediate family member. S. 784.046(1)(b), F.S.

<sup>45</sup> S. 784.064(2), F.S.

<sup>46</sup> S. 784.064(5), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> S. 784.0845(1), F.S.

- Grant an ex parte temporary injunction in response to a petitioner's petition for injunction for protection against stalking.

Upon proper notice and a final evidentiary hearing, the court may grant such relief as it deems appropriate, including the issuance of a final injunction.<sup>49</sup>

### *Injunction for Protection Against Exploitation of a Vulnerable Adult*

Under s. 825.1035, F.S., a vulnerable adult<sup>50</sup> in imminent danger of being exploited may file a petition<sup>51</sup> for an injunction for protection against exploitation. There is no requirement for any exploitation to have already occurred before the vulnerable adult may petition for an injunction.<sup>52</sup> A court may grant a temporary injunction ex parte, pending a full hearing on the petition,<sup>53</sup> upon making specified findings including that an immediate and present danger of exploitation of the vulnerable adult exists.<sup>54</sup> A temporary injunction may:

- Prohibit the respondent from having any direct or indirect contact with the vulnerable adult;
- Restrain the respondent from committing any acts of exploitation against the vulnerable adult;<sup>55</sup>
- Freeze the assets or credit lines of the vulnerable adult;
- Award the temporary exclusive use and possession of the dwelling that the vulnerable adult and the respondent share to the vulnerable adult, or bar the respondent from the vulnerable adult's residence; or
- Include any other terms the court deems necessary to protect the vulnerable adult or his or her assets, including any injunctions or directives to law enforcement agencies.<sup>56</sup>

In determining whether reasonable cause exists to believe that the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation, the court must consider the following factors:

- The existence of a verifiable injunction for protection issued previously or from another jurisdiction.
- Any history of exploitation by the respondent upon the vulnerable adult in the petition or any other vulnerable adult.
- Any history of the vulnerable adult being previously exploited or unduly influenced.
- The capacity of the vulnerable adult to make decisions related to his or her finances and property.
- Susceptibility of the vulnerable adult to undue influence.
- Any criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.<sup>57</sup>

A court may grant a temporary ex parte injunction if it finds any of the following:<sup>58</sup>

- An immediate and present danger of exploitation of the vulnerable adult exists.
- There is a likelihood of irreparable harm and non-availability of an adequate remedy at law.
- There is a substantial likelihood of success on the merits.

<sup>49</sup> S. 784.0845(6)(a), F.S.

<sup>50</sup> "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. S. 415.102(28), F.S.

<sup>51</sup> Additionally, the guardian of a vulnerable adult, a person or organization acting on behalf of and with the consent of the vulnerable adult or his or her guardian, an agent acting under power of attorney, or a person simultaneously filing a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult may file a petition for injunction for protection from exploitation. S. 825.1035(2)(a)2.-5., F.S.

<sup>52</sup> S. 825.1035(2)(e), F.S.

<sup>53</sup> An ex parte temporary injunction may be effective for up to 15 days, unless good cause is shown to extend the injunction, in which case, the temporary injunction may be extended one time for up to an additional 30 days. S. 825.1035(5)(d), F.S.

<sup>54</sup> S. 825.1035(5)(a)1., F.S.

<sup>55</sup> The terms of an injunction restraining the respondent remain in effect until the injunction is modified or dissolved. S. 825.1035(8)(c), F.S.

<sup>56</sup> Ss. 825.1035(3)(a)22., (5)(a)2., and (8)(a)2., F.S.

<sup>57</sup> S. 825.1035(6), F.S.

<sup>58</sup> The findings required for a temporary injunction and continuing an injunction after a full hearing on the petition are the same with the exception of probable cause findings that exploitation occurred if the temporary injunction froze the vulnerable adult's assets. Ss.

825.1035(5)(a)1. and (8)(a)1., F.S.



- The threatened injury to the vulnerable adult outweighs possible harm to the respondent.
- Granting the injunction will not disserve the public interest.
- Such injunction provides for the vulnerable adult's physical or financial safety.<sup>59</sup>

After a final hearing, a court may grant any additional relief the court deems appropriate, including:

- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing the vulnerable adult's frozen assets or credit lines to be returned to the vulnerable adult; or
- Entering a final cost judgment against the respondent and in favor of the petitioner for all taxable costs and entering a final cost judgment against the respondent and in favor of the clerk of the court for all the clerk's filing fees and service charges that were waived.

A court may enforce a violation of an injunction for protection through a civil or criminal contempt proceeding. A state attorney may also prosecute the violation under s. 825.1036, F.S.<sup>60</sup> A person who willfully violates an injunction for protection against exploitation of a vulnerable adult commits a first-degree misdemeanor.<sup>61</sup> A vulnerable adult who suffers an injury or loss as a result of a violation of an injunction for protection may be awarded economic damages and attorney fees and costs for enforcement of such injunction.<sup>62</sup> Alternatively, actual damages may be assessed against the petitioner if the court finds that the petition lacks substantial fact or legal support.<sup>63</sup>

### **Effect of Proposed Changes**

CS/CS/HB 45 creates the Hope Card program throughout the state of Florida. The bill directs the clerks of the court to develop and implement the program in consultation with the Office of the Attorney General.

Under the bill, a person who has received a final judgment for injunction for protection against domestic violence, stalking, repeat violence, sexual violence, dating violence, or exploitation of a vulnerable adult may apply for a Hope Card. The application for a Hope Card must be submitted to the clerk of the court in the circuit where the order for an injunction for protection was originally filed.

A person may apply for a Hope Card at any time after the final judgment for injunction is issued and at any time prior to the expiration of the underlying injunction. Pursuant to the bill, no fee for the application or the receipt of the card may be assessed.

The bill provides that a Hope Card is valid for two years from the date of issuance or until the expiration of the underlying injunction, whichever is earlier. A Hope Card may be renewed after the two year period if the underlying injunction remains in effect.

The bill provides that each Hope Card issued must be a durable, wallet-sized card and must include all of the following information:

- The respondent's name and date of birth;
- The name and date of birth of the petitioner or protected person;
- Information regarding:
  - The issuing court;
  - Case number;
  - Date the injunction was issued; and
  - Expiration date, if any, of the injunction.
- The date of issuance and expiration date of the Hope Card.

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<sup>59</sup> S. 825.1035(5)(a)1., F.S.

<sup>60</sup> S. 825.1035(11)(a), F.S.

<sup>61</sup> 825.1036(4)(a), F.S. 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.

<sup>62</sup> S. 825.1036(5), F.S.

<sup>63</sup> S. 825.1035(12), F.S.

The bill provides that intentional misuse of a Hope Card or a document purporting to be Hope Card is a second-degree misdemeanor. As such, a person who has actual knowledge that he or she is not protected by a valid injunction and presents the Hope Card or a document purporting to be a Hope Card for the purpose of proving the existence of an injunction, commits a second-degree misdemeanor. A second-degree misdemeanor is punishable by imprisonment for up to 60 days and a \$500 fine.

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

**B. SECTION DIRECTORY:**

- Section 1:** Creates s. 741.311, relating to Hope Card Program for persons issued orders of protection.
- Section 2:** Amends s. 741.30, relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; statewide verification system; enforcement; public records exemption.
- Section 3:** Amends s. 784.046, relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.
- Section 4:** Amends s. 784.0485, relating to stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.
- Section 5:** Amends s. 825.1035, relating to injunction for protection against exploitation of a vulnerable adult.
- 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:  
None.

**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:**

CS/CS/HB 45 has an indeterminate negative fiscal impact to the clerks of court due to increased workload and costs associated with program implementation. Projections from the Florida Court Clerks and Comptrollers indicate the cost to produce the Hope Cards to be approximately \$10 per card. Based on county fiscal year 2021-22 data, there were approximately 17,761 filed injunctions resulting in final

orders of protection, representing an approximate cost of \$176,710.<sup>64</sup> This indicates an average impact per county of approximately \$2,637, if averaged across Florida's 67 counties.

Resources provided to the clerks of court in Fiscal Year 2023-24 include the redistribution of approximately \$25.6 million from the General Revenue Fund to the clerks Fine and Forfeiture fund.<sup>65</sup> It is anticipated that any impact on the clerks of court for development and implementation of the Hope Card program can be absorbed within existing resources.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed an erroneous reference to the district courts of appeal and clarified that the program must be developed by OSCA in consultation with the Attorney General and the clerks of court, through their association. Once developed, the clerks must implement the Hope Card Program. The amendment specified that each Hope Card is valid for a maximum of two years with the ability to be renewed if the underlying injunction remains in effect. The amendment provided that misuse of a Hope Card or a document purporting to be a Hope Card is a second-degree misdemeanor.

On January 29, 2024, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment requires the clerks of the court, in consultation with the Office of the Attorney General, to develop and implement the Hope Card Program. The amendment also removed a provision allowing for Hope Cards to be provided to those with orders of protection foreign to the state of Florida, and removed the certified mail delivery requirement for Hope Cards.

This analysis is drafted to the committee substitute as amended by the Justice Appropriations Subcommittee.

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<sup>64</sup> Information from Sara Sanders Bremer, Director of Government Relations, Florida Court Clerks and Comptrollers, RE: Hope Cards for Persons Issued Orders of Protection (Jan. 25, 2024)

<sup>65</sup> Ch. 23-284, Laws of Fla.

1                   A bill to be entitled  
2       An act relating to Hope Cards for persons issued  
3       orders of protection; creating s. 741.311, F.S.;  
4       requiring the clerks of the circuit court, in  
5       consultation with the Office of the Attorney General,  
6       to develop and implement the Hope Card Program;  
7       authorizing certain persons to request a Hope Card  
8       after a specified date; specifying when and how a  
9       person may request a Hope Card; requiring clerks'  
10      offices to create a Hope Card and provide such card to  
11      petitioners within a specified time frame; prohibiting  
12      the assessment of a fee; providing requirements for  
13      the Hope Card; providing criminal penalties for the  
14      fraudulent use of a Hope Card; amending ss. 741.30,  
15      784.046, 784.0485, and 825.1035, F.S.; conforming  
16      provisions to changes made by the act; providing an  
17      effective date.

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

20  
21       Section 1.   Section 741.311, Florida Statutes, is created  
22   to read:

23       741.311 Hope Card Program for persons issued orders of  
24   protection.-

25       (1) The clerks of the circuit court, in consultation with

26 the Office of the Attorney General, shall develop and implement  
27 the Hope Card Program, which provides for the issuance of a Hope  
28 Card to any person who has been issued an order of protection by  
29 a county or circuit court in this state.

30 (2) Beginning October 1, 2024, a person who has been  
31 issued a final judgment on injunction for protection under s.  
32 741.30, s. 784.046, s. 784.0485, or s. 825.1035 may request a  
33 Hope Card from the clerk of the court of the circuit in which  
34 the order for an injunction for protection was entered. A person  
35 may request a Hope Card at the time the final judgment on  
36 injunction for protection is issued or at any other time before  
37 the expiration of the order for protection.

38 (3) After the court has issued a final judgment on  
39 injunction for protection and within 3 business days after  
40 receipt of a request for a Hope Card, the clerk of the court  
41 shall create the Hope Card and provide it to the petitioner.

42 (4) The clerk of the court may not assess a fee for the  
43 issuance of a Hope Card.

44 (5) A Hope Card is valid for 2 years after the date of  
45 issuance of the final order or the expiration date of the  
46 injunction, whichever is earlier. A Hope Card may be renewed  
47 after the 2-year period if the injunction is still in effect.

48 (6) A Hope Card issued under the program must be a  
49 durable, wallet-sized card containing all of the following  
50 information:

51 (a) The respondent's name and date of birth.

52 (b) The name and date of birth of the petitioner or  
 53 protected person.

54 (c) Information regarding the issuing court; the case  
 55 number; the date the order of protection was issued; and the  
 56 expiration date, if any, of the order of protection.

57 (d) The date of issuance and the expiration date of the  
 58 Hope Card.

59 (7) A person who, having actual knowledge that he or she  
 60 is not protected by an injunction that is currently in force and  
 61 effect, knowingly and willfully presents to another person a  
 62 Hope Card or other document purporting to be a Hope Card for the  
 63 purpose of evidencing the existence of an injunction, commits a  
 64 misdemeanor of the second degree, punishable as provided in s.  
 65 775.082 or s. 775.083.

66 Section 2. Paragraph (d) is added to subsection (8) of  
 67 section 741.30, Florida Statutes, to read:

68 741.30 Domestic violence; injunction; powers and duties of  
 69 court and clerk; petition; notice and hearing; temporary  
 70 injunction; issuance of injunction; statewide verification  
 71 system; enforcement; public records exemption.-

72 (8)

73 (d) The petitioner may request a Hope Card under s.  
 74 741.311 after the court has issued a final order of protection.

75 Section 3. Paragraph (d) is added to subsection (8) of

76 | section 784.046, Florida Statutes, to read:

77 |       784.046 Action by victim of repeat violence, sexual  
78 | violence, or dating violence for protective injunction; dating  
79 | violence investigations, notice to victims, and reporting;  
80 | pretrial release violations; public records exemption.—

81 |       (8)

82 |       (d) The petitioner may request a Hope Card under s.  
83 | 741.311 after the court has issued a final order of protection.

84 |       Section 4. Paragraph (c) is added to subsection (8) of  
85 | section 784.0485, Florida Statutes, to read:

86 |       784.0485 Stalking; injunction; powers and duties of court  
87 | and clerk; petition; notice and hearing; temporary injunction;  
88 | issuance of injunction; statewide verification system;  
89 | enforcement.—

90 |       (8)

91 |       (c) The petitioner may request a Hope Card under s.  
92 | 741.311 after the court has issued a final order of protection.

93 |       Section 5. Paragraph (c) is added to subsection (10) of  
94 | section 825.1035, Florida Statutes, to read:

95 |       825.1035 Injunction for protection against exploitation of  
96 | a vulnerable adult.—

97 |       (10) TRANSMITTAL TO SHERIFF; SERVICE; HOPE CARD.—

98 |       (c) The petitioner may request a Hope Card under s.  
99 | 741.311 after the court has issued a final order of protection.

100 |       Section 6. This act shall take effect October 1, 2024.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 189 Gaming Control

**SPONSOR(S):** Regulatory Reform & Economic Development Subcommittee, Salzman

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	7 Y, 5 N, As CS	Thompson	Anstead
2) Appropriations Committee	19 Y, 8 N	Helpling	Pridgeon
3) Judiciary Committee		Butcher	Kramer

### SUMMARY ANALYSIS

The Florida Gaming Control Commission (Commission), is responsible for exercising all regulatory and executive powers of the state with respect to gambling, excluding the state lottery. The Commission's Division of Gaming Enforcement (Division) is a criminal justice agency tasked with the enforcement of Florida's gambling laws to combat illegal gambling activities. The Division director and all investigators are certified law enforcement officers, have the power to investigate, apprehend, and make arrests for any alleged violation of the state's gambling laws, or any other law of this state, and are authorized to seize, store, and test contraband in accordance with the Florida Contraband Forfeiture Act.

Recently, illegal gambling operations using unregulated slot machines have been increasing. The machines used are similar to regulated gambling devices, but can be manipulated by the operators to fraudulently control the outcome and ratio of winnings. The operations (adult arcades or internet cafes) target vulnerable populations, and are often tied to other criminal activity, including money laundering, drug trafficking, and violent crime. The Division, along with local law enforcement, have conducted numerous enforcement actions, including raids, resulting in arrests and closures; however, the activity persists. According to the Commission, because many of the criminal penalties related to illegal gambling are relatively minor, they do not deter the activity and adult arcades continue operating illegal slot machines across the state.

CS/HB 189 revises specified criminal penalties and creates new crimes related to illegal gambling, as follows:

- Amends s. 843.08, F.S., to prohibit falsely impersonating personnel or representatives of the Commission.
- Amends s. 849.01, F.S., to increase the penalty for keeping an illegal gambling house from a second degree misdemeanor to a third degree felony.
- Amends s. 849.15, F.S., to increase the penalty for manufacturing, selling, or possessing illegal slot machines from a second degree misdemeanor to a first degree misdemeanor, and to a felony if committed by a manager or another person with a prior conviction for the offense.
- Creates s. 849.155, F.S., to prohibit trafficking in more than 15 illegal slot machines or any parts thereof as a first degree felony and to require a court to impose specified fines upon a conviction.
- Creates s. 849.157, F.S., to prohibit making a false or misleading statement to facilitate the sale of illegal slot machines as a third degree felony, and a second degree felony when a violation involves five or more machines.
- Creates s. 849.47, F.S., to prohibit transporting five or more persons to facilitate illegal gambling as a first degree misdemeanor, and a third degree felony if a minor, a person 65 or older, or 12 or more persons are transported.
- Creates s. 849.48, F.S., to prohibit certain gambling or gaming advertisements as a first degree misdemeanor.
- Creates s. 849.49, F.S., to prohibit counties, municipalities, or other political subdivisions from regulating gaming, gambling, lotteries, or other activities described in s. 546.10, F.S., or ch. 849, F.S.
- Amends s. 903.046, F.S., to require a court to consider the amount of currency seized in connection with certain gambling violations when determining bail conditions.
- Amends s. 921.0022, F.S., to list and revise rankings of specified gaming offenses on the Criminal Punishment Code's offense severity ranking chart (OSRC).

The bill may have an indeterminate positive impact on jail and prison beds and may have a positive fiscal impact on the Commission which may see an increase in revenues resulting from confiscation of contraband and receipt of fines levied pursuant to the bill. See Fiscal Comments.

The effective date of the bill is July 1, 2024.

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

**STORAGE NAME:** h0189b.JDC

**DATE:** 2/19/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### **Gambling in Florida**

Gambling is generally prohibited in Florida, unless specifically authorized. Gambling is defined in Florida law as playing or engaging in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value.<sup>1</sup> The standard jury instructions for criminal cases in Florida provide that in order to prove the crime of gambling, the state must prove the following three elements beyond a reasonable doubt:<sup>2</sup>

- Playing or engaging in a game of chance.
- Risking money or property on the outcome of the game.
- Expecting to gain or lose money or property as a result of the game.

Florida does not allow gambling on games of skill of all types. Gambling on games of skill is highly regulated, and wagers on such games that are not specifically authorized are considered illegal.

Section 7, Art. X, of the Florida Constitution prohibits lotteries, other than pari-mutuel pools, from being conducted in Florida.

Slot machines that are not operated by a licensed pari-mutuel facility or in accordance with a tribal compact or specific law are illegal in Florida.

Chapter 849, F.S., includes prohibitions against slot machines, keeping a gambling house, engaging in bookmaking, and running a lottery. However, a constitutional amendment approved by voters in 1986 authorized state-operated lotteries, and a constitutional amendment in 2004 authorized slot machines in Miami-Dade and Broward Counties.

The following gaming activities are also authorized by law and regulated by the state:

- Pari-mutuel<sup>3</sup> wagering;<sup>4</sup>
- Gaming on tribal reservations in accordance with the federal Indian Gaming Regulatory Act and the 2021 Gaming Compact with the Seminole Tribe of Florida;
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;<sup>5</sup> and
- Cardrooms<sup>6</sup> at certain pari-mutuel facilities.

Under the Florida Contraband Forfeiture Act,<sup>7</sup> gambling proceeds, paraphernalia, and property may be seized as contraband. For example, a vehicle used for transporting an illegal slot machine is subject to seizure.<sup>8</sup>

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<sup>1</sup> S. 849.08, F.S.

<sup>2</sup> The Florida Bar, Criminal Jury Instructions Chapter 22, 22.1 Gambling, <https://www.floridabar.org/rules/florida-standard-jury-instructions/criminal-jury-instructions-home/criminal-jury-instructions/sji-criminal-chapter-22/> (last visited Feb. 1, 2024).

<sup>3</sup> “Pari-mutuel” is defined in Florida law as “a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.

<sup>4</sup> *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

<sup>5</sup> *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.

<sup>6</sup> S. 849.086(2)(c), F.S., defines “cardroom” to mean “a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility.”

<sup>7</sup> Ss. 932.701-932.706, F.S., comprise the Florida Contraband Forfeiture Act.

<sup>8</sup> S. 849.36, F.S.

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,<sup>9</sup> bingo,<sup>10</sup> charitable drawings,<sup>11</sup> game promotions (sweepstakes),<sup>12</sup> bowling tournaments,<sup>13</sup> and skill-based amusement games and machines at specified locations.<sup>14</sup>

## Florida Gaming Control Commission

The Florida Gaming Control Commission (Commission) is a five-member regulatory body that is responsible for exercising all regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts, and other forms of gambling authorized by the State Constitution or law, excluding the state lottery.<sup>15</sup> The Commission is also the State Compliance Agency responsible for monitoring compliance with the provisions of the Gaming Compact between the Seminole Tribe of Florida and the State of Florida.<sup>16</sup>

The Division of Gaming Enforcement (Division) is a criminal justice agency<sup>17</sup> tasked with the enforcement of Florida's gambling laws to combat illegal gambling activities.<sup>18</sup> While every law enforcement officer in the state of Florida has the authority to make arrests for violations of Florida's gambling laws, the Division is the first law enforcement agency whose primary responsibility is investigating illegal gambling.<sup>19</sup>

The Division director and all investigators are certified and designated law enforcement officers, and have the power to detect, apprehend, and arrest for any alleged violation of the state's gambling laws, or any other law of this state.<sup>20</sup> Such law enforcement officers may enter upon any premises at which gaming activities are taking place in the state for the performance of their lawful duties and may take with them any necessary equipment, and such entry does not constitute a trespass.<sup>21</sup>

Such officers have the authority, without a warrant, to search and inspect any premises where the violation is alleged to have occurred or is occurring. Investigators employed by the Commission are required to have access to, and the right to inspect, premises licensed by the Commission, to collect taxes and remit them to the officer entitled to them, and to examine the books and records of all persons licensed by the Commission.<sup>22</sup>

The Division and its investigators are specifically authorized to seize, store, and test any contraband<sup>23</sup> in accordance with the Florida Contraband Forfeiture Act.<sup>24</sup>

According to the Commission, the Division:<sup>25</sup>

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<sup>9</sup> S. 849.085, F.S.

<sup>10</sup> S. 849.0931, F.S.

<sup>11</sup> S. 849.0935, F.S.

<sup>12</sup> S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

<sup>13</sup> S. 849.141, F.S.

<sup>14</sup> S. 546.10, F.S.

<sup>15</sup> See ss. 16.71-16.716, F.S.

<sup>16</sup> S. 285.710, F.S.

<sup>17</sup> S. 16.711(1), F.S.

<sup>18</sup> Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023*, pg. 6, <https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf> (last visited Feb. 1, 2024).

<sup>19</sup> Florida Gaming Control Commission, *Gaming Enforcement*, <https://flgaming.gov/enforcement/> (last visited Feb. 1, 2024).

<sup>20</sup> S. 16.711(3), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> The term "contraband" has the same meaning as the term "contraband article" in s. 932.701(2)(a)2, F.S., which is defined as "any equipment, gambling device, apparatus, material of gaming, proceeds, substituted proceeds, real or personal property, Internet domain name, gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was obtained, received, used, attempted to be used, or intended to be used in violation of the gambling laws of the state, including any violation of chapter 24, part II of chapter 285, chapter 546, chapter 550, chapter 551, or chapter 849."

<sup>24</sup> S. 16.711(4), F.S.

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

- Participates in direct enforcement activities involving proactive investigations initiated by reports of illegal gambling, confidential sources, and investigative leads. Upon obtaining sufficient evidence, agents execute search warrants, resulting in arrests and the seizure of illegal gambling devices and contraband.
- Serves as a valuable resource for state and local law enforcement partners, providing expert guidance on the intricacies of Florida's gambling laws and regulations. Agents share their knowledge and experience, assisting other law enforcement agencies in identifying illegal gambling activities, gathering evidence, and building strong cases for prosecution. This collaborative approach ensures that illegal gambling operations are effectively investigated and disrupted.

## Illegal Gambling Machines

According to the American Gaming Association, “there are a growing number of companies that design, manufacture, sell, or operate machines that mimic regulated gambling devices but operate without complying with state and federal laws. These games are extremely similar to regulated gambling devices, using drums or reels with insignia or other symbols that players ‘spin’ to win prizes, including money. The manufacturers of such machines argue that their games are ‘skill-based’ or operate in other ‘gray areas’ of the law, thereby exempting them from regulation. However, these machines function similarly to traditional slot machines, and in fact, many consumers do not know the difference between regulated gambling devices and these ‘skill-based’ or ‘gray’ machines.”<sup>26</sup>

These machines have been found to put consumers at risk by targeting the most vulnerable populations. In addition, they are often tied to criminal activity, including money laundering, drug trafficking, violent crime, and more.<sup>27</sup>

Regulated gambling device manufacturers that seek to manufacture, sell, or ship a gambling device in interstate commerce are required by the federal Johnson Act to register annually with the U.S. Department of Justice.<sup>28</sup> The Johnson Act makes it unlawful to transport a gambling device in interstate or foreign commerce, unless the device is shipped to a state or tribal jurisdiction that has otherwise made such shipment or operation of these games lawful.

Gambling devices are defined in the Johnson Act as any slot machine or other machine or device that is designed primarily for use in gambling, where as a result of application of an element of chance and any money or property, a person may be entitled to win money or property.<sup>29</sup>

Failure to comply with the Johnson Act carries penalties of fines up to \$5,000 and up to two years of imprisonment, along with forfeiture of the unregistered gambling devices.<sup>30</sup>

## Allied Veterans of the World

In March 2013, a three-year, multi-state, multi-agency investigation into the operations of illegal gambling at so-called Internet cafes affiliated with Allied Veterans of the World (Allied Veterans)

<sup>26</sup> American Gaming Association, *Re: Comments Requested on Registration Under the Gambling Devices Act of 1962*, 86 Fed. Reg. 53, 682, OMB No. 1123-0010, <https://www.americangaming.org/wp-content/uploads/2022/03/AGA-Comment-Gambling-Devices-Act-Nov.-29-202198.pdf> (last visited Feb. 1, 2024).

<sup>27</sup> See American Gaming Association, *SKILLED AT DECEPTION: How Unregulated Gaming Machines Endanger Consumers and Dilute Investments in Local Economies*, <https://www.americangaming.org/wp-content/uploads/2021/04/Unregulated-Gaming-Machines-White-Paper-Final.pdf> (last visited Feb. 1, 2024).

<sup>28</sup> Gambling Devices Act of 1962, 15 U.S.C. §§ 1171–78 (the “Johnson Act”).

<sup>29</sup> 15 U.S.C. § 1171(a).

<sup>30</sup> 15 U.S.C. §§ 1176, 1177

concluded with the arrest of 57 people, and seizure of about 300 bank accounts and approximately \$64.7 million. Charges included racketeering and money laundering.<sup>31</sup>

The Florida Attorney General's Office of Statewide Prosecution, alleged that the establishments purported to provide customers with access to the Internet. Customers purchased prepaid cards that they could use for Internet time, and while on the computer could participate in contests that were similar to playing a slot machine. Winnings were posted to the prepaid cards, which could be turned in for cash.<sup>32</sup>

Allied Veterans operated centers out of about 50 strip malls throughout Florida. Prosecutors said the centers were mini-casinos, and most people used the pretext of buying Internet time to actually use the computers to gamble. Defense attorneys said the centers offered sweepstakes, not gambling.<sup>33</sup> Under Florida law, sweepstakes may be conducted in connection with and incidental to the sale of consumer products or services, and in which the elements of chance and prize are present, only after filing, and providing certain information regarding winnings, with the Department of Agriculture and Consumer Services.<sup>34</sup> This allows businesses such as McDonald's to offer games of chance without being in violation of illegal gambling.

In spite of the large number of people arrested, only one person was sentenced to prison after being found guilty of racketeering, helping to run a lottery, and possession of an illegal slot machine or device. The conviction was subsequently overturned by the Fifth District Court of Appeal, and the Florida Supreme Court declined to overturn the appellate court's decision and reinstate the conviction.<sup>35</sup>

As a result of the arrests and failure to obtain convictions, in 2013, the legislature clarified that Internet café style gambling machines were illegal in the state. The Legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prizes are prohibited slot machines.<sup>36</sup>

In 2015, the Legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida's limitations on gambling and prevent the expansion of casino-style gambling. The Legislature clarified regulations related to the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.<sup>37</sup>

## Recent Activity

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<sup>31</sup> Mary Ellen Klas, *Bill Banning Internet Cafes Becomes Law in Florida*, *Governing*, The States and Localities (April 11, 2013), <https://www.governing.com/archive/mct-bill-banning-internet-cafes-becomes-law-in-florida.html#:~:text=The%20measure%2C%20HB%20155%2C%20was,workers%20in%20now%2Dshuttered%20operations> (last visited Feb. 1, 2024).

<sup>32</sup> The National Registry of Exonerations, *Kelly Mathis*, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5122> (last visited Feb. 1, 2024).

<sup>33</sup> Larry Hannan, *Allied Veterans of the World: A massive scandal -- or just overreach?*, *The Florida Times Union* (Feb. 21, 2015), <https://www.jacksonville.com/story/news/crime/2015/02/22/allied-veterans-scandal-didnt-live-its-billing/15651951007/> (last visited Feb. 1, 2024).

<sup>34</sup> S. 849.094, F.S.

<sup>35</sup> Eileen Kelley, *State Attorney General's Office drops Allied Veterans charges against embattled Jacksonville lawyer*, *The Florida Times Union* (Mar. 16, 2017), <https://www.jacksonville.com/story/news/crime/2017/03/16/state-attorney-general-s-office-drops-allied-veterans-charges-against/15746477007/> (last visited Feb. 1, 2024).

<sup>36</sup> Florida House of Representatives Select Committee on Gaming, *Final Bill Analysis of 2013 CS/HB 155*, p. 1 (Apr. 19, 2013).

<sup>37</sup> S. 546.10, F.S.

According to reports, illegal gambling operations targeting vulnerable aging populations in Florida are increasing. The activity has especially grown since the pandemic with an “explosion of illegal gambling lounges opening up with unregulated slot machines.”<sup>38</sup>

According to the Commission, “some of them register as amusement arcades through the Department of Revenue, which means they're acting like a Dave and Buster's or a Chuck E. Cheese, but in reality, they're offering illegal gambling devices such as slot machines. If the game has any element of chance built into it, under Florida statute, it's considered an illegal gambling device. They have the ability to dial up the winnings to entice play. Once they get a packed house, they dial down the winnings to almost zero. Then at that point, they're just stealing and using predatory practices and taking money from Florida's senior population.”<sup>39</sup>

On May 9, 2023, special agents from the Commission and local law enforcement executed search warrants simultaneously in Fort Pierce, Delray Beach, St. Petersburg, and Tampa. They targeted illegal gambling operations at adult arcades and seized more than \$1 million in assets, cash, slot-style gaming machines, computers, and ATMs. The raid resulted in seven arrests and the seizure of 360 slot machines. After the May raid, St. Lucie County sheriff's deputies went to every known adult arcade location in St. Lucie County to hand-deliver a warning letter initially mailed to each arcade.<sup>40</sup>

Many arcades in St. Lucie County and some in Indian River County closed out of fear. However, some arcades never closed, and most eventually reopened. It appears only a handful shut down permanently. State officials said they would continue to monitor those open adult arcades and continue to work with local law enforcement.<sup>41</sup>

In 2023, the Commission investigated several illegal slot machine businesses operating in the state, and found that:<sup>42</sup>

- The scope of the problem is much larger than initially anticipated.
- There are significant adverse harms associated with the activity.
- Successfully shutting down such businesses will require collaborative and coordinated efforts.
- Obstacles will continue to evolve but can be overcome.

During the 2022-2023 fiscal year, the Division received 1,266 total location based complaints of illegal gambling. From those complaints, 493 letters were sent to the local law enforcement departments informing them of possible illegal gambling activities at these locations. From those complaints, 506 letters were sent directly to businesses informing them of their possible participation in illegal gambling activities and providing copies of the gambling laws and associated criminal punishments.<sup>43</sup>

During the 2022-2023 fiscal year, the Division conducted joint investigation operations with the Chipley Police Department, Hillsborough Sheriff's Office, Holmes County Sheriff's Office, Manatee County Sheriff's Office, Palm Beach Sheriff's Office, St. Lucie County Sheriff's Office, and St. Petersburg Police Department resulting in 52 arrests and the seizure of:<sup>44</sup>

- 858 illegal slot machines.
- \$1,151,000 in cash.
- Approximately \$2,000,000 in real estate.
- 40 grams of fentanyl.

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<sup>38</sup> Jordan Brown, *Florida seniors warned to be cautious of shady slot machines*, FOX 13 Tampa Bay (May 23, 2023), <https://www.fox13news.com/news/illegal-gambling-operations-in-florida-re-targeting-aging-populations> (last visited Feb. 1, 2024).

<sup>39</sup> *Id.*

<sup>40</sup> TCPalm, *Florida investigators shut down arcades with illegal slot machines. Here's what we know*, <https://www.tcpalm.com/story/news/crime/st-lucie-county/2023/09/14/what-we-know-investigators-raid-adult-arcades-with-illegal-slots-treasure-coast/70853727007/> (last visited Feb. 1, 2024).

<sup>41</sup> *Id.*

<sup>42</sup> Florida Gaming Control Commission, Presentation to the House Regulatory Reform & Economic Development Subcommittee, (Oct. 17, 2023), at pg. 12.

<sup>43</sup> Florida Gaming Control Commission, *Gaming Enforcement Investigations and Actions, Annual Report 2022-2023*, at pg. 7, <https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf> (last visited Feb. 1, 2024).

<sup>44</sup> *Id.*

- 10 grams of methamphetamine.

## Slot Machines

In Florida, a slot machine is defined as a machine or device that:<sup>45</sup>

- Is activated by inserting something of value (money, coin, account number, code, or other object or information);
- Is caused to operate or operated by a user **by application of skill, element of chance, or other outcome that is unpredictable to the user**; and
- The user receives or is entitled to receive something of value or additional chances or rights to use the device or machine.

There is a rebuttable presumption that a device, system, or network is a prohibited slot machine or device if it is used to display images of games of chance and is part of a scheme involving any payment or donation of money or its equivalent and awarding anything of value.<sup>46</sup>

Slot machines are only authorized in licensed pari-mutuel facilities located in Miami-Dade and Broward counties and on tribal property.<sup>47</sup> At any location other than licensed pari-mutuel facilities, it is a violation to “manufacture, own, store, keep, possess, sell, rent, lease, let on shares, lend or give away, transport, or expose for sale or lease, or to offer to sell, rent, lease, let on shares, lend or give away, or permit the operation of any slot machine or device or any part thereof.”<sup>48</sup>

A person who violates the prohibitions<sup>49</sup> against manufacturing, selling, or possessing slot machines or devices commits a:

- Second degree misdemeanor upon a first conviction.<sup>50</sup>
- First degree misdemeanor upon a second conviction.<sup>51</sup>
- Third degree felony upon a third or subsequent conviction, and the person is deemed a “common offender.”<sup>52</sup>

Unlicensed slot machines are illegal in Florida and are considered “contraband.” Relating to contraband, Florida law specifies, “the right of property in and to any [illegal slot machine or device] and to all money and other things of value therein, is declared not to exist in any person, and...shall be forfeited...to the county in which the seizure was made.”<sup>53</sup>

Florida law also provides that all sums of money and other value used, displayed in, or connected with illegal gambling or an illegal gambling device contrary to the laws of this state shall be forfeited.<sup>54</sup>

Pursuant to the federal Johnson Act, Florida law allows the shipment of gaming devices including slot machines into this state provided the destination of the shipment is an eligible slot machine facility, or the facility of a slot machine manufacturer or slot machine distributor.<sup>55</sup>

## False Personation

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<sup>45</sup> S. 849.16(1), F.S.

<sup>46</sup> S. 849.16(3), F.S.

<sup>47</sup> S. 551.101, F.S.

<sup>48</sup> S. 849.15(1)(a), F.S.

<sup>49</sup> Ss. 849.15, F.S. – 849.22, F.S.

<sup>50</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Ss. 775.082 or 775.083, F.S.

<sup>51</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 or 775.083, F.S.

<sup>52</sup> S. 849.23, F.S. 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.

<sup>53</sup> S. 849.19, F.S.

<sup>54</sup> S. 849.12, F.S.

<sup>55</sup> S. 849.15(2), F.S.



Section 843.08, F.S., prohibits falsely assuming or pretending to be a state, local, or federal law enforcement officer, or requiring assistance in a matter pertaining to the duty of such officer (false personation).<sup>56</sup> The list of officers and individuals who may not be falsely personated include:

- Firefighters;
- Sheriffs or sheriffs deputies;
- Florida Highway Patrol officers;
- Fish and Wildlife Conservation Commission officers;
- Department of Environmental Protection officers;
- Department of Financial Services officers;
- Division of Investigative and Forensic Services personnel or representatives;
- Department of Corrections officers;
- State attorneys or assistant state attorneys;
- The statewide prosecutor or assistant statewide prosecutors;
- State attorney investigators;
- Coroners;
- Police officers;
- Lottery special agents or lottery investigators;
- Beverage enforcement agents;
- School guardians;
- Security officers;
- Members of the Florida Commission on Offender Review or any administrative aides or supervisors employed by the commission; and
- Any personnel or representatives of the Department of Law Enforcement, or federal law enforcement officers as defined in s. 901.1505, F.S.<sup>57</sup>

Generally, a person who violates s. 843.08, F.S., commits a third degree felony. A person who poses as a specified officer during the course of the commission of a felony commits a second degree felony.<sup>58</sup>

Section 843.08, F.S., does not include Commission personnel or representatives in the list of officers and individuals who may not be falsely personated.

### **Keeping a Gambling House**

Under s. 849.01, F.S., it is a second degree misdemeanor to keep a gambling house.<sup>59</sup> Specifically, a person is guilty of this offense if he or she:

- Habitually keeps, exercises, or maintains, for the purpose of gaming or gambling:<sup>60</sup>
  - A gaming table or room;
  - Gaming implements;
  - Gaming apparatus; or
  - A house, booth, tent, shelter, or other place.

A second degree misdemeanor is punishable by up to 60 days in jail and a fine up to \$500.<sup>61</sup>

### **Criminal Punishment Code**

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<sup>56</sup> S. 843.08, F.S.

<sup>57</sup> S. 901.1505, F.S., defines the term “federal law enforcement officer” as “a person who is employed by the Federal Government as a full-time law enforcement officer as defined by the applicable provisions of the United States Code, who is empowered to effect an arrest for violations of the United States Code, who is authorized to carry firearms in the performance of her or his duties, and who has received law enforcement training equivalent to that prescribed in s. 943.13.”

<sup>58</sup> 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.

<sup>59</sup> S. 849.01, F.S.

<sup>60</sup> S. 849.01, F.S.; *Ferguson v. State*, 377 So. 2d 709, 711 (Fla. 1979) (requiring an element of “habitualness” for a conviction under s. 849.01, F.S.).

<sup>61</sup> See ss. 775.082 and 775.083, F.S.



The Criminal Punishment Code (Code) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998.<sup>62</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10), either by being specifically listed in the offense severity ranking chart<sup>63</sup> (OSRC) or by default.<sup>64</sup> Judges must use the Code worksheet to compute a sentence score for each felony offender.<sup>65</sup>

Sentence points are assigned and accrue based on the level ranking assigned to the primary offense, additional offenses, and prior offenses.<sup>66</sup> Sentence points increase as the offense severity level increases from Level 1 (least severe) to Level 10 (most severe). Sentence points may be added for victim injury, and increase based on the type of injury and severity.<sup>67</sup> Sentence points may also be added or multiplied for other factors including possession of a firearm or the commission of certain offenses, such as drug trafficking.<sup>68</sup> If an offense is unlisted on the OSRC, the Code provides a ranking based on felony level.<sup>69</sup> For example, an unranked third degree felony is a level 1 offense.<sup>70</sup>

If total sentence points equal or are less than 44 points, the lowest permissible sentence is any nonstate prison sanction, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.<sup>71</sup> Absent mitigation,<sup>72</sup> the permissible range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>73</sup>

The OSRC ranks the following third degree felony gaming violations as a Level 1 offense:<sup>74</sup>

- Set up, promote, or conduct any lottery for money or for anything of value;<sup>75</sup>
- Dispose of any money or other property of any kind whatsoever by means of any lottery;<sup>76</sup>
- Conduct any lottery drawing for the distribution of a prize or prizes by lot or chance, or advertise any such lottery scheme or device in any newspaper or by circulars, posters, pamphlets, radio, telegraph, telephone, or otherwise;<sup>77</sup>
- Aid or assist in the setting up, promoting, or conducting of any lottery or lottery drawing, whether by writing, printing, or in any other manner whatsoever, or be interested in or connected in any way with any lottery or lottery drawing;<sup>78</sup> and
- Engaging in bookmaking.<sup>79</sup>

## Bail Determinations

The purpose of bail in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant.<sup>80</sup>

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<sup>62</sup> S. 921.002, F.S.

<sup>63</sup> S. 921.0022, F.S.

<sup>64</sup> S. 921.0023, F.S., addresses ranking unlisted felony offenses. For example, an unlisted felony of the third degree is ranked within offense level 1.

<sup>65</sup> S. 921.0024, F.S.

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

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

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

<sup>69</sup> S. 921.0023, F.S.

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

<sup>71</sup> S. 921.0022(2), F.S.

<sup>72</sup> The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

<sup>73</sup> S. 921.0022(2), F.S.

<sup>74</sup> S. 921.022(3)(a), F.S.

<sup>75</sup> S. 849.09(1)(a)-(d), F.S.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> S. 849.25(2), F.S.

<sup>80</sup> S. 903.046(1), F.S.

Under s. 903.046, F.S., when determining whether to release a defendant on bail or other conditions, and what that bail or other conditions of release may be, the court is required to consider certain factors, including:<sup>81</sup>

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct.
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail or procure an appearance bond.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.

Section 903.046, F.S., currently does not require courts to consider specific factors related to currency seized that is involved in state gambling law violations.

### **Effect of Proposed Changes**

#### **False Personation**

CS/HB 189 amends s. 843.08, F.S., to add Commission personnel or representatives to the list of officers and individuals who may not be falsely personated. Under the bill, a person who falsely personates a Commission personnel or representative commits a third degree felony, and a second degree felony if such false personation occurs during the commission of another felony.

#### **Keeping a Gambling House**

The bill amends s. 849.01, F.S., to increase the penalty for keeping an illegal gambling house from a second degree misdemeanor to a third degree felony, and ranks the offense as a Level 3 offense on the OSRC.

#### **Slot Machines**

The bill amends s. 849.15, F.S., prohibiting the manufacture, sale, or possession of illegal slot machines, to:

- Increase general violations from a second degree misdemeanor to a first degree misdemeanor.
- Create a new third degree felony, ranked as a Level 3 offense on the OSRC, if:
  - At the time of the violation the person is acting as a manager; or
  - The person has one prior conviction for a violation of s. 849.15, F.S.
- Create a new second degree felony, ranked as a Level 5 offense on the OSRC, if:
  - At the time of the violation the person is acting as a manager; and
  - The violation involves five or more slot machines or devices; or
  - The person has two or more prior convictions for a violation of s. 849.15, F.S.
- Define "conviction" to mean "a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered."
- Define "manager" to mean "a person who, at any business, establishment, premises, or other location at which a slot machine or device is offered for play, has:
  - Authorization to operate or hold open the business, establishment, premises, or other location without any other employee present;
  - Authorization to supervise another employee or employees; or
  - Any ownership interest in the business, establishment, premises, or other location."

The bill creates s. 849.155, F.S., prohibiting trafficking in slot machines or devices, to:

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<sup>81</sup> S. 903.046(2), F.S.  
**STORAGE NAME:** h0189b.JDC  
**DATE:** 2/19/2024

- Create a first degree felony,<sup>82</sup> ranked as a Level 7 offense on the OSRC, for knowingly selling, purchasing, manufacturing, transporting, delivering, or bringing into this state more than 15 slot machines or devices or any part thereof; and requires a court to order a person convicted of such a violation to pay a:
  - \$100,000 fine, if the offense involved more than 15, but less than 25 slot machines or devices or any parts thereof.
  - \$250,000 fine, if the offense involved 25 or more, but less than 50 slot machines or devices or any parts thereof.
  - \$500,000 fine, if the offense involved 50 or more slot machines or devices or any parts thereof.
- Require all fines imposed and collected under s. 849.155, F.S., to be deposited into the Pari-mutuel Wagering Trust Fund and authorize such funds to be used for the enforcement of chapters 546, 550, 551, and 849, F.S., by the Commission.

The bill creates s. 849.157, F.S., to prohibit a person from making false or misleading statements to facilitate the sale of illegal slot machines, as a:

- Third degree felony, ranked as a Level 3 offense on the OSRC, if a person knowingly and willfully:
  - Makes a materially false or misleading statement regarding the legality of a slot machine or device for the purpose of facilitating the sale or delivery of a slot machine or device for any money or other valuable consideration; or
  - Disseminates false or misleading information regarding the legality of a slot machine or device for the purpose of facilitating the sale or delivery of a slot machine or device for any money or other valuable consideration.
- Second degree felony, ranked as a Level 5 offense on the OSRC, when such a violation involves the sale or delivery, or attempted sale or delivery, of five or more slot machines or devices.

### **Transporting Persons to Facilitate Illegal Gambling**

The bill creates s. 849.47, F.S., to create a:

- First degree misdemeanor for knowingly and willfully for profit or hire transporting, or procuring the transportation of, five or more other persons into or within this state when a person knows or reasonably should know such transportation is for the purpose of facilitating illegal gambling.
- Third degree felony, ranked as a Level 3 offense on the OSRC, if the violation includes the transport, or procurement of transportation of:
  - A minor or a person 65 years of age or older; or
  - 12 or more persons.

For purposes of s. 849.47, F.S., the bill defines the term “illegal gambling” as any criminal violation of chapters 546, 550, 551, or 849, F.S., that occurs at any business, establishment, premises, or other location which operates for profit.

### **Gambling or Gaming Advertisements**

The bill creates s. 849.48, F.S., to prohibit, except as otherwise specifically authorized by law:

- Knowingly and intentionally making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated or circulated or placed before the public in this state, in any manner, any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice for the purpose of promoting or facilitating illegal gambling.
- Setting up any type or plate for any type of advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice when the person knows or reasonably should know that such material will be used for the purpose of promoting or facilitating illegal gambling.

<sup>82</sup> 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.

The bill:

- Makes a violation of the prohibition a first degree misdemeanor.
- Specifies that nothing in s. 849.48, F.S., prohibits the printing or producing of any advertisement, circular, bill, poster, pamphlet, list, schedule, announcement, or notice to be used for the purpose of promoting or facilitating gambling conducted in any other state or nation, outside of this state, where such gambling is not prohibited.
- Defines the term “illegal gambling” as any criminal violation of chapters 546, 550, 551, or 849, F.S., that occurs at any business, establishment, premises, or other location which operates for profit.

## Preemption

The bill creates s. 849.49, F.S., to prohibit a county, municipality, or other political subdivision of the state from enacting or enforcing any ordinance or local rule relating to gaming, gambling, lotteries, or any activities described in s. 546.10, F.S., or chapter 849, F.S., except as otherwise expressly provided by the state constitution or general law.

## Bail Determinations

The bill amends s. 903.046, F.S., to require a court to consider the amount of currency seized that is connected to or involved in a violation of chapters 546, 550, 551, or 903, F.S., when determining whether to release a defendant on bail or other conditions, and what that bail or other conditions of release may be.

## Criminal Punishment Code

The bill also amends s. 921.0022, F.S., to increase the OSRC ranking for specified current gaming offenses, including:

- Bookmaking under s. 849.25(2), F.S., from a Level 1 to a Level 3 offense.
- Bookmaking under s. 849.25(3), F.S., second or subsequent violation, from a Level 4 to a Level 5 offense.
- Offenses related to conducting an unlawful lottery under s. 849.09(1)(a)-(d), F.S., from a Level 1 to a Level 3 offense.
- Offenses related to conducting an unlawful lottery under s. 849.09(1)(e)-(k), F.S., second or subsequent violation, from a Level 1 to a Level 3 offense.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 843.08, F.S., relating to false personation.

**Section 2:** Amends s. 849.01, F.S., relating to keeping gambling houses, etc.

**Section 3:** Amends s. 849.15, F.S., relating to manufacture, sale, possession, etc., of slot machines or devices prohibited.

**Section 4:** Creates s. 849.155, F.S., relating to trafficking in slot machines or devices or any parts thereof.

**Section 5:** Creates s. 849.157, F.S., relating to making a false or misleading statement regarding the legality of slot machines or devices to facilitate sale.

**Section 6:** Repeals s. 849.23, F.S., relating to Penalty for violations of ss. 849.15-849.22, F.S.

**Section 7:** Creates s. 849.47, F.S., relating to transporting or procuring the transportation of persons to facilitate illegal gambling.

**Section 8:** Creates s. 849.48, F.S., relating to gambling or gaming advertisements; prohibited.

**Section 9:** Creates s. 849.49, F.S., relating to preemption.

**Section 10:** Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

**Section 11:** Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

**Section 12:** 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:

See Fiscal Comments.

#### 2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may help to prevent or reduce illegal gambling, which may protect vulnerable populations and reduce secondary criminal activity, including money laundering, drug trafficking, and violent crime.

### D. FISCAL COMMENTS:

The fiscal impact to the state and local government is indeterminate. The bill may have an indeterminate positive impact on the jail and prison bed population by creating new gaming offenses, increasing penalties for specified current gaming offenses, and listing specified gaming offenses on the OSRC, which may result in increased admissions to jail and prison facilities and offenders serving longer terms of incarceration in such facilities.

The bill also creates new criminal fines for specified violations relating to illegal gambling. This may create a positive fiscal impact to the state and local governmental entities that receive proceeds from the related fines. This may also create a negative fiscal impact to those entities relating to administration of enforcement.

Specifically, the Commission may experience an increase in revenues resulting from increased confiscation of contraband under the bill. The bill also requires all fines imposed and collected for violations of trafficking in slot machines or devices to be deposited into the Pari-mutuel Wagering Trust Fund and authorizes the use of such funds by the Commission of the enforcement of chapters 546, 550, 551, and 849, F.S.

The Criminal Justice Impact Conference has not yet analyzed this bill.

## 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 does not appear to create a need for additional rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 17, 2024, the Regulatory Reform & Economic Development Subcommittee adopted a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Removes the provision that exempted the Commission from chapter 255, F.S.
- Revises the penalty for keeping an illegal gambling house.
- Removes the provision that creates a rebuttable presumption that the presence of one or more slot machines at a house, room, booth, tent, shelter or place is being illegally rented for gambling or gaming purposes and subject to a third degree felony for keeping an illegal gambling house.
- Removes provisions that increase the penalties for:
  - Allowing a minor, a mentally incompetent person, or a person under guardianship to gamble.
  - A licensed pool hall owner that allows persons to play for money.
  - Illegal lottery offenses.
- Revises penalties for the manufacture, sale, and possession of illegal slot machines.
- Increases penalties for making false or misleading statements regarding legality of slot machines to facilitate sale.
- Creates penalties for transporting persons to facilitate illegal gambling.
- Revises bail funding guidelines for courts to consider.
- Revises the offense severity ranking chart in the criminal punishment code.
- Preempts local governments from enacting or enforcing ordinances or local rules relating to gaming, gambling, lotteries, or any activities described in s. 546.10 or ch. 849, except as otherwise expressly provided by the state constitution or general law.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

1                   A bill to be entitled  
2           An act relating to gaming control; amending s. 843.08,  
3           F.S.; prohibiting a person from falsely personating  
4           any personnel or representative from the Florida  
5           Gaming Control Commission; providing a criminal  
6           penalty; amending s. 849.01, F.S.; specifying a  
7           violation of the prohibition against keeping a  
8           gambling house must be committed knowingly; increasing  
9           the criminal penalty for a violation; amending s.  
10          849.15, F.S.; providing definitions; increasing the  
11          criminal penalty for specified violations involving a  
12          slot machine or device; creating s. 849.155, F.S.;  
13          prohibiting a person from trafficking in slot machines  
14          or devices; providing a criminal penalty; requiring a  
15          court to order an offender to pay a specified fine if  
16          he or she is convicted of trafficking in a specified  
17          number of slot machines or devices; providing for  
18          deposit of fines collected and use of proceeds;  
19          creating s. 849.157, F.S.; prohibiting a person from  
20          making false statements or disseminating false  
21          information regarding the legality of a slot machine  
22          or device to facilitate the sale or delivery of such  
23          device; providing criminal penalties; repealing s.  
24          849.23, F.S., relating to penalties for specified  
25          violations; creating s. 849.47, F.S.; prohibiting a

26 | person from, for profit or hire, transporting or  
27 | procuring the transportation of a specified number of  
28 | other persons to facilitate illegal gambling;  
29 | providing criminal penalties; defining the term  
30 | "illegal gambling"; creating s. 849.48, F.S.;  
31 | prohibiting a person from making or disseminating  
32 | specified advertisements to promote or facilitate  
33 | illegal gambling; prohibiting activities for creation  
34 | of specified advertisements if a person knows or  
35 | reasonably should know such material will be used to  
36 | promote or facilitate illegal gambling; providing a  
37 | criminal penalty; providing an exception; defining the  
38 | term "illegal gambling"; creating s. 849.49, F.S.;  
39 | specifying that the regulation of gambling is  
40 | expressly preempted to the state; providing an  
41 | exception; amending s. 903.046, F.S.; requiring a  
42 | court to consider the amount of currency seized that  
43 | is connected to specified violations relating to  
44 | illegal gambling when determining bail; amending s.  
45 | 921.0022, F.S.; ranking offenses created by the act on  
46 | the offense severity ranking chart of the Criminal  
47 | Punishment Code; re-ranking specified offenses on the  
48 | offense severity ranking chart of the Criminal  
49 | Punishment Code; conforming provisions to changes made  
50 | by the act; amending ss. 772.102 and 895.02, F.S.;



51 conforming provisions to changes made by the act;  
52 providing an effective date.

53

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

55

56 Section 1. Section 843.08, Florida Statutes, is amended to  
57 read:

58 843.08 False personation.—A person who falsely assumes or  
59 pretends to be a firefighter, a sheriff, an officer of the  
60 Florida Highway Patrol, an officer of the Fish and Wildlife  
61 Conservation Commission, an officer of the Department of  
62 Environmental Protection, an officer of the Department of  
63 Financial Services, any personnel or representative of the  
64 Division of Investigative and Forensic Services, any personnel  
65 or representative of the Florida Gaming Control Commission, an  
66 officer of the Department of Corrections, a correctional  
67 probation officer, a deputy sheriff, a state attorney or an  
68 assistant state attorney, a statewide prosecutor or an assistant  
69 statewide prosecutor, a state attorney investigator, a coroner,  
70 a police officer, a lottery special agent or lottery  
71 investigator, a beverage enforcement agent, a school guardian as  
72 described in s. 30.15(1)(k), a security officer licensed under  
73 chapter 493, any member of the Florida Commission on Offender  
74 Review or any administrative aide or supervisor employed by the  
75 commission, any personnel or representative of the Department of

76 Law Enforcement, or a federal law enforcement officer as defined  
 77 in s. 901.1505, and takes upon himself or herself to act as  
 78 such, or to require any other person to aid or assist him or her  
 79 in a matter pertaining to the duty of any such officer, commits  
 80 a felony of the third degree, punishable as provided in s.  
 81 775.082, s. 775.083, or s. 775.084. However, a person who  
 82 falsely personates any such officer during the course of the  
 83 commission of a felony commits a felony of the second degree,  
 84 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 85 If the commission of the felony results in the death or personal  
 86 injury of another human being, the person commits a felony of  
 87 the first degree, punishable as provided in s. 775.082, s.  
 88 775.083, or s. 775.084. In determining whether a defendant has  
 89 violated this section, the court or jury may consider any  
 90 relevant evidence, including, but not limited to, whether the  
 91 defendant used lights in violation of s. 316.2397 or s. 843.081.

92 Section 2. Section 849.01, Florida Statutes, is amended to  
 93 read:

94 849.01 Keeping gambling houses, etc.—Whoever by herself or  
 95 himself, her or his servant, clerk or agent, or in any other  
 96 manner knowingly has, keeps, exercises or maintains a gaming  
 97 table or room, or gaming implements or apparatus, or house,  
 98 booth, tent, shelter or other place for the purpose of gaming or  
 99 gambling or in any place of which she or he may directly or  
 100 indirectly have charge, control or management, either

101 exclusively or with others, procures, suffers or permits any  
102 person to play for money or other valuable thing at any game  
103 whatever, whether heretofore prohibited or not, commits a felony  
104 of the third ~~misdemeanor of the second~~ degree, punishable as  
105 provided in s. 775.082, ~~or~~ s. 775.083, or 775.084.

106 Section 3. Section 849.15, Florida Statutes, is amended to  
107 read:

108 849.15 Manufacture, sale, possession, etc., of slot  
109 machines or devices prohibited.—

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

111 (a) "Conviction" means a determination of guilt that is  
112 the result of a plea or a trial, regardless of whether  
113 adjudication is withheld or a plea of nolo contendere is  
114 entered.

115 (b) "Manager" means a person who, at any business,  
116 establishment, premises, or other location at which a slot  
117 machine or device is offered for play, has:

118 1. Authorization to operate or hold open the business,  
119 establishment, premises, or other location without any other  
120 employee present;

121 2. Authorization to supervise another employee or  
122 employees; or

123 3. Any ownership interest in the business, establishment,  
124 premises, or other location.

125 (2)-(1) It is unlawful:

126 (a) To manufacture, own, store, keep, possess, sell, rent,  
127 lease, let on shares, lend or give away, transport, or expose  
128 for sale or lease, or to offer to sell, rent, lease, let on  
129 shares, lend or give away, or permit the operation of, or for  
130 any person to permit to be placed, maintained, or used or kept  
131 in any room, space, or building owned, leased or occupied by the  
132 person or under the person's management or control, any slot  
133 machine or device or any part thereof; or

134 (b) To make or to permit to be made with any person any  
135 agreement with reference to any slot machine or device, pursuant  
136 to which the user thereof, as a result of any element of chance  
137 or other outcome unpredictable to him or her, may become  
138 entitled to receive any money, credit, allowance, or thing of  
139 value or additional chance or right to use such machine or  
140 device, or to receive any check, slug, token or memorandum  
141 entitling the holder to receive any money, credit, allowance or  
142 thing of value.

143 (3) (a) Except as provided in paragraphs (b) and (c), a  
144 person who violates subsection (2) commits a misdemeanor of the  
145 first degree, punishable as provided in s. 775.082 or s.  
146 775.083.

147 (b) A person commits a felony of the third degree,  
148 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
149 if he or she violates subsection (2) and:

150 1. At the time of the violation the person is acting as a

151 manager.

152 2. Has one prior conviction for a violation of this  
 153 section.

154 (c) A person commits a felony of the second degree,  
 155 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
 156 if he or she violates subsection (2) and:

157 1.a. At the time of the violation the person is acting as  
 158 a manager; and

159 b. The violation involves five or more slot machines or  
 160 devices.

161 2. Has two or more prior convictions for a violation of  
 162 this section.

163 (4)~~(2)~~ Pursuant to section 2 of that chapter of the  
 164 Congress of the United States entitled "An act to prohibit  
 165 transportation of gaming devices in interstate and foreign  
 166 commerce," approved January 2, 1951, being ch. 1194, 64 Stat.  
 167 1134, and also designated as 15 U.S.C. ss. 1171-1177, the State  
 168 of Florida, acting by and through the duly elected and qualified  
 169 members of its Legislature, does hereby in this section, and in  
 170 accordance with and in compliance with the provisions of section  
 171 2 of such chapter of Congress, declare and proclaim that any  
 172 county of the State of Florida within which slot machine gaming  
 173 is authorized pursuant to chapter 551 is exempt from the  
 174 provisions of section 2 of that chapter of the Congress of the  
 175 United States entitled "An act to prohibit transportation of

176 gaming devices in interstate and foreign commerce," designated  
177 as 15 U.S.C. ss. 1171-1177, approved January 2, 1951. All  
178 shipments of gaming devices, including slot machines, into any  
179 county of this state within which slot machine gaming is  
180 authorized pursuant to chapter 551 and the registering,  
181 recording, and labeling of which have been duly performed by the  
182 manufacturer or distributor thereof in accordance with sections  
183 3 and 4 of that chapter of the Congress of the United States  
184 entitled "An act to prohibit transportation of gaming devices in  
185 interstate and foreign commerce," approved January 2, 1951,  
186 being ch. 1194, 64 Stat. 1134, and also designated as 15 U.S.C.  
187 ss. 1171-1177, shall be deemed legal shipments thereof into this  
188 state provided the destination of such shipments is an eligible  
189 facility as defined in s. 551.102 or the facility of a slot  
190 machine manufacturer or slot machine distributor as provided in  
191 s. 551.109(2)(a).

192 Section 4. Section 849.155, Florida Statutes, is created  
193 to read:

194 849.155 Trafficking in slot machines or devices or any  
195 parts thereof.—Any person who knowingly sells, purchases,  
196 manufactures, transports, delivers, or brings into this state  
197 more than 15 slot machines or devices or any part thereof,  
198 commits a felony of the first degree, punishable as provided in  
199 s. 775.082, s. 775.083, or s. 775.084. If the quantity of slot  
200 machines or devices or any part thereof involved:

201       (1) Is more than 15 slot machines or devices or any part  
 202 thereof, but less than 25 slot machines or devices or any part  
 203 thereof, such person must be ordered to pay a fine of \$100,000.

204       (2) Is 25 slot machines or devices or any part thereof or  
 205 more, but less than 50 slot machines or devices or any part  
 206 thereof, such person must be ordered to pay a fine of \$250,000.

207       (3) Is 50 slot machines or devices or any part thereof or  
 208 more, such person must be ordered to pay a fine of \$500,000.

209  
 210 All fines imposed and collected pursuant to this section must be  
 211 deposited into the Pari-mutuel Wagering Trust Fund and may be  
 212 used for the enforcement of chapters 546, 550, 551, and this  
 213 chapter by the Florida Gaming Control Commission.

214       Section 5. Section 849.157, Florida Statutes, is created  
 215 to read:

216       849.157 Making a false or misleading statement regarding  
 217 the legality of slot machines or devices to facilitate sale.-

218       (1) Except as provided in subsection (2), a person who  
 219 knowingly and willfully makes a materially false or misleading  
 220 statement or who knowingly and willfully disseminates false or  
 221 misleading information regarding the legality of a slot machine  
 222 or device for the purpose of facilitating the sale or delivery  
 223 of a slot machine or device for any money or other valuable  
 224 consideration commits a felony of the third degree, punishable  
 225 as provided in s. 775.082, s. 775.083, or s. 775.084.

226        (2) A person who violates subsection (1) when such a  
227 violation involves the sale or delivery, or attempted sale or  
228 delivery, of five or more slot machines or devices commits a  
229 felony of the second degree, punishable as provided in s.  
230 775.082, s. 775.083, or s. 775.084.

231        Section 6. Section 849.23, Florida Statutes, is repealed.

232        Section 7. Section 849.47, Florida Statutes, is created to  
233 read:

234        849.47 Transporting or procuring the transportation of  
235 persons to facilitate illegal gambling.—

236        (1) Except as provided in subsection (2), a person who  
237 knowingly and willfully for profit or hire transports, or  
238 procures the transportation of, five or more other persons into  
239 or within this state when he or she knows or reasonably should  
240 know such transportation is for the purpose of facilitating  
241 illegal gambling commits a misdemeanor of the first degree,  
242 punishable as provided in s. 775.082 or s. 775.083.

243        (2)(a) A person who transports, or procures the  
244 transportation of, a minor or a person 65 years of age or older  
245 in violation of subsection (1) commits a felony of the third  
246 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
247 775.084.

248        (b) A person who transports, or procures the  
249 transportation of, 12 or more persons in violation of subsection  
250 (1) commits a felony of the third degree, punishable as provided



251 in s. 775.082, s. 775.083, or s. 775.084.

252 (3) As used in this section, the term "illegal gambling"  
253 means any criminal violation of chapter 546, chapter 550,  
254 chapter 551, or this chapter that occurs at any business,  
255 establishment, premises, or other location which operates for  
256 profit.

257 Section 8. Section 849.48, Florida Statutes, is created to  
258 read:

259 849.48 Gambling or gaming advertisements; prohibited.—

260 (1)(a) Except as otherwise specifically authorized by law,  
261 a person may not knowingly and intentionally make, publish,  
262 disseminate, circulate or place before the public, or cause,  
263 directly or indirectly, to be made, published, disseminated or  
264 circulated or placed before the public in this state, in any  
265 manner, any advertisement, circular, bill, poster, pamphlet,  
266 list, schedule, announcement, or notice for the purpose of  
267 promoting or facilitating illegal gambling.

268 (b) Except as otherwise specifically authorized by law, a  
269 person may not set up any type or plate for any type of  
270 advertisement, circular, bill, poster, pamphlet, list, schedule,  
271 announcement, or notice when he or she knows or reasonably  
272 should know that such material will be used for the purpose of  
273 promoting or facilitating illegal gambling.

274 (2) A person who violates subsection (1) commits a  
275 misdemeanor of the first degree, punishable as provided in s.

276 775.082 or s. 775.083.

277 (3) This section does not prohibit the printing or  
278 producing of any advertisement, circular, bill, poster,  
279 pamphlet, list, schedule, announcement, or notice to be used for  
280 the purpose of promoting or facilitating gambling conducted in  
281 any other state or nation, outside of this state, where such  
282 gambling is not prohibited.

283 (4) As used in this section, the term "illegal gambling"  
284 means any criminal violation of chapter 546, chapter 550,  
285 chapter 551, or this chapter that occurs at any business,  
286 establishment, premises, or other location which operates for  
287 profit.

288 Section 9. Section 849.49, Florida Statutes, is created to  
289 read:

290 849.49 Preemption.— No county, municipality, or other  
291 political subdivision of the state shall enact or enforce any  
292 ordinance or local rule relating to gaming, gambling, lotteries,  
293 or any activities described in s. 546.10 or this chapter, except  
294 as otherwise expressly provided by the state constitution or  
295 general law.

296 Section 10. Paragraphs (i) through (m) of subsection (2)  
297 of section 903.046, Florida Statutes, are redesignated as  
298 paragraphs (j) through (n), respectively, and a new paragraph  
299 (i) is added to that subsection, to read:

300 903.046 Purpose of and criteria for bail determination.—

301 (2) When determining whether to release a defendant on  
 302 bail or other conditions, and what that bail or those conditions  
 303 may be, the court shall consider:

304 (i) The amount of currency seized that is connected to or  
 305 involved in a violation of chapter 546, chapter 550, chapter  
 306 551, or this chapter.

307 Section 11. Paragraphs (a), (c), (e), and (g) of  
 308 subsection (3) of section 921.0022, Florida Statutes, are  
 309 amended to read:

310 921.0022 Criminal Punishment Code; offense severity  
 311 ranking chart.—

312 (3) OFFENSE SEVERITY RANKING CHART

313 (a) LEVEL 1

314

Florida Statute	Felony Degree	Description
24.118(3) (a)	3rd	Counterfeit or altered state lottery ticket.
104.0616(2)	3rd	Unlawfully distributing, ordering, requesting, collecting, delivering, or possessing vote-by-mail ballots.

315

316

317	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
318	212.15(2)(b)	3rd	Failure to remit sales taxes, amount \$1,000 or more but less than \$20,000.
319	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
320	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
321	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
322	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
323	322.212 (1)(a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully

issued driver license;  
possession of simulated  
identification.

324

322.212 (4) 3rd Supply or aid in supplying  
unauthorized driver license or  
identification card.

325

322.212 (5) (a) 3rd False application for driver  
license or identification card.

326

414.39 (3) (a) 3rd Fraudulent misappropriation of  
public assistance funds by  
employee/official, value more  
than \$200.

327

443.071 (1) 3rd False statement or  
representation to obtain or  
increase reemployment  
assistance benefits.

328

509.151 (1) 3rd Defraud an innkeeper, food or  
lodging value \$1,000 or more.

329

517.302 (1) 3rd Violation of the Florida

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Securities and Investor  
Protection Act.

330

713.69                      3rd      Tenant removes property upon  
which lien has accrued, value  
\$1,000 or more.

331

812.014 (3) (c)            3rd      Petit theft (3rd conviction);  
theft of any property not  
specified in subsection (2).

332

815.04 (4) (a)            3rd      Offense against intellectual  
property (i.e., computer  
programs, data).

333

817.52 (2)                      3rd      Hiring with intent to defraud,  
motor vehicle services.

334

817.569 (2)                3rd      Use of public record or public  
records information or  
providing false information to  
facilitate commission of a  
felony.

335

826.01                      3rd      Bigamy.

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336	828.122 (3)	3rd	Fighting or baiting animals.
337	831.04 (1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
338	831.31 (1) (a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
339	832.041 (1)	3rd	Stopping payment with intent to defraud \$150 or more.
340	832.05 (2) (b) & (4) (c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
341	838.15 (2)	3rd	Commercial bribe receiving.
342	838.16	3rd	Commercial bribery.

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343	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
344	847.011 (1) (a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
345	<del>849.09(1) (a) - (d)</del>	3rd	<del>Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.</del>
346	<del>849.23</del>	3rd	<del>Gambling-related machines; "common offender" as to property rights.</del>
347	<del>849.25(2)</del>	3rd	<del>Engaging in bookmaking.</del>
348	860.08	3rd	Interfere with a railroad signal.
349	860.13(1) (a)	3rd	Operate aircraft while under the influence.



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359

893.13(2)(a)2.	3rd	Purchase of cannabis.
893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
(c) LEVEL 3		
Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude

law enforcement officer in  
patrol vehicle with siren and  
lights activated.

360 319.30(4) 3rd Possession by junkyard of motor  
vehicle with identification  
number plate removed.

361 319.33(1)(a) 3rd Alter or forge any certificate  
of title to a motor vehicle or  
mobile home.

362 319.33(1)(c) 3rd Procure or pass title on stolen  
vehicle.

363 319.33(4) 3rd With intent to defraud,  
possess, sell, etc., a blank,  
forged, or unlawfully obtained  
title or registration.

364 327.35(2)(b) 3rd Felony BUI.

365 328.05(2) 3rd Possess, sell, or counterfeit  
fictitious, stolen, or  
fraudulent titles or bills of

sale of vessels.

366

328.07(4) 3rd Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.

367

376.302(5) 3rd Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.

368

379.2431(1)(e)5. 3rd Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.

369

379.2431(1)(e)6. 3rd Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection

Act.

370

379.2431  
(1) (e) 7.

3rd

Soliciting to commit or  
conspiring to commit a  
violation of the Marine Turtle  
Protection Act.

371

400.9935(4) (a)  
or (b)

3rd

Operating a clinic, or offering  
services requiring licensure,  
without a license.

372

400.9935(4) (e)

3rd

Filing a false license  
application or other required  
information or failing to  
report information.

373

440.1051(3)

3rd

False report of workers'  
compensation fraud or  
retaliation for making such a  
report.

374

501.001(2) (b)

2nd

Tampers with a consumer product  
or the container using  
materially false/misleading  
information.

375	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
376	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
377	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
378	697.08	3rd	Equity skimming.
379	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.
380	794.053	3rd	Lewd or lascivious written solicitation of a person 16 or 17 years of age by a person 24 years of age or older.
381	806.10 (1)	3rd	Maliciously injure, destroy, or interfere with vehicles or

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equipment used in firefighting.

382

806.10(2) 3rd Interferes with or assaults  
firefighter in performance of  
duty.

383

810.09(2)(c) 3rd Trespass on property other than  
structure or conveyance armed  
with firearm or dangerous  
weapon.

384

812.014(2)(c)2. 3rd Grand theft; \$5,000 or more but  
less than \$10,000.

385

812.0145(2)(c) 3rd Theft from person 65 years of  
age or older; \$300 or more but  
less than \$10,000.

386

812.015(8)(b) 3rd Retail theft with intent to  
sell; conspires with others.

387

812.081(2) 3rd Theft of a trade secret.

388

815.04(4)(b) 2nd Computer offense devised to  
defraud or obtain property.

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389	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
390	817.233	3rd	Burning to defraud insurer.
391	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
392	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
393	817.236	3rd	Filing a false motor vehicle insurance application.
394	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
395	817.413 (2)	3rd	Sale of used goods of \$1,000 or more as new.

396  
397  
398  
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400  
401

817.49(2)(b)1.	3rd	Willful making of a false report of a crime causing great bodily harm, permanent disfigurement, or permanent disability.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
836.13(2)	3rd	Person who promotes an altered sexual depiction of an identifiable person without consent.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.



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402	<u>849.01</u>	<u>3rd</u>	<u>Keeping a gambling house.</u>
403	<u>849.09(1) (a) - (d)</u>	<u>3rd</u>	<u>Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.</u>
404	<u>849.09(1) (e), (f), (g), (i), or (k)</u>	<u>3rd</u>	<u>Conducting an unlawful lottery; second or subsequent offense.</u>
405	<u>849.09(1) (h) or (j)</u>	<u>3rd</u>	<u>Conducting an unlawful lottery; second or subsequent offense.</u>
406	<u>849.15(3) (b)</u>	<u>3rd</u>	<u>Manufacture, sale, or possession of slot machine; by manager or with prior conviction.</u>
407	<u>849.157(1)</u>	<u>3rd</u>	<u>False or misleading statement to facilitate sale of slot machines or devices.</u>
	<u>849.25(2)</u>	<u>3rd</u>	<u>Engaging in bookmaking.</u>

408	<u>849.47(2) (a) &amp;</u> <u>(b)</u>	3rd	<u>Transporting persons to</u> <u>facilitate illegal gambling;</u> <u>minor or person 65 years of age</u> <u>or older or 12 or more persons.</u>
409	860.15(3)	3rd	Overcharging for repairs and parts.
410	870.01(2)	3rd	Riot.
411	870.01(4)	3rd	Inciting a riot.
412	893.13(1) (a) 2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (2) (c)10., (3), or (4) drugs).
413	893.13(1) (d) 2.	2nd	Sell, manufacture, or deliver s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (2) (c)10., (3), or (4) drugs

within 1,000 feet of  
university.

414

893.13(1)(f)2.            2nd    Sell, manufacture, or deliver  
s. 893.03(1)(c), (2)(c)1.,  
(2)(c)2., (2)(c)3., (2)(c)6.,  
(2)(c)7., (2)(c)8., (2)(c)9.,  
(2)(c)10., (3), or (4) drugs  
within 1,000 feet of public  
housing facility.

415

893.13(4)(c)            3rd    Use or hire of minor; deliver  
to minor other controlled  
substances.

416

893.13(6)(a)            3rd    Possession of any controlled  
substance other than felony  
possession of cannabis.

417

893.13(7)(a)8.           3rd    Withhold information from  
practitioner regarding previous  
receipt of or prescription for  
a controlled substance.

418

893.13(7)(a)9.           3rd    Obtain or attempt to obtain

controlled substance by fraud,  
 forgery, misrepresentation,  
 etc.

419

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

420

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

421

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

422

893.13(8)(a)2. 3rd Employ a trick or scheme in the  
 practitioner's practice to  
 assist a patient, other person,

or owner of an animal in  
obtaining a controlled  
substance.

423

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

424

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

425

918.13(1)                    3rd    Tampering with or fabricating  
physical evidence.

426

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

427

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

428	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
429			
430	(e) LEVEL 5		
431			
	Florida Statute	Felony Degree	Description
432	316.027 (2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
433	316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
434	316.80 (2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
435	322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.

436	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
437	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.
438	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny

lobster trap, line, or buoy.

439

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

440

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

441

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

442

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

443

440.381 (2) 3rd Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

444

624.401 (4) (b) 2. 2nd Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.



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445	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
446	790.01 (3)	3rd	Unlawful carrying of a concealed firearm.
447	790.162	2nd	Threat to throw or discharge destructive device.
448	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
449	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
450	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
451	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
452			

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453	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
454	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
455	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
456	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
457	812.015 (8) (a) & (c) - (e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
458	812.015 (8) (f)	3rd	Retail theft; multiple thefts within specified period.
	812.019 (1)	2nd	Stolen property; dealing in or

trafficking in.

459

812.081 (3) 2nd Trafficking in trade secrets.

460

812.131 (2) (b) 3rd Robbery by sudden snatching.

461

812.16 (2) 3rd Owning, operating, or  
conducting a chop shop.

462

817.034 (4) (a) 2. 2nd Communications fraud, value  
\$20,000 to \$50,000.

463

817.234 (11) (b) 2nd Insurance fraud; property value  
\$20,000 or more but less than  
\$100,000.

464

817.2341 (1), 3rd Filing false financial  
(2) (a) & statements, making false  
(3) (a) entries of material fact or  
false statements regarding  
property values relating to the  
solvency of an insuring entity.

465

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.

466

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

467

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

468

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

469

827.071 (4) 2nd Possess with intent to promote any photographic material, motion picture, etc., which includes child pornography.

470

471	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography.
472	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
473	836.14 (4)	2nd	Person who willfully promotes for financial gain a sexually explicit image of an identifiable person without consent.
474	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
	843.01 (1)	3rd	Resist officer with violence to person; resist arrest with

violence.

475

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

476

847.0137                    3rd    Transmission of pornography by  
(2) & (3)                    electronic device or equipment.

477

847.0138                    3rd    Transmission of material  
(2) & (3)                    harmful to minors to a minor by  
electronic device or equipment.

478

849.15(3) (c)              2nd    Manufacture, sale, or  
possession of a slot machine;  
by a manager of five or more  
machines or two or more prior  
convictions.

479

849.157(2)                2nd    False or misleading statement  
to facilitate sale of slot  
machines or devices; five or  
more machines.

480

849.25(3)                2nd    Bookmaking; second or

subsequent offense.

481

874.05(1)(b) 2nd Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

482

874.05(2)(a) 2nd Encouraging or recruiting person under 13 years of age to join a criminal gang.

483

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).

484

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.

485

893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.

486

893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)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.

487

893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine (or other s.



893.03(1) (a), (1) (b), (1) (d),  
 or (2) (a), (2) (b), or (2) (c) 5.  
 drugs) within 1,000 feet of  
 public housing facility.

488

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

489

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

490

491                      (g)      LEVEL 7

492

Florida	Felony	
Statute	Degree	Description

493

316.027(2) (c)	1st	Accident involving death, failure to stop; leaving scene.
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494

316.193(3) (c) 2.	3rd	DUI resulting in serious bodily injury.
-------------------	-----	--

495

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.

496 327.35(3)(c)2. 3rd Vessel BUI resulting in serious  
 bodily injury.

497 402.319(2) 2nd Misrepresentation and  
 negligence or intentional act  
 resulting in great bodily harm,  
 permanent disfiguration,  
 permanent disability, or death.

498 409.920 3rd Medicaid provider fraud;  
 (2)(b)1.a. \$10,000 or less.

499 409.920 2nd Medicaid provider fraud; more  
 (2)(b)1.b. than \$10,000, but less than  
 \$50,000.

500 456.065(2) 3rd Practicing a health care

profession without a license.

501

456.065 (2) 2nd Practicing a health care profession without a license which results in serious bodily injury.

502

458.327 (1) 3rd Practicing medicine without a license.

503

459.013 (1) 3rd Practicing osteopathic medicine without a license.

504

460.411 (1) 3rd Practicing chiropractic medicine without a license.

505

461.012 (1) 3rd Practicing podiatric medicine without a license.

506

462.17 3rd Practicing naturopathy without a license.

507

463.015 (1) 3rd Practicing optometry without a license.

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509	464.016 (1)	3rd	Practicing nursing without a license.
510	465.015 (2)	3rd	Practicing pharmacy without a license.
511	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
512	467.201	3rd	Practicing midwifery without a license.
513	468.366	3rd	Delivering respiratory care services without a license.
514	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
515	483.901 (7)	3rd	Practicing medical physics without a license.
516	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.

517	484.053	3rd	Dispensing hearing aids without a license.
518	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.
519	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.
520	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

521	775.21(10) (a)	3rd	Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
522	775.21(10) (b)	3rd	Sexual predator working where children regularly congregate.
523	775.21(10) (g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
524	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
525	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

526	782.071	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
527	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
528	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
529	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
530	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
531	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
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533	784.048 (7)	3rd	Aggravated stalking; violation of court order.
534	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
535	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
536	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
537	784.081 (1)	1st	Aggravated battery on specified official or employee.
538	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
539	784.083 (1)	1st	Aggravated battery on code inspector.
	787.06 (3) (a) 2.	1st	Human trafficking using coercion for labor and services



of an adult.

540 787.06(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.

541 790.07(4) 1st Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

542 790.16(1) 1st Discharge of a machine gun under specified circumstances.

543 790.165(2) 2nd Manufacture, sell, possess, or deliver hoax bomb.

544 790.165(3) 2nd Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

545 790.166(3) 2nd Possessing, selling, using, or

546			attempting to use a hoax weapon of mass destruction.
	790.166 (4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
547			
	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
548			
	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.
549			
	796.05 (1)	1st	Live on earnings of a prostitute; 2nd offense.
550			
	796.05 (1)	1st	Live on earnings of a prostitute; 3rd and subsequent

offense.

551 800.04(5)(c)1. 2nd Lewd or lascivious molestation;  
victim younger than 12 years of  
age; offender younger than 18  
years of age.

552 800.04(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  
or older.

553 800.04(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.

554 806.01(2) 2nd Maliciously damage structure by  
fire or explosive.

555 810.02(3)(a) 2nd Burglary of occupied dwelling;  
unarmed; no assault or battery.

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556	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
557	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
558	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
559	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.
560	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
561	812.014(2)(b)3.	2nd	Property stolen, emergency

562			medical equipment; 2nd degree grand theft.
	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
563			
	812.014 (2) (f)	2nd	Grand theft; second degree; firearm with previous conviction of s. 812.014 (2) (c) 5.
564			
	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
565			
	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
566			
	812.131 (2) (a)	2nd	Robbery by sudden snatching.
567			
	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
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569	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
570	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
571	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
572	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
573	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.
	817.418 (2) (a)	3rd	Offering for sale or advertising personal protective equipment with intent to

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defraud.

574 817.504 (1) (a) 3rd Offering or advertising a  
vaccine with intent to defraud.

575 817.535 (2) (a) 3rd Filing false lien or other  
unauthorized document.

576 817.611 (2) (b) 2nd Traffic in or possess 15 to 49  
counterfeit credit cards or  
related documents.

577 825.102 (3) (b) 2nd Neglecting an elderly person or  
disabled adult causing great  
bodily harm, disability, or  
disfigurement.

578 825.103 (3) (b) 2nd Exploiting an elderly person or  
disabled adult and property is  
valued at \$10,000 or more, but  
less than \$50,000.

579 827.03 (2) (b) 2nd Neglect of a child causing  
great bodily harm, disability,  
or disfigurement.

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580	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
581	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
582	838.015	2nd	Bribery.
583	838.016	2nd	Unlawful compensation or reward for official behavior.
584	838.021(3)(a)	2nd	Unlawful harm to a public servant.
585	838.22	2nd	Bid tampering.
586	843.0855(2)	3rd	Impersonation of a public officer or employee.
587	843.0855(3)	3rd	Unlawful simulation of legal process.
588			



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589	843.0855(4)	3rd	Intimidation of a public officer or employee.
590	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
591	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
592	<u>849.155</u>	<u>1st</u>	<u>Trafficking in slot machines or devices or any part thereof.</u>
593	872.06	2nd	Abuse of a dead human body.
594	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
595	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

596	893.13(1)(c)1.	1st	<p>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.</p>
597	893.13(1)(e)1.	1st	<p>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.</p>
598	893.13(4)(a)	1st	<p>Use or hire of minor; deliver to minor other controlled substance.</p>

599	893.135 (1) (a) 1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
600	893.135 (1) (b) 1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
601	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
602	893.135 (1) (c) 2.a.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.
603	893.135 (1) (c) 2.b.	1st	Trafficking in hydrocodone, 50 grams or more, less than 100 grams.
604	893.135 (1) (c) 3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.
	893.135	1st	Trafficking in oxycodone, 14

605	(1) (c) 3.b.		grams or more, less than 25 grams.
606	893.135 (1) (c) 4.b. (I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.
607	893.135 (1) (d) 1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.
608	893.135 (1) (e) 1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.
609	893.135 (1) (f) 1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
610	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
	893.135 (1) (h) 1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1

kilogram or more, less than 5 kilograms.

611

893.135 1st Trafficking in 1,4-Butanediol,  
 (1) (j) 1.a. 1 kilogram or more, less than 5 kilograms.

612

893.135 1st Trafficking in Phenethylamines,  
 (1) (k) 2.a. 10 grams or more, less than 200 grams.

613

893.135 1st Trafficking in synthetic  
 (1) (m) 2.a. cannabinoids, 280 grams or more, less than 500 grams.

614

893.135 1st Trafficking in synthetic  
 (1) (m) 2.b. cannabinoids, 500 grams or more, less than 1,000 grams.

615

893.135 1st Trafficking in n-benzyl  
 (1) (n) 2.a. phenethylamines, 14 grams or more, less than 100 grams.

616

893.1351(2) 2nd Possession of place for  
 trafficking in or manufacturing

of controlled substance.

617 896.101 (5) (a) 3rd Money laundering, financial  
 transactions exceeding \$300 but  
 less than \$20,000.

618 896.104 (4) (a) 1. 3rd Structuring transactions to  
 evade reporting or registration  
 requirements, financial  
 transactions exceeding \$300 but  
 less than \$20,000.

619 943.0435 (4) (c) 2nd Sexual offender vacating  
 permanent residence; failure to  
 comply with reporting  
 requirements.

620 943.0435 (8) 2nd Sexual offender; remains in  
 state after indicating intent  
 to leave; failure to comply  
 with reporting requirements.

621 943.0435 (9) (a) 3rd Sexual offender; failure to  
 comply with reporting  
 requirements.

622

943.0435(13) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

623

943.0435(14) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

624

944.607(9) 3rd Sexual offender; failure to comply with reporting requirements.

625

944.607(10)(a) 3rd Sexual offender; failure to submit to the taking of a digitized photograph.

626

944.607(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

627

628 944.607(13) 3rd Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification; providing false  
registration information.

629 985.4815(10) 3rd Sexual offender; failure to  
submit to the taking of a  
digitized photograph.

630 985.4815(12) 3rd Failure to report or providing  
false information about a  
sexual offender; harbor or  
conceal a sexual offender.

631 985.4815(13) 3rd Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification; providing false  
registration information.

632 Section 12. Paragraph (a) of subsection (1) and paragraph  
633 (a) of subsection (2) of section 772.102, Florida Statutes, are  
634 amended to read:  
635 772.102 Definitions.—As used in this chapter, the term:



636 (1) "Criminal activity" means to commit, to attempt to  
637 commit, to conspire to commit, or to solicit, coerce, or  
638 intimidate another person to commit:

639 (a) Any crime that is chargeable by indictment or  
640 information under the following provisions:

641 1. Section 210.18, relating to evasion of payment of  
642 cigarette taxes.

643 2. Section 414.39, relating to public assistance fraud.

644 3. Section 440.105 or s. 440.106, relating to workers'  
645 compensation.

646 4. Part IV of chapter 501, relating to telemarketing.

647 5. Chapter 517, relating to securities transactions.

648 6. Section 550.235 or s. 550.3551, relating to dogracing  
649 and horseracing.

650 7. Chapter 550, relating to jai alai frontons.

651 8. Chapter 552, relating to the manufacture, distribution,  
652 and use of explosives.

653 9. Chapter 562, relating to beverage law enforcement.

654 10. Section 624.401, relating to transacting insurance  
655 without a certificate of authority, s. 624.437(4)(c)1., relating  
656 to operating an unauthorized multiple-employer welfare  
657 arrangement, or s. 626.902(1)(b), relating to representing or  
658 aiding an unauthorized insurer.

659 11. Chapter 687, relating to interest and usurious  
660 practices.

- 661           12. Section 721.08, s. 721.09, or s. 721.13, relating to  
 662 real estate timeshare plans.
- 663           13. Chapter 782, relating to homicide.
- 664           14. Chapter 784, relating to assault and battery.
- 665           15. Chapter 787, relating to kidnapping or human  
 666 trafficking.
- 667           16. Chapter 790, relating to weapons and firearms.
- 668           17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07,  
 669 relating to prostitution.
- 670           18. Chapter 806, relating to arson.
- 671           19. Section 810.02(2)(c), relating to specified burglary  
 672 of a dwelling or structure.
- 673           20. Chapter 812, relating to theft, robbery, and related  
 674 crimes.
- 675           21. Chapter 815, relating to computer-related crimes.
- 676           22. Chapter 817, relating to fraudulent practices, false  
 677 pretenses, fraud generally, and credit card crimes.
- 678           23. Section 827.071, relating to commercial sexual  
 679 exploitation of children.
- 680           24. Chapter 831, relating to forgery and counterfeiting.
- 681           25. Chapter 832, relating to issuance of worthless checks  
 682 and drafts.
- 683           26. Section 836.05, relating to extortion.
- 684           27. Chapter 837, relating to perjury.
- 685           28. Chapter 838, relating to bribery and misuse of public

686 office.

687 29. Chapter 843, relating to obstruction of justice.

688 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

689 s. 847.07, relating to obscene literature and profanity.

690 31. Section 849.09, s. 849.14, s. 849.15, ~~s. 849.23~~, or s.

691 849.25, relating to gambling.

692 32. Chapter 893, relating to drug abuse prevention and

693 control.

694 33. Section 914.22 or s. 914.23, relating to witnesses,

695 victims, or informants.

696 34. Section 918.12 or s. 918.13, relating to tampering

697 with jurors and evidence.

698 (2) "Unlawful debt" means any money or other thing of

699 value constituting principal or interest of a debt that is

700 legally unenforceable in this state in whole or in part because

701 the debt was incurred or contracted:

702 (a) In violation of any one of the following provisions of

703 law:

704 1. Section 550.235 or s. 550.3551, relating to dogracing

705 and horseracing.

706 2. Chapter 550, relating to jai alai frontons.

707 3. Section 687.071, relating to criminal usury and loan

708 sharking.

709 4. Section 849.09, s. 849.14, s. 849.15, ~~s. 849.23~~, or s.

710 849.25, relating to gambling.

711 Section 13. Paragraph (a) of subsection (12) of section  
 712 895.02, Florida Statutes, is amended to read:

713 895.02 Definitions.—As used in ss. 895.01–895.08, the  
 714 term:

715 (12) "Unlawful debt" means any money or other thing of  
 716 value constituting principal or interest of a debt that is  
 717 legally unenforceable in this state in whole or in part because  
 718 the debt was incurred or contracted:

719 (a) In violation of any one of the following provisions of  
 720 law:

721 1. Section 550.235 or s. 550.3551, relating to dogracing  
 722 and horseracing.

723 2. Chapter 550, relating to jai alai frontons.

724 3. Section 551.109, relating to slot machine gaming.

725 4. Chapter 687, relating to interest and usury.

726 5. Section 849.09, s. 849.14, s. 849.15, ~~s. 849.23~~, or s.  
 727 849.25, relating to gambling.

728 Section 14. This act shall take effect July 1, 2024.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 365 Representation by Counsel in Hearings on Petitions for Risk Protection Orders

**SPONSOR(S):** Criminal Justice Subcommittee, Sirois and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Padgett	Hall
2) Judiciary Committee		Padgett	Kramer

### SUMMARY ANALYSIS

Section 790.401, F.S., authorizes a law enforcement officer or a law enforcement agency to file a petition for a risk protection order (RPO). An RPO is a temporary ex parte order or a final order which requires a respondent to surrender to the law enforcement agency all firearms and ammunition owned by the respondent that are in his or her custody, control, or possession and any license to carry a concealed weapon or concealed firearm issued to the respondent.

At the hearing on a petition for an RPO, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition, the court *must* issue an RPO for a period of time the court deems appropriate, up to 12 months. A person offering evidence or recommendations relating to the issuance of an RPO must present the evidence or recommendations in writing to the court with copies to each party and his or her attorney, *if one is retained*, or must present the evidence under oath at a hearing at which all parties are present. The rules of evidence apply in an RPO hearing to the same extent as in a domestic violence injunction proceeding under s. 741.30, F.S.

Section 27.40, F.S., requires counsel to be appointed to represent any person in a criminal or civil proceeding entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. Generally, in the following order and manner, the court shall appoint:

- A public defender to represent indigent persons as authorized in s. 27.51, F.S.;
- The office of criminal conflict and civil regional counsel (RCC) in those cases in which the public defender is unable to provide representation due to a conflict of interest or is not authorized to provide representation; or
- Private counsel in cases in which RCC is unable to provide representation due to a conflict of interest.

Section 790.401, F.S., does not explicitly provide the right for a respondent to be represented by counsel and no other statute authorizing a court to appoint counsel to represent an indigent person authorizes the court to do so in an RPO action.

CS/HB 365 amends s. 790.401, F.S., to specify that a respondent in an RPO action has the right to be represented by an attorney. Additionally, the bill provides an indigent respondent with the right to have an attorney appointed to represent him or her in an RPO action. Under the bill, such counsel may include a public defender, RCC, or private attorney appointed off the conflict registry under s. 27.40, F.S. The bill limits compensation for a court-appointed private attorney in an RPO action to \$1,000.

To the extent that indigent RPO respondents request a court-appointed attorney as authorized by the bill, the bill will result in an increased workload to public defenders, RCCs, and court-appointed private attorneys and, as such, will have an indeterminate impact on state expenditures.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Risk Protection Orders

Section 790.401, F.S., authorizes a law enforcement officer or a law enforcement agency to file a petition for a risk protection order (RPO). An RPO is a temporary ex parte order or a final order which requires a respondent to surrender to the law enforcement agency all firearms and ammunition owned by the respondent that are in his or her custody, control, or possession and any license to carry a concealed weapon or concealed firearm issued to the respondent.<sup>1</sup>

##### *Petition*

A petition for an RPO must be filed in the circuit court in the county where the petitioner's law enforcement agency is located or where the respondent resides<sup>2</sup> and must:

- Allege the respondent poses a significant danger of causing personal injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition, and such allegation must be accompanied by an affidavit made under oath which states the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent;
- Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent's current ownership, possession, custody, or control; and
- Identify whether there is a known existing protection order governing the respondent under s. 741.30, F.S., (relating to domestic violence), s. 784.046, F.S., (relating to repeat violence, sexual violence, or dating violence), or s. 784.0485, F.S., (relating to stalking).<sup>3</sup>

The petitioner must make a good faith effort to provide notice to a family or household member of the respondent and to any third party who may be at risk of violence. Such notice must state that the petitioner intends to petition the court for an RPO or that he or she has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest, in his or her petition for an RPO, that he or she has provided the required notice or must attest to the steps that he or she will take to provide such notice.<sup>4</sup>

Once the petition is filed, the court must order a hearing to be held within 14 days and must issue a notice of hearing to the respondent.

##### *Temporary Ex Parte RPO*

A petitioner may request that a temporary ex parte RPO be issued pending a final hearing, and without notice to the respondent, by including in the petition detailed allegations based on personal knowledge that the respondent poses a significant danger of causing personal injury to himself or herself or others in the near future by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or ammunition.<sup>5</sup>

In considering whether to issue a temporary ex parte RPO, the court can consider all relevant evidence. A temporary ex parte RPO restrains the respondent from having any firearms or ammunition in his or her custody, control, or possession and from purchasing or receiving any firearm or ammunition while the order is in effect. If a court enters a temporary ex parte RPO, it must be served upon the

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<sup>1</sup> S. 790.401(7)(a), F.S.

<sup>2</sup> See s. 790.401(2)(a) and (j), F.S.

<sup>3</sup> S. 790.401(2)(e), F.S.

<sup>4</sup> S. 790.401(2)(f), F.S.

<sup>5</sup> S. 790.401(4)(a), F.S.

respondent at the same time as the notice of hearing and petition.<sup>6</sup> A temporary ex parte RPO remains in effect until the final hearing.<sup>7</sup>

### *RPO Hearing*

At the hearing on a petition for an RPO, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition, the court *must* issue an RPO for a period of time the court deems appropriate, up to 12 months. In making its determination, the court may consider any relevant evidence, including, but not limited to, any of the following:

- A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm;
- An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation of an RPO or a specified no contact order committed by the respondent;
- A previous or existing RPO issued against the respondent;
- A violation of a previous or existing RPO issued against the respondent;
- Whether the respondent has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence under s. 741.28, F.S.;
- Whether the respondent has used, or has threatened to use, any weapons against himself or herself or others;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person;
- Whether the respondent has been arrested for, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;
- Corroborated evidence of controlled substance or alcohol abuse by the respondent;
- Evidence of the recent acquisition of firearms or ammunition by the respondent;
- Any relevant information from family and household members concerning the respondent; and
- Witness testimony, taken while the witness is under oath, relating to the matter before the court.<sup>8</sup>

A person offering evidence or recommendations relating to the issuance of an RPO must present the evidence or recommendations in writing to the court with copies to each party and his or her attorney, *if one is retained*, or must present the evidence under oath at a hearing at which all parties are present.<sup>9</sup> The rules of evidence apply in an RPO hearing to the same extent as in a domestic violence injunction proceeding under s. 741.30, F.S.<sup>10</sup>

### *Order*

Section 790.401(3)(g), F.S., requires an RPO to include all of the following:

- A statement of the grounds supporting the issuance of the order;
- The date the order was issued and the date the order ends;
- Whether the respondent is required to complete a mental health evaluation or chemical dependency evaluation;
- The address of the court in which any responsive pleadings should be filed;
- A description of the requirements for surrender of all firearms and ammunition owned by the respondent; and

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<sup>6</sup> S. 790.401(3)(a), F.S.

<sup>7</sup> S. 790.401(4)(f), F.S.

<sup>8</sup> S. 790.401(3)(c), F.S.

<sup>9</sup> S. 790.401(3)(d), F.S.

<sup>10</sup> S. 790.401(3)(e), F.S.



- A required notice advising the respondent, in part, of the right to request a hearing to vacate the order and that he or she may seek the advice of an attorney concerning any matter connected with the RPO.<sup>11</sup>

Upon the issuance of an RPO, s. 790.401(10), F.S., specifies the following reporting requirements:

- The Clerk must enter any RPO into the uniform case reporting system and forward the respondent's identifying information to the Department of Agriculture and Consumer Services, who must immediately suspend any concealed weapons or concealed firearms license held by the respondent.
- The appropriate law enforcement agency must enter any RPO into the Florida Crime Information Center and National Crime Information Center making the order fully enforceable in any county in the state.

Section 790.401(6), F.S., provides the respondent the right to request a hearing to vacate an RPO, subject to specified time limitations and also grants a petitioner the right to request an extension of an RPO at any time within 30 days before the order expires.

A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition, knowing that he or she is prohibited from doing so by an RPO, commits a third degree felony.<sup>12</sup>

### Court Appointed Counsel

Section 27.40, F.S., requires counsel to be appointed to represent any person in a criminal or civil proceeding entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. Generally, in the following order and manner, the court shall appoint:

- A public defender to represent indigent persons<sup>13</sup> as authorized in s. 27.51, F.S.;
- The office of criminal conflict and civil regional counsel (RCC) in those cases in which the public defender certifies in writing that he or she is unable to provide representation due to a conflict of interest or is not authorized to provide representation; or
- Private counsel in those cases in which RCC certifies in writing that the office is unable to provide representation due to a conflict of interest.

Section 27.51, F.S., requires a public defender to represent any person who is determined to be indigent and:

- Under arrest for, or charged with, a felony,
- Under arrest for, or charged with:
  - A misdemeanor authorized for prosecution by the state attorney;
  - A violation of chapter 316 punishable by imprisonment;
  - Criminal contempt; or
  - A violation of a special law or county or municipal ordinance ancillary to a state charge or if the public defender contracts with the county or municipality to provide representation pursuant to ss. 27.54 and 125.69;
- Alleged to be a delinquent child;
- The subject of a petition to be involuntarily placed as a mentally ill person under part I of chapter 394 (Baker Act), involuntarily placed as a sexually violent predator under part V of chapter 394 (Jimmy Ryce Act), or involuntarily admitted to residential services as a person with developmental disabilities under chapter 393;
- Convicted and sentenced to death, for the purposes of handling an appeal to the Supreme Court; or

<sup>11</sup> S. 790.401(3)(g), F.S.

<sup>12</sup> S. 790.401(11), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. S. 775.082, s. 775.083, or s. 775.084, F.S.

<sup>13</sup> A person seeking appointment of a public defender under s. 27.51, F.S., based on inability to pay must apply to the clerk of the court for a determination of indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final approval by the Supreme Court. S. 27.52, F.S.

- Appealing any civil or criminal matter previously listed.

Section 27.51, F.S., does not require or authorize a public defender to represent a respondent in a petition for an RPO. Similarly, s. 27.511, F.S., does not require or authorize RCC to represent a respondent in a petition for an RPO if the public defender certifies he or she has a conflict of interest.

A private attorney appointed by the court to represent an indigent client is entitled to payment of a flat fee as authorized under s. 27.5304, F.S. Section 27.5304, F.S., does not currently contain a fee schedule for representation relating to an RPO.

### **Effect of Proposed Changes**

CS/HB 365 amends s. 790.401, F.S., to specify that a respondent in an RPO action has the right to be represented by an attorney. Additionally, the bill provides an indigent respondent the right to have an attorney to be appointed to represent him or her in an RPO action. Under the bill, such attorney may include a public defender, RCC, or private attorney appointed off the conflict registry under s. 27.40, F.S. The bill requires the notice of hearing provided to an RPO respondent to inform the respondent of his or her right to be represented by an attorney and the right to have an attorney appointed if he or she is indigent and desires representation in the RPO action.

The bill amends ss. 27.51 and 27.511, F.S., to authorize the public defender and RCC, respectively, to represent a respondent in an RPO action.

The bill amends s. 27.5304, F.S., to limit the compensation for a private attorney who is appointed by a court to represent a respondent in an RPO action to \$1,000.

The bill amends s. 39.815, F.S., to conform a cross-reference to changes made by the bill.

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

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 790.401, F.S., relating to risk protection orders.

**Section 2:** Amends s. 27.51, F.S., relating to duties of the public defender.

**Section 3:** Amends s. 27.511, F.S., relating to officer of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

**Section 4:** Amends s. 27.5304, F.S., relating to private court-appointed counsel; compensation; notice.

**Section 5:** Amends s. 39.815, F.S., relating to appeal.

**Section 6:** 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:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill will have an indeterminate impact on state expenditures. Public defenders, RCCs, and court-appointed private counsel do not currently represent respondents in RPO actions. To the extent that indigent RPO respondents will seek the assistance of court-appointed counsel as authorized by the bill, the bill will result in an increased workload to public defenders, RCCs, and court-appointed private counsel. Because the number of RPO respondents who are indigent is unknown, and because the number of those respondents who will request court-appointed counsel is unknown, the impact to their workload is indeterminate.

To the extent private attorneys are appointed from the conflict registry to represent indigent respondents, such attorneys may be compensated up to \$1,000 for providing such representation and may experience a positive fiscal impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 30, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment differed from the original bill in that it:

- Required the notice of RPO hearing to inform a respondent of his or her right to be represented by an attorney and inform the respondent that an attorney will be appointed if he or she is indigent and desires representation.
- Authorized the public defender and RCC to provide representation to an indigent respondent in an RPO action.
- Limited the compensation for a court-appointed private attorney in an RPO action to \$1,000.
- Made technical changes to conform current law with the changes made by the bill.

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 representation by counsel in  
3       hearings on petitions for risk protection orders;  
4       amending s. 790.401, F.S.; providing the respondent  
5       has the right to be represented by an attorney in a  
6       risk protection order proceeding and the right to have  
7       an attorney appointed if he or she cannot afford one;  
8       authorizing a private counsel who is appointed to  
9       represent the respondent in a risk protection order to  
10      be compensated; requiring specified notice to a  
11      respondent; conforming a provision to changes made by  
12      the act; amending s. 27.51, F.S.; authorizing a public  
13      defender to represent a person who is named as the  
14      respondent in a risk protection order; amending s.  
15      27.511, F.S.; authorizing the office of criminal  
16      conflict and civil regional counsel to represent a  
17      person who is named as the respondent in a risk  
18      protection order in specified circumstances;  
19      conforming a cross-reference; amending s. 27.5304,  
20      F.S.; specifying the compensation for a private  
21      counsel who is appointed to represent a respondent in  
22      a risk protection order proceeding; conforming cross-  
23      references; amending s. 39.815, F.S.; conforming a  
24      cross-reference; providing an effective date.  
25

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

27 |

28 |       Section 1. Paragraphs (c) and (d) of subsection (2) and  
29 | paragraphs (a) and (d) of subsection (3) of section 790.401,  
30 | Florida Statutes, are amended to read:

31 |       790.401 Risk protection orders.—

32 |       (2) PETITION FOR A RISK PROTECTION ORDER.—There is created  
33 | an action known as a petition for a risk protection order.

34 |       (c) The respondent has a right to be represented by an  
35 | attorney. If the respondent is indigent and desires  
36 | representation, the court shall appoint an attorney as provided  
37 | in s. 27.40. However, such petition for a risk protection order  
38 | does not require either party to be represented by an attorney.

39 |       (d) Notwithstanding any other law, attorney fees may not  
40 | be awarded in any proceeding under this section. However, this  
41 | paragraph does not preclude a private counsel who is appointed  
42 | to represent an indigent respondent from being compensated as  
43 | provided under s. 27.5304.

44 |       (3) RISK PROTECTION ORDER HEARINGS AND ISSUANCE.—

45 |       (a) Upon receipt of a petition, the court must order a  
46 | hearing to be held no later than 14 days after the date of the  
47 | order and must issue a notice of hearing to the respondent for  
48 | the same. Such notice of hearing must inform the respondent of  
49 | his or her right to be represented by an attorney and inform the  
50 | respondent that if he or she is indigent and desires

51 representation, that an attorney will be appointed as provided  
52 in s. 27.40.

53 1. The clerk of the court shall cause a copy of the notice  
54 of hearing and petition to be forwarded on or before the next  
55 business day to the appropriate law enforcement agency for  
56 service upon the respondent as provided in subsection (5).

57 2. The court may, as provided in subsection (4), issue a  
58 temporary ex parte risk protection order pending the hearing  
59 ordered under this subsection. Such temporary ex parte order  
60 must be served concurrently with the notice of hearing and  
61 petition as provided in subsection (5).

62 3. The court may conduct a hearing by telephone pursuant  
63 to a local court rule to reasonably accommodate a disability or  
64 exceptional circumstances. The court must receive assurances of  
65 the petitioner's identity before conducting a telephonic  
66 hearing.

67 (d) A person, including an officer of the court, who  
68 offers evidence or recommendations relating to the cause of  
69 action either must present the evidence or recommendations in  
70 writing to the court with copies to each party and his or her  
71 attorney, if one is retained or appointed, or must present the  
72 evidence under oath at a hearing at which all parties are  
73 present.

74 Section 2. Paragraphs (e) and (f) of subsection (1) of  
75 section 27.51, Florida Statutes, are redesignated as paragraphs

76 (f) and (g), respectively, and a new paragraph (e) is added to  
 77 that subsection, to read:

78 27.51 Duties of public defender.—

79 (1) The public defender shall represent, without  
 80 additional compensation, any person determined to be indigent  
 81 under s. 27.52 and:

82 (e) Named as the respondent in a petition filed before a  
 83 circuit court for a risk protection order pursuant to s.  
 84 790.401;

85 Section 3. Paragraphs (e), (f), and (g) of subsection (5)  
 86 of section 27.511, Florida Statutes, are redesignated as  
 87 paragraphs (f), (g), and (h), respectively, subsection (8) of  
 88 that section is amended, and a new paragraph (e) is added to  
 89 subsection (5) of that section, to read:

90 27.511 Offices of criminal conflict and civil regional  
 91 counsel; legislative intent; qualifications; appointment;  
 92 duties.—

93 (5) When the Office of the Public Defender, at any time  
 94 during the representation of two or more defendants, determines  
 95 that the interests of those accused are so adverse or hostile  
 96 that they cannot all be counseled by the public defender or his  
 97 or her staff without a conflict of interest, or that none can be  
 98 counseled by the public defender or his or her staff because of  
 99 a conflict of interest, and the court grants the public  
 100 defender's motion to withdraw, the office of criminal conflict



101 and civil regional counsel shall be appointed and shall provide  
 102 legal services, without additional compensation, to any person  
 103 determined to be indigent under s. 27.52, who is:

104 (e) Named as the respondent in a petition filed before a  
 105 circuit court for a risk protection order pursuant to s.  
 106 790.401;

107 (8) The public defender for the judicial circuit specified  
 108 in s. 27.51(4) shall, after the record on appeal is transmitted  
 109 to the appellate court by the office of criminal conflict and  
 110 civil regional counsel which handled the trial and if requested  
 111 by the regional counsel for the indicated appellate district,  
 112 handle all circuit court and county court appeals authorized  
 113 pursuant to paragraph (5)(g) ~~(5)(f)~~ within the state courts  
 114 system and any authorized appeals to the federal courts required  
 115 of the official making the request. If the public defender  
 116 certifies to the court that the public defender has a conflict  
 117 consistent with the criteria prescribed in s. 27.5303 and moves  
 118 to withdraw, the regional counsel shall handle the appeal,  
 119 unless the regional counsel has a conflict, in which case the  
 120 court shall appoint private counsel pursuant to s. 27.40.

121 Section 4. Subsections (6) through (13) of section  
 122 27.5304, Florida Statutes, are renumbered as subsections (7)  
 123 through (14), respectively, subsection (2) and paragraph (b) of  
 124 subsection (11) are amended, and a new subsection (6) is added  
 125 to that section, to read:

126 27.5304 Private court-appointed counsel; compensation;  
 127 notice.—

128 (2) The Justice Administrative Commission shall review an  
 129 intended billing by private court-appointed counsel for attorney  
 130 fees based on a flat fee per case for completeness and  
 131 compliance with contractual and statutory requirements. The  
 132 commission may approve the intended bill for a flat fee per case  
 133 for payment without approval by the court if the intended  
 134 billing is correct. An intended billing that seeks compensation  
 135 for any amount exceeding the flat fee established for a  
 136 particular type of representation, as prescribed in the General  
 137 Appropriations Act, shall comply with subsections (12) and (13)  
 138 ~~subsections (11) and (12)~~.

139 (6) The compensation for representation in a risk  
 140 protection order proceeding under s. 790.401 may not exceed  
 141 \$1,000.

142 (11) It is the intent of the Legislature that the flat  
 143 fees prescribed under this section and the General  
 144 Appropriations Act comprise the full and complete compensation  
 145 for private court-appointed counsel. It is further the intent of  
 146 the Legislature that the fees in this section are prescribed for  
 147 the purpose of providing counsel with notice of the limit on the  
 148 amount of compensation for representation in particular  
 149 proceedings and the sole procedure and requirements for  
 150 obtaining payment for the same.

151 (b) If court-appointed counsel is allowed to withdraw from  
 152 representation prior to the full performance of his or her  
 153 duties through the completion of the case and the court appoints  
 154 a subsequent attorney, the total compensation for the initial  
 155 and any and all subsequent attorneys may not exceed the flat fee  
 156 established under this section and the General Appropriations  
 157 Act, except as provided in subsection (13) ~~(12)~~.

158  
 159 This subsection constitutes notice to any subsequently appointed  
 160 attorney that he or she will not be compensated the full flat  
 161 fee.

162 Section 5. Subsection (1) of section 39.815, Florida  
 163 Statutes, is amended to read:

164 39.815 Appeal.—

165 (1) Any child, any parent or guardian ad litem of any  
 166 child, any other party to the proceeding who is affected by an  
 167 order of the court, or the department may appeal to the  
 168 appropriate district court of appeal within the time and in the  
 169 manner prescribed by the Florida Rules of Appellate Procedure.  
 170 The district court of appeal shall give an appeal from an order  
 171 terminating parental rights priority in docketing and shall  
 172 render a decision on the appeal as expeditiously as possible.  
 173 Appointed counsel shall be compensated as provided in s.  
 174 27.5304 (7) ~~s. 27.5304(6)~~.

175 Section 6. This act shall take effect July 1, 2024.



## 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: CS/SB 1764

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	13 Y, 0 N	Smith	Keith
3) Judiciary Committee		Butcher	Kramer

### 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 fine for a violation of s. 316.191(2), F.S., from \$500 to \$1,000, to \$1,500 to \$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 fine for such a violation from \$1,000 to \$3,000, to \$5,000 to \$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 fine from \$2,000 to \$5,000, to \$7,500 to \$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.

# 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.”<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

In Jacksonville, street takeover participants acknowledged that their meet-ups have anywhere from 300 to thousands of people in attendance,<sup>4</sup> and residents nearby indicate that these events are dangerous and often continue until well past midnight.<sup>5</sup> 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.<sup>6</sup> In Miami, police arrested a suspect accused of organizing street races and intersection takeovers in South Florida dating back to 2022.<sup>7</sup> 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.<sup>8</sup>

#### 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 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

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<sup>1</sup> 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 Feb. 15, 2024).

<sup>2</sup> 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 Feb. 15, 2024).

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

<sup>4</sup> 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 Feb. 15, 2024).

<sup>5</sup> 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 Feb. 15, 2024).

<sup>6</sup> 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 Feb. 15, 2024).

<sup>7</sup> 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 Feb. 15, 2024).

<sup>8</sup> *Street Racing/Takeovers, Stunt Driving*, FLHSMV, <https://www.flhsmv.gov/safety-center/driving-safety/stop-racing/> (last visited Feb. 15, 2024).

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:

- Two<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

“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.<sup>12</sup>

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

- 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;<sup>14</sup>
- 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.<sup>15</sup>

A racing violation is a first degree misdemeanor,<sup>16</sup> punishable by up to one year in county jail.<sup>17</sup>

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.

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<sup>9</sup> 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 Feb. 15, 2024).

<sup>10</sup> S. 316.191(1)(d), F.S.

<sup>11</sup> S. 316.191(1)(i), F.S.

<sup>12</sup> S. 316.191(1)(j), F.S.

<sup>13</sup> S. 316.191(7), F.S.

<sup>14</sup> S. 316.191(2), F.S.

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

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

<sup>17</sup> S. 775.082, F.S.

- 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.<sup>18</sup>

In addition to the criminal penalties provided, a person who commits a racing violation must pay a \$65 penalty.<sup>19</sup> 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.<sup>20</sup>

### Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code<sup>21</sup> are listed in a single offense severity ranking chart (OSRC),<sup>22</sup> 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.<sup>23,24</sup> 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.<sup>25,26</sup> 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.<sup>27</sup>

### **Effect of Proposed Changes**

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

- Increase the fine for a violation of s. 316.191(2), F.S., from \$500 to \$1,000, to \$1,500 to \$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.<sup>28</sup>
  - Increase the fine for such a violation from \$1,000 to \$3,000, to \$5,000 to \$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.

<sup>18</sup> S. 316.191(3), F.S.

<sup>19</sup> S. 318.18(20), F.S.

<sup>20</sup> S. 316.191(4), F.S.

<sup>21</sup> 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.

<sup>22</sup> S. 921.0022, F.S.

<sup>23</sup> S. 921.0022(2), F.S.

<sup>24</sup> 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.

<sup>25</sup> Ss. 921.0022 and 921.0024, F.S.

<sup>26</sup> 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.

<sup>27</sup> 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.

<sup>28</sup> 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.



- Create a second degree felony,<sup>29</sup> 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 fine from \$2,000 to \$5,000, to \$7,500 to \$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.<sup>30</sup>

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, and by creating a new racing offense for which a person is subject to fines and fees.

##### 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 fine 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

<sup>29</sup> 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.

<sup>30</sup> S. 316.003(1), F.S.

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.

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A bill to be entitled  
 An act relating to motor vehicle racing penalties;  
 amending s. 316.191, F.S.; increasing the fine for  
 offenses of drag race, street takeover, stunt driving,  
 competition, contest, test, or exhibition; increasing  
 the criminal penalty and revising applicability of the  
 criminal penalty for second offenses of drag race,  
 street takeover, stunt driving, competition, contest,  
 test, or exhibition occurring within a specified time  
 period; increasing the fine for such violations;  
 increasing the penalty for third or subsequent  
 offenses of drag race, street takeover, stunt driving,  
 competition, contest, test, or exhibition occurring  
 within a specified time period; increasing the fine  
 for such violations; increasing the fine for acting as  
 a spectator at a drag race, street takeover, stunt  
 driving, competition, contest, test, or exhibition;  
 providing penalties for impeding, obstructing, or  
 interfering with an emergency vehicle while  
 participating in a drag race, street takeover, stunt  
 driving, competition, contest, test, or exhibition;  
 providing an effective date.

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

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

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.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Michael offered the following:

**Amendment**

5 Remove lines 58-97 and insert:

6 (3) (a) Except as provided in paragraphs (b), (c), and (d),  
7 any person who violates subsection (2) commits a misdemeanor of  
8 the first degree, punishable as provided in s. 775.082 or s.  
9 775.083. Any person who violates subsection (2) shall pay a fine  
10 of not less than \$500 and not more than \$2,000 ~~\$1,000~~, and the  
11 department shall revoke the driver license of a person so  
12 convicted for 1 year. A hearing may be requested pursuant to s.  
13 322.271.

14 (b) Any person who commits a second violation of  
15 subsection (2) within 1 year ~~5 years~~ after the date of a prior  
16 violation that resulted in a conviction for a violation of



Amendment No. 1

17 subsection (2) commits a felony of the third degree ~~misdemeanor~~  
18 ~~of the first degree~~, punishable as provided in s. 775.082, ~~or~~ s.  
19 775.083, or s. 775.084, and shall pay a fine of not less than  
20 \$2,500 ~~\$1,000~~ and not more than \$4,000 ~~\$3,000~~. The department  
21 shall also revoke the driver license of that person for 2 years.  
22 A hearing may be requested pursuant to s. 322.271.

23 (c) Any person who commits a third or subsequent  
24 violation of subsection (2) within 5 years after the date of a  
25 prior violation that resulted in a conviction for a violation of  
26 subsection (2) commits a felony ~~misdemeanor~~ of the third ~~first~~  
27 degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or  
28 s. 775.084, and shall pay a fine of not less than \$3,500 ~~\$2,000~~  
29 and not more than \$7,500 ~~\$5,000~~. The department shall also  
30 revoke the driver license of that person for 4 years. A hearing  
31 may be requested pursuant to s. 322.271.

32 (d) Except as provided in paragraph (e), any person who  
33 violates subsection (2) and, in the course of committing the  
34 offense, knowingly impedes, obstructs, or interferes with an  
35 authorized emergency vehicle, as defined in s. 316.003(1), that  
36 is on call and responding to an emergency other than a violation  
37 of this section, commits a felony of the third degree,  
38 punishable as provided in paragraph (b).

39 (e) Any person who commits a second or subsequent  
40 violation of paragraph (d) commits a felony of the second  
41 degree, punishable as provided in s. 775.082, s. 775.083, or s.

Amendment No. 1

42 775.084. The department shall also revoke the driver license of  
43 that person for 4 years. A hearing may be requested pursuant to  
44 s. 322.271.

45 (f)~~(d)~~ In any case charging a violation of subsection (2),



## 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	13 Y, 0 N	Saag	Keith
3) Judiciary Committee		Leshko	Kramer

### 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.

# 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.<sup>1</sup> "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."<sup>2</sup>

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).<sup>3</sup> 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).<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

##### 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 searching<sup>7</sup> or forensic genetic genealogy,<sup>8</sup> utilizes single nucleotide polymorphism (SNP)<sup>9</sup>-based DNA matching combined with family tree research to produce investigative leads in criminal investigations and missing persons cases.<sup>10</sup> 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

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<sup>1</sup> FindLaw, *How DNA Evidence Works*, <https://criminal.findlaw.com/criminal-procedure/how-dna-evidence-works.html> (last visited Feb. 15, 2024).

<sup>2</sup> 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 Feb. 15, 2024).

<sup>3</sup> 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 Feb. 15, 2024).

<sup>4</sup> *Id.*  
<sup>5</sup> FBI, *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 Feb. 15, 2024).

<sup>6</sup> *Id.*  
<sup>7</sup> 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 Feb. 15, 2024).

<sup>8</sup> *Supra* note 2, at 2.

<sup>9</sup> 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 Feb. 15, 2024).

<sup>10</sup> *Supra* note 2, at 2.

algorithms run. Information and data derived from IGG is not, and cannot be, uploaded, searched, or retained in any CODIS DNA Index.<sup>11</sup>

IGG examines more than half a million SNP DNA markers which replace the STR DNA markers typically analyzed.<sup>12</sup> 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.<sup>13</sup> SNP markers have been identified as being more stable than STR markers and allow for increased accuracy in identifying potential familial connections.<sup>14</sup>

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<sup>15, 16</sup> 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.<sup>17</sup>

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.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup> GEDmatch is also able to accept raw data from both microarrays and whole genome sequencing and can be used for law enforcement matching.<sup>21</sup> Similarly, DNASolves does not provide genetic testing services, but does accept user-uploaded SNP data from the four principal DTCs.<sup>22</sup>

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.

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<sup>11</sup> *Supra* note 7, at 3-4.

<sup>12</sup> *Supra* note 7, at 3.

<sup>13</sup> *Supra* note 7, at 3.

<sup>14</sup> 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 Feb. 15, 2024).

<sup>15</sup> 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 Feb. 15, 2024).

<sup>16</sup> 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.

<sup>17</sup> Scientific Working Group DNA Analysis Methods, *Overview of Investigative Genetic Genealogy*, [https://www.swgdam.org/files/ugd/4344b0\\_6cc9e7c82ccc4fc0b5d10217af64e31b.pdf](https://www.swgdam.org/files/ugd/4344b0_6cc9e7c82ccc4fc0b5d10217af64e31b.pdf) (last visited Feb. 15, 2024).

<sup>18</sup> *Supra* note 7, at 3.

<sup>19</sup> *Supra* note 17, at 2.

<sup>20</sup> *Id.*

<sup>21</sup> *Supra* note 2, at 13.

<sup>22</sup> *Supra* note 2, at 15.

In response to the increase in the utilization of IGG, the U.S. Department of Justice 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.<sup>23</sup>
- 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 associated<sup>24</sup> 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.<sup>25</sup>

#### *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.<sup>26</sup> FTDNA allows users to opt out of law enforcement searches.<sup>27</sup>

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,

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<sup>23</sup> “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.

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

<sup>25</sup> *Supra* notes 7 and 17.

<sup>26</sup> *Supra* note 2, at 12.

<sup>27</sup> *Supra* note 17, at 3.

while profiles uploaded to identify the perpetrator of a violent crime<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

### Florida Department of Law Enforcement Genetic Genealogy Team

The Florida Department of Law Enforcement (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.<sup>31</sup> 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.<sup>32</sup>

### **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.

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.

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

<sup>29</sup> *Supra* note 17, at 4.

<sup>30</sup> *Supra* note 2, at 15.

<sup>31</sup> FDLE, *Forensic/Investigative Genetic Genealogy*, <https://www.fdle.state.fl.us/Forensics/Disciplines/Genetic-Genealogy.aspx> (last visited Feb. 15, 2024).

<sup>32</sup> FDLE, Agency Analysis of 2024 House Bill 453, p. 2 (Dec. 22, 2023)(on file with the House Criminal Justice Subcommittee).



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 forensic investigative genetic genealogy to generate investigative leads for specified criminal investigations, which may require outsourcing to a private entity for certain DNA testing.

**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 #:** PCS for CS/HB 473 Cybersecurity Incident Liability

**SPONSOR(S):** Judiciary Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Leshko	Kramer

### SUMMARY ANALYSIS

Section 282.3185, F.S., requires counties and municipalities (referred to as local governments in this section) to implement, adopt, and comply with cybersecurity training, standards, and incident notification protocols. Local governments are required to adopt cybersecurity standards that safeguard the local government's data, information technology, and information technology resources to ensure availability, confidentiality, and integrity. The standards must be consistent with generally accepted best practices for cybersecurity, including the National Institute for Standards and Technology (NIST) Cybersecurity Framework.

NIST is a non-regulatory federal agency housed within the United States Department of Commerce, whose role is to facilitate and support the development of cybersecurity risk frameworks. NIST is charged with providing a prioritized, flexible, repeatable, performance-based, and cost-effective approach, including information security measures and controls that may be voluntarily adopted by owners and operators of critical infrastructure to help them identify, assess, and manage cyber risks. While the NIST Cybersecurity Framework was developed with critical infrastructure in mind, it can also be used by organizations in any sector of the economy or society.

Additionally, s. 501.171, F.S., requires covered entities, governmental entities, and third-party agents to comply with specified notification protocols in the event of a breach of security affecting personal information.

PCS for CS/HB 473 creates s. 768.401, F.S., to provide that a county or municipality that substantially complies with the cybersecurity training, standards, and notification protocols under s. 282.3185, F.S., or any other political subdivision of the state that complies with s. 282.3185, F.S., on a voluntary basis, is not liable in connection with a cybersecurity incident.

The bill also provides that a covered entity or third-party agent, that acquires, maintains, stores, processes, or uses personal information is not liable in connection with a cybersecurity incident if the covered entity or third-party agent substantially complies with notice protocols as provided within s. 501.171, F.S., as applicable, and has also adopted a cybersecurity program that substantially aligns with the current version of any standards, guidelines, or regulations that implement any of the standards specified in the bill or with applicable state and federal laws and regulations. The bill provides certain requirements for a covered entity or third-party agent to retain its liability protection.

The bill does not establish a private cause of action. The bill further provides that the amendments made by the bill apply to any suit filed on or after the effective date of the bill and to any putative class action not certified on or before the effective date of the bill.

The bill does not affect state or local government revenues or expenditures.

The bill takes effect upon becoming law.

### FULL ANALYSIS

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

**STORAGE NAME:** pcs0473.JDC

**DATE:** 2/19/2024

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Access to Courts

The Florida Constitution broadly protects the right to access the courts, which "shall be open to every person for redress of any injury...."<sup>1</sup> However, this constitutional right is not unlimited.

In *Kluger v. White*,<sup>2</sup> the Supreme Court of Florida stated that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim...." The takeaway from *Kluger* and other relevant case law is that the Legislature may:

- Reduce the right to bring a cause of action as long as the right is not entirely abolished.<sup>3</sup>
- Abolish a cause of action that is not "traditional and long-standing"—that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the Florida Constitution's Declaration of Rights.<sup>4</sup>
- Abolish a cause of action if the Legislature either:
  - Provides a reasonable commensurate benefit in exchange;<sup>5</sup> or
  - Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."<sup>6</sup>

##### Tort Liability and Negligence

A "tort" is a wrong for which the law provides a remedy. The purpose of tort law is to fairly compensate a person harmed by another person's wrongful acts, whether intentional, reckless, or negligent, through a civil action or other comparable process. A properly-functioning tort system:

- Provides a fair and equitable forum to resolve disputes;
- Appropriately compensates legitimately harmed persons;
- Shifts the loss to responsible parties;
- Provides an incentive to prevent future harm; and
- Deters undesirable behavior.<sup>7</sup>

"Negligence" is a legal term for a type of tort action that is unintentionally committed. In a negligence action, the plaintiff is the party that brings the lawsuit, and the defendant is the party that defends against it. To prevail in a negligence lawsuit, a plaintiff must demonstrate that the:

- Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
- Defendant breached his or her duty of care by failing to conform to the required standard;

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<sup>1</sup> Art. I, s. 21, Fla. Const.

<sup>2</sup> *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

<sup>3</sup> See *Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).

<sup>4</sup> See *Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); see also *Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative . . . unless the Legislature can show an overpowering public necessity . . .").

<sup>5</sup> *Kluger*, 281 So. 2d at 4; see *Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding a statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); accord *Lasky v. State Fam Ins. Co.*, 296 So. 2d 9 (Fla. 1974); but see *Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down a noneconomic cap on damages, which, while not wholly abolishing a cause of action, did not provide a commensurate benefit).

<sup>6</sup> *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); see *Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity exists, and further that 'no alternative method of meeting such public necessity can be shown'").

<sup>7</sup> Am. Jur. 2d Torts s. 2.



- Defendant's breach caused the plaintiff's injury; and
- Plaintiff suffered actual damage or loss resulting from his or her injury.<sup>8</sup>

Courts distinguish varying degrees of civil negligence by using terms such as:

<b>Slight Negligence</b>	The failure to exercise great care. This often applies to injuries caused by common carriers charged with the duty to exercise the highest degree of care toward their passengers. <sup>9</sup>
<b>Ordinary Negligence</b>	The failure to exercise that degree of care which an ordinary prudent person would exercise; or, in other words, a course of conduct which a reasonable and prudent person would know might possibly result in injury to others. <sup>10</sup>
<b>Gross Negligence</b>	A course of conduct which a reasonable and prudent person knows would probably and most likely result in injury to another. <sup>11</sup> To prove gross negligence, a plaintiff must usually show that the defendant had knowledge or awareness of imminent danger to another and acted or failed to act with a conscious disregard for the consequences. <sup>12</sup> Once proven, gross negligence may support a punitive damage <sup>13</sup> award. <sup>14</sup>

In Florida, before a court awards damages in a negligence action, the jury generally assigns a fault percentage to each party under the comparative negligence rule. Florida applies<sup>15</sup> a "modified" comparative negligence rule, which generally prohibits a plaintiff from recovering damages if the plaintiff is more than 50 percent at fault for his or her own harm.<sup>16</sup>

The Florida Rules of Civil Procedure generally require a plaintiff in a civil action to file a complaint and require a defendant to file an answer to the complaint.<sup>17</sup> Florida is a "fact-pleading jurisdiction." This means that a pleading setting forth a claim for relief, including a complaint, must generally state a cause of action and contain a:

- Short and plain statement of the grounds on which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds to support it;
- Short and plain statement of the ultimate facts<sup>18</sup> showing the pleader is entitled to relief; and
- Demand for the relief to which the pleader believes he or she is entitled.<sup>19</sup>

<sup>8</sup> 6 *Florida Practice Series* s. 1.1; see *Barnett v. Dept. of Financial Services*, 303 So. 3d 508 (Fla. 2020).

<sup>9</sup> See *Faircloth v. Hill*, 85 So. 2d 870 (Fla. 1956); see also *Holland America Cruises, Inc. v. Underwood*, 470 So. 2d 19 (Fla. 2d DCA 1985); *Werndli v. Greyhound Corp.*, 365 So. 2d 177 (Fla. 2d DCA 1978); 6 *Florida Practice Series* s. 1.2.

<sup>10</sup> See *De Wald v. Quarnstrom*, 60 So. 2d 919 (Fla. 1952); see also *Clements v. Deeb*, 88 So. 2d 505 (Fla. 1956); 6 *Florida Practice Series* s. 1.2.

<sup>11</sup> See *Clements*, 88 So. 2d 505; 6 *Florida Practice Series* s. 1.2.

<sup>12</sup> See *Carraway v. Revell*, 116 So. 2d 16 (Fla. 1959).

<sup>13</sup> Punitive damages are awarded in addition to actual damages to punish a defendant for behavior considered especially harmful. Florida generally caps punitive damage awards at \$500,000 or triple the value of compensatory damages, whichever is greater, and caps cases of intentional misconduct with a financial motivation at two million dollars or four times the amount of compensatory damages, whichever is greater. S. 768.73(1), F.S.

<sup>14</sup> See *Glaab v. Caudill*, 236 So. 2d 180 (Fla. 2d DCA 1970); 6 *Florida Practice Series* s. 1.2; s. 768.72(2), F.S.

<sup>15</sup> The comparative negligence standard does not apply to any action brought to recover economic damages from pollution, based on an intentional tort, or to which the joint and several liability doctrines is specifically applied in ch. 403, 498, 517, 542, and 895, F.S. S. 768.81(4), F.S.

<sup>16</sup> S. 768.81(6), F.S. This comparative negligence rule does not apply to an action for damages for personal injury or wrongful death arising out of medical negligence pursuant to ch. 766, F.S.; therefore, a plaintiff who is more than fifty percent responsible for his or her own damages may still recover a portion of damages in a medical negligence suit.

<sup>17</sup> Fla. R. Civ. P. 1.100.

<sup>18</sup> Ultimate facts are facts that must be accepted for a claim to prevail, usually inferred from a number of supporting evidentiary facts, which themselves are facts making other facts more probable. See Legal Information Institute, *Ultimate Fact*, [https://www.law.cornell.edu/wex/ultimate\\_fact](https://www.law.cornell.edu/wex/ultimate_fact) (last visited Jan. 18, 2024); see also Legal Information Institute, *Evidentiary Facts*, [https://www.law.cornell.edu/wex/evidentiary\\_fact](https://www.law.cornell.edu/wex/evidentiary_fact) (last visited Jan. 18, 2024).

<sup>19</sup> See *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990); Fla. R. Civ. P. 1.110.

However, certain allegations<sup>20</sup> must be plead with "particularity," which is a heightened level of pleading requiring a statement of facts sufficient to satisfy the elements of each claim.

### Burden of Proof and Presumptions

The burden of proof is an obligation to prove a material fact in issue.<sup>21</sup> Generally, the party who asserts the material fact in issue has the burden of proof.<sup>22</sup> In a civil proceeding, for example, the burden of proof is on the plaintiff to prove the allegations contained in his or her complaint. Further, a defendant in either a criminal or a civil proceeding has the burden to prove any affirmative defenses<sup>23</sup> he or she may raise in response to the charges or allegations. However, there are certain statutory and common law presumptions<sup>24</sup> that may shift the burden of proof from the party asserting the material fact in issue to the party defending against such fact.<sup>25</sup> These presumptions remain in effect following the introduction of evidence rebutting the presumption, and the factfinder must decide if such evidence is strong enough to overcome the presumption.<sup>26</sup> A presumption is a legal inference that can be made with knowing certain facts. Most presumptions are able to be rebutted, if proven to be false or thrown into sufficient doubt by the evidence.<sup>27</sup>

### Local Government Cybersecurity

Section 282.3185, F.S., requires counties and municipalities (referred to as local governments in this section) to implement, adopt, and comply with cybersecurity training, standards, and incident notification protocols.

The Florida Digital Service is tasked with developing basic and advanced<sup>28</sup> cybersecurity training<sup>29</sup> curriculum for local government employees. All local government employees with access to the local government's network must complete basic cybersecurity training within 30 days after commencing employment and annually thereafter.<sup>30</sup> Additionally, all local government technology professionals and employees with access to highly sensitive information must also complete the advanced cybersecurity training within 30 days after commencing employment and annually thereafter.<sup>31</sup>

Additionally, local governments are required to adopt cybersecurity standards that safeguard the local government's data, information technology, and information technology resources to ensure availability, confidentiality, and integrity.<sup>32</sup> The standards must be consistent with generally accepted best practices for cybersecurity, including the National Institute for Standards and Technology (NIST) Cybersecurity

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<sup>20</sup> These allegations include fraud, mistake, condition of the mind, and denial of performance or occurrence. Fla. R. Civ. P. 1.120(b),(c).

<sup>21</sup> 5 *Florida Practice Series* s. 16:1.

<sup>22</sup> *Id.*; see *Berg v. Bridle Path Homeowners Ass'n, Inc.*, 809 So. 2d 32 (Fla. 4th DCA 2002).

<sup>23</sup> An affirmative defense is a defense which, if proven, negates criminal or civil liability even if it is proven that the defendant committed the acts alleged. Examples include self-defense, entrapment, insanity, necessity, and *respondeat superior*. Legal Information Institute, *Affirmative Defense*, [https://www.law.cornell.edu/wex/affirmative\\_defense](https://www.law.cornell.edu/wex/affirmative_defense) (last visited Jan. 18, 2024).

<sup>24</sup> These presumptions tend to be social policy expressions, such as the presumption that all people are sane or that all children born in wedlock are legitimate. 5 *Florida Practice Series* s. 16:1.

<sup>25</sup> 5 *Florida Practice Series* s. 16:1.

<sup>26</sup> *Id.*

<sup>27</sup> Legal Information Institute, *Presumption*, <https://www.law.cornell.edu/wex/presumption> (last visited Jan. 18, 2024).

<sup>28</sup> Advanced cybersecurity training must develop, assess, and document competencies by role and skill level. The training curriculum must include training on the identification of each cybersecurity incident severity level contained in s. 282.318(3)(c)9.a., F.S. S. 282.318(3)(a), F.S.

<sup>29</sup> The training may be provided in collaboration with the Cybercrime Office of the Florida Department of Law Enforcement, a private sector entity, or an institution of the Florida State University System. S. 282.318(3)(b), F.S.

<sup>30</sup> S. 282.318(3)(a)1., F.S.

<sup>31</sup> S. 282.318(3)(a)2., F.S.

<sup>32</sup> S. 282.318(4)(a), F.S.

Framework.<sup>33</sup> Once the standards are adopted,<sup>34</sup> each local government is to notify the Florida Digital Service (FLDS)<sup>35</sup> as soon as possible.<sup>36</sup>

Local governments are also required to comply with specified incident notification protocols in the event of a cybersecurity incident or ransomware incident, including:

- Notifying the Cybersecurity Operations Center (COC) of the Cybercrime Office of the Florida Department of Law Enforcement and the sheriff who has jurisdiction over the local government.
  - A local government must report all ransomware incidents and any cybersecurity incident determined by the local government to be of severity level 3, 4, or 5<sup>37</sup> as soon as possible but no later than 48 hours after discovery of the cybersecurity incident and no later than 12 hours after discovery of the ransomware incident.
    - The COC must notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 as soon as possible but no later than 12 hours after receiving the local government's incident report. Such notification must include a high-level description of the incident and the likely effects.
  - A local government may report a cybersecurity incident determined by the local government to be of severity level 1 or 2.<sup>38</sup>
- Submitting an after-action report to the Florida Digital Service within one week after the remediation of a cybersecurity or ransomware incident.
  - The after-action report must summarize the incident, the incident's resolution, and any insights gained as a result of the incident.<sup>39</sup>

Any such local government notification report must contain, at a minimum, the following information:

- A summary of the facts surrounding the cybersecurity incident or ransomware incident.
- The date on which the local government most recently backed up its data; the physical location of the backup, if the backup was affected; and if the backup was created using cloud computing.
- The types of data compromised by the incident.
- The estimated fiscal impact of the incident.
- In the case of a ransomware incident, the details of the ransom demanded.<sup>40</sup>

### Cybersecurity Standards

NIST is a non-regulatory federal agency housed within the United States Department of Commerce.<sup>41</sup> NIST's role was updated in the Cybersecurity Enhancement Act (CEA) of 2014 to facilitate and support the development of cybersecurity risk frameworks. The CEA charged NIST with providing a prioritized, flexible, repeatable, performance-based, and cost-effective approach, including information security measures and controls that may be voluntarily adopted by owners and operators of critical infrastructure<sup>42</sup> to help them identify, assess, and manage cyber risks. This charge formalized "NIST's previous work developing Framework Version 1.0 under Executive Order 13636, 'Improving Critical Infrastructure Cybersecurity,' issued in February 2013, and provided guidance for future Framework evolution."<sup>43</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> Each county with a population of 75,000 or more and each municipality with a population of 25,000 or more were required to adopt such cybersecurity standards by January 1, 2024. However, each county with a population of less than 75,000 and each municipality with a population of less than 25,000 have until January 1, 2025 to adopt appropriate standards. S. 282.3185(4)(b) – (c), F.S.

<sup>35</sup> FLDS works under Department of Management Services to implement policies for information technology and cybersecurity for state agencies.

<sup>36</sup> S. 282.3185(4)(d), F.S.

<sup>37</sup> Severity levels are determined based on the criteria contained in s. 282.3185(3)(c)9.a.(I) – (V), F.S.

<sup>38</sup> S. 282.3185(5)(b) – (c), F.S.

<sup>39</sup> S. 282.3185(6), F.S.

<sup>40</sup> S. 282.3185(5)(a), F.S.

<sup>41</sup> NIST, *NIST General Information*, <https://www.nist.gov/director/pao/nist-general-information> (last visited Feb. 12, 2024).

<sup>42</sup> "Critical infrastructure" is defined as systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters. NIST, *Framework for Improving Critical Infrastructure Cybersecurity*, p. 1, <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf> (last visited Feb. 11, 2024).

<sup>43</sup> *Id.*

While the Framework was developed with critical infrastructure in mind, it can also be used by organizations in any sector of the economy or society. The Framework is designed to complement, and not replace, an organization’s own unique approach to cybersecurity risk management. As such, there are a variety of ways to use the Framework and the decision about how to apply it is left to the implementing organization. For example, an organization may use its current processes and consider the Framework to identify opportunities to strengthen its cybersecurity risk management. Alternatively, an organization without an existing cybersecurity program can use the Framework as a reference to establish one. The Framework,<sup>44</sup> overall, provides an outline of best practices that helps organizations decide where to focus resources for cybersecurity protection.<sup>45</sup>

Other cybersecurity standards include:

<p><b>NIST special publication 800-171</b></p>	<p>Provides recommended requirements for protecting the confidentiality of controlled unclassified information. Defense contractors must implement the recommended requirements to demonstrate their provision of adequate security to protect the covered defense information included in their defense contracts. Additionally, if a manufacturer, involved in supply chains tied to government contracts, is part of a Department of Defense, General Services Administration, NASA, or other state or federal agency supply chain then they must comply with these security requirements.<sup>46</sup></p>
<p><b>NIST special publications 800-53 and 800-53A</b></p>	<p>Contains a catalog of security and privacy controls designed to help protect organizations, assets, the privacy of individuals and to manage cybersecurity and privacy risks in cloud computing environments.<sup>47</sup></p>
<p><b>The Federal Risk and Authorization Management Program (FedRAMP) security assessment framework</b></p>	<p>Provides a standardized approach to security assessment, authorization, and continuous monitoring for cloud services and cloud products offered by cloud service providers (CSPs). The FedRAMP authorization process determines whether CSPs meet federal cloud security guidelines. At the core of FedRAMP is the NIST Special Publication 800-53.<sup>48, 49</sup></p>
<p><b>The Center for Internet Security (CIS) Critical Security Controls</b></p>	<p>CIS Critical Security Controls are a prescriptive, prioritized, and simplified set of best practices for strengthening cybersecurity for different organizations. CIS was created in response to extreme data losses experienced by organizations in the U.S. defense industrial base.<sup>50</sup></p>

<sup>44</sup> NIST Cybersecurity Framework 2.0 is to be released at the end of February 2024.

<sup>45</sup> *Id.* at p. 3.

<sup>46</sup> NIST, *What is the NIST SP 800-171 and Who Needs to Follow It?*, <https://www.nist.gov/blogs/manufacturing-innovation-blog/what-nist-sp-800-171-and-who-needs-follow-it-0#:~:text=NIST%20SP%20800-171%20is%20a%20NIST%20Special%20Publication,protecting%20the%20confidentiality%20of%20controlled%20unclassified%20information%20%28CUI%29> (last visited Feb. 11, 2024).

<sup>47</sup> NIST, *Selecting Security and Privacy Controls: Choosing the Right Approach*, <https://www.nist.gov/blogs/cybersecurity-insights/selecting-security-and-privacy-controls-choosing-right-approach> (last visited Feb. 11, 2024).

<sup>48</sup> RiskOptics, *How State and Local Agencies Can Use FedRAMP*, <https://reciprocity.com/how-state-and-local-agencies-can-use-fedramp/> (last visited Feb. 11, 2024).

<sup>49</sup> Although state and local agencies are not authorized to directly access FedRAMP security documentation (which is housed in a secured federal portal), they can still apply the FedRAMP framework in their own cloud contracts and assessments. *Id.*

<sup>50</sup> CIS, *CIS Critical Security Controls*, <https://www.cisecurity.org/controls> (last visited Feb. 11, 2024).

<p><b>The International Organization for Standardization/International Electrotechnical Commission 27000 – series (ISO/IEC 27000) family of standards</b></p>	<p>The mainstay of the ISO/IEC 27000 family series is ISO 27001, which sets out the specification for an information security management system (ISMS).<sup>51</sup> ISO 27001 is an international standard that helps organizations manage the security of their information assets. ISO 27001 provides a management framework for implementing an ISMS to ensure the confidentiality, integrity, and availability of all corporate data such as, financial information, intellectual property, employee data, and information managed by third parties. ISO 27001 audits can be conducted to review an organization’s practices, policies, and procedures to determine if the organization’s ISMS meets the requirements of the standard.<sup>52</sup></p>
<p><b>HITRUST Common Security Framework (CSF)</b></p>	<p>The CSF can be utilized to manage and certify compliance with information security controls and to consolidate compliance reporting requirements. The CSF normalizes security and privacy requirements for organizations from a variety of sources, including: HIPPA security requirements; NIST 800-53, and other industry frameworks. The CSF helps organizations consolidate these various sources into a single control set.<sup>53</sup></p>
<p><b>Service Organization Control Type 2 (SOC 2) Framework</b></p>	<p>SOC 2 is a cybersecurity compliance framework developed by the American Institute of Certified Public Accountants. The primary purpose of SOC 2 is to ensure that third-party service providers store and process client data in a secure manner. The framework specifies criteria to uphold high standards of data security, based on five trust service principles: security, privacy, availability, confidentiality, and processing integrity. SOC 2 is able to provide different requirements for every organization depending on the organizations operating models.<sup>54</sup></p>
<p><b>Secure Controls Framework</b></p>	<p>Secure Controls Framework is a metaframework that contains a variety of cybersecurity and data privacy controls that organizations can use to build secure and compliant cybersecurity and data privacy programs.<sup>55</sup></p>

Additionally, there are certain cybersecurity standards that apply when certain information is being maintained:

<sup>51</sup> IT Governance, *ISO 27000 Series of Standards*, <https://www.itgovernanceusa.com/iso27000-family> (last visited Feb. 11, 2024).

<sup>52</sup> IT Governance, *ISO 27001, the International Information Security Standard*, <https://www.itgovernanceusa.com/iso27001#:~:text=ISO%2027001%20is%20a%20globally%20recognized%20information%20security,trusted%20benchmark.%20Protect%20your%20data%2C%20wherever%20it%20lives> (last visited Feb. 11, 2024).

<sup>53</sup> Linford & Co., LLP, *Understanding the HITRUST CSF: A Guide for Beginners*, <https://linfordco.com/blog/hitrust-csf-framework/> (last visited Feb. 16, 2024) (The CSF is updated roughly annually with minor versions being released between major revisions).

<sup>54</sup> One Login, *What is SOC 2?* <https://www.onelogin.com/learn/what-is-soc-2#:~:text=SOC%202%2C%20aka%20Service%20Organization%20Control%20Type%202%2C.and%20process%20client%20data%20in%20a%20secure%20manner> (last visited Feb. 16, 2024).

<sup>55</sup> Secure Controls Framework, *About the SCF*, <https://securecontrolsframework.com/about-us/> (last visited Feb. 16, 2024); Secure Controls Framework, *SCF Frequently Asked Questions (FAQ)*, <https://securecontrolsframework.com/faq/> (last visited Feb. 16, 2024).



<p><b>The Health Insurance Portability and Accountability Act of 1996 security requirements<sup>56</sup></b></p>	<p>The HIPAA Security Rule protects all individually identifiable health information that is created, received, maintained, or transmitted in electronic form. To comply with the HIPAA Security Rule, specified entities must: (1) ensure confidentiality of all electronic protected health information, (2) detect and safeguard against anticipated threats to information security, (3) protect against anticipated impermissible uses or disclosures, and (4) certify compliance by their workforce.<sup>57</sup></p>
<p><b>Title V of the Gramm-Leach-Bliley Act of 1999<sup>58</sup></b></p>	<p>Requires the Federal Trade Commission, in conjunction with other regulators, to issue regulations ensuring that financial institutions protect the privacy of consumers' personal financial information.<sup>59</sup></p>
<p><b>The Federal Information Security Modernization Act of 2014<sup>60</sup></b></p>	<p>Requires agencies to report the status of their information security programs to the Office of Management and Budget and requires Inspectors General to conduct annual independent assessments of those programs.<sup>61</sup></p>
<p><b>The Health Information Technology for Economic and Clinical Health Act requirements<sup>62</sup></b></p>	<p>Addresses the privacy and security concerns associated with the electronic transmission of health information, in part, through several provisions that strengthen the civil and criminal enforcement of the HIPAA rules.<sup>63</sup></p>
<p><b>The Criminal Justice Information Services (CJIS) Security Policy</b></p>	<p>CJIS provides criminal justice agencies and non-criminal justice agencies with a minimum set of security requirements for access to Federal Bureau of Investigation CJIS Division systems and information and to protect and safeguard criminal justice information.<sup>64</sup></p>

Security of Confidential Personal Information

Section 501.171, F.S., requires covered entities,<sup>65</sup> governmental entities,<sup>66</sup> and third-party agents<sup>67</sup> to take reasonable measures to protect and secure data in electronic form containing personal information.<sup>68, 69</sup>

<sup>56</sup> In 45 C.F.R. part 160 and part 164 subparts A and C.

<sup>57</sup> Centers for Disease Control and Prevention, *Health Insurance Portability and Accountability Act of 1996 (HIPAA)*, <https://www.cdc.gov/phlp/publications/topic/hipaa.html> (last visited Feb. 11, 2024).

<sup>58</sup> Pub. L. No. 106-102, as amended.

<sup>59</sup> Federal Trade Commission, *Gramm-Leach-Bliley Act*, <https://www.ftc.gov/legal-library/browse/statutes/gramm-leach-bliley-act> (last visited Feb. 11, 2024).

<sup>60</sup> Pub. L. No. 113-283.

<sup>61</sup> U.S. Chief Information Officers Council, *Federal Information Security Modernization Act (FISMA)*, <https://www.cio.gov/policies-and-priorities/FISMA/> (last visited Feb. 11, 2024).

<sup>62</sup> 45 C.F.R. parts 160 and 164.

<sup>63</sup> U.S. Department of Health and Human Services, *HITECH Act Enforcement Interim Final Rule*, <https://www.hhs.gov/hipaa/for-professionals/special-topics/hitech-act-enforcement-interim-final-rule/index.html> (last visited Feb. 11, 2024).

<sup>64</sup> Federal Bureau of Investigation, *Criminal Justice Information Services (CJIS) Security Policy*, [https://www.fbi.gov/file-repository/cjis\\_security\\_policy\\_v5-9\\_20200601.pdf/view](https://www.fbi.gov/file-repository/cjis_security_policy_v5-9_20200601.pdf/view) (last visited Feb. 16, 2024).

<sup>65</sup> "Covered entity" means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. S. 501.171(1)(b), F.S.

<sup>66</sup> "Governmental entity" means any department, division, bureau, commission, regional planning agency, board, district, authority, agency, or other instrumentality of this state that acquires, maintains, stores, or uses data in electronic form containing personal information. S. 501.171(1)(f), F.S.

<sup>67</sup> "Third-party agent" means an entity that has been contracted to maintain, store, or process personal information on behalf of a covered entity or governmental entity. S. 501.171(1)(h), F.S.

<sup>68</sup> S. 501.171(2), F.S.

<sup>69</sup> "Personal information" means either of the following:

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Covered entities and governmental entities are required to provide notice to the Department of Legal Affairs (DLA) of any breach of security affecting 500 or more individuals in this state. Such notice must be provided as expeditiously as practicable, but no later than 30 days after the determination of a breach or reason to believe a breach occurred.<sup>70</sup> Additionally, such entities must give notice to each individual in this state whose personal information was, or such entity reasonably believes to have been, accessed as a result of the breach. Notice to individuals must be made as expeditiously as practicable and without unreasonable delay, taking into account the time necessary to allow the entity to determine the scope of the breach of security, to identify individuals affected by the breach, and to restore the reasonable integrity of the data system that was breached, but no later than 30 days after the determination of a breach or reason to believe a breach occurred.<sup>71, 72</sup>

Additionally, if a covered entity or governmental entity discovers circumstances that require notice to more than 1,000 individuals at a single time, the entity must also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis<sup>73</sup> of the timing, distribution, and content of the notices sent to such individuals.<sup>74</sup>

Third-party agents are required to notify the covered entity or governmental entity, whose personal information it is maintaining, storing, or processing, of a breach of security as expeditiously as practicable, but no later than 10 days following the determination of the breach of security or reason to believe the breach occurred.<sup>75</sup>

A violation of s. 501.171, F.S., is treated as an unfair or deceptive trade practice in any action brought by DLA under s. 501.207, F.S., against a covered entity or third-party agent.

Section 501.207, F.S., authorizes DLA to bring an action:

- To obtain a declaratory judgment that an act or practice violates the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).<sup>76</sup>
- To enjoin any person who has violated, is violating, or is otherwise likely to violate, FDUTPA.
- On behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.<sup>77</sup>

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a. An individual's first name or first initial and last name in combination with anyone or more of the following data elements for that individual:

- (I) A social security number;
- (II) A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
- (III) A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;
- (IV) Any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
- (V) An individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.

b. A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

The term does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable. S. 501.171(1)(g), F.S.

<sup>70</sup> S. 501.171(3)(a), F.S.

<sup>71</sup> S. 501.171(4)(a), F.S.

<sup>72</sup> Notice is not required if the entity reasonably determines that the breach has not and will not likely result in identity theft or any other financial harm to the individuals whose personal information has been accessed. S. 501.171(4)(c), F.S.

<sup>73</sup> As defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681a(p).

<sup>74</sup> S. 501.171(5), F.S.

<sup>75</sup> S. 501.171(6), F.S.

<sup>76</sup> FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce. FDUTPA was modeled after the Federal Trade Commission Act. S. 501.202, F.S.

<sup>77</sup> S. 501.207(1), F.S.

In addition to the above-enumerated remedies, a covered entity that violates notice requirements to DLA and individuals as provided under s. 501.171, F.S., is liable for a civil penalty<sup>78</sup> not to exceed \$500,000, as follows:

- In the amount of \$1,000 for each day up to the first 30 days following any notification violation and, thereafter, \$50,000 for each subsequent 30-day period or portion thereof for up to 180 days.
- If the violation continues for more than 180 days, in an amount not to exceed \$500,000.<sup>79</sup>

## Effect of the Bill

PCS for CS/HB 473 creates s. 768.401, F.S., to provide that a county or municipality that substantially complies with the cybersecurity training, standards, and notification protocols under s. 282.3185, F.S., or any other political subdivision of the state that complies with s. 282.3185, F.S., on a voluntary basis, is not liable in connection with a cybersecurity incident.

The bill defines the following terms:

- “Covered entity” means a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity.
- “Third-party agent” means an entity that has been contracted to maintain, store, or process personal information on behalf of a covered entity.

The bill provides that a covered entity or third-party agent that acquires, maintains, stores, processes, or uses personal information is not liable in connection with a cybersecurity incident if the entity or third-party agent substantially complies with the notice protocols required under s. 501.171, F.S., and either:

- Has adopted a cybersecurity program that substantially aligns with the current version of any standards, guidelines, or regulations that implement any of the following:
  - NIST Framework for Improving Critical Infrastructure Cybersecurity;
  - NIST special publication 800-171;
  - NIST special publications 800-53 and 800-53A;
  - The Federal Risk and Authorization Management Program security assessment framework;
  - CIS Critical Security Controls;
  - The International Organization for Standardization/International Electrotechnical Commission 27000 – series family of standards;
  - HITRUST Common Security Framework (CSF);
  - Service Organization Control Type 2 (SOC 2) Framework;
  - Secure Controls Framework;
  - Other similar industry frameworks or standards; or
- If regulated by the state or federal government, or both, or if otherwise subject to the requirements of any of the following laws and regulations, has substantially aligned its cybersecurity program to the current version of:
  - The security requirements of the Health Insurance Portability and Accountability Act of 1996;
  - Title V of the Gramm-Leach-Bliley Act of 1999, as amended;
  - The Federal Information Security Modernization Act of 2014;
  - The Health Information Technology for Economic and Clinical Health Act;
  - The Criminal Justice Information Services (CJIS) Security Policy; or
  - Other similar requirements mandated by state or federal law or regulation.

The bill provides that a covered entity or third-party agent may demonstrate “substantial alignment” with the relevant frameworks, standards, laws, or regulations by providing documentation or other evidence reflecting such alignment following an assessment conducted internally or by a third party. In determining whether a covered entity’s or third-party agent’s cybersecurity program is in substantial alignment, all of the following factors must be considered:

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<sup>78</sup> The civil penalties for failure to notify apply per breach and not per individual affected by the breach. S. 501.171(9)(b), F.S.

<sup>79</sup> S. 501.171(9)(b)1.-2., F.S.  
**STORAGE NAME** pcs0473.JDC  
**DATE** 2/19/2024



- The size and complexity of the covered entity or third-party agent;
- The nature and scope of the activities of the covered entity or third-party agent; and
- The sensitivity of the information to be protected.

The bill requires a covered entity or third-party agent to make changes as necessary to substantially align its cybersecurity program with any revisions of relevant frameworks or standards or of applicable laws or regulations within one year after the implementation of such revisions, in order to retain protection from liability.

In an action in connection with a cybersecurity incident, if the defendant is a county, municipality, other political subdivision, covered entity, or third-party agent covered by s. 768.401, F.S., the defendant has the burden of proof to establish substantial compliance.

The bill does not establish a private cause of action. It provides that the failure of a county, municipality, other political subdivision of the state, covered entity, or third-party agent to substantially implement a cybersecurity program as specified in the bill is not evidence of negligence and does not constitute negligence per se.

The bill further provides that the amendments made by the bill apply to any suit filed on or after the effective date of the bill and to any putative class action<sup>80</sup> not certified on or before the effective date of the bill.

The bill provides that the act shall take effect upon becoming law.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 768.401, F.S., relating to limitation on liability for cybersecurity incidents.

**Section 2:** Provides that the bill is effective upon becoming law.

## 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:

<sup>80</sup> “A putative class action is a lawsuit brought by one or more named plaintiffs on behalf of a potential group of similarly situated individuals (known as a class) who allegedly suffered a common claim. Lawsuits do not become class actions until an actual class has been certified by the court. Therefore, a putative class action means the class has not yet been certified by the court. If the court certifies the class, the lawsuit becomes a class action.” International Risk Management Institute, *Putative Class Action*,

<https://www.irmi.com/term/insurance-definitions/putative-class-action#:~:text=A%20putative%20class%20action%20is,allegedly%20suffered%20a%20common%20claim>

(last visited Feb. 12, 2024).

The bill may have an indeterminate positive fiscal impact on private individuals as it provides an incentive for counties, municipalities, other political subdivisions, covered entities, and third-party agents to take actions that better protect data (including taxpayer and consumer personal information), information technology, and information technology resources that, if accessed by unauthorized persons, could cause harm to persons and businesses. This action may reduce the frequency and impact of cyber-attacks on private individuals in the state.

The bill may also make it more difficult for plaintiffs to recover damages in a cybersecurity action against entities that comply with the standards outlined in the bill.

**D. FISCAL COMMENTS:**

The bill does not affect state or local government revenues or expenditures.

**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 does not require or authorize rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to cybersecurity incident liability;  
 3           creating s. 768.401, F.S.; providing definitions;  
 4           providing that a county, municipality, other political  
 5           subdivision of the state, covered entity, or third-  
 6           party agent that complies with certain requirements is  
 7           not liable in connection with a cybersecurity  
 8           incident; requiring covered entities and third-party  
 9           agents to adopt revised frameworks, standards, laws,  
 10          or regulations within a specified time period;  
 11          providing that a private cause of action is not  
 12          established; providing that certain failures are not  
 13          evidence of negligence and do not constitute  
 14          negligence per se; specifying that the defendant in  
 15          certain actions has a certain burden of proof;  
 16          providing applicability; providing an effective date.

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

19  
 20           Section 1. Section 768.401, Florida Statutes, is created  
 21 to read:

22           768.401 Limitation on liability for cybersecurity  
 23 incidents.—

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

25           (a) "Covered entity" means a sole proprietorship,

26 partnership, corporation, trust, estate, cooperative,  
 27 association, or other commercial entity.

28 (b) "Third-party agent" means an entity that has been  
 29 contracted to maintain, store, or process personal information  
 30 on behalf of a covered entity.

31 (2) A county or municipality that substantially complies  
 32 with s. 282.3185, and any other political subdivision of the  
 33 state that substantially complies with s. 282.3185 on a  
 34 voluntary basis, is not liable in connection with a  
 35 cybersecurity incident.

36 (3) A covered entity or third-party agent that acquires,  
 37 maintains, stores, processes, or uses personal information is  
 38 not liable in connection with a cybersecurity incident if the  
 39 covered entity or third-party agent does all of the following,  
 40 as applicable:

41 (a) Substantially complies with s. 501.171(3)-(6), as  
 42 applicable.

43 (b)1. Has adopted a cybersecurity program that  
 44 substantially aligns with the current version of any standards,  
 45 guidelines, or regulations that implement any of the following:

46 a. The National Institute of Standards and Technology  
 47 (NIST) Framework for Improving Critical Infrastructure  
 48 Cybersecurity;

49 b. NIST special publication 800-171;

50 c. NIST special publications 800-53 and 800-53A;

- 51        d. The Federal Risk and Authorization Management Program  
 52 security assessment framework;
- 53        e. The Center for Internet Security (CIS) Critical  
 54 Security Controls;
- 55        f. The International Organization for  
 56 Standardization/International Electrotechnical Commission 27000-  
 57 series (ISO/IEC 27000) family of standards;
- 58        g. HITRUST Common Security Framework (CSF);
- 59        h. Service Organization Control Type 2 (SOC 2) Framework;
- 60        i. Secure Controls Framework;
- 61        j. Other similar industry frameworks or standards; or  
 62 2. If regulated by the state or Federal Government, or  
 63 both, or if otherwise subject to the requirements of any of the  
 64 following laws and regulations, has adopted a cybersecurity  
 65 program that substantially aligns with the current version of  
 66 the following, as applicable:
- 67        a. The Health Insurance Portability and Accountability Act  
 68 of 1996 security requirements in 45 C.F.R. part 160 and part 164  
 69 subparts A and C.
- 70        b. Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L.  
 71 No. 106-102, as amended.
- 72        c. The Federal Information Security Modernization Act of  
 73 2014, Pub. L. No. 113-283.
- 74        d. The Health Information Technology for Economic and  
 75 Clinical Health Act requirements in 45 C.F.R. parts 160 and 164.

76 e. The Criminal Justice Information Services (CJIS)  
 77 Security Policy.

78 f. Other similar requirements mandated by state or federal  
 79 law or regulation.

80 (4) A covered entity's or third-party agent's substantial  
 81 alignment with a framework or standard under subparagraph  
 82 (3)(b)1. or with a law or regulation under subparagraph (3)(b)2.  
 83 may be demonstrated by providing documentation or other evidence  
 84 of an assessment, conducted internally or by a third-party,  
 85 reflecting that the covered entity's or third-party agent's  
 86 cybersecurity program is substantially aligned with the relevant  
 87 frameworks or standards or with the applicable state or federal  
 88 law or regulation. In determining whether a covered entity's or  
 89 third-party agent's cybersecurity program is in substantial  
 90 alignment, all of the following factors must be considered:

91 (a) The size and complexity of the covered entity or  
 92 third-party agent.

93 (b) The nature and scope of the activities of the covered  
 94 entity or third-party agent.

95 (c) The sensitivity of the information to be protected.

96 (5) Any covered entity or third-party agent must  
 97 substantially align its cybersecurity program with any revisions  
 98 of relevant frameworks or standards or of applicable state or  
 99 federal laws or regulations within 1 year after the latest  
 100 publication date stated in any such revisions in order to retain

101 protection from liability.

102 (6) This section does not establish a private cause of  
 103 action.

104 (7) Failure of a county, municipality, other political  
 105 subdivision of the state, covered entity, or third-party agent  
 106 to substantially implement a cybersecurity program that is in  
 107 compliance with this section is not evidence of negligence and  
 108 does not constitute negligence per se.

109 (8) In an action relating to a cybersecurity incident, if  
 110 the defendant is a county, municipality, or political  
 111 subdivision covered by subsection (2) or a covered entity or  
 112 third-party agent covered by subsection (3), the defendant has  
 113 the burden of proof to establish substantial compliance.

114 Section 2. The amendments made by this act apply to any  
 115 suit filed on or after the effective date of this act and to any  
 116 putative class action not certified on or before the effective  
 117 date of this act.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 485 Return of Weapons and Arms Following an Arrest

**SPONSOR(S):** Brackett

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N	Padgett	Hall
2) Judiciary Committee		Padgett	Kramer

### SUMMARY ANALYSIS

Generally, a law enforcement officer is authorized to search a person incident to a lawful arrest and seize items discovered on the person arrested or within his or her immediate control if the seizure is necessary to protect the officer from attack, prevent an escape, or assure the subsequent lawful custody of the fruits of a crime or the articles used in the commission of a crime. A law enforcement agency holds seized property that is needed for the prosecution of a crime as evidence. All other seized property that is not contraband is either held by a law enforcement agency as “personal property” or “safekeeping property.”

Section 790.08, F.S., requires every law enforcement officer who makes an arrest under s. 790.07, F.S., which prohibits the use or attempted use of a weapon, electric weapon or device, or arms (weapon or firearm) in committing a felony, or under any other law or municipal ordinance to take possession of any weapon or firearm found upon the person arrested and deliver such weapon or firearm to the sheriff or chief of police of the jurisdiction in which the arrest was made. The sheriff or the chief of police must retain such weapon or firearm until after the trial of the person arrested.

Sections 790.08(2) and (3), F.S., require the forfeiture of a weapon or firearm if a person is convicted of violating s. 790.07, F.S., or a similar offense involving the *use or attempted use* of a weapon or firearm in committing a felony, and the return of a weapon or firearm if a person is acquitted or such charges are dismissed. The forfeiture and return requirements do *not* apply in circumstances where a weapon or firearm was seized as evidence but was not *used* in committing a felony or where a weapon or firearm is seized and held by a law enforcement agency as safekeeping property. Because there is currently no statute prescribing procedures for the return of a weapon or firearm held as safekeeping property, the specific procedures for returning such property vary by jurisdiction. Certain general procedures, such as requiring a person to produce photo identification and complete a background check prior to the release of a firearm, appear universal. However, the specifics of such procedures, such as the proof of ownership required to claim property, the time required to complete a background check, and the need for judicial approval prior to releasing a weapon or firearm, may vary.

HB 485 amends s. 790.08, F.S., to delete the requirement for a sheriff or chief of police to retain custody of all weapons or firearms seized incident to an arrest until after the trial of the person arrested. Instead, the bill requires a law enforcement agency to return any weapons or firearms that are taken from a person following an arrest, but that are not seized as evidence, upon request of the person arrested, if he or she:

- Has been released from detention;
- Provides a form of government-issued photographic identification; and
- If requesting the return of a firearm, successfully completes a criminal history background check confirming the person is not prohibited from possessing a firearm under state or federal law, including not having any prohibition arising from an injunction, a risk protection order, or any other court order prohibiting the person from possessing a firearm.

The bill authorizes a sheriff or chief of police to develop reasonable procedures to ensure the timely return of weapons or firearms which are not inconsistent with the bill. The bill prohibits a sheriff or chief of police from requiring a court order to release weapons or firearms that are not seized as evidence in a criminal proceeding unless there are competing claims of ownership of such weapons or firearms.

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

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:** h0485b.JDC

**DATE:** 2/19/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Seizing Property Following an Arrest

###### *Generally*

Section 901.21, F.S., authorizes a law enforcement officer to search a person who is lawfully arrested and the area within the person's immediate presence for the purpose of:

- Protecting the officer from attack;
- Preventing the person from escaping; or
- Discovering the fruits of a crime.

A law enforcement officer conducting such a lawful search without a warrant may seize all instruments, articles, or things discovered on the person arrested or within the person's immediate control, the seizure of which is reasonably necessary for the purpose of:

- Protecting the officer from attack;
- Preventing the escape of the arrested person; or
- Assuring subsequent lawful custody of the fruits of a crime or of the articles used in the commission of a crime.

A law enforcement agency holds seized property that is needed for the prosecution of a crime as evidence.<sup>1</sup> All other seized property that is not contraband is either held by a law enforcement agency as "personal property" or "safekeeping property."<sup>2</sup>

###### *Weapons, Electric Weapons or Devices, or Arms*

Section 790.08, F.S.,<sup>3</sup> requires every law enforcement officer who makes an arrest under s. 790.07, F.S.,<sup>4</sup> or under any other law or municipal ordinance to take possession of any weapons,<sup>5</sup> electric weapons or devices,<sup>6</sup> or arms mentioned in s. 790.07, F.S.,<sup>7</sup> (weapons or firearms) found upon the person arrested and deliver such weapons or firearms<sup>8</sup> to the sheriff or chief of police of the jurisdiction

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<sup>1</sup> Broward County Sheriff's Office, *Evidence Unit*, <https://www.sheriff.org/LE/Pages/Evidence-and-Property-Unit.aspx> (last visited Dec. 6, 2023). Nassau County Sheriff's Office, *Property & Evidence*, <https://nassauso.com/administrative-services/property-evidence/> (last visited Dec. 6, 2023).

<sup>2</sup> *Id.* Personal property includes items such as a wallet, keys, or watch. All other non-evidentiary items seized from a person at the time of arrest, such as weapons or firearms, are generally held by a law enforcement agency as safekeeping property.

<sup>3</sup> Section 790.08, F.S., does not apply to a municipality in a county that has home rule under the Florida Constitution. S. 790.08(7), F.S. These counties include Duval, Monroe, Miami-Dade, and Hillsborough. 95-82 Fla. Op. Att'y Gen. (1995).

<sup>4</sup> Section 790.07, F.S., prohibits a person from displaying, using, threatening, or attempting to use:

- Any weapon or electric weapon or device or carrying a concealed weapon while committing or attempting to commit any felony or while under indictment; or
- A firearm while committing or attempting to commit any felony.

A violation involving a weapon or electric weapon or device is a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084. A violation involving a firearm is a second degree felony, punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084.

<sup>5</sup> "Weapon" means any dirk, knife, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon except a firearm or a common pocketknife, plastic knife, or blunt-bladed table knife. S. 790.001(20), F.S.

<sup>6</sup> "Electric weapon or device" means any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury. S. 790.001(7), F.S.

<sup>7</sup> The term "arms" is not defined in ch. 790, F.S., or in s. 790.07, F.S. However, from the context of s. 790.07, F.S., the term "arms" appears to mean a firearm. See *infra*, note 4. For purposes of this analysis, the terms "arms" and "firearms" are interchangeable.

<sup>8</sup> "Firearm" means any weapon, including a starter gun, which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffle r or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime. S. 790.001(9), F.S.

in which the arrest was made.<sup>9</sup> The sheriff or the chief of police must retain such weapons or firearms until after the trial of the person arrested.<sup>10</sup>

## Return of Seized Property Held by a Law Enforcement Agency

### *Weapons or Firearms Held as Evidence*

Section 790.08(1), F.S., requires a sheriff or chief of police to retain a seized weapon or firearm until after the trial of the person arrested.<sup>11</sup> If a person arrested is convicted of violating s. 790.07, F.S., a similar offense under any municipal ordinance, or any other offense involving the *use or attempted use* of a weapon or firearm, such weapon or firearm is forfeited to the state.<sup>12</sup> If a person arrested is acquitted of such an offense or the charges against a person are dismissed, the weapon or firearm seized must be returned to the person.<sup>13</sup> If a person fails to claim a weapon or firearm within 60 days of his or her acquittal or the dismissal of charges, the weapon or firearm must be delivered to the sheriff of the county in which the person was arrested.<sup>14</sup> If a person fails to claim a weapon or firearm within six months from the date it was delivered to the sheriff, such weapon or firearm is forfeited to the state.<sup>15</sup>

The forfeiture and return requirements in s. 790.08(2) and (3), F.S., do *not* apply if a person is arrested for committing an offense in which a weapon or firearm is seized and held as evidence but was not *used* in committing a felony (e.g. unlawfully carrying a concealed firearm in violation of s. 790.01(3), F.S.)<sup>16</sup> In such circumstances, the return of such a weapon or firearm is governed by s. 705.105, F.S., which generally provides for the disposition of unclaimed evidence following the conclusion of a criminal proceeding.<sup>17</sup>

### *Weapons or Firearms Held as Safekeeping Property*

Similarly, the forfeiture and return requirements in s. 790.08(2) and (3), F.S., do *not* apply to a weapon or firearm seized incident to an arrest that is held as safekeeping property and not needed as evidence since the weapon or firearm was neither *used* in committing a felony nor related to the crime for which the person was arrested (e.g. a person is arrested for driving with a suspended license and is lawfully carrying a concealed firearm at the time of his or her arrest). Because there is currently no statute providing for the return of a weapon or firearm held as safekeeping property, the specific procedures for returning such property may vary by jurisdiction.<sup>18</sup> Certain general procedures, such as requiring a person to produce photo identification and complete a background check prior to the release of a firearm, appear universal.<sup>19</sup> However, the specifics of such procedures, such as the proof of ownership required to claim property, the time required to complete a background check, and the need for judicial

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<sup>9</sup> S. 790.08(1), F.S.

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

<sup>11</sup> It appears, in practice, that the requirement in s. 790.08(1), F.S., to retain a weapon or firearm until after the trial of the person arrested applies only to a weapon or firearm that is seized as evidence. See *infra* note 21.

<sup>12</sup> S. 790.08(2), F.S.

<sup>13</sup> S. 790.08(3), F.S.

<sup>14</sup> If the weapon, electric weapon or device, or firearm was delivered to the sheriff immediately following a person's arrest, no transfer is necessary. *Id.*

<sup>15</sup> S. 790.08(5), F.S.

<sup>16</sup> See *Darman v. State*, 774 So. 2d 798 (Fla. 4th DCA 2000).

<sup>17</sup> Under s. 705.105, F.S., title to unclaimed evidence or unclaimed tangible personal property lawfully seized pursuant to a lawful investigation in the custody of the court or clerk of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency vests permanently in the law enforcement agency 60 days after the conclusion of the proceeding. S. 705.105(1), F.S.

<sup>18</sup> Brevard County Sheriff's Office, *Evidence Unit*, <https://www.brevardsheriff.com/home/commands-services/administrative-services-command/evidence-unit/> (last visited Dec. 6, 2023). Broward County Sheriff's Office, *Evidence Unit*, <https://www.sheriff.org/LE/Pages/Evidence-and-Property-Unit.aspx> (last visited Dec. 6, 2023). Escambia County Sheriff's Office, *Evidence Unit*, <https://www.escambiaso.com/departments/specialized-units/evidence-unit/> (last visited Dec. 6, 2023). Hillsborough County Sheriff's Office, *Return of Property*, <https://www.teamhcs.com/Section/d8e5482d-66a8-44bf-9ac6-8913eca8da4c/Property-and-Evidence#:~:text=Return%20of%20Property&text=You%20must%20bring%20the%20original,be%20presented%20to%20claim%20property> (last visited Dec. 6, 2023). Nassau County Sheriff's Office, *Property & Evidence*, <https://nassauso.com/administrative-services/property-evidence/> (last visited Dec. 6, 2023). Pinellas County Sheriff's Office, *Property & Evidence*, <https://pcsoweb.com/property-evidence> (last visited Dec. 6, 2023).

<sup>19</sup> *Id.*

approval prior to releasing a weapon or firearm, may vary.<sup>20</sup> The lack of any standardized procedures across jurisdictions for returning a weapon or firearm that is held as safekeeping property may cause confusion and delay in returning a weapon or firearm to its owner. In addition, in those jurisdictions that require a court order to release a weapon or firearm, the owner of the weapon or firearm may incur the added expense of hiring an attorney to file a motion for the return of his or her property with the court.

### Effect of Proposed Changes

HB 485 amends s. 790.08, F.S., to delete the requirement for a sheriff or chief of police to retain custody of all weapons or firearms seized incident to an arrest until after the trial of the person arrested. Instead, the bill requires a law enforcement agency to return any weapons or firearms that are taken from a person following an arrest, but that are *not* seized as evidence, upon request of the person arrested if he or she:

- Has been released from detention;
- Provides a form of government-issued photographic identification; and
- If requesting the return of a firearm, successfully completes a criminal history background check confirming the person is not prohibited from possessing a firearm under state or federal law, including not having any prohibition arising from an injunction, a risk protection order, or any other court order prohibiting the person from possessing a firearm.

The bill authorizes a sheriff or chief of police to develop reasonable procedures to ensure the timely return of weapons or firearms which are not inconsistent with the bill. The bill prohibits a sheriff or chief of police from requiring a court order to release weapons or firearms that are not seized as evidence in a criminal proceeding unless there are competing claims of ownership of such weapons or firearms.

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

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 790.08, F.S., relating to taking possession of weapons and arms; reports; disposition; custody.

**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:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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<sup>20</sup> *Id.*

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the 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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to the return of weapons and arms  
 3           following an arrest; amending s. 790.08, F.S.;  
 4           requiring weapons, electric weapons or devices, or  
 5           arms taken from a person pursuant to an arrest that  
 6           are not seized as evidence to be returned to the  
 7           person from whom they were taken if specified  
 8           conditions are met; authorizing a sheriff or chief of  
 9           police to develop procedures to ensure the timely  
 10          return of certain weapons, electric weapons or  
 11          devices, or arms; prohibiting a sheriff or chief of  
 12          police from requiring a court order before releasing  
 13          certain weapons, electric weapons or devices, or arms;  
 14          providing an exception; providing an effective date.

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

17  
 18           Section 1. Subsection (1) of section 790.08, Florida  
 19 Statutes, is amended to read:

20           790.08 Taking possession of weapons and arms; reports;  
 21 disposition; custody.—

22           (1) (a) Every officer making an arrest under s. 790.07, or  
 23 under any other law or municipal ordinance within the state,  
 24 shall take possession of any weapons, electric weapons or  
 25 devices, or arms mentioned in s. 790.07 found upon the person

26 arrested and deliver them to the sheriff of the county, or the  
27 chief of police of the municipality wherein the arrest is made,  
28 ~~who shall retain the same until after the trial of the person~~  
29 ~~arrested.~~

30 (b) Any weapons, electric weapons or devices, or arms that  
31 are taken from a person under paragraph (a) that are not seized  
32 as evidence must be returned upon request to the person from  
33 whom the weapons, electric weapons or devices, or arms were  
34 taken if the person meets all of the following criteria:

35 1. The person has been released from detention.

36 2. The person provides a form of government-issued  
37 photographic identification.

38 3. If requesting the return of a firearm, a completed  
39 criminal history background check confirms the person is not  
40 prohibited from possessing a firearm under state or federal law,  
41 including not having any prohibition arising from an injunction,  
42 a risk protection order, or any other court order prohibiting  
43 the person from possessing a firearm.

44 (c) The sheriff or chief of police may develop reasonable  
45 procedures to ensure the timely return of weapons, electric  
46 weapons or devices, or arms which are not inconsistent with this  
47 subsection.

48 (d) The sheriff or chief of police may not require a court  
49 order to release weapons, electric weapons or devices, or arms  
50 that are not seized as evidence in a criminal proceeding unless

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51 | there are competing claims of ownership of such weapons,  
52 | electric weapons or devices, or arms.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Brackett offered the following:

**Amendment (with title amendment)**

Remove lines 32-52 and insert:

6 as evidence or seized and subject to forfeiture under ss.  
 7 932.701-932.7062, must be returned upon request to the person  
 8 from whom the weapons, electric weapons or devices, or arms were  
 9 taken within 30 days after such request is made if he or she  
 10 meets all of the following criteria:

11 1. The person has been released from detention.

12 2. The person provides a form of government-issued  
13 photographic identification.

14 3. If requesting the return of a firearm, a completed  
15 criminal history background check confirms the person is not  
16 prohibited from possessing a firearm under state or federal law,

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17 including not having any prohibition arising from an injunction,  
18 a risk protection order, or any other court order prohibiting  
19 the person from possessing a firearm.

20 (c) The sheriff or chief of police may develop reasonable  
21 procedures to ensure the timely return of weapons, electric  
22 weapons or devices, or arms which are not inconsistent with this  
23 subsection.

24 (d) The sheriff or chief of police may not require a court  
25 order to release weapons, electric weapons or devices, or arms  
26 that are not seized as evidence in a criminal proceeding unless  
27 there are competing claims of ownership of such weapons,  
28 electric weapons or devices, or arms.

29 Section 2. Subsection (3) of section 933.14, Florida  
30 Statutes, is amended to read:

31 933.14 Return of property taken under search warrant.-

32 (3) No pistol or firearm taken by any officer with a  
33 search warrant ~~or without a search warrant upon a view by the~~  
34 ~~officer of a breach of the peace~~ shall be returned except  
35 pursuant to an order of a trial court judge.

36  
37 -----

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

39 Remove lines 6-14 and insert:  
40 are not seized as evidence or seized and subject to  
41 forfeiture to be returned to the person within a

Amendment No. 1

42 | certain timeframe if specified conditions are met;  
43 | authorizing a sheriff or chief of police to develop  
44 | procedures to ensure the timely return of certain  
45 | weapons, electric weapons or devices, or arms;  
46 | prohibiting a sheriff or chief of police from  
47 | requiring a court order before releasing certain  
48 | weapons, electric weapons or devices, or arms;  
49 | providing an exception; amending s. 933.14, F.S.;  
50 | deleting a requirement for an order of a trial court  
51 | judge to return a pistol or firearm taken by an  
52 | officer following a breach of the peace; providing an  
53 | effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 607 Retention of Sexual Offense Evidence

**SPONSOR(S):** Criminal Justice Subcommittee, Plakon and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee	13 Y, 0 N	Saag	Keith
3) Judiciary Committee		Leshko	Kramer

### SUMMARY ANALYSIS

A sexual assault kit (SAK), sometimes referred to as a “rape kit,” is a medical kit used to collect evidence from a sexual assault victim’s body and clothing during a forensic physical examination. SAKs collected from reporting victims are submitted by law enforcement agencies (LEA) to crime laboratories for DNA analysis and resulting DNA profiles are uploaded to local, state, and federal DNA databases to determine whether a match identifying the perpetrator can be made.

Under s. 943.326, F.S., a SAK collected from a reporting victim and received by a LEA must be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is received by a LEA and a report of the sexual offense has been made to the LEA; or within 30 days after the alleged victim or his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or is deceased, requests the evidence to be tested. A Florida Department of Law Enforcement (FDLE) or regional county laboratory may only process SAK evidence if there is an accompanying law enforcement report. SAKs from non-reporting victims, those who choose not to report an offense to law enforcement are not tested unless the victim later reports the offense or requests such testing. SAK testing must be completed no later than 120 days after the SAK is submitted to the statewide criminal analysis laboratory system. A SAK must be retained in a secure, environmentally safe manner until the agency prosecuting the associated offense approves the kit’s destruction. An alleged victim, or his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or deceased, must be informed of the purpose of submitting evidence for testing and of the right to request testing.

While s. 943.326, F.S., provides specific guidance controlling the retention period and destruction of SAKs collected from reporting victims, there is no clear guidance on retention or destruction procedures for SAKs collected from non-reporting victims.

CS/HB 607 amends s. 943.326, F.S., to require a SAK collected from a non-reporting victim to be retained for a minimum of eight years from the collection date by the medical facility that collected the kit, a certified rape crisis center with appropriate storage capabilities, or a LEA. The bill requires a SAK collected from a non-reporting victim to be stored anonymously, in a secure, environmentally safe manner, and with a documented chain of custody. Under the bill, if a non-reporting victim later makes a report to law enforcement or requests, or has a request made on his or her behalf by an authorized representative, to have his or her SAK tested, the kit must then be retained until the prosecuting agency authorizes its destruction. Additionally, the bill requires DNA evidence not contained in a SAK and collected from a reporting victim to be retained until the prosecuting agency authorizes its destruction.

The bill may have an indeterminate, but likely insignificant, fiscal impact on state, local, or private entities required to retain SAKs collected from non-reporting victims based on the costs associated with storing the kits in a manner consistent with the requirements of the bill.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Forensic Physical Exams and Sexual Assault Kits

In Florida, a victim of certain sexual offenses may have a forensic physical examination conducted by a healthcare provider without cost to the victim, or the victim's parent or guardian if the victim is a minor, regardless of whether the victim participates in the criminal justice system or cooperates with law enforcement.<sup>1</sup> A sexual assault kit (SAK), sometimes referred to as a "rape kit," is a medical kit used to collect evidence from a sexual assault victim's body and clothing during a forensic physical examination. A SAK typically contains standardized items including swabs, tubes, glass slides, containers, and plastic bags used to collect and preserve bodily fluids, hair, and fibers that may contain the perpetrator's DNA or other forensic evidence.<sup>2</sup> SAKs collected from reporting victims are submitted by law enforcement agencies to crime laboratories for DNA analysis and resulting DNA profiles are uploaded to local, state, and federal DNA databases to determine whether a match identifying the perpetrator can be made.

##### *Department of Legal Affairs SAK Protocols*

According to protocols developed by the Florida Department of Legal Affairs (DLA), healthcare providers conducting a forensic physical examination should complete a Sexual Assault Kit Form for Healthcare Providers (SAK form).<sup>3</sup> The SAK form includes an exam consent form, applicable to both reporting and non-reporting victims, that requires the victim to indicate that he or she consents to a forensic physical examination for the preservation of evidence of a sexual offense. If a victim chooses to make a report to law enforcement, a separate form authorizing the release of collected evidence and report to law enforcement must be signed by the victim. All consent forms must be retained by the rape crisis center<sup>4</sup> or medical facility conducting the examination.<sup>5</sup>

A non-reporting victim is one who does not authorize reporting an offense to law enforcement. The medical provider still carries out the complete forensic and medical examination and the SAK evidence is preserved and maintained in a manner that protects the victim's identity. If the victim later chooses to file a report with law enforcement, he or she must sign a release authorizing the medical provider to make his or her identity known and the forensic examination record available to the law enforcement agency.<sup>6</sup>

Section 39.201(1) and (5), F.S., however, requires any person that knows, or has reasonable cause to suspect, that a child has been sexually abused to make a report to the central abuse hotline. Within 48 hours after the central abuse hotline receives such a report the Department of Children and Families must conduct an assessment and send a written report to the appropriate county sheriff's office. As such, a child can never be classified as a non-reporting victim.

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<sup>1</sup> S. 960.28, F.S. (The Crime Victims' Services Office of the Department of Legal Affairs pays for medical expenses connected with an initial forensic physical examination of a victim of sexual battery or a lewd or lascivious offense).

<sup>2</sup> The White House, Office of the Press Secretary, *Fact Sheet: Investments to Reduce The National Rape Kit Backlog And Combat Violence Against Women*, (Mar. 16, 2015) <https://obamawhitehouse.archives.gov/the-press-office/2015/03/16/fact-sheet-investments-reduce-national-rape-kit-backlog-and-combat-viole> (last visited Feb. 19, 2024).

<sup>3</sup> Florida Department of Legal Affairs (DLA), Division of Victim Services and Criminal Justice Programs, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, (Apr. 2015), pp. 12-13, [https://myfloridalegal.com/webfiles.nsf/WF/JFAO-77TKCT/\\$file/ACSP.pdf](https://myfloridalegal.com/webfiles.nsf/WF/JFAO-77TKCT/$file/ACSP.pdf) (last visited Feb. 19, 2024).

<sup>4</sup> A "rape crisis center" is any public or private agency that offers assistance to victims of sexual assault or sexual battery and their families. S. 90.5035(1)(a), F.S.

<sup>5</sup> DLA, *supra* at note 3.

<sup>6</sup> Florida Department of Law Enforcement (FDLE), *Sexual Assault Kit Submissions Frequently Asked Questions*, p. 1, [https://www.fdle.state.fl.us/Forensics/Documents/Sexual-Assault-Kit-FAQs-for-LEA\\_Final.aspx](https://www.fdle.state.fl.us/Forensics/Documents/Sexual-Assault-Kit-FAQs-for-LEA_Final.aspx) (last visited Feb. 19, 2024).

DLA protocols provide instructions for sealing the SAK once a victim's exam is complete and require the SAK to stay with the examiner or to be secured in a locked area with limited access and proper chain of custody procedures until it is transferred to the proper law enforcement agency. Additionally, DLA protocols require the examiner to check the local area guidelines for storage procedures for non-reporting kits. However, DLA recommends a law enforcement agency to be utilized for long-term evidence storage.<sup>7</sup>

### SAK Submission and Testing

Under s. 943.326, F.S.:

- A SAK from a reporting victim, received by an agency must be submitted to the statewide criminal analysis laboratory system<sup>8</sup> for forensic testing within 30 days after the evidence is:
  - Received by a law enforcement agency and a report of the sexual offense has been made to the law enforcement agency; or
  - Within 30 days after the alleged victim or his or her parent, guardian, or legal representative, if the alleged victim is a minor, or the victim's personal representative if the alleged victim is deceased, requests the evidence to be tested.
- A Florida Department of Law Enforcement (FDLE) or regional county laboratory may only process evidence from a SAK if there is an accompanying law enforcement report. SAKs collected from non-reporting victims<sup>9</sup> are not tested unless an alleged victim later reports the offense or requests such testing.
- SAK testing must be completed no later than 120 days after the SAK is submitted to the statewide criminal analysis laboratory system.<sup>10</sup>
- A SAK must be retained in a secure, environmentally safe manner until the agency prosecuting the associated offense approves the kit's destruction.
- An alleged victim, or his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or deceased, must be informed by either a medical provider conducting a forensic physical examination for the purpose of collecting a SAK, or by a law enforcement agency that collects other DNA evidence associated with the sexual offense if no SAK is collected of the purpose of submitting evidence for testing and of the right to request testing.<sup>11</sup>

While s. 943.326, F.S., currently provides specific guidance controlling the retention period and destruction of SAKs collected from reporting victims, there is no clear guidance on retention or destruction procedures for SAKs collected from non-reporting victims. Accordingly, under current practice, a kit collected from a non-reporting victim is destroyed at an undefined interval or, in some cases, retained indefinitely, as it never reaches the purview of any prosecuting agency.

### *Florida Track-Kit*

Florida Track-Kit, established by FDLE pursuant to s. 943.326, F.S., is a statewide database that allows law enforcement, an alleged victim, and an alleged victim's parent, guardian, or legal representative, if the alleged victim is a minor, or an alleged victim's personal representative if the alleged victim is deceased, to track the location, processing status, and storage of each SAK collected. The database tracks a SAK's status throughout the criminal justice process, including the kit's initial collection at a medical facility, storage, analysis, and eventual destruction. Law enforcement agencies, medical facilities, crime laboratories, and any other facility that collects, receives, maintains, stores, or preserves SAKs are required to participate in the database.

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<sup>7</sup> DLA, *supra* at note 3, pp. 20-21.

<sup>8</sup> Generally, law enforcement agencies in Florida submit SAKs for DNA testing to the statewide criminal analysis laboratory system, which consists of six laboratories operated by FDLE in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five regional county laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties. S. 943.32, F.S.

<sup>9</sup> According to FDLE protocols, testing a non-reporting victim's SAK would violate the confidentiality and privacy of the victim's health records under the Health Insurance Portability and Accountability Act. FDLE, *supra* at note 7.

<sup>10</sup> The statutory timeline is satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the SAK in an attempt to identify the foreign DNA attributable to a suspect. S. 943.326(4)(b), F.S.

<sup>11</sup> S. 943.326, F.S.

FDLE is required to notify every alleged victim, and his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or deceased, that the database exists and to provide such individuals with instructions on how to use the database. Additionally, an alleged victim or his or her parent, guardian, or legal or personal representative, if the alleged victim is a minor or deceased, must be notified if the victim's SAK testing results in a DNA match, but such notification must not release any genetic or other identifying information about the match. The required notification may only be delayed up to 180 days after the date the match is made, if law enforcement determines notification would negatively affect an investigation.<sup>12</sup>

### Time Limitations for Prosecution

The statute of limitations (SOL) determines the timeframe in which a criminal prosecution must be initiated.<sup>13</sup> The SOL in effect at the time a crime is committed controls.<sup>14</sup> In general, time is calculated from the day after a person commits an offense, and the filing of a charging document such as an indictment or information initiates the prosecution for the purpose of satisfying the time limitations.<sup>15</sup> Regardless of whether a charging document is filed, the time limitation does not run during any time an offender is continuously absent from the state or otherwise undiscoverable because he or she lacks a reasonably ascertainable home address or place of employment; however, an extension under this scenario may not exceed the normal time limitation by more than three years.<sup>16</sup>

Capital felonies,<sup>17</sup> life felonies,<sup>18</sup> and felonies resulting in a death are not subject to time constraints, and the state may bring charges at any time.<sup>19</sup> The standard time limitations for other crimes are:<sup>20</sup>

- Four years for a first-degree felony.
- Three years for a second or third-degree felony.
- Two years for a first-degree misdemeanor.
- One year for a second-degree misdemeanor.

### Exceptions to Standard SOL for Sexual Battery Offenses

Exceptions to the standard SOL apply to certain crimes and circumstances. In particular, Florida extends or removes time limitations or changes the date on which calculation of the SOL begins<sup>21</sup> for specified sexual battery offenses.<sup>22</sup>

Under s. 775.15, F.S., the following SOL apply to sexual battery prosecutions:

- No SOL, and prosecution may be commenced at any time, for a specified:
  - Sexual battery involving a victim under 16;<sup>23</sup>
  - Sexual battery involving a victim under 18;<sup>24</sup>
  - First-degree felony sexual battery involving a victim under 18;<sup>25</sup> and
  - First or second-degree felony sexual battery involving a victim 16 or older but less than 18 years of age,<sup>26</sup> if the offense is reported within 72 hours of commission.<sup>27</sup>

---

<sup>12</sup> S. 943.326(4)(c-e), F.S.

<sup>13</sup> S. 775.15, F.S.

<sup>14</sup> *Beyer v. State*, 76 So. 3d 1132, 1135 (Fla. 4th DCA 2012).

<sup>15</sup> S. 775.15(3-4), F.S.

<sup>16</sup> S. 775.15(5), F.S.

<sup>17</sup> S. 775.082, F.S.

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

<sup>19</sup> S. 775.15(1), F.S.

<sup>20</sup> S. 775.15(2), F.S.

<sup>21</sup> See s. 775.15, F.S.

<sup>22</sup> An extension of a particular crime's SOL does not violate the ex post facto clause of the Florida Constitution if the extension takes effect before prosecution of an offense is barred by the old SOL and the new SOL clearly indicates it applies to cases pending upon its effective date. Art. I, s.10, Fla. Const.; *Andrews v. State*, 392 So. 2d 270, 271 (Fla. 2d DCA 1980).

<sup>23</sup> Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2010. S. 775.15(13)(c), F.S.

<sup>24</sup> Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2020. S. 775.15(20), F.S.

<sup>25</sup> Prosecution must not have been barred by s. 775.15(2), F.S., on or before October 1, 2003. S. 775.15(13)(b), F.S.

<sup>26</sup> If a victim is less than 18 years of age, prosecution of the offense must not have been barred by s. 775.15(2), F.S., on or before December 31, 1984. S. 775.15(13)(a), F.S.

<sup>27</sup> S. 775.15(13)(a) and (14)(a), F.S.



- If not reported within 72 hours of commission, prosecution of a specified first or second-degree felony sexual battery involving a victim 16 or older must be commenced within eight years.<sup>28</sup>
- However, if a victim is under 18 at the time any of the above sexual battery offenses are committed, the applicable SOL does not begin to run until he or she turns 18 or the violation is reported to law enforcement or a governmental agency, whichever occurs earlier.<sup>29</sup>

### Effect of Proposed Changes

CS/HB 607 amends s. 943.326, F.S., to require a SAK collected from a non-reporting victim to be retained for a minimum of eight years from the collection date by the medical facility that collected the kit, a certified rape crisis center with appropriate storage capabilities, or a law enforcement agency. The bill requires a SAK collected from a non-reporting victim to be stored:

- Anonymously;
- In a secure, environmentally safe manner; and
- With a documented chain of custody.

Under the bill, if a non-reporting victim later makes a report to law enforcement or requests, or has a request made on his or her behalf by an authorized representative, to have his or her SAK tested, his or her kit must then be retained until the prosecuting agency authorizes its destruction.

Additionally, the bill requires DNA evidence not contained in a SAK and collected from a reporting victim to be retained until the prosecuting agency authorizes its destruction.

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

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 943.326, F.S., relating to DNA evidence collected in sexual offense investigations.

**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:

<sup>28</sup> Prosecution must not have been barred by s. 775.15(2), F.S., on or before July 1, 2015. S. 775.15(14)(b), F.S.

<sup>29</sup> S. 775.15(13)(a), F.S.

See Fiscal Comments.

**D. FISCAL COMMENTS:**

The bill may have an indeterminate, but likely insignificant, fiscal impact on medical facilities, rape crisis centers, and law enforcement agencies required to retain SAKs collected from non-reporting victims based on the costs associated with storing the kits for a minimum of eight years in a manner consistent with the requirements of the bill. FDLE reports that the number of kits required to be stored as a result of the changes imposed by the bill are not expected to require increased storage facilities or programs.<sup>30</sup>

**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 December 12, 2023, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that DNA evidence not contained in a SAK and collected from a reporting victim must be retained until the prosecuting agency authorizes its destruction.
- Clarified that if a non-reporting victim later makes a report to law enforcement or requests, or has a request made on his or her behalf by an authorized representative, to have his or her SAK tested, the kit must be retained until the prosecuting agency authorizes its destruction.
- Removed the requirement that a SAK collected from a non-reporting victim must be stored in such a manner that it will not be submitted for testing unless an appropriate request is made.
- Made technical changes.

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

---

<sup>30</sup> FDLE, Agency Analysis, p. 3 (June 27, 2023)(on file with the House Criminal Justice Subcommittee).

1                                   A bill to be entitled  
 2           An act relating to retention of sexual offense  
 3           evidence; amending s. 943.326, F.S.; establishing a  
 4           minimum timeframe for the retention of specified  
 5           sexual offense evidence; requiring specified protocols  
 6           for the storing of specified sexual offense evidence;  
 7           providing an effective date.

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

10  
 11           Section 1. Subsection (3) of section 943.326, Florida  
 12           Statutes, is amended, and subsection (1) of that section is  
 13           republished, to read:

14           943.326 DNA evidence collected in sexual offense forensic  
 15           physical examinations and investigations.-

16           (1) A sexual offense evidence kit, or other DNA evidence if  
 17           a kit is not collected, must be submitted to a member of the  
 18           statewide criminal analysis laboratory system under s. 943.32  
 19           for forensic testing within 30 days after:

20           (a) Receipt of the evidence by a law enforcement agency if  
 21           a report of the sexual offense is made to the law enforcement  
 22           agency; or

23           (b) A request to have the evidence tested is made to the  
 24           medical provider or the law enforcement agency by:

25           1. The alleged victim;

26           2. The alleged victim's parent, guardian, or legal  
27 representative, if the alleged victim is a minor; or

28           3. The alleged victim's personal representative, if the  
29 alleged victim is deceased.

30           (3) (a) Except as provided in paragraph (b) a collected  
31 sexual offense evidence kit, or other DNA evidence if a kit is  
32 not collected, collected from an alleged victim who reports a  
33 sexual offense to a law enforcement agency or who makes a  
34 request, or on whose behalf a request is made, for testing in  
35 compliance with paragraph (1)(b), must be retained in a secure,  
36 environmentally safe manner until the prosecuting agency has  
37 approved its destruction.

38           (b)1. A sexual offense evidence kit collected from a  
39 person who does not report a sexual offense to a law enforcement  
40 agency during the forensic physical examination and who does not  
41 make a request, or have a request made on his or her behalf, in  
42 compliance with paragraph (1)(b) must be retained for a minimum  
43 of 8 years from the collection date by the medical facility that  
44 collected the kit, a certified rape crisis center with  
45 appropriate storage capabilities, or a law enforcement agency. A  
46 sexual offense evidence kit retained pursuant to this  
47 subparagraph must be stored anonymously, in a secure,  
48 environmentally safe manner, and with a documented chain of  
49 custody.

50           2. If, at any time following the initial retention of a

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51 sexual offense evidence kit pursuant to subparagraph (b)1., an  
52 alleged victim makes a report to a law enforcement agency or  
53 makes a request, or has a request made on his or her behalf, for  
54 testing in compliance with paragraph (1) (b), the kit must be  
55 retained as described in paragraph (3) (a).

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Plakon offered the following:

**Amendment (with title amendment)**

Remove lines 43-55 and insert:

6 of 50 years after the collection date. Within 30 days of  
 7 collecting such a kit, the medical facility or certified rape  
 8 crisis center that collected the kit must transfer the kit to  
 9 the department who must maintain the kit in compliance with this  
 10 subparagraph. A sexual offense evidence kit that is transferred  
 11 and retained pursuant to this subparagraph must be stored  
 12 anonymously, in a secure, environmentally safe manner, and with  
 13 a documented chain of custody.

14 2. If, at any time following the initial retention of a  
 15 sexual offense evidence kit pursuant to subparagraph (b)1., an  
 16 alleged victim makes a report to a law enforcement agency or

Amendment No. 1

17 makes a request, or has a request made on his or her behalf, for  
18 testing in compliance with paragraph (1) (b), the kit must be  
19 retained as described in paragraph (3) (a) if the applicable time  
20 limitation under s. 775.15 has not run and prosecution of a  
21 criminal case may still be commenced. In circumstances in which  
22 a criminal case may not be commenced because the applicable time  
23 limitation under 775.15 has expired, the kit must be maintained  
24 in a secure, environmentally safe manner until the department  
25 has approved its destruction.

26  
27 -----

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

29 Remove lines 5-6 and insert:  
30 sexual offense evidence; requiring specified entities to  
31 transfer such evidence to the department within a specified time  
32 period; requiring the department to retain such evidence for the  
33 required time period; requiring specified protocols for the  
34 transferring and storing of specified sexual offense evidence;  
35 authorizing specified entities to approve destruction of such  
36 evidence in specified circumstances;





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for CS/HB 621 Property Rights  
**SPONSOR(S):** Judiciary Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 888

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Mathews	Kramer

**SUMMARY ANALYSIS**

It is well-established that the “right to exclude others” is a fundamental right of property ownership. In recent news, there has been an increasing prevalence of “squatters” unlawfully entering residential property and refusing to leave when asked. By refusing to leave, a squatter violates the property owner’s right to exclude and his or her freedom to enjoy the property as he or she desires.

PCS for CS/HB 621 creates s. 82.036, F.S., to create a limited process for the removal of unauthorized persons from residential real property. Under this new process, a property owner or his or her authorized agent may file a verified complaint with the sheriff in the county in which the property is located. Upon verification of the identity of the person filing the complaint and verification of the person’s right to possess the real property, the sheriff must serve notice to the unlawful occupants to immediately vacate the property. The PCS allows the sheriff to charge a fee for this service as well as a reasonable hourly rate if the property owner requests the sheriff’s assistance in keeping the peace while changing the locks and removing the unlawful occupant’s personal property from the residence.

The PCS provides immunity from liability to the sheriff for any loss, destruction, or damage to property. Further, the PCS provides the lawful property owner immunity from liability for any loss, destruction, or damage to personal property, unless the removal was wrongful. The PCS creates a civil cause of action for wrongful removal and authorizes a wrongfully removed party to collect damages, court costs, and fees, where appropriate.

The PCS creates the following crimes related to the real property:

- Unlawfully detaining a residential dwelling and intentionally causing at least \$1,000 in damage to such dwelling is a second-degree felony.
- The use of false documents purporting to be a valid lease or deed is a first-degree misdemeanor.
- The fraudulent listing, sale, or lease of a residential property without possessing an ownership right to or leasehold interest in the property is a first-degree felony.

The PCS may have an insignificant fiscal impact on local governments due to the increase in workload for law enforcement. However, the costs will likely be covered by the fee the sheriff is authorized to collect for such services. The PCS’s new criminal penalties may also have an impact on jail or prison beds.

The PCS has an effective date of July 1, 2024.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

A property owner seeking a civil court order for removal of an unlawful occupant from the owner's property may file an action for possession in county or civil court. If the owner prevails in his or her case, the clerk of court will issue a writ of possession to the Sheriff commanding the Sheriff to return possession of the property to the owner. Without an order from the court, law enforcement is not necessarily required to remove unwanted persons from an owner's property.

Further, it is well-established that the "right to exclude others" is a universally held fundamental right of property ownership.<sup>1</sup> In recent news, there has been an increasing prevalence of "squatters" unlawfully entering residential property and refusing to leave when asked. By refusing to leave, a squatter violates the property owner's right to exclude and his or her freedom to enjoy the property as he or she desires.<sup>2</sup>

##### Actions for Possession

Property owners possess three separate, yet somewhat overlapping, judicial remedies for removing an unwanted guest from their home, depending on the applicable circumstances.

##### *Eviction*

Part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act" (FRLATA), governs the relationship between landlords and tenants under a residential lease agreement. A rental agreement includes any written or oral agreement regarding the duration and conditions of a tenant's occupation of a dwelling unit.<sup>3</sup> Section 83.57, F.S., provides that a tenancy without a specific term may be terminated upon written notice of either party. The amount of notice required may range from 7 to 60 days.<sup>4</sup> A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated by filing an action for possession.<sup>5</sup> The FRLATA may apply to situations in which an invited guest made some minor contributions for the purchase of household goods or the payment of household expenses while residing in the property with the consent of the owner if a court decides that such an arrangement is a residential tenancy based on an agreement to pay "rent" in exchange for occupancy. However, if the court determines that possession is not based on residential tenancy (a landlord-tenant relationship), eviction is not the proper remedy and procedures under FRLATA are not available.<sup>6</sup>

##### *Unlawful Detainer*

An unlawful detainer action can be filed to remove an unwanted guest who occupied residential property with the consent of the owner but who has refused to surrender possession of the property upon the expiration or revocation of the property owner's consent.<sup>7</sup> In such situation, the person

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<sup>1</sup> Cf. *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021).

<sup>2</sup> See generally Jonathan Turley, *Fairly Big Problem: Squatters Invade Homes and Refuse to Leave. How is This Legal?*, USA Today (July 3, 2023), <https://www.usatoday.com/story/opinion/2023/07/03/squatters-rights-leave-homeowners-forgotten/70364321007/> (last visited Feb. 17, 2024).

<sup>3</sup> S. 83.43(12), F.S. ("A rental agreement" means any written ... or oral agreement for a duration of less than 1 year, providing for use and occupancy of premises.")

<sup>4</sup> S. 83.57, F.S.

<sup>5</sup> S. 83.59, F.S.

<sup>6</sup> *Grimm v. Huckabee*, 891 So. 2d 608 (Fla. 1st DCA 2005).

<sup>7</sup> S. 82.01(4), F.S.

unlawfully detaining the property ordinarily is not a tenant and claims no other right or interest in the property.

### *Ejectment*

An ejectment action can be filed to eject an unwanted guest who once may have had permission to live upon the property, but subsequently claimed that he or she had a legal right to be there and refused to leave when asked to do so by the property owner. To prevail in an ejectment action, the plaintiff must prove that he or she has good title to the property and has been deprived of its possession by the unwanted guest.<sup>8</sup>

The actions for eviction, unlawful detainer, and ejectment are similar, but a number of the respective pleading requirements differ, as may the forum in which the property owner is required to file the appropriate complaint. An eviction or unlawful detainer action must be filed in county court<sup>9</sup> and is entitled to the summary procedure of s. 51.011, F.S., which provides that a defendant must answer the action within 5 days.<sup>10</sup> Thus, an action for possession based upon eviction or unlawful detainer may only take several weeks before entry of a judgment. Ejectment actions, however, are subject to the exclusive original jurisdiction of the circuit court<sup>11</sup> and are governed by the Florida Rules of Civil Procedure, which may result in a longer court process before a property owner may obtain a judgment for possession.

### Statutory Remedy for Removal of a Transient Occupant

The term “transient” describes something that is temporary, impermanent, or passing; accordingly, a transient is understood to mean a person whose presence is temporary or fleeting.<sup>12</sup> Pursuant to s. 82.035(1), F.S., a “transient occupant” is a person whose residency in real property intended for residential use has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature.<sup>13</sup>

Pursuant to s. 82.035(4), F.S., an owner or person who is otherwise entitled to possession of real property has a cause of action for unlawful detainer against a transient occupant. However, if the court determines that the defendant is not a transient occupant, but rather is a tenant of the property, the petitioner must seek eviction to remove the defendant.<sup>14</sup>

Chapter 82, F.S., identifies several factors that may establish a person’s occupancy of residential property as transient, including a person who:

- Does not have an ownership interest, financial interest, or leasehold interest in the property entitling him or her to occupancy;
- Does not have any property utility subscriptions;
- Cannot produce documentation, correspondence, or identification cards sent or issued by a government agency which show that the person used the property address of record with the agency within the previous 12 months;
- Pays minimal or no rent for his or her stay at the property;
- Does not have a designated space of his or her own, such as a personal bedroom, at the property;
- Has minimal, if any belongings, at the property; and

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<sup>8</sup> S. 66.021, F.S.

<sup>9</sup> S. 34.011(2), F.S.

<sup>10</sup> Under the summary procedure of s. 51.011, F.S., all defenses of law or fact are required to be contained in the defendant’s answer which must be filed within five days after service of process of the plaintiff’s complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

<sup>11</sup> S. 26.012(2)(f), F.S.

<sup>12</sup> *Black’s Law Dictionary* 1637 (9th ed. 2009).

<sup>13</sup> S. 82.035(1), F.S.

<sup>14</sup> S. 82.035(4), F.S.

- Has an apparent permanent residence elsewhere.<sup>15</sup>

Although a transient occupant may have once been on the residential property legally, with permission by the property owner, the transient occupant may unlawfully detain residential property if he or she remains in occupancy after the owner has asked or directed the transient occupant to leave.<sup>16</sup> In the case of a transient occupant who unlawfully remains on residential property, current law authorizes law enforcement to direct the transient occupant to leave.<sup>17</sup> An owner of a residential property may present a sworn affidavit detailing the transient occupant's unlawful detainer of the property to a law enforcement officer.<sup>18</sup> The sworn affidavit must set forth facts to establish that the transient occupant remains unlawfully on the property.

Upon receipt of a sworn affidavit, a law enforcement officer may, but is not required to, direct the transient occupant to leave the property. A transient occupant who fails to comply with such direction from a law enforcement officer is considered to be trespassing on the property pursuant to s. 810.08, F.S.<sup>19</sup> Current law provides redress against the person who requested the removal for a party who is wrongfully removed from a property under the transient occupancy provisions of ch. 82, F.S.<sup>20</sup>

### Criminal Trespass

Section 810.08, F.S., provides that a person commits the criminal offense of trespass in a structure or conveyance if the person, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.<sup>21</sup> Generally, trespass is a second-degree misdemeanor; however, the severity of the offense increases in certain situations such as when a person is present in the structure at the time of the trespass. A trespass with a person present in the structure is a first degree misdemeanor.<sup>22</sup> Similarly, a trespass committed while the trespasser is armed with a firearm or a dangerous weapon constitutes a third-degree felony.<sup>23</sup>

Where a criminal trespass is occurring, a law enforcement officer arrests the trespasser and immediately restores the real property owner to possession of the real property, without cost. However, where the criminal trespass offense is not readily observable because the trespasser claims ownership or lease rights, a law enforcement officer may decline to arrest or remove the person from the property and view the dispute as a "civil matter." In that situation, the law enforcement officer may decide not to force the unwanted person to surrender possession of the property without a court order.

### Property Crimes

Florida criminalizes various behavior related to fraudulently obtaining or damaging property that a person does not own. Section 817.03, F.S., provides that any person who makes or causes to be made any false written statement relating to his or her financial condition, assets or liabilities, or relating to the financial condition, assets or liabilities of any firm or corporation in which such person has a financial interest, or for whom he or she is acting, with a fraudulent intent of obtaining credit, goods, money or other property, and by such false statement obtains credit, goods, money or other property, commits a first-degree misdemeanor.<sup>24</sup>

Further, section 806.13, F.S., provides criminal penalties for acts of criminal mischief. A person commits criminal mischief if he or she willfully and maliciously injures or damages real or personal

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<sup>15</sup> S. 82.035(1)(a), F.S.

<sup>16</sup> S. 82.035(2), F.S.

<sup>17</sup> S. 82.035(3), F.S.

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

<sup>19</sup> S. 82.035(3)(a), F.S.

<sup>20</sup> S. 82.035(3)(b), F.S.

<sup>21</sup> S. 810.08(1), F.S.

<sup>22</sup> S. 82.08(2), F.S.

<sup>23</sup> S. 82.08(2)(c), F.S.

<sup>24</sup> A first-degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

property belonging to another, and includes placing graffiti or doing other acts of vandalism. The severity of the crime and the penalties associated with criminal mischief vary depending on the amount of damage caused.

## **Effect of Proposed Changes**

PCS for CS/HB 621 creates s. 82.036, F.S., to provide a limited remedy to remove an unauthorized person from residential real property. The PCS provides a statement of Legislative findings which emphasizes that the right to exclude another person from entering a person's residential property, as well as the right to direct a person to leave one's own residential property, are two of the most important real property rights afforded to property owners. Further, the statement provides that current remedies available to an owner of residential real property to remove an unauthorized person are insufficient and fail to adequately protect the rights of the owner. The statement explains that the intent of the proposed law is to quickly restore possession of residential real property to the lawful owner without delay, while limiting the opportunity for criminal activity or retribution, which would cause additional harm to the property and the property owner.

### Immediate Removal of Unlawful Occupants of Residential Real Property

The PCS creates a mechanism by which a lawful property owner or his or her authorized agent may request the sheriff of the county in which the property is located to immediately remove an unauthorized person or persons from the residential real property. In order to utilize this limited alternative process, all of the following conditions must be met:

- The person requesting the removal of an unauthorized person is the property owner or the authorized agent of the property owner;
- The real property being occupied includes a residential dwelling;
- An unauthorized person or persons have unlawfully entered and continue to remain or reside on the property;
- The real property was not open to the public at the time the unauthorized person entered;
- The property owner has already directed the unauthorized person to leave the property;
- The unauthorized person is not a current or former tenant pursuant to a written or oral rental agreement authorized by the property owner;
- The unauthorized person is not an immediate family member of the property owner; and
- There is no pending litigation related to the real property between the owner and any known unauthorized person.

#### *Verified Complaint to Remove Persons Unlawfully Occupying Real Property*

If all of the above-mentioned conditions are met, the property owner or his or her agent must submit a verified Complaint to Remove Persons Unlawfully Occupying Residential Real Property to the sheriff of the county in which the property is located. The PCS provides the form for such verified complaint.

The complaint requires the owner or his or her authorized agent to attest under penalty of perjury that the required provisions for the immediate removal of the unauthorized person are satisfied. Further, the complaint requires the signor to acknowledge that such removal of an unauthorized person may result in a cause of action against the owner for any false statements made in the complaint or for wrongfully using this specific procedure to remove a person. As such, the owner agrees to risk liability for actual damages, statutory damages, penalties, costs, and reasonable attorney fees associated with a subsequent cause of action. The owner must also include a copy of his or her valid government-issued identification, or, if the signor is the authorized agent of the owner, must include documents evidencing his or her authority to act on the owner's behalf.

#### *Notice to Immediately Vacate*

Once the complaint has been received by the sheriff for the county in which the subject property is located, the sheriff must verify that the person who submitted the complaint is either the record owner of the real property or is the authorized agent of the owner, and that he or she appears entitled to the

specific relief of immediate removal and restoration of possession. If the sheriff verifies the identity of the owner or agent and it appears that such person is entitled to relief, the sheriff must, without delay, serve a notice to immediately vacate upon each unlawful occupant and put the owner in possession of the real property.

Under the PCS, service of such notice to immediately vacate may be accomplished via hand delivery or posting of the notice on the front door or entrance to the dwelling. The PCS also directs the sheriff to attempt to verify the identities of all persons occupying the dwelling and to document the same on the return of service. Further, the PCS authorizes the sheriff to arrest any person found in the dwelling for trespass, outstanding warrants, or any other applicable legal cause.

#### *Fees for Services by Sheriff*

The PCS authorizes the sheriff to receive the same fee for the service of the notice to immediately vacate as he or she would be entitled to for serving a writ of possession under s. 30.231, F.S., which is currently \$90.

Under the PCS, the property owner or his or her authorized agent may also request the sheriff to stand by to “keep the peace” while the owner changes the locks and removes any personal property left behind by the unlawful occupants to or near the property line for them to retrieve. If the owner or agent requests the sheriff to stand by as permitted, the sheriff is authorized to charge a reasonable hourly rate for his or her services.

Further, the sheriff is shielded from liability to the unlawful occupant or any other party for any loss, destruction, or damage of property. The PCS also provides for immunity from liability for the property owner or agent for any loss, destruction, or damage to the personal property of the unlawful occupant or other party. However, such immunity from liability is not allowed if the removal was wrongful.

#### *Cause of Action for Wrongful Removal*

The PCS creates a civil cause of action for the wrongful removal of a party under the provisions of the bill. If a person was wrongfully removed, he or she may be restored to possession of the real property and is eligible to recover:

- Actual costs of damages incurred;
- Statutory damages equal to three times the fair market rent of the dwelling;
- Court costs; and
- Reasonable attorney fees.

#### *Arrest for Other Crimes*

The provisions of the PCS do not limit the rights of a property owner or limit the authority of law enforcement to arrest an unlawful occupant for trespassing, vandalism, theft, or other criminal acts.

### Criminal Penalties

#### *Intentional Destruction of Residential Real Property*

The PCS creates a specific crime of criminal mischief under s. 806.13, F.S., for a person who unlawfully detains, occupies, or trespasses upon a residential dwelling and intentionally causes damage greater than \$1,000 in value. This crime is a second-degree felony, which is punishable by imprisonment of up to 15 years and a fine of up to \$10,000 and additional penalties if the person is a habitual offender as provided under s. 775.084, F.S.

#### *Providing False Documents to Detain Real Property*

Additionally, the PCS amends s. 817.03, F.S., to create a first-degree misdemeanor for the use of a false document with the intent to detain or remain upon the property. Under the bill, a person who, with

the intent to detain or remain on the property, knowingly and willfully presents to another person a false document purporting to be a valid lease, deed, or other document conveying rights to the property, commits a first-degree misdemeanor. A first-degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine.

### *Fraudulent Sale or Lease of Residential Real Property*

The PCS creates s. 817.0311, F.S., to provide for criminal penalties for the fraudulent sale or lease of residential real property. As such, a person who lists or advertises a residence for sale with the knowledge that the purported seller lacks legal title or authority to sell the property, commits a first-degree felony. Additionally, a person who rents or leases a property to another person with the knowledge that he or she has no ownership of or leasehold interest in the property, commits a first-degree felony. A first-degree felony is punishable by up to 30 years in prison and a \$10,000 fine.

#### Effective Date

The PCS has an effective date of July 1, 2024.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 82.036, F.S., relating to limited alternative remedy to remove unauthorized persons from residential real property.

**Section 2:** Amends s. 806.13, F.S., relating to criminal mischief; penalties; penalties for minor.

**Section 3:** Amends s. 817.03, F.S., relating to making false statement to obtain property or credit or to detain real property.

**Section 4:** Creates s. 817.0311, F.S., relating to fraudulent sale or lease of residential real property.

**Section 5:** 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:

The PCS may have an indeterminate fiscal impact to local governments based on the ability of the sheriff to collect a fee for service of notice and for services provided to stand by and keep the peace.

##### 2. Expenditures:

The PCS may have an indeterminate fiscal impact on local government expenditures due to an increase in workload for law enforcement related to the requirement to verify complaints and restore possession of real property to a lawful owner. However, this increase in expenditures will likely be covered by the fee the sheriff is authorized to charge under the PCS for such services.

See fiscal comments.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS may make the removal of an unlawful occupant easier for a property owner. As such, the bill may have a positive economic impact on the private sector based upon the quicker and more efficient removal of such unlawful occupants.

D. FISCAL COMMENTS:

The PCS may have an indeterminate positive impact on jail and prison beds due to the creation of new criminal offenses.

### 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:

The PCS neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES



1                                      A bill to be entitled  
 2                                      An act relating to property rights; creating s.  
 3                                      82.036, F.S.; providing legislative findings;  
 4                                      authorizing property owners or their authorized agents  
 5                                      to request assistance from the sheriff from where the  
 6                                      property is located for immediately removing  
 7                                      unauthorized occupants from a residential dwelling  
 8                                      under certain conditions; requiring such owners or  
 9                                      agents to submit a specified completed and verified  
 10                                     complaint to the sheriff of the county in which the  
 11                                     real property is located; specifying requirements for  
 12                                     the form of the complaint; requiring the sheriff to  
 13                                     verify the identity of the person submitting the  
 14                                     complaint; requiring the sheriff to hand deliver a  
 15                                     notice to immediately vacate to the unlawful occupant  
 16                                     or to post such notice in a specified manner and to  
 17                                     attempt to verify and note the identity of all  
 18                                     occupants; authorizing a sheriff to arrest an  
 19                                     unauthorized occupant for legal cause; providing that  
 20                                     sheriffs are entitled to a specified fee for service  
 21                                     of such notice; authorizing the owner or agent to  
 22                                     request that the sheriff stand by while the owner or  
 23                                     agent takes possession of the property; authorizing  
 24                                     the sheriff to charge a reasonable hourly rate;  
 25                                     providing that the sheriff is not liable to any party

26 for loss, destruction, or damage; providing that the  
 27 property owner or agent is not liable to any party for  
 28 the loss or destruction of, or damage to, personal  
 29 property unless it was wrongfully removed; providing  
 30 civil remedies; providing construction; amending s.  
 31 806.13, F.S.; providing criminal penalties for a  
 32 person who unlawfully detains, or occupies or  
 33 trespasses upon, a residential dwelling and who  
 34 intentionally damages the dwelling causing at least a  
 35 specified amount damages; amending s. 817.03, F.S.;  
 36 providing criminal penalties for any person who  
 37 knowingly and willfully presents a false document  
 38 purporting to be a valid lease agreement, deed, or  
 39 other instrument conveying real property rights;  
 40 creating s. 817.0311, F.S.; providing criminal  
 41 penalties for a person who lists or advertises for  
 42 sale, or rents or leases, residential real property  
 43 under certain circumstances; providing criminal  
 44 penalties; providing an effective date.

45  
 46 Be It Enacted by the Legislature of the State of Florida:

47  
 48 Section 1. Section 82.036, Florida Statutes, is created to  
 49 read:

50 82.036 Limited alternative remedy to remove unauthorized

51 persons from residential real property.-

52 (1) The Legislature finds that the right to exclude others  
 53 from entering, and the right to direct others to immediately  
 54 vacate, residential real property are the most important real  
 55 property rights. The Legislature further finds that existing  
 56 remedies regarding unauthorized persons who unlawfully remain on  
 57 residential real property fail to adequately protect the rights  
 58 of the property owner and fail to adequately discourage theft  
 59 and vandalism. The intent of this section is to quickly restore  
 60 possession of residential real property to the lawful owner of  
 61 the property when the property is being unlawfully occupied and  
 62 to thereby preserve property rights while limiting the  
 63 opportunity for criminal activity.

64 (2) A property owner or his or her authorized agent may  
 65 request from the sheriff of the county in which the property is  
 66 located the immediate removal of a person or persons unlawfully  
 67 occupying a residential dwelling pursuant to this section if all  
 68 of the following conditions are met:

69 (a) The requesting person is the property owner or  
 70 authorized agent of the property owner;

71 (b) The real property that is being occupied includes a  
 72 residential dwelling;

73 (c) An unauthorized person or persons have unlawfully  
 74 entered and remain or continue to reside on the property owner's  
 75 property;

76 (d) The real property was not open to members of the  
 77 public at the time the unauthorized person or persons entered;

78 (e) The property owner has directed the unauthorized  
 79 person to leave the property;

80 (f) The unauthorized person or persons are not current or  
 81 former tenants pursuant to a written or oral rental agreement  
 82 authorized by the property owner;

83 (g) The unauthorized person or persons are not immediate  
 84 family members of the property owner; and

85 (h) There is no pending litigation related to the real  
 86 property between the property owner and any known unauthorized  
 87 person.

88 (3) To request the immediate removal of an unlawful  
 89 occupant of a residential dwelling, the property owner or his or  
 90 her authorized agent must submit a complaint by presenting a  
 91 completed and verified Complaint to Remove Persons Unlawfully  
 92 Occupying Residential Real Property to the sheriff of the county  
 93 in which the real property is located. The submitted complaint  
 94 must be in substantially the following form:

95  
 96 COMPLAINT TO REMOVE PERSONS UNLAWFULLY OCCUPYING  
 97 RESIDENTIAL REAL PROPERTY

98  
 99 I, the owner or authorized agent of the owner of the real  
 100 property located at ... .., declare under the penalty of

101 perjury that (initial each box):

102 1. .... I am the owner of the real property or the  
 103 authorized agent of the owner of the real property.

104 2. .... I purchased the property on .....

105 3. .... The real property is a residential dwelling.

106 4. .... An unauthorized person or persons have unlawfully  
 107 entered and are remaining or residing unlawfully on the real  
 108 property.

109 5. .... The real property was not open to members of the  
 110 public at the time the unauthorized person or persons entered.

111 6. .... I have directed the unauthorized person or persons  
 112 to leave the real property, but they have not done so.

113 7. .... The person or persons are not current or former  
 114 tenants pursuant to any valid lease authorized by the property  
 115 owner, and any lease that may be produced by an occupant is  
 116 fraudulent.

117 8. .... The unauthorized person or persons sought to be  
 118 removed are not an owner or a co-owner of the property and have  
 119 not been listed on the title to the property unless the person  
 120 or persons have engaged in title fraud.

121 9. .... The unauthorized person or persons are not  
 122 immediate family members of the property owner.

123 10. .... There is no litigation related to the real  
 124 property pending between the property owner and any person  
 125 sought to be removed.

126 11. .... I understand that a person or persons removed  
 127 from the property pursuant to this procedure may bring a cause  
 128 of action against me for any false statements made in this  
 129 complaint, or for wrongfully using this procedure, and that as a  
 130 result of such action I may be held liable for actual damages,  
 131 penalties, costs, and reasonable attorney fees.

132 12. .... I am requesting the sheriff to immediately remove  
 133 the unauthorized person or persons from the residential  
 134 property.

135 13. .... A copy of my valid government-issued  
 136 identification is attached, or I am an agent of the property  
 137 owner, and documents evidencing my authority to act on the  
 138 property owner's behalf are attached.

139  
 140 I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH  
 141 STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS  
 142 MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY,  
 143 PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.

144  
 145 ...(Signature of Property Owner or Agent of Owner)...  
 146

147 (4) Upon receipt of the complaint, the sheriff shall  
 148 verify that the person submitting the complaint is the record  
 149 owner of the real property or the authorized agent of the owner  
 150 and appears otherwise entitled to relief under this section. If

151 verified, the sheriff shall, without delay, serve a notice to  
 152 immediately vacate on all the unlawful occupants and shall put  
 153 the owner in possession of the real property. Service may be  
 154 accomplished by hand delivery of the notice to an occupant or by  
 155 posting the notice on the front door or entrance of the  
 156 dwelling. The sheriff shall also attempt to verify the  
 157 identities of all persons occupying the dwelling and note the  
 158 identities on the return of service. If appropriate, the sheriff  
 159 may arrest any person found in the dwelling for trespass,  
 160 outstanding warrants, or any other legal cause.

161 (5) The sheriff is entitled to the same fee for service of  
 162 the notice to immediately vacate as if the sheriff were serving  
 163 a writ of possession under s. 30.231. After the sheriff serves  
 164 the notice to immediately vacate, the property owner or  
 165 authorized agent may request that the sheriff stand by to keep  
 166 the peace while the property owner or agent of the owner changes  
 167 the locks and removes the personal property of the unlawful  
 168 occupants from the premises to or near the property line. When  
 169 such a request is made, the sheriff may charge a reasonable  
 170 hourly rate, and the person requesting the sheriff to stand by  
 171 and keep the peace is responsible for paying the reasonable  
 172 hourly rate set by the sheriff. The sheriff is not liable to the  
 173 unlawful occupant or any other party for loss, destruction, or  
 174 damage of property. The property owner or his or her authorized  
 175 agent is not liable to an unlawful occupant or any other party

176 for the loss, destruction, or damage to the personal property  
 177 unless the removal was wrongful.

178 (6) A person may bring a civil cause of action for  
 179 wrongful removal under this section. A person harmed by a  
 180 wrongful removal under this section may be restored to  
 181 possession of the real property and may recover actual costs and  
 182 damages incurred, statutory damages equal to triple the fair  
 183 market rent of the dwelling, court costs, and reasonable  
 184 attorney fees. The court shall advance the cause on the  
 185 calendar.

186 (7) This section does not limit the rights of a property  
 187 owner or limit the authority of a law enforcement officer to  
 188 arrest an unlawful occupant for trespassing, vandalism, theft,  
 189 or other crimes.

190 Section 2. Present subsections (4) through (11) of section  
 191 806.13, Florida Statutes, are redesignated as subsections (5)  
 192 through (12), respectively, a new subsection (4) is added to  
 193 that section, and present subsection (10) of that section is  
 194 amended, to read:

195 806.13 Criminal mischief; penalties; penalty for minor.-

196 (4) A person who unlawfully detains or occupies or  
 197 trespasses upon a residential dwelling and who intentionally  
 198 damages the dwelling causing \$1,000 or more in damages commits a  
 199 felony of the second degree, punishable as provided in s.  
 200 775.082, s. 775.083, or s. 775.084.



201        (11)~~(10)~~ A minor whose driver license or driving privilege  
 202 is revoked, suspended, or withheld under subsection (10) ~~(9)~~ may  
 203 elect to reduce the period of revocation, suspension, or  
 204 withholding by performing community service at the rate of 1 day  
 205 for each hour of community service performed. In addition, if  
 206 the court determines that due to a family hardship, the minor's  
 207 driver license or driving privilege is necessary for employment  
 208 or medical purposes of the minor or a member of the minor's  
 209 family, the court shall order the minor to perform community  
 210 service and reduce the period of revocation, suspension, or  
 211 withholding at the rate of 1 day for each hour of community  
 212 service performed. As used in this subsection, the term  
 213 "community service" means cleaning graffiti from public  
 214 property.

215        Section 3. Section 817.03, Florida Statutes, is amended to  
 216 read:

217        817.03 Making false statement to obtain property or credit  
 218 or to detain real property.-

219        (1) Any person who shall make or cause to be made any  
 220 false statement, in writing, relating to his or her financial  
 221 condition, assets or liabilities, or relating to the financial  
 222 condition, assets or liabilities of any firm or corporation in  
 223 which such person has a financial interest, or for whom he or  
 224 she is acting, with a fraudulent intent of obtaining credit,  
 225 goods, money or other property, and shall by such false

226 statement obtain credit, goods, money or other property, commits  
 227 ~~shall be guilty of~~ a misdemeanor of the first degree, punishable  
 228 as provided in s. 775.082 or s. 775.083.

229 (2) Any person who, with the intent to detain or remain  
 230 upon real property, knowingly and willfully presents to another  
 231 person a false document purporting to be a valid lease  
 232 agreement, deed, or other instrument conveying real property  
 233 rights commits a misdemeanor of the first degree, punishable as  
 234 provided in s. 775.082 or s. 775.083.

235 Section 4. Section 817.0311, Florida Statutes, is created  
 236 to read:

237 817.0311 Fraudulent sale or lease of residential real  
 238 property.—A person who lists or advertises residential real  
 239 property for sale knowing that the purported seller has no legal  
 240 title or authority to sell the property, or rents or leases the  
 241 property to another person knowing that he or she has no lawful  
 242 ownership in the property or leasehold interest in the property,  
 243 commits a felony of the first degree, punishable as provided in  
 244 s. 775.082, s. 775.083, or s. 775.084.

245 Section 5. This act shall take effect July 1, 2024.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 651 Civil Liability for the Wrongful Death of an Unborn Child

**SPONSOR(S):** Civil Justice Subcommittee, Persons-Mulicka

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 5 N, As CS	Leshko	Jones
2) Judiciary Committee		Leshko	Kramer

**SUMMARY ANALYSIS**

Florida's Wrongful Death Act (Act) provides that when a person's death is caused by a wrongful act, negligence, default, or breach of contract or warranty, and the deceased person would have been entitled to recover damages if he or she had survived, the person responsible for the death is liable for damages notwithstanding the injured person's death. In a wrongful death action, the Act limits the types of damages recoverable by certain parties as follows:

- The deceased's estate may recover for:
  - Lost wages, benefits, and other earnings;
  - Medical and funeral expenses that were paid by the estate; and
  - The value the estate could reasonably have been expected to acquire if the deceased had lived.
- Specified family members may recover for:
  - The value of lost support and services from the date of the decedent's injury to his or her death;
  - Future loss of support and services from the date of death, reduced to present value;
  - Loss of companionship and guidance;
  - Mental and emotional pain and suffering, in specified cases; and
  - Compensation for medical and funeral expenses the family member has paid for the deceased.

However, the Florida Supreme Court has held that an unborn child is not legally a "person" for purposes of the Act—meaning that a person whose action causes the death of an unborn child is not civilly liable to the surviving parents for damages under the Act.

CS/HB 651 expands Florida's Wrongful Death Act to allow the parents of an unborn child to recover monetary damages from a person who is responsible for the unborn child's death. However, the bill clarifies that such wrongful death action may not be brought against the mother for the wrongful death of her own unborn child.

The bill may have an indeterminate fiscal impact as it expands Florida's Wrongful Death Act, which may allow for parents of an unborn child to recover increased monetary damages from state and local government entities and private individuals party to the suit.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida's Wrongful Death Act

A "wrongful death" action arises when a person dies from injuries sustained as a result of an act or omission by the defendant.<sup>1</sup> At common law, there was no cause of action for wrongful death.<sup>2</sup> Courts reasoned that a deceased person could not pursue legal action, so the claim died with the decedent.<sup>3</sup> In turn, states began to enact wrongful death statutes to create a civil right to recovery when the would-be plaintiff dies, shifting the resulting losses from the decedent's survivors to the wrongdoer.<sup>4</sup>

Under Florida's Wrongful Death Act (Act),<sup>5</sup> when a person's death is caused by a wrongful act, negligence, default, or breach of contract or warranty of any person, and the event would have entitled the deceased to recover damages if he or she had survived, the person who would have been liable if death had not occurred is still liable for specified damages, notwithstanding the injured person's death.<sup>6</sup>

A wrongful death suit must be brought by the decedent's personal representative, who may recover damages for the benefit of certain specified individuals.<sup>7</sup> The Act specifies the parties who may recover for a wrongful death, who are generally:

- The deceased's estate;
- The surviving spouse of the deceased;
- Children of the deceased, who are under 25 years of age;
- Children of the deceased, who are 25 years of age or older, if there is no surviving spouse;
- Parents of a deceased child who was under 25 years of age; and
- Parents of a deceased child who was 25 years of age or older who had no surviving spouse or children.<sup>8</sup>

However, these parties may only recover damages that are specified under the Act. The deceased's estate may recover for:

- Lost wages, benefits, and other earnings including the potential for future earnings;
- Medical and funeral expenses that were paid by the estate; and
- The value the estate could reasonably have acquired had the deceased lived.<sup>9</sup>

A "survivor" under the Act—which means the decedent's spouse, child, and parents, as well as other blood relatives,<sup>10</sup> may recover for:

- The value of lost support and services from the date of the deceased's injury to his or her death;<sup>11</sup> and
- Loss of future support and services from the date of death, reduced to present value.<sup>12</sup>

Further, specified family members may recover for:

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<sup>1</sup> See *Pezzi v. Brown*, 697 So. 2d 883, 884 n.1 (Fla. 4th DCA 1997).

<sup>2</sup> Dennis M. Doiron, *A Better Interpretation of the Wrongful Death Act*, 43 Me. L. Rev. 449 (1991), <https://core.ac.uk/download/pdf/304932065.pdf> (last visited Feb. 10, 2024).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*; s. 768.17, F.S.

<sup>5</sup> Ss. 768.16 – 26, F.S.

<sup>6</sup> S. 768.19, F.S.

<sup>7</sup> S. 768.20, F.S.

<sup>8</sup> S. 768.21, F.S.

<sup>9</sup> S. 768.21(6), F.S.

<sup>10</sup> S. 768.18(1), F.S.

<sup>11</sup> S. 768.21(1), F.S.

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

- Loss of companionship and guidance in certain circumstances;<sup>13</sup>
- Mental pain and suffering if the family member seeking damages is:
  - A surviving spouse;<sup>14</sup>
  - A child of the deceased who is under 25 years of age;
  - A child of the deceased who is 25 years of age or older, if there is no surviving spouse;<sup>15</sup>
  - A parent of a deceased child who was under 25 years of age;
  - A parent of a deceased child who was 25 years of age or older who had no surviving spouse or children;<sup>16</sup> and
- Compensation for medical and funeral expenses the family member has paid for the deceased.<sup>17</sup>

However, the Act also provides that, in the case of the death of a parent due to medical negligence, a child who is 25 years of age or older may not seek noneconomic damages (such as damages for mental pain and suffering); and, in the case of the death of a child who was 25 years of age or older due to medical negligence, a surviving parent may not seek noneconomic damages.<sup>18</sup>

### Civil Remedies for the Death of an Unborn Child

In the 1978 case of *Duncan v. Flynn*, the Florida Supreme Court held that, legally speaking, an unborn fetus is not a “person” for purposes of Florida’s Wrongful Death Act (Act). In turn, when a person causes the death of an unborn child, the child’s parents cannot recover civil damages under the Act for the child’s death.<sup>19</sup>

In 1997, in *Tanner v. Hartog*, the Florida Supreme Court reiterated that “there is no cause of action under Florida’s Wrongful Death Act for the death of a stillborn fetus.”<sup>20</sup> However, in that same case, the Court recognized a common law action for “negligent stillbirth.” The Court emphasized that the damages recoverable in such an action are limited to mental pain and anguish and medical expenses incurred incident to the pregnancy, and that such legal action is different from an action under the Wrongful Death Act, as follows:

A suit for negligent stillbirth is a direct common law action by the parents which is different in kind from a wrongful death action. The former is directed toward the death of a fetus while the latter is applicable to the death of a living person. As contrasted to the damages recoverable by parents under the wrongful death statute, the damages recoverable in an action for negligent stillbirth would be limited to mental pain and anguish and medical expenses incurred incident to the pregnancy.<sup>21</sup>

Therefore, although Florida allows a limited recovery of damages for negligent stillbirth, it does not currently recognize a cause of action for wrongful death based on the death of an unborn child.

### Other States

Florida remains one of six states, including California and New York,<sup>22</sup> that does not currently recognize a cause of action for the wrongful death of an unborn child.<sup>23</sup> Forty-three states currently do allow for a

<sup>13</sup> S. 768.21(2)-(3), F.S.

<sup>14</sup> S. 768.21(2), F.S.

<sup>15</sup> S. 768.21(3), F.S.

<sup>16</sup> S. 768.21(4), F.S.

<sup>17</sup> S. 768.21(5), F.S.

<sup>18</sup> S. 768.21(8), F.S.

<sup>19</sup> *Singleton v. Ranz*, 534 So. 2d 847, 847 (Fla. 5th DCA 1988)(citing *Duncan v. Flynn*, 358 So. 2d 178, 178 (Fla. 1978)).

<sup>20</sup> *Tanner v. Hartog*, 696 So. 2d 705, 706 (Fla. 1997).

<sup>21</sup> *Tanner*, 696 So. 2d at 708-09.

<sup>22</sup> *Rosales v. Northeast Community Clinic*, B276465, 2018 WL 1633068, at \*2 (Cal. Ct. App. Apr. 5, 2018); *Endresz v. Friedberg*, 24 N.Y. 2d 478, 484 (N.Y. 1969).

<sup>23</sup> *Stern v. Miller*, 348 So. 2d 303, 307–08 (Fla. 1977); The three other states include Iowa, Maine, and New Jersey. *Dunn v. Rose Way, Inc.*, 333 N.W. 2d 830, 831 (Iowa 1983); *Shaw v. Jendzejec*, 717 A.2d 367, 371 (Me. 1998); *Giardina v. Bennett*, 111 N.J. 412, 421–25 (N.J. 1988).

cause of action for the wrongful death of an unborn child, depending on the viability<sup>24</sup> of the child in question.<sup>25</sup>

Fifteen states afford a cause of action for the wrongful death of an unborn child at any stage of development.<sup>26</sup> Several of these states, however, provide an exception so that the mother cannot be sued for the wrongful death of her unborn child.<sup>27</sup>

Three states, including Connecticut,<sup>28</sup> Georgia,<sup>29</sup> and Mississippi,<sup>30</sup> permit a wrongful death action to be brought on behalf of an unborn child if the quickening standard is met, which requires fetal movement to have been detected prior to death.<sup>31</sup>

Twenty-five states permit a cause of action for the wrongful death of an unborn child under a viability standard, which examines whether an unborn child can exist independently outside of the mother's womb.<sup>32</sup> Of these 25 states, one state, Indiana, prohibits a wrongful death action where the death is of an unborn child as the result of a lawful abortion.<sup>33</sup>

Finally, one state, Wyoming, remains undecided as to whether a cause of action for wrongful death exists as to an unborn child.<sup>34</sup>

### Effect of Proposed Changes

CS/HB 651 amends ss. 768.18 and 768.21, F.S., to expand Florida's Wrongful Death Act (Act) to allow parents of an unborn child to recover civil damages for such unborn child's death in the same way that other survivors may generally recover under the Act. The bill accomplishes this by amending the definition of "survivors" to include parents of an unborn child and by specifically providing that parents of an unborn child may also recover for mental pain and suffering from the date of injury. Under the bill, the parents in such a wrongful death suit could potentially recover damages allowed by the Act,

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<sup>24</sup> "Viability" is the ability of a developing fetus to survive independent of a pregnant woman's womb. Elizabeth Chloe Romanis, *Is "viability" viable? Abortion, conceptual confusion and the law in England and Wales and the United States*, 7 J. Law. Biosci. (Jan.-Dec. 2020).

<sup>25</sup> Only Wyoming remains undecided as to whether a cause of action for wrongful death exists as to an unborn child.

<sup>26</sup> Alabama (*Hamilton v. Scott*, 97 So. 3d 728 (Ala. 2012)); *Mack v. Carmack*, 79 So. 3d 597 (Ala. 2011)); Alaska (Alaska Stat. Ann. § 09.55.585); Arkansas (Ark. Code Ann. § 15-62-102); Illinois (740 Ill. Comp. Stat. Ann. 180/2.2); Kansas (Kan. Stat. Ann. § 60-1901); Louisiana (Louisiana Civil Code Art. 26); Michigan (Mich. Comp. Laws Ann. § 600.2922a); Missouri (Mo. Ann. Stat. § 1.205); Nebraska (Neb. Rev. Stat. § 30-809); Oklahoma (12 Okl. St. Ann. § 1053, OK ST T. 12 § 1053); *Pino v. United States*, 2008 OK 26, 183 P.3d 1001); South Dakota (S.D. Codified Laws §21-5-1); Texas (Tex. Civ. Prac. & Rem. Code § 71.002); Utah (*Carranza v. United States*, 2011 UT 80, 267 P.3d 912); Virginia (Va. Code Ann. §§8.01-50); West Virginia (*Farley v. Sarti*, 195 W. Va. 671, 681 (1995)).

<sup>27</sup> See Kan. Stat. Ann. § 60-1901; Tex. Civ. Prac. & Rem. Code § 71.003.

<sup>28</sup> *Elderkin v. Mahoney*, No. No. CV156056191, 2017 WL 5178583 (Conn. Super. Ct. Sept. 28, 2017).

<sup>29</sup> *Porter v. Lassiter*, 91 Ga. App. 712 (1955); *Shirley v. Bacon*, 154 Ga. App. 203 (1980).

<sup>30</sup> Miss. Code Ann. § 11-7-13 (2018).

<sup>31</sup> Romanis, *supra*, note 24.

<sup>32</sup> Arizona (*Summerfield v. Superior Ct. in and for Maricopa County*, 144 Ariz. 467 (Ariz. 1985)); Colorado (*Gonzales v. Mascarenas*, 190 P. 3d 826 (Colo. App. 2008)); Delaware (*Worgan v. Greggo & Ferrera, Inc.*, 50 Del. 258 (Del. Super. Ct. 1956)); Hawaii (*Hawaii Castro v. Melchor*, 137 Hawai'i 179 (Haw. Ct. App. 2016)); Idaho (*Volk v. Baldazo*, 103 Idaho 570 (Idaho 1982)); Indiana (Ind. Code Ann. §34-23-2-1(b)); Kentucky (*Stevens v. Flynn*, No. 2010-CA-00196-MR, 2011 WL 3207952 (Ky. Ct. App. July 29, 2011)); Maryland (*Brown v. Contemporary OB/GYN Assocs.*, 143 Md. App. 199 (Md. Ct. Spec. App. 2002); Md. Code Ann., Cts. & Jud. Proc. §§ 3-902, 3-904); Massachusetts (*Thibert v. Milka*, 419 Mass. 693 (Mass. 1995)); Minnesota (*Pehrson v. Kistner*, 301 Minn. 299 (Minn. 1974)); Montana (*Blackburn v. Blue Mt. Women's Clinic*, 286 Mont. 60 (Mont. 1997)); Nevada (*White v. Yup*, 85 Nev. 527 (Nev. 1969)); New Hampshire (*Wallace v. Wallace*, 120 N.H. 675 (N.H. 1980)); New Mexico (*Miller v. Kirk*, 120 N.M. 654 (N.M. 1995)); North Carolina (*DiDonato v. Wortman*, 320 N.C. 423, 358 S.E.2d 489 (1987)); North Dakota (*Hopkins v. McBane*, 359 N.W. 2d 862 (N.D. 1984)); Ohio (*Griffiths v. Doctor's Hosp.*, 150 Ohio App. 3d 234, 2002-Ohio-6173, 780 N.E.2d 603 (2002)); Oregon (*LaDu v. Oregon Clinic, P.C.*, 165 Or. App. 687 (Or. Ct. App. 2000)); Pennsylvania (*Coveleski v. Bubnis*, 535 Pa.166 (Pa. 1993)); Rhode Island (*Miccolis v. AMICA*, 587 A. 2d 67 (R.I. 1991)); South Carolina (*Crosby v. Glasscock Trucking*, 340 S.C. 626 (S.C. 2000)); Tennessee (Tenn. Code Ann. § 2 0-5-106(c)); Vermont (*Vaillancourt v. Med. Ctr. Hosp. Vt., Inc.*, 139 Vt. 38 (Vt. 1980)); Washington (*Baum v. Burrington*, 119 Wash. App.36 (Wash. Ct. App. 2003)); Wisconsin (*Kwaterski v. State Farm Mut. Auto. Ins. Co.*, 34 Wis. 2d 14 (Wis. 1967)).

<sup>33</sup> Ind. Code Ann. §34-23-2-1.

<sup>34</sup> Wyoming has not determined whether an unborn child is a "person" under the state's Wrongful Death Act. But, the Wyoming Supreme Court has held that an unborn child is not a "minor" for whom guardianship statutes authorize the appointment of a guardian. *Matter of Guardianship of MKH*, 2016 WY 103, 382 P.3d 1096 (Wyo. 2016).

including the value of future loss of support and services, reduced to present value; mental pain and suffering; and already-paid medical or funeral expenses.

However, the bill also amends s. 768.19, F.S., to clarify that the wrongful death action created by the bill may not be brought against the mother of the unborn child.

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

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 768.18, F.S., relating to definitions.

**Section 2:** Amends s. 768.19, F.S., relating to right of action.

**Section 3:** Amends s. 768.21, F.S., relating to damages.

**Section 4:** 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:**

See Fiscal Comments.

**D. FISCAL COMMENTS:**

The bill may have an indeterminate fiscal impact as it expands Florida's Wrongful Death Act, which may allow for parents of an unborn child to recover increased monetary damages from state and local government entities and private individuals party to the suit.

**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 18, 2024, the Civil 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:

- Amended s. 768.19, F.S., to prohibit a right of action against the mother for the wrongful death of the mother's unborn child.
- Removed a provision that limited when parents of an unborn child may recover medical or funeral expenses.

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

1                   A bill to be entitled  
2           An act relating to civil liability for the wrongful  
3           death of an unborn child; reordering and amending s.  
4           768.18, F.S.; revising the definition of the term  
5           "survivors" to include the parents of an unborn child;  
6           amending s. 768.19, F.S.; prohibiting a right of  
7           action against the mother for the wrongful death of an  
8           unborn child; amending s. 768.21, F.S.; authorizing  
9           parents of an unborn child to recover certain damages;  
10          conforming a cross-reference; providing an effective  
11          date.

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

14  
15          Section 1. Section 768.18, Florida Statutes, is reordered  
16          and amended to read:

17          768.18 Definitions.—As used in ss. 768.16–768.26:

18          (1)~~(2)~~ "Minor children" means children under 25 years of  
19          age, notwithstanding the age of majority.

20          (2)~~(5)~~ "Net accumulations" means the part of the  
21          decedent's expected net business or salary income, including  
22          pension benefits, that the decedent probably would have retained  
23          as savings and left as part of her or his estate if the decedent  
24          had lived her or his normal life expectancy. "Net business or  
25          salary income" is the part of the decedent's probable gross

26 | income after taxes, excluding income from investments continuing  
 27 | beyond death, that remains after deducting the decedent's  
 28 | personal expenses and support of survivors, excluding  
 29 | contributions in kind.

30 |       ~~(3)~~~~(4)~~ "Services" means tasks, usually of a household  
 31 | nature, regularly performed by the decedent that will be a  
 32 | necessary expense to the survivors of the decedent. These  
 33 | services may vary according to the identity of the decedent and  
 34 | survivor and shall be determined under the particular facts of  
 35 | each case.

36 |       ~~(4)~~~~(3)~~ "Support" includes contributions in kind as well as  
 37 | money.

38 |       ~~(5)~~~~(1)~~ "Survivors" means the decedent's spouse, children,  
 39 | parents, and, when partly or wholly dependent on the decedent  
 40 | for support or services, any blood relatives and adoptive  
 41 | brothers and sisters. It includes the child born out of wedlock  
 42 | of a mother, but not the child born out of wedlock of the father  
 43 | unless the father has recognized a responsibility for the  
 44 | child's support. It also includes the parents of an unborn  
 45 | child.

46 |       Section 2. Section 768.19, Florida Statutes, is amended to  
 47 | read:

48 |       768.19 Right of action.—

49 |       ~~(1)~~ When the death of a person is caused by the wrongful  
 50 | act, negligence, default, or breach of contract or warranty of

51 any person, including those occurring on navigable waters, and  
52 the event would have entitled the person injured to maintain an  
53 action and recover damages if death had not ensued, the person  
54 or watercraft that would have been liable in damages if death  
55 had not ensued shall be liable for damages as specified in this  
56 act notwithstanding the death of the person injured, although  
57 death was caused under circumstances constituting a felony.

58 (2) Notwithstanding any other provision of this act, a  
59 wrongful death action for the death of an unborn child may not  
60 be brought against the mother of the unborn child.

61 Section 3. Subsection (4) and paragraph (a) of subsection  
62 (6) of section 768.21, Florida Statutes, are amended to read:

63 768.21 Damages.—All potential beneficiaries of a recovery  
64 for wrongful death, including the decedent's estate, shall be  
65 identified in the complaint, and their relationships to the  
66 decedent shall be alleged. Damages may be awarded as follows:

67 (4) Each parent of a deceased minor child or an unborn  
68 child may also recover for mental pain and suffering from the  
69 date of injury. Each parent of an adult child may also recover  
70 for mental pain and suffering if there are no other survivors.

71 (6) The decedent's personal representative may recover for  
72 the decedent's estate the following:

73 (a) Loss of earnings of the deceased from the date of  
74 injury to the date of death, less lost support of survivors  
75 excluding contributions in kind, with interest. Loss of the

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76 prospective net accumulations of an estate, which might  
77 reasonably have been expected but for the wrongful death,  
78 reduced to present money value, may also be recovered:

79 1. If the decedent's survivors include a surviving spouse  
80 or lineal descendants; or

81 2. If the decedent is not a minor child as defined in s.  
82 768.18 ~~s. 768.18(2)~~, there are no lost support and services  
83 recoverable under subsection (1), and there is a surviving  
84 parent.

85  
86 Evidence of remarriage of the decedent's spouse is admissible.

87 Section 4. This act shall take effect July 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Persons-Mulicka offered the following:

3  
4 **Amendment (with title amendment)**

5 Between lines 45 and 46, insert:

6 (6) "Unborn child" has the same meaning as in s.  
7 775.021 (5).

8  
9  
10 -----  
11 **T I T L E A M E N D M E N T**

12 Remove line 5 and insert:  
13 "survivors" to include the parents of an unborn child; providing  
14 a definition for the term "unborn child";



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 757 Defamation, False Light, and Unauthorized Publication of Name or Likenesses

**SPONSOR(S):** Civil Justice Subcommittee, Andrade

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 4 N, As CS	Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee	8 Y, 5 N	Larkin	Anstead
3) Judiciary Committee		Mawn	Kramer

### SUMMARY ANALYSIS

The First Amendment to the United States Constitution provides that “Congress shall make no law ... abridging the freedom of speech, or of the press....” Courts apply the First Amendment to the states through the Fourteenth Amendment, thus prohibiting the states from enacting laws which abridge the freedom of speech or of the press. Courts also apply the First Amendment to civil lawsuits between private parties where the courts must, in deciding the claims, apply a state rule of law touching on the freedoms guaranteed by the First Amendment, including claims for:

- Defamation, which is a tort arising out of a statement that injures a third party’s reputation.
- Invasion of privacy, which is a tort that generally falls into one of the following three categories:
  - Unauthorized publication of another’s name or likeness;
  - Unreasonable public disclosure of a private fact; or
  - Publicity that unreasonably places another in a false light before the public.

In these instances, the courts recognize that the First Amendment guarantees are not absolute. Instead, the courts must balance the rights of the defendant to speak or otherwise publicize information with the rights of the plaintiff to protect his or her reputation or privacy. This is especially important where the plaintiff is a public figure; in such instance, a court, recognizing the necessity of the free flow of information of public importance, generally requires a public figure suing for defamation to prove actual malice on the part of the defendant before he or she can prevail, instead of mere negligence, as is the usual standard. Further, Florida law establishes an evidentiary journalist’s privilege, which privilege prevents a journalist from being compelled to testify about or provide information obtained while gathering news in most situations, including the identity of any sources.

CS/HB 757:

- Defines “defamation or privacy tort” and modifies the venue requirements for a defamation or privacy tort action.
- Extends the liability shield under the fair reporting privilege to newspaper entities.
- Limits a media entity’s liability shield under the fair reporting privilege and ability to avoid punitive damages where a defamatory statement is not removed from the Internet as required by the bill.
- Creates a rebuttable presumption that a publisher published a statement about a public figure with actual malice where the public figure proves the statement is false and the publisher relied on an anonymous source for the statement.
- Authorizes a “veracity hearing” in a defamation or privacy tort action in specified circumstances.
- Resuscitates the tort of false light in the limited context of the use of artificial intelligence to create or edit any form of media.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of July 1, 2024.



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### First Amendment Guarantees: Freedom of Speech and of the Press

The First Amendment to the United States Constitution provides that “Congress shall make no law ... abridging the freedom of speech, or of the press...”<sup>1</sup> In 1940, the United States Supreme Court held that the Fourteenth Amendment’s concept of liberty embraced the liberties guaranteed by the First Amendment, which provides, in pertinent part, that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.”<sup>2</sup>

Thus, courts apply the First Amendment to the states through the Fourteenth Amendment, therefore prohibiting the states from enacting laws which abridge the freedom of speech or of the press. Courts also apply the First Amendment to civil lawsuits between private parties where the courts must, in deciding the claims, apply a state rule of law, whether statutory or common law,<sup>3</sup> touching on the freedoms guaranteed by the First Amendment.<sup>4</sup> In applying the First Amendment to such lawsuits, the United States Supreme Court recognizes that the constitutional protections for the freedom of speech and of the press were guaranteed to the people to assure the free exchange of ideas for the bringing about of political and social changes desired by the people.<sup>5</sup> The Court has also acknowledged that maintaining the opportunity for free political discussion so that governments may be responsive to the will of the people and changes may be obtained by lawful means is a fundamental principle of the constitutional system; indeed, noted the Court, the freedom of speech and of the press “is the indispensable condition of nearly every other form of freedom.”<sup>6</sup>

##### General Tort Law

The main purpose of Florida’s civil justice system is to properly and fairly redress the civil wrongs committed throughout the state. A functioning civil justice system, when it operates justly:

- Provides a fair and equitable forum to resolve disputes;
- Discourages persons from resorting to self-help methods to redress wrongs;
- Appropriately compensates legitimately harmed persons;
- Shifts losses to responsible parties;
- Provides incentives to prevent future harm; and
- Deters undesirable behavior.<sup>7</sup>

A goal of the civil justice system is to redress tortious conduct, or “torts” – that is, wrongs for which the law provides a remedy. Torts are generally divided into three categories, as follows:

- An intentional tort, examples of which include assault, battery, or false imprisonment.<sup>8</sup>

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<sup>1</sup> The First Amendment was ratified on December 15, 1791, as part of the Bill of Rights; that is, the first ten Amendments to the United States Constitution. Library of Congress, *The Bill of Rights*, <https://www.loc.gov/item/today-in-history/december-15/#:~:text=On%20December%2015%2C%201791%2C%20the.of%20peaceful%20assembly%20and%20petition> (last visited Feb. 8, 2024).

<sup>2</sup> *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

<sup>3</sup> Common law is law arising from judicial decisions. Legal Information Institute, *Common Law*, [https://www.law.cornell.edu/wex/common\\_law](https://www.law.cornell.edu/wex/common_law) (last visited Feb. 8, 2024).

<sup>4</sup> See, e.g., *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); see also, e.g., *American Fed’n of Labor v. Swing*, 312 U.S. 321 (1941).

<sup>5</sup> See, e.g., *Sullivan*, 376 U.S. at 269.

<sup>6</sup> *Curtis Pub. Co. v. Butts*, 388 U.S. 130 (1967)

<sup>7</sup> Cf. Am. Jur. 2d Torts s. 2.

<sup>8</sup> Legal Information Institute, *Intentional Tort*, [https://www.law.cornell.edu/wex/intentional\\_tort](https://www.law.cornell.edu/wex/intentional_tort) (last visited Feb. 8, 2024).

- Recklessness, which is behavior so careless that it is considered an extreme departure from the care a reasonable person would exercise in similar circumstances.<sup>9</sup>
- Negligence, which is the failure to behave with the level of care that an ordinary prudent person would have exercised under the same circumstances.<sup>10</sup> To prevail in a negligence lawsuit, the plaintiff must show that the:
  - Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
  - Defendant breached his or her duty of care by failing to conform to the required standard;
  - Defendant's breach caused the plaintiff to suffer an injury; and
  - Plaintiff suffered actual damage or loss resulting from such injury.<sup>11</sup>

Some torts, such as defamation and invasion of privacy, touch on conduct which amounts to speech, or which is carried out by the press; in these instances, the courts recognize that the First Amendment guarantees are not absolute.<sup>12</sup> Instead, the courts must balance the rights of the defendant to speak or otherwise publicize information with the rights of the plaintiff to protect his or her reputation or privacy.

### Defamation

Defamation is a tort arising out of a statement that injures a third party's reputation – in other words, it is a statement that tends to harm the reputation of another by lowering him or her in the community's estimation.<sup>13</sup> More broadly stated, it is a statement that exposes another to hatred, ridicule, or contempt or injures another's business, reputation, or occupation.<sup>14</sup> Such statements fall into one of two categories:

- Libel, which is a defamatory statement expressed in print, writing, pictures, signs, effigies, or any communication embodied in physical form.<sup>15</sup>
- Slander, which is a defamatory statement made orally.<sup>16</sup>

To prove defamation, a plaintiff generally must show:

- A false statement purporting to be fact;
- Publication or communication of that statement to a third person;
- Fault amounting to at least negligence; and
- Damages – that is, some harm caused to the plaintiff's reputation.

Florida law also recognizes defamation by implication.<sup>17</sup> Thus, a technically true statement can be defamatory where, by its context or the omission of other facts, it creates a false impression and satisfies all of the other elements of defamation.<sup>18</sup>

<sup>9</sup> Legal Information Institute, *Reckless*, <https://www.law.cornell.edu/wex/reckless> (last visited Feb. 8, 2024).

<sup>10</sup> Legal Information Institute, *Negligence*, <https://www.law.cornell.edu/wex/negligence> (last visited Feb. 8, 2024).

<sup>11</sup> 6 *Florida Practice Series* s. 1.1; see *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).

<sup>12</sup> See, e.g., *Herbert v. Lando*, 441 U.S. 153 (1979) ("Given the required proof, damages liability for defamation abridges neither freedom of speech nor freedom of the press"); see also *Butts*, 388 U.S. at 146 (society has "a pervasive and strong interest in preventing and redressing attacks upon reputation").

<sup>13</sup> Fla. S. Ct., *Standard Jury Instructions – Civil Cases (No. 00-1)*, 795 So. 2d 51 (2001).

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

<sup>15</sup> Legal Information Institute, *Libel*, <https://www.law.cornell.edu/wex/libel> (last visited Feb. 8, 2024).

<sup>16</sup> Legal Information Institute, *Slander*, <https://www.law.cornell.edu/wex/slander> (Feb. 8, 2024).

<sup>17</sup> *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008).

<sup>18</sup> *Id.* at 1108.

## *Venue for Defamation Action*

For civil lawsuits not relating to real property, including defamation claims, Florida law provides two locations where venue is proper (that is, where the lawsuit may be filed); specifically, such lawsuits may be filed in the county where the defendant resides or the county in which the cause of action accrued.<sup>19</sup> Florida law also prohibits a person from having more than one choice of venue for damages for defamation founded upon any single publication, exhibition, or utterance, such as one:

- Newspaper edition;
- Book;
- Magazine;
- Presentation to an audience;
- Broadcast over radio or television; or
- Motion picture exhibition.<sup>20</sup>

Recovery in such an action must include all damages for the alleged tort suffered by the plaintiff in all jurisdictions.<sup>21</sup>

## *Cause of Action for Defamation*

A person who believes he or she is a defamation victim has two years to file a lawsuit raising the defamation allegation, with the time in which to bring a lawsuit for damages founded upon a single publication, exhibition, or utterance running from the time of the first publication, exhibition, or utterance at issue in Florida.<sup>22</sup> Further, a judgment in any jurisdiction for or against the plaintiff on the substantive merits of an action for damages founded on a single publication, exhibition, or utterance bars any other action for damages by the same plaintiff against the same defendant founded on the same publication, exhibition, or utterance.<sup>23</sup>

## *Defenses to Defamation*

Truth is an absolute defense to most defamation allegations, except for allegations of defamation by implication; however, in such cases, truth is still available as a defense to a defendant who can prove that the implication created by the allegedly defamatory statement is true.<sup>24</sup> Defamation law also shields publishers from liability for minor factual inaccuracies; thus, a statement is considered substantially true where its “substance or gist conveys essentially the same meaning that the truth would have conveyed.”<sup>25</sup>

Certain privileges may also provide a defense to defamation, although the degree of the defense provided depends on whether the privilege is absolute or qualified.<sup>26</sup> An absolute privilege provides complete immunity to defamation liability; in such instances, the statement’s falsity and the speaker’s intent are irrelevant.<sup>27</sup> However, a qualified privilege only provides immunity from defamation liability where the defendant did not act with actual malice.<sup>28</sup>

## *Damages*

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<sup>19</sup> S. 47.011, F.S.

<sup>20</sup> S. 770.05, F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Ss. 95.11(4)(h), F.S. and 770.07, F.S.

<sup>23</sup> S. 770.06, F.S.

<sup>24</sup> *Butts*, 388 U.S. at 151.

<sup>25</sup> Fla. S. Ct., *Standard Jury Instructions*, *supra* note 13.

<sup>26</sup> Legal Information Institute, *Defamation*, <https://www.law.cornell.edu/wex/defamation> (last visited Feb. 8, 2024).

<sup>27</sup> For example, an absolute privilege extends to statements made by judges, attorneys, witnesses and jurors in a judicial proceeding where the statements are relevant to the issue before the court. *Myers v. Hodges*, 44 So. 357 (1907).

<sup>28</sup> For example, a qualified privilege extends to statements made by judges, attorneys, witnesses, and jurors in a judicial proceeding where the statements are irrelevant to the issue before the court. *Id.* at 362.

A prevailing plaintiff in a defamation action may recover his or her actual damages where the award is supported by competent evidence.<sup>29</sup> Such damages may be economic damages (that is, monetary losses) or noneconomic damages (such as damages for pain and suffering or humiliation).<sup>30</sup> Moreover, nominal damages<sup>31</sup> may be awarded to vindicate a plaintiff where defamation is found but no actual damages are proved, and punitive damages<sup>32</sup> may be awarded where the plaintiff proves the defendant acted willfully, wantonly, or maliciously.<sup>33</sup>

### *Defamation Per Se*

“Defamation *per se*” is a statement that is so egregious that the law presumes that it was defamatory.<sup>34</sup> In determining whether a statement is defamation *per se*, the fact-finder must look only to the language of the statement itself without relying on implications.<sup>35</sup> Courts have found that certain statements are defamation *per se*, including a false statement:

- That a person committed a crime of moral turpitude;<sup>36</sup>
- Charging a person with having a sexually-transmitted or other communicable disease;
- Tending to subject a person to hatred, distrust, ridicule, contempt, or disgrace, such as by imputing that a woman is unchaste; or
- Tending to impute to another conduct, characteristics, or a condition incompatible with the proper exercise of his or her lawful business, trade, profession, or office.<sup>37</sup>

When a defamation claim involves defamation *per se*, malice and damages are generally presumed as a matter of law and thus do not need to be proved; these presumptions may justify a punitive damages<sup>38</sup> award even where the jury does not find that the plaintiff suffered actual damages.<sup>39</sup> However, the Florida Supreme Court has found that the malice and damages presumption does not apply against defendants who are members of the media; thus, even where defamation *per se* is alleged against such a defendant, malice and damages must still be proved.<sup>40</sup>

### *Discrimination Allegations*

Courts typically hold that an allegation that a person is racist, sexist, homophobic, transphobic or otherwise holds feelings of dislike or hatred toward a particular class of persons is an “opinion” not amounting to defamation, since the truth of the opinion cannot be proved or disproved.<sup>41</sup> However, courts typically hold that a false allegation that a person discriminated against a person or group of people on the basis of race, sex, sexual orientation, gender identity, or membership in another class amounts to defamation, as it is more of a factual assertion, the truth of which can be proven or disproved.<sup>42</sup> At least one court has found that an allegation that a business discriminated against would-be patrons on the basis of their race was defamation *per se*.<sup>43</sup>

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<sup>29</sup> *Army Aviation Heritage Found. And Museum, Inc. v. Buis*, 504 F. Supp. 2d 1254 (N.D. Fla. 2007); Legal Information Institute, *Actual Damages*, [https://www.law.cornell.edu/wex/actual\\_damages](https://www.law.cornell.edu/wex/actual_damages) (last visited Feb. 8, 2024).

<sup>30</sup> *Id.*

<sup>31</sup> “Nominal damages” is a trivial sum of money awarded to a plaintiff whose legal right was technically violated but who has not established that he or she is entitled to an actual damages award because there was no accompanying loss proved. Legal Information Institute, *Nominal Damages*, [https://www.law.cornell.edu/wex/nominal\\_damages](https://www.law.cornell.edu/wex/nominal_damages) (last visited Feb. 8, 2024).

<sup>32</sup> “Punitive damages” are damages awarded to punish the defendant and deter the future bad behavior of others. Legal Information Institute, *Punitive Damages*, [https://www.law.cornell.edu/wex/punitive\\_damages](https://www.law.cornell.edu/wex/punitive_damages) (last visited Feb. 8, 2024).

<sup>33</sup> *Buis*, 504 F. Supp. 2d at 1262.

<sup>34</sup> *Layne v. Tribune Co.*, 146 So. 234 (Fla. 1933).

<sup>35</sup> *Id.* at 237.

<sup>36</sup> A “crime of moral turpitude” is a crime involving wicked or deviant behavior constituting an immoral, unethical, or unjust departure from ordinary social standards such that it would shock a community. Legal Information Institute, *Moral Turpitude*, [https://www.law.cornell.edu/wex/moral\\_turpitude](https://www.law.cornell.edu/wex/moral_turpitude) (last visited Feb. 8, 2024).

<sup>37</sup> *Blake v. Giustibelli*, 182 So. 3d 881 (Fla. 4th DCA 2016) (citing *Richard v. Gray*, 62 So. 2d 597, 598 (Fla. 1953)).

<sup>38</sup> “Punitive damages” are damages awarded to punish the defendant and deter the future bad behavior of others. Such damages are usually only available where a plaintiff proves the defendant acted willfully, wantonly, or maliciously. Legal Information Institute, *Punitive Damages*, [https://www.law.cornell.edu/wex/punitive\\_damages](https://www.law.cornell.edu/wex/punitive_damages) (last visited Feb. 8, 2024).

<sup>39</sup> *Layne*, 146 So. at 236; *Lawnwood Medical Center, Inc. v. Sadow*, 43 So. 3d 710 (Fla. 4th DCA 2010).

<sup>40</sup> *Mid-Florida Television Corp. v. Boyles*, 467 So. 2d 282 (Fla. 1985).

<sup>41</sup> See, e.g., *Williams v. Lazer*, 495 P.3d 93 (Nev. 2021); *Garrard v. Charleston Cnty. Sch. Dist.*, 838 S.E. 2d 698 (S.C. Ct. App. 2019).

<sup>42</sup> See, e.g., *Gibson Brothers, Inc. v. Oberlin College*, 187 N.E. 3d 629 (Ohio Ct. App. 2022).

<sup>43</sup> *Id.* at 653.

### *Pre-Suit Notice for Media Entities*

Before a defamation lawsuit may be filed in Florida against a newspaper, periodical, or other medium for publishing or broadcasting a defamatory statement, the plaintiff must, at least five days before filing suit, serve notice in writing on the defendant, which notice specifies the article or broadcast and the statements therein which the plaintiff alleges are defamatory.<sup>44</sup> Further, the plaintiff in such a suit is limited to recovering his or her actual damages if it appears from the evidence presented at trial that:

- An article or broadcast was published in good faith;
- Its falsity was due to an honest mistake of facts;
- There were reasonable grounds for believing the statement at issue was true; and
- Within a specified time period, a full and fair correction, apology, or retraction was, in the case of a:
  - Newspaper or periodical, published in the same editions or corresponding issues of the newspaper or periodical in which the defamatory article appeared, and in as conspicuous a place and type as said article; or
  - Broadcast, the correction, apology, or retraction was broadcast at a comparable time.<sup>45</sup>

However, “full and fair correction” must be made, in the case of a:

- Broadcast or a daily or weekly newspaper or periodical, within 10 days after service of notice;
- Newspaper or periodical published semi-monthly, within 20 days after service of notice;
- Newspaper or periodical published monthly, within 45 days of the notice; and
- Newspaper or periodical published less frequently than monthly, in the next issue, if notice is served no later than 45 days before such publication.<sup>46</sup>

In other words, the plaintiff may not recover punitive damages where the defendant newspaper or broadcast station published or broadcast the defamatory statement in good faith and issued a timely and appropriate correction, apology, or retraction.

### *Civil Liability of Certain Media Outlets*

Florida law provides a fair reporting privilege, which privilege shields from civil liability a radio or television broadcasting station owner, licensee, or operator, and the agents and employees thereof, for any defamatory statement published or uttered in or as part of a radio or television broadcast by one other than such owner, licensee, or operator, or an agent or employee thereof, unless the plaintiff alleges and proves that such owner, licensee, or operator, or an agent or employee thereof, failed to exercise due care to prevent the publication or utterance of such statement in such broadcasts.<sup>47</sup> In this context, the exercise of due care is construed to include the bona fide compliance with any federal law or the regulation of any federal regulatory agency.<sup>48</sup>

### *Public Figures*

Courts classify persons who have achieved a certain measure of notoriety, whether by achievement or celebrity, or who hold public office, as “public figures” for the purpose of defamation law.<sup>49</sup> A person may achieve such pervasive fame or notoriety that he or she becomes a public figure for all purposes and in all contexts of his or her life.<sup>50</sup> More commonly, however, a person voluntarily injects himself or is drawn into a particular controversy and thereby becomes a public figure for a limited range of issues.<sup>51</sup>

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<sup>44</sup> S. 770.01, F.S.

<sup>45</sup> S. 770.02(1), F.S.

<sup>46</sup> S. 770.02(2), F.S.

<sup>47</sup> S. 770.04, F.S.

<sup>48</sup> *Id.*

<sup>49</sup> *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

<sup>50</sup> *Id.* at 351.

<sup>51</sup> *Id.*

Recognizing the unique role public figures play in society, the United States Supreme Court has held that the negligence standard applicable in a defamation claim involving a private citizen is the inappropriate standard in a defamation claim brought by a public figure; instead, a public figure must prove the statement at issue was made with “actual malice” – that is, with knowledge that it was false or with reckless disregard as to whether it was false or not.<sup>52</sup> Mere proof of failure to investigate, without more, does not establish the reckless disregard for the truth which would constitute “actual malice.”<sup>53</sup>

In justifying the actual malice standard, the U.S. Supreme Court has noted that criticism of official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes a public figure’s official reputation.<sup>54</sup> Further, the Court has noted that authoritative interpretations of the First Amendment’s constitutional guarantees do not turn upon “the truth, popularity, or social utility of the ideas and beliefs which are offered.”<sup>55</sup> Erroneous statements, according to the Court, are inevitable in free debate and must be protected if the freedoms of expression are to survive; “cases which impose liability for erroneous reports of the political conduct of officials reflect the obsolete doctrine that the governed must not criticize their governors.”<sup>56</sup>

### Invasion of Privacy

Florida law recognizes a right to privacy – that is, the right to be let alone and live in a community without being held up to the public gaze against one’s will.<sup>57</sup> An invasion of privacy claim is a tort (“privacy tort”) that generally falls into one of the following three categories:<sup>58</sup>

- Unauthorized publication of another’s name or likeness;
- Unreasonable public disclosure of a private fact; or
- Publicity that unreasonably places another in a false light before the public.<sup>59</sup>

A person who believes he or she has been the victim of a privacy tort generally has four years to bring a lawsuit raising the invasion of privacy allegations; however, an unauthorized publication cause of action may not be brought if the name or likeness used belongs to a decedent and the use on which the action is based occurred more than 40 years after the decedent’s death.<sup>60</sup>

Further, as with defamation:

- The cause of action for damages founded upon a single publication, exhibition, or utterance is deemed to have accrued at the time of the first publication, exhibition, or utterance thereof in Florida.<sup>61</sup>
- No person may have more than one choice of venue for damages for a privacy tort founded upon any single publication, exhibition, or utterance and recovery in such an action must include all damages for any such tort suffered by the plaintiff in all jurisdictions.<sup>62</sup>
- A public figure has a lower expectation of privacy than a non-public figure.<sup>63</sup>

However, unlike in defamation claims, mere spoken words do not give rise to a privacy tort; the conduct at issue must be published or broadcast in some fashion.<sup>64</sup> Further, neither the truth of the published matter nor the absence of malice or wrongful motive on the part of the writer or publisher constitute a defense to a privacy tort.<sup>65</sup>

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<sup>52</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

<sup>53</sup> *Gertz*, 418 U.S. at 330.

<sup>54</sup> *Sullivan*, 376 U.S. at 271-272 (citing *N.A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963) and quoting *Sweeney v. Patterson*, 128 F. 2d 457 (D.C. Cir. 1942)).

<sup>55</sup> *Sullivan*, 376 U.S. at 271.

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

<sup>57</sup> *Cason v. Baskin*, 20 So. 2d 243 (Fla. 1944). This is not to be confused with the right to privacy guaranteed in article I, section 23 of the Florida Constitution, which generally guarantees Floridians a right to be free from government intrusion into their private lives.

<sup>58</sup> A fourth category, unreasonable intrusion into another’s seclusion, is not discussed here, as it does not require publication.

<sup>59</sup> Restatement (Second) of Torts s. 652A.

<sup>60</sup> Ss. 95.11(3)(o) and 540.08(4), F.S.; *Epic Metals Corp. v. Condec, Inc.*, 867 F. Supp. 1009 (M.D. Fla. 1994).

<sup>61</sup> S. 770.07, F.S.

<sup>62</sup> S. 770.05, F.S.

<sup>63</sup> *Cason*, 20 So. 2d at 251.

<sup>64</sup> *Id.* at 251-252; *In re Carter*, 411 B.R. 730 (U.S. Bankr. Ct., M.D. Fla. 2009).

<sup>65</sup> *Cason*, 20 So. 2d at 252.

Damages available to a prevailing plaintiff in a privacy tort include actual damages and punitive damages where the defendant's conduct was willful, wanton, or malicious.<sup>66</sup> However, the plaintiff need not prove actual damages to prevail in a privacy tort claim and may recover nominal damages if actual damages are not proved.<sup>67</sup>

### *Unauthorized Publication*

Florida courts recognize the common law tort of unauthorized publication of another's name or likeness (sometimes referred to as "appropriation").<sup>68</sup> Florida law also codifies this tort in s. 540.08, F.S., providing generally the same elements as the common law tort.<sup>69</sup> 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 purpose<sup>70</sup> 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;<sup>71</sup>
- 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
  - If no person is so authorized, then by the decedent's surviving spouse or any one of his or her surviving children.<sup>72</sup>

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.<sup>73</sup> 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.<sup>74</sup> However, only the individual whose privacy was invaded may sue for unauthorized publication at common law.<sup>75</sup>

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

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<sup>66</sup> *James v. Intelligent Software Solutions*, 2017 WL 5634293 (11th Cir. 2017).

<sup>67</sup> *Facchina v. Mut. Benefits Corp.*, 735 So. 2d 499 (Fla. 4th DCA 1999).

<sup>68</sup> *Coton v. Televised Visual X-Ography, Inc.*, 740 F. Supp.2d 1299 (M.D. Fla. 2010).

<sup>69</sup> 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).

<sup>70</sup> 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).

<sup>71</sup> Consent may only be given on behalf of a minor by the guardian of his or her person or by either parent. S. 540.08(6), F.S.

<sup>72</sup> 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.

<sup>73</sup> S. 540.08(2), F.S.; *Coton*, 740 F. Supp. 2d at 1312.

<sup>74</sup> "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.

<sup>75</sup> *Loft*, 408 So. at 623-625.



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.<sup>76</sup>

### *Public Disclosure of Private Facts*

Florida courts recognize the common law tort of unreasonable public disclosure of private facts, which cause of action may only be brought by the person whose privacy was so invaded.<sup>77</sup> To prevail in a public disclosure claim, the plaintiff must prove that the:

- Defendant publicized a truthful but private<sup>78</sup> fact concerning the plaintiff; and
- Matter publicized is of a kind that:
  - Publication would be highly offensive to a reasonable person; and
  - Is not of legitimate public concern – that is, the matter is not newsworthy.<sup>79</sup>

Generally, the disclosure must also have been made to the public at large or to so many persons that the matter is substantially certain to become public knowledge.<sup>80</sup> There is no precise number of persons to whom disclosure must be made to satisfy this requirement; instead the court must consider the facts of each case in determining whether the publication was sufficiently “public.”<sup>81</sup> Further, the plaintiff’s consent to the publication is an absolute defense, which consent may be express or implied.<sup>82</sup>

### *False Light*

False light is a common law tort that Florida courts no longer recognize, although other jurisdictions do continue to recognize it. Traditionally, this tort arose out of a statement that would be highly offensive to a reasonable person; unlike defamation, which affords a remedy for damages to a person’s reputation, false light affords a remedy for emotional harm.<sup>83</sup> Thus, to prevail in a false light claim, a plaintiff traditionally had to prove that the:

- Publication places the plaintiff in a false light that would be highly offensive to a reasonable person; and
- Defendant acted knowingly or in reckless disregard as to the false light in which the plaintiff would be placed.<sup>84</sup>

As with defamation by implication, truth was not an absolute defense to a false light claim, as such a claim could exist where the facts alleged are true but the implication or innuendo created by the juxtaposition or omission of the facts is false.<sup>85</sup> However, truth was available to a defendant in a false light claim as a defense where the defendant could show that the implication or innuendo created was true.<sup>86</sup>

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<sup>76</sup> 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).

<sup>77</sup> *Cape Publications, Inc. v. Hitchner*, 549 So. 2d 1374 (Fla. 1989); *Tyne*, 204 F. Supp. 2d at 1344.

<sup>78</sup> To be considered “private,” a fact cannot already have been “in the public eye”; that is, the facts cannot already have been publicized by another source or through the plaintiff’s failure to conceal them. *Heath v. Playboy Enter. Inc.*, 732 F. Supp. 1145 (S.D. Fla. 1990); *Doe v. Univision Television Group, Inc.*, 717 So. 2d 63 (Fla. 3d DCA 1998).

<sup>79</sup> There is no set standard for what is considered “newsworthy.” Instead, the courts look to the specific facts of each case to determine the newsworthiness of the private information publicized. *Hitchner*, 549 So. 2d at 1377; Restatement (Second) of Torts § 652D.

<sup>80</sup> *Guarino v. Mandel*, 327 So. 3d 853 (Fla. 4th DCA 2021).

<sup>81</sup> *Leach v. District Bd. of Trustees of Palm Beach*, 244 F. Supp. 3d 1334 (S.D. Fla. 2017).

<sup>82</sup> *Heath*, 732 F. Supp. At 1150.

<sup>83</sup> *Rapp*, 997 So. 2d at 1108; Restatement (Second) of Torts § 652E; *Gannet Co., Inc. v. Anderson*, 947 So. 2d 1 (Fla. 1st DCA 2006); Robert, Rafii, *Defamation vs. False Light: What Is the Difference?*, <https://www.findlaw.com/injury/torts-and-personal-injuries/defamation-vs--false-light-what-is-the-difference.html> (last visited Feb. 8, 2024) (noting that “[d]efamation is meant to protect reputation. A non-offensive statement about a person can harm ... reputation. As such, defamation does not require that the statement is offensive or embarrassing. False light demands that the implication is offensive or embarrassing to a reasonable person”).

<sup>84</sup> Restatement (Second) of Torts § 652E.

<sup>85</sup> *Lane*, 242 F. Supp. 2d at 1221.

<sup>86</sup> *Id.* at 1222.



Florida courts recognized the common law tort of false light until 2008,<sup>87</sup> when the Florida Supreme Court held that it would no longer recognize false light because it overlapped so substantially with defamation.<sup>88</sup>

### Journalist's Privilege

A legal privilege generally operates to keep communications or other information private to promote open communication and information-sharing in situations where such communication and information-sharing should be encouraged; such privileges can be affirmatively raised in legal proceedings to shield protected communications and information, but can also generally be waived by the person for whose benefit the privilege exists.<sup>89</sup>

One such privilege is the journalist's privilege, which, generally speaking, affords journalists the right not to disclose the identity of witnesses and other materials in court. Although it is journalists who invoke the journalist's privilege, the theory behind the privilege is to shield informants who have information of value to the public, to encourage the free flow of such information.<sup>90</sup>

Forty-nine states (including Florida) and the District of Columbia currently recognize a journalist's privilege either in statute or under the common law; some states make the privilege absolute, while others make the privilege qualified, and the laws vary as to who may claim the privilege and to what information it applies.<sup>91</sup> The United States Supreme Court has also recognized a journalist's limited First Amendment right to keep confidential the names of his or her sources and unpublished information provided by such sources; most federal courts also recognize such a privilege, but the scope of the privilege varies.<sup>92</sup>

#### *Journalist's Privilege in Florida*

Florida law affords a professional journalist<sup>93</sup> a qualified privilege not to be a witness concerning, and not to disclose the information, including the identity of any source, that the professional journalist has obtained while actively gathering news.<sup>94</sup> This privilege applies only to information or eyewitness observations obtained within the professional journalist's normal scope of employment, and a journalist does not waive the privilege simply by publishing or broadcasting information.<sup>95</sup> However, the privilege does not apply to physical evidence, eyewitness observations, or visual or audio recording of crimes; thus, a professional journalist may be compelled to testify before a grand jury or in other criminal proceedings regarding criminal activity which he or she witnessed and to turn over any physical evidence or recordings of the crime he or she may have obtained.<sup>96</sup>

Further, because the journalist's privilege is qualified, it may be overcome by a party who makes a clear and specific showing that:

- The information is relevant and material to unresolved issues that have been raised in the proceeding for which the information is sought;

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<sup>87</sup> See, e.g., *Gannet*, 947 So. 2d at 11.; see also *Heekin v. CBS Broadcasting, Inc.*, 789 So. 2d 355 (Fla. 2d DCA 2001).

<sup>88</sup> *Rapp*, 997 So. 2d at 1113-1114.

<sup>89</sup> Legal Information Institute, *Privilege*, <https://www.law.cornell.edu/wex/privilege> (last visited Feb. 8, 2024).

<sup>90</sup> Geoffrey R. Stone, *Why We Need A Federal Reporter's Privilege*, 34 Hofstra L. Rev. 39 (2005), [https://law.hofstra.edu/pdf/academics/journals/lawreview/lrv\\_issues\\_v34n01\\_bb4\\_ideas-essays\\_stone\\_final.pdf](https://law.hofstra.edu/pdf/academics/journals/lawreview/lrv_issues_v34n01_bb4_ideas-essays_stone_final.pdf) (last visited Feb. 8, 2024).

<sup>91</sup> Wyoming does not currently recognize a journalist's privilege. Student Press Law Center, *State-by-State Guide to the Reporter's Privilege for Student Media*, <https://splc.org/2019/08/state-by-state-guide-to-the-reporters-privilege-for-student-media/> (last visited Feb. 8, 2024); Justia, *Reporter Shield Laws* <https://www.justia.com/communications-internet/reporter-shield-laws/> (last visited Feb. 8, 2024).

<sup>92</sup> *Branzburg v. Hayes*, 408 U.S. 665 (1972).

<sup>93</sup> A "professional journalist" is a person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or an independent contractor for a newspaper; news journal; news agency; press association; wire service; radio or television station; network; or news magazine. S. 90.5015(1), F.S.

<sup>94</sup> "News" means information of public concern relating to local, statewide, national, or worldwide issues or events. S. 90.5015(2), F.S.

<sup>95</sup> S. 90.5015(2) and (4), F.S.; *State v. Davis*, 720 So. 2d 220 (Fla. 1998).

<sup>96</sup> S. 90.5015(2), F.S.; *Miami Herald Publishing Co. v. Morejon*, 561 So. 2d 577 (Fla. 1990) ("There is no privilege, qualified, limited, or otherwise, which protects journalists from testifying as to their eyewitness observations of a relevant event in a subsequent court proceeding.")

- The information cannot be obtained from alternative sources; and
- A compelling interest exists for the required information disclosure.<sup>97</sup>

The court, in turn, must order disclosure only of that portion of the information for which such a showing was made and support such order with clear and specific findings made after a hearing.<sup>98</sup>

## **Effect of Proposed Changes**

### Defamation or Privacy Tort Defined

CS/HB 757 amends s. 770.05, F.S., to define the term “defamation or privacy tort,” as used in chapter 770, F.S., to mean libel, slander, invasion of privacy, or any other tort founded upon a single publication, exhibition, or utterance, including any one:

- Newspaper edition.
- Book.
- Magazine.
- Presentation to an audience.
- Radio or television broadcast.
- Motion picture exhibition.
- Internet publication, exhibition, or utterance.

This definition under the bill does not change any of the elements of defamation or a privacy tort, and does not make something defamation or a privacy tort that is not already such under current law.

### Pre-Suit Notice for Media Entities

The bill amends s. 770.02, F.S., to provide that, if a newspaper or broadcast station published the article or broadcast identified in the plaintiff’s pre-suit notice on the Internet, such article or broadcast must be permanently removed from the Internet within 10 days after service of such notice in order to limit the plaintiff’s recovery to actual damages. In other words, even where a newspaper or broadcast station has properly issued a correction, apology, or retraction as contemplated by this section, where the newspaper or broadcast station does not also timely and permanently remove the article or broadcast from the Internet, punitive damages may still be assessed. This accounts for the reality that, in the digital age, the printing or broadcasting of a correction, apology, or retraction alone may be insufficient to remedy the harm caused by a defamatory statement’s publication or broadcast, as the statement may continue to exist on the Internet and indefinitely perpetuate the plaintiff’s harm.

### Civil Liability of Certain Media Outlets

The bill amends s. 770.04, F.S., to add a newspaper owner, licensee, or operator, and the agents or employees thereof, to the list of persons affiliated with media outlets who are shielded from liability in specified circumstances by the reporting privilege provided in this section. Specifically, the bill provides that a newspaper owner, licensee, or operator, and the agents and employees thereof, are not liable for any defamatory statement published or uttered in a newspaper article by one other than such owner, licensee, or operator, or an agent or employee thereof, unless the plaintiff alleges and proves that such owner, licensee, or operator, or an agent or employee thereof, failed to exercise due care to prevent the publication or utterance of such statement in such newspaper article.

However, the bill also amends s. 770.04, F.S., to provide that, when an owner, licensee, or operator of shielded media entity publishes a defamatory statement on the Internet with no knowledge of the statement’s falsity and thereafter receives notice that such statement has been found in a judicial proceeding to be false, or receives notice of facts that would cause a reasonable person to conclude that such statement was false, and fails to take reasonable steps to permanently remove the statement and any related report from the Internet, the continued appearance of such statement or report on the Internet after receipt of the notice is a new publication for purposes of the statute of limitations, and the

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<sup>97</sup> S. 90.5015(2), F.S.

<sup>98</sup> S. 90.5015(3), F.S.

owner, licensee, or operator would not be entitled to a fair reporting privilege for such new publication. In other words, even where the media entity's owner, licensee, or operator exercised due care as to the original publication of the statement in a radio or television broadcast or a newspaper article, where such statement is also published on the Internet and the owner, licensee, or operator fails to take reasonable steps to remove it therefrom, the owner, licensee, or operator loses the benefit of the fair reporting privilege and the liability shield it provided as to the Internet publication. This accounts for the reality that, in the digital age, the continued publication of a defamatory statement on the Internet, even where such statement was originally published without the knowledge that it was false, could indefinitely perpetuate the harm caused by the statement, and reflects the policy that persons who knowingly choose to perpetuate that harm should not be shielded from civil liability.

### Venue for a Defamation or Privacy Tort

The bill amends s. 770.05, F.S., to expand the venue options available to a person suing for a defamation or privacy tort. Specifically, the bill provides that, when the damages for a defamation or privacy tort are based on material published through the:

- Radio or television, venue is proper in any county where the material was accessed.
- Internet, venue is proper in any county in the state.

These changes update venue laws as they pertain to defamation or privacy tort actions, reflecting the wide reach of the internet and certain broadcasts through which defamatory statements and private information are easily spread.

### Veracity Hearings in Defamation of Privacy Tort Actions

The bill creates s. 770.107, F.S., to authorize a "veracity hearing" in defamation or privacy tort actions. Specifically, the bill requires a court, upon motion by any party to a defamation or privacy tort action, to conduct an evidentiary hearing to determine two issues, which issues may be dispositive, as follows:

- Whether a statement is a state of fact or opinion.
- The veracity of any statement of fact that constitutes the basis for the cause of action.

Under the bill, the court must hear such motion within 60 days of service thereof, and the court's review is limited solely to determining the nature of the statement and its veracity. The bill also prohibits a court, in ruling upon such a motion, from issuing findings about:

- Whether the statement of fact is defamation per se, defamation per quod, or a privacy tort;
- Whether the plaintiff qualifies as a public figure or limited public figure; or
- Whether the defendant acted negligently, recklessly, intentionally, or with actual malice.

### Anonymous Sources

The bill creates s. 770.11, F.S., to provide that there is a rebuttable presumption that a publisher acted with actual malice in publishing a statement if a public figure plaintiff can prove that the published statement is false and the publisher relied on an anonymous source for the statement. Practically speaking, a journalist who relies on information supplied by an anonymous source in making a statement, which statement turns out to be false, and who chooses to exercise the journalist's privilege by maintaining the confidentiality of a source's identity, would have to overcome the presumption of actual malice to avoid civil liability.

### False Light through Artificial Intelligence

The bill creates s. 770.15, F.S., to resuscitate the tort of false light in the limited context of the use of artificial intelligence. Specifically, the bill provides that a person who uses artificial intelligence to create or edit any form of media so that it attributes something false to or leads a reasonable viewer to believe something false about another is subject to liability if all of the following apply:

- The media is published, distributed, or otherwise placed before the public;
- The false light in which the other person was placed would be highly offensive to a reasonable person; and

- The person had knowledge of or acted in reckless disregard as to the media's false implications.

The bill defines "artificial intelligence" for the purposes of this section as the theory and development of computer systems that are designed to simulate human intelligence through machine learning and perform tasks that would normally require human involvement, such as visual perception, speech recognition, decision-making, and translation between languages. The bill also expands the original tort of false light by specifying that this section incorporates the standards set forth under Ch. 770, F.S., for defamation causes of action "to the extent necessary."

Practically speaking, where artificial intelligence is used to create or edit any form of media, a person represented therein could likely bring a defamation claim under current law where the media so created or edited is used in a way that defames the person. However, such a person, when attempting to prove damages, would generally have to show that his or her reputation had suffered. By generally resuscitating the tort of false light in this limited context, the bill requires a plaintiff attempting to prove damages to show only that he or she suffered emotional harm; this is likely an easier standard for a plaintiff to meet.

### Severability

The bill provides for severability. Specifically, the bill provides that, if a court holds any provision of the bill or its application to any person or circumstances invalid, the invalidity does not affect the bill's other provisions or applications which can be given effect without the invalid provision or application.

### Effective Date

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

## B. SECTION DIRECTORY:

- Section 1:** Amends s. 770.02, F.S., relating to correction, apology, or retraction by newspaper or broadcast station.
- Section 2:** Amends s. 770.04, F.S., relating to civil liability of radio or television broadcasting stations; care to prevent publication or utterance required.
- Section 3:** Amends s. 770.05, F.S., relating to limitation of choice of venue.
- Section 4:** Creates s. 770.107, F.S., relating to veracity hearings in defamation or privacy tort actions.
- Section 5:** Creates s. 770.11, F.S., relating to presumption regarding anonymous sources when the statement made about a public figure is false.
- Section 6:** Creates s. 770.15, F.S., relating to using artificial intelligence to place person in false light.
- Section 7:** Reenacts s. 770.06, F.S., relating to adverse judgment in any jurisdiction a bar to additional action.
- Section 8:** Reenacts s. 770.07, F.S., relating to cause of action, time of accrual.
- Section 9:** Reenacts s. 770.08, F.S., relating to limitation on recovery of damages.
- Section 10:** Provides for severability.
- Section 11:** 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:

The bill may have a positive fiscal impact on a public figure plaintiff who obtains the benefit of an actual malice presumption which a publisher is unable to overcome. Likewise, the bill may have a negative fiscal impact on a publisher who relies on an anonymous source for a statement about a public figure, which statement turns out to be false, and who is unable to overcome the presumption that the statement was published with actual malice.

The bill may also have a positive fiscal impact on a plaintiff who prevails on a false light claim as resuscitated by the bill, which requires only a showing of emotional harm when attempting to prove damages, where such plaintiff would not have prevailed had he or she raised a defamation claim, which requires a showing of reputational harm when attempting to prove damages. Likewise, the bill may have a negative fiscal impact on a defendant who is found liable for a false light claim as resuscitated by the bill where such defendant would not have been found liable had the plaintiff raised a defamation claim instead.

Further, the bill may have a positive fiscal impact on a plaintiff who prevails in a lawsuit against a media entity involving publication of a statement on the Internet where the media entity would have previously been shielded from civil liability, or where the plaintiff is able to obtain punitive damages against a media entity even after the entity issues a correction, apology, or retraction. Likewise, the bill may have a negative fiscal impact on a media entity who does not take required steps to remove a publication from the Internet and therefore loses its liability shield or is assessed punitive damages.

Finally, the bill may have a positive economic impact on the private sector, to the extent that a “veracity hearing” leads to the earlier resolution of a defamation or privacy tort action and thereby reduces litigation costs for the parties to such action.

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:

The bill resuscitates the tort of false light in the context of the use of artificial intelligence, limits a media entity’s civil liability shield and ability to avoid punitive damages in specified circumstances, and creates a rebuttable presumption that a publisher acted with actual malice in publishing a statement where a public figure plaintiff proves such statement is false and where the publisher chose to exercise the journalist’s privilege by maintaining the confidentiality of a source’s identity.

The First Amendment to the United States Constitution provides that “Congress shall make no law ... abridging the freedom of speech, or of the press...” Courts apply the First Amendment to the

states through the Fourteenth Amendment, thus restricting the states in enacting laws which abridge the freedom of speech or of the press.

In claims for defamation and invasion of privacy, the courts recognize that the First Amendment guarantees are not absolute. Instead, the courts must balance the rights of the defendant to speak or otherwise publicize information with the rights of the plaintiff to protect his or her reputation or privacy.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 18, 2024, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Extended the liability shield under the fair reporting privilege to newspaper entities.
- Limited a media entity's liability shield under the fair reporting privilege and ability to avoid punitive damages where a defamatory statement is not removed from the Internet as required by the bill.
- Authorized a "veracity hearing" in specified circumstances.

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

1                                   A bill to be entitled  
2           An act relating to defamation, false light, and  
3           unauthorized publication of name or likenesses;  
4           amending s. 770.02, F.S.; requiring that certain  
5           articles or broadcasts be removed from the Internet  
6           within a specified period to limit damages for  
7           defamation; amending s. 770.04, F.S.; providing  
8           persons in certain positions relating to newspapers  
9           with immunity for defamation if such persons exercise  
10          due care to prevent utterance of such a statement;  
11          requiring removal of defamatory statements from the  
12          Internet in certain circumstances; amending s. 770.05,  
13          F.S.; providing a definition; providing venue for  
14          damages for a defamation or privacy tort based on  
15          material broadcast over radio or television; providing  
16          venue for damages for a defamation or privacy tort  
17          based on material published, exhibited, or uttered on  
18          the Internet; creating s. 770.107, F.S.; providing for  
19          a motion for a veracity hearing in a defamation or  
20          privacy tort action; specifying determinations to be  
21          made on such a motion; providing a timeframe for a  
22          hearing; limiting the court's review of such a motion;  
23          specifying that a certain finding may not be made in  
24          ruling on such a motion; creating s. 770.11, F.S.;  
25          providing a rebuttable presumption that a publisher of

26 a false statement acted with actual malice in certain  
 27 circumstances; creating s. 770.15, F.S.; providing a  
 28 definition; providing that a person who uses  
 29 artificial intelligence to create or edit any form of  
 30 media in a certain manner is subject to liability in  
 31 certain circumstances; incorporating certain  
 32 standards; reenacting ss. 770.06, 770.07, and 770.08,  
 33 F.S., relating to adverse judgment in any jurisdiction  
 34 as a bar to additional action, cause of action and  
 35 time of accrual, and limitation on recovery of  
 36 damages, respectively, to incorporate the amendment  
 37 made to s. 770.05, F.S., in references thereto;  
 38 providing severability; providing an effective date.

39  
 40 Be It Enacted by the Legislature of the State of Florida:

41  
 42 Section 1. Section 770.02, Florida Statutes, is amended to  
 43 read:

44 770.02 Correction, apology, or retraction by newspaper or  
 45 broadcast station.—

46 (1) If it appears upon the trial that said article or  
 47 broadcast was published in good faith; that its falsity was due  
 48 to an honest mistake of the facts; that there were reasonable  
 49 grounds for believing that the statements in said article or  
 50 broadcast were true; and that, within the period of time



51 specified in subsection (2), a full and fair correction,  
52 apology, or retraction was, in the case of a newspaper or  
53 periodical, published in the same editions or corresponding  
54 issues of the newspaper or periodical in which said article  
55 appeared and in as conspicuous place and type as said original  
56 article or, in the case of a broadcast, the correction, apology,  
57 or retraction was broadcast at a comparable time, then the  
58 plaintiff in such case shall recover only actual damages. For  
59 purposes of this section, if such an article or a broadcast has  
60 been published on the Internet, the article or broadcast must be  
61 permanently removed from the Internet within the time period  
62 provided in paragraph (2) (a) in order to limit recovery to  
63 actual damages as provided in this section.

64 (2) Full and fair correction, apology, or retraction shall  
65 be made:

66 (a) In the case of a broadcast or a daily or weekly  
67 newspaper or periodical, within 10 days after service of  
68 notice.~~;~~

69 (b) In the case of a newspaper or periodical published  
70 semimonthly, within 20 days after service of notice.~~;~~

71 (c) In the case of a newspaper or periodical published  
72 monthly, within 45 days after service of notice.~~;~~~~and~~

73 (d) In the case of a newspaper or periodical published  
74 less frequently than monthly, in the next issue, provided notice  
75 is served no later than 45 days prior to such publication.

76 Section 2. Section 770.04, Florida Statutes, is amended to  
 77 read:

78 770.04 Civil liability of certain media outlets ~~radio or~~  
 79 ~~television broadcasting stations~~; care to prevent publication or  
 80 utterance required.—

81 (1) The owner, licensee, or operator of a radio or  
 82 television broadcasting station or a newspaper, and the agents  
 83 or employees of any such owner, licensee, or operator, shall not  
 84 be liable for any damages for any defamatory statement published  
 85 or uttered in or as a part of a radio or television broadcast or  
 86 newspaper article, by one other than such owner, licensee, or  
 87 operator, or general agent or employees thereof, unless it is  
 88 ~~shall be~~ alleged and proved by the complaining party, that such  
 89 owner, licensee, operator, general agent, or employee, has  
 90 failed to exercise due care to prevent the publication or  
 91 utterance of such statement in such broadcasts or newspaper  
 92 articles, provided, however, the exercise of due care shall be  
 93 construed to include the bona fide compliance with any federal  
 94 law or the regulation of any federal regulatory agency.

95 (2) When an owner, a licensee, or an operator described in  
 96 subsection (1) publishes a defamatory statement on the Internet  
 97 with no knowledge of falsity of the statement and thereafter  
 98 receives notice that such statement has been found in a judicial  
 99 proceeding to be false, or receives notice of facts that would  
 100 cause a reasonable person to conclude that such statement was

101 false, and the owner, licensee, or operator fails to take  
102 reasonable steps to permanently remove the statement and any  
103 related report from the Internet, the continued appearance of  
104 such statement or report on the Internet after the notice shall  
105 be a new publication for purpose of the statute of limitations,  
106 and the owner, licensee, or operator shall not be entitled to a  
107 fair reporting privilege for such new publication.

108 Section 3. Section 770.05, Florida Statutes, is amended to  
109 read:

110 770.05 Limitation of choice of venue.—

111 (1) As used in this chapter, the term "defamation or  
112 privacy tort" means libel, slander, invasion of privacy, or any  
113 other tort founded upon any single publication, exhibition, or  
114 utterance, such as any one edition of a newspaper, book, or  
115 magazine, any one presentation to an audience, any one broadcast  
116 over radio or television, any one exhibition of a motion  
117 picture, or any one publication, exhibition, or utterance on the  
118 Internet.

119 (2) A ~~No~~ person may not ~~shall~~ have more than one choice of  
120 venue for damages for a defamation or privacy tort ~~libel or~~  
121 ~~slander, invasion of privacy, or any other tort founded upon any~~  
122 ~~single publication, exhibition, or utterance, such as any one~~  
123 ~~edition of a newspaper, book, or magazine, any one presentation~~  
124 ~~to an audience, any one broadcast over radio or television, or~~  
125 ~~any one exhibition of a motion picture.~~ Recovery in any action

126 shall include all damages for any such tort suffered by the  
127 plaintiff in all jurisdictions.

128 (3) Notwithstanding any other provision of this chapter,  
129 or any other statute providing for venue, when:

130 (a) Damages for a defamation or privacy tort are based on  
131 material broadcast over radio or television, venue is proper in  
132 any county in which the material was accessed.

133 (b) Damages for a defamation or privacy tort are based on  
134 material published, exhibited, or uttered on the Internet, venue  
135 is proper in any county in the state.

136 Section 4. Section 770.107, Florida Statutes, is created  
137 to read:

138 770.107 Veracity hearings in defamation or privacy tort  
139 actions.—

140 (1) Upon motion by any party to a cause of action brought  
141 under this chapter, the court shall conduct an evidentiary  
142 hearing to determine:

143 (a) Whether a statement is a statement of fact or an  
144 opinion.

145 (b) The veracity of any statement of fact that constitutes  
146 the basis for the cause of action.

147 (2) Unless otherwise agreed to by the parties, the court  
148 shall hear the motion within 60 days after service of the  
149 motion.

150 (3) The court's review of the motion shall be limited

151 solely to determining whether a statement is a statement of fact  
 152 or an opinion and the veracity of the statement of fact at issue  
 153 in the underlying cause of action.

154 (4) In ruling upon a motion for determination of veracity,  
 155 the court shall issue no findings regarding the following  
 156 matters at issue in the underlying cause of action:

157 (a) Whether the statement of fact constitutes defamation  
 158 per se, defamation per quod, or a privacy tort;

159 (b) Whether the plaintiff in the cause of action qualifies  
 160 as a public figure or limited public figure; or

161 (c) Whether the defendant in the cause of action acted  
 162 negligently, recklessly, intentionally, or with actual malice.

163 Section 5. Section 770.11, Florida Statutes, is created to  
 164 read:

165 770.11 Presumption regarding anonymous sources when the  
 166 statement made about a public figure is false.—If a public  
 167 figure plaintiff can establish that a published statement is  
 168 false and that the publisher relied on an anonymous source for  
 169 the statement, there is a rebuttable presumption that the  
 170 publisher acted with actual malice in publishing the statement.

171 Section 6. Section 770.15, Florida Statutes, is created to  
 172 read:

173 770.15 Using artificial intelligence to place person in  
 174 false light.—

175 (1) As used in this section, the term "artificial

176 intelligence" means the theory and development of computer  
177 systems that are designed to simulate human intelligence through  
178 machine learning and perform tasks that would normally require  
179 human involvement, such as visual perception, speech  
180 recognition, decisionmaking, and translation between languages.

181 (2) A person who uses artificial intelligence to create or  
182 edit any form of media so that it attributes something false to  
183 or leads a reasonable viewer to believe something false about  
184 another person is subject to liability if all of the following  
185 apply:

186 (a) The media is published, distributed, or otherwise  
187 placed before the public.

188 (b) The false light in which the other person was placed  
189 would be highly offensive to a reasonable person.

190 (c) The person had knowledge of or acted in reckless  
191 disregard as to the false implications of the media.

192 (3) This section incorporates the standards set forth  
193 under chapter 770 for defamation causes of action to the extent  
194 necessary.

195 Section 7. For the purpose of incorporating the amendment  
196 made by this act to section 770.05, Florida Statutes, in a  
197 reference thereto, section 770.06, Florida Statutes, is  
198 reenacted to read:

199 770.06 Adverse judgment in any jurisdiction a bar to  
200 additional action.—A judgment in any jurisdiction for or against

201 the plaintiff upon the substantive merits of any action for  
 202 damages founded upon a single publication or exhibition or  
 203 utterance as described in s. 770.05 shall bar any other action  
 204 for damages by the same plaintiff against the same defendant  
 205 founded upon the same publication or exhibition or utterance.

206 Section 8. For the purpose of incorporating the amendment  
 207 made by this act to section 770.05, Florida Statutes, in a  
 208 reference thereto, section 770.07, Florida Statutes, is  
 209 reenacted to read:

210 770.07 Cause of action, time of accrual.—The cause of  
 211 action for damages founded upon a single publication or  
 212 exhibition or utterance, as described in s. 770.05, shall be  
 213 deemed to have accrued at the time of the first publication or  
 214 exhibition or utterance thereof in this state.

215 Section 9. For the purpose of incorporating the amendment  
 216 made by this act to section 770.05, Florida Statutes, in a  
 217 reference thereto, section 770.08, Florida Statutes, is  
 218 reenacted to read:

219 770.08 Limitation on recovery of damages.—No person shall  
 220 have more than one choice of venue for damages for libel founded  
 221 upon a single publication or exhibition or utterance, as  
 222 described in s. 770.05, and upon his or her election in any one  
 223 of his or her choices of venue, then the person shall be bound  
 224 to recover there all damages allowed him or her.

225 Section 10. If any provision of this act or its

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2024

226 application to any person or circumstance is held invalid, the  
227 invalidity does not affect other provisions or applications of  
228 this act which can be given effect without the invalid provision  
229 or application, and to this end the provisions of this act are  
230 severable.

231 Section 11. This act shall take effect July 1, 2024.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Andrade offered the following:

**Amendment (with title amendment)**

Remove lines 58-191 and insert:

plaintiff in such case shall recover only actual damages.

(2) Full and fair correction, apology, or retraction shall be made:

(a) In the case of a broadcast or a daily or weekly newspaper or periodical, within 10 days after service of notice.~~;~~

(b) In the case of a newspaper or periodical published semimonthly, within 20 days after service of notice.~~;~~

(c) In the case of a newspaper or periodical published monthly, within 45 days after service of notice.~~;~~ and

Amendment No. 1

16 (d) In the case of a newspaper or periodical published  
17 less frequently than monthly, in the next issue, provided notice  
18 is served no later than 45 days prior to such publication.

19 (3) For purposes of this section, in order to limit  
20 recovery to actual damages as provided in this section, when  
21 such an article or a broadcast has been published on the  
22 Internet, the article or broadcast must either be:

23 (a) Permanently removed from the Internet within the time  
24 period provided in paragraph (2) (a), or

25 (b) Retracted or corrected within the time period provided  
26 in paragraph (2) (a) and a notation must be placed on the  
27 headline and at the beginning of the article, in type font as  
28 large or larger than the article's, stating the retraction or  
29 correction was made and what was retracted or corrected.

30 Section 2. Section 770.04, Florida Statutes, is amended to  
31 read:

32 770.04 Civil liability of certain media outlets ~~radio or~~  
33 ~~television broadcasting stations~~; care to prevent publication or  
34 utterance required.—

35 (1) The owner, licensee, or operator of a radio or  
36 television broadcasting station or a newspaper, and the agents  
37 or employees of any such owner, licensee, or operator, shall not  
38 be liable for any damages for any defamatory statement published  
39 or uttered in or as a part of a radio or television broadcast or  
40 newspaper article, by one other than such owner, licensee, or

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41 operator, or general agent or employees thereof, unless it is  
42 ~~shall be~~ alleged and proved by the complaining party, that such  
43 owner, licensee, operator, general agent, or employee, has  
44 failed to exercise due care to prevent the publication or  
45 utterance of such statement in such broadcasts or newspaper  
46 articles, provided, however, the exercise of due care shall be  
47 construed to include the bona fide compliance with any federal  
48 law or the regulation of any federal regulatory agency.

49 (2) When an owner, a licensee, or an operator described in  
50 subsection (1) publishes a defamatory statement on the Internet  
51 with no knowledge of falsity of the statement and thereafter  
52 receives notice that such statement has been found in a judicial  
53 proceeding to be false, or receives notice of facts that would  
54 cause a reasonable person to conclude that such statement was  
55 false, and the owner, licensee, or operator fails to take  
56 reasonable steps to permanently remove the statement and any  
57 related report from the Internet or correct the statement as  
58 prescribed in s. 770.02(3), the continued appearance of such  
59 statement or report on the Internet after the notice shall be a  
60 new publication for purpose of the statute of limitations, and  
61 the owner, licensee, or operator shall not be entitled to a fair  
62 reporting privilege for such new publication.

63 Section 3. Section 770.05, Florida Statutes, is amended to  
64 read:

65 770.05 Limitation of choice of venue.—

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Amendment No. 1

66           (1) As used in this chapter, the term "defamation or  
67 privacy tort" means libel, slander, invasion of privacy, or any  
68 other tort founded upon any single publication, exhibition, or  
69 utterance, such as any one edition of a newspaper, book, or  
70 magazine, any one presentation to an audience, any one broadcast  
71 over radio or television, any one exhibition of a motion  
72 picture, or any one publication, exhibition, or utterance on the  
73 Internet.

74           (2) A ~~No~~ person may not ~~shall~~ have more than one choice of  
75 venue for damages for a defamation or privacy tort ~~libel or~~  
76 ~~slander, invasion of privacy, or any other tort founded upon any~~  
77 ~~single publication, exhibition, or utterance, such as any one~~  
78 ~~edition of a newspaper, book, or magazine, any one presentation~~  
79 ~~to an audience, any one broadcast over radio or television, or~~  
80 ~~any one exhibition of a motion picture.~~ Recovery in any action  
81 shall include all damages for any such tort suffered by the  
82 plaintiff in all jurisdictions.

83           (3) Notwithstanding any other provision of this chapter,  
84 or any other statute providing for venue, when:

85           (a) Damages for a defamation or privacy tort are based on  
86 material broadcast over radio or television, venue is proper in  
87 any county in which the material was accessed and in which a  
88 plaintiff reasonably suffered damages as a result of the  
89 broadcast.

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90 (b) Damages for a defamation or privacy tort are based on  
91 material published, exhibited, or uttered on the Internet, venue  
92 is proper in any county in the state in which a plaintiff  
93 reasonably suffered damages as a result of the publication.

94 (c) A plaintiff may not bring an action for a defamation  
95 or privacy tort in a venue that does not possess a reasonable  
96 connection to the material circumstances related to the cause of  
97 action.

98 (4) Upon the court's initiative or motion of any party,  
99 the court shall award reasonable attorney fees and damages to be  
100 paid to the defendant in equal amounts by the plaintiff and the  
101 plaintiff's attorney if a plaintiff's choice of venue is  
102 determined to possess no reasonable connection to the material  
103 circumstances related to the cause of action or the plaintiff's  
104 choice of venue is determined to have been sought for the  
105 purposes of harassment or other vexatious purpose.

106 Section 4. Section 770.107, Florida Statutes, is created  
107 to read:

108 770.107 Veracity hearings in defamation or privacy tort  
109 actions.-

110 (1)(a) Upon motion by any party to a cause of action  
111 brought under this chapter, the court shall conduct a hearing to  
112 determine the following:

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113 1. Whether any material statement that constitutes the  
114 basis for the cause of action is a statement of fact or an  
115 opinion.

116 2. The veracity of any statement of fact that constitutes  
117 the basis for the cause of action.

118 (b) The court shall grant such motion if the movant shows  
119 there is no genuine dispute as to any material fact regarding  
120 the subject of the motion.

121 (2) Unless otherwise agreed to by the parties, the court  
122 shall hear the motion within 60 days after service of the  
123 motion.

124 (3) The court's review of the motion shall be limited  
125 solely to determining whether a statement is a statement of fact  
126 or an opinion and the veracity of the statement of fact at issue  
127 in the underlying cause of action.

128 (4) In ruling upon a motion for determination of veracity,  
129 the court shall issue no findings regarding the following  
130 matters at issue in the underlying cause of action:

131 (a) Whether the statement of fact constitutes defamation  
132 per se, defamation per quod, or a privacy tort;

133 (b) Whether the plaintiff in the cause of action qualifies  
134 as a public figure or limited public figure; or

135 (c) Whether the defendant in the cause of action acted  
136 negligently, recklessly, intentionally, or with actual malice.

Amendment No. 1

137       (5) The court shall assess against the nonprevailing party  
138 the reasonable attorney fees and costs associated with the  
139 hearing.

140       Section 5. Section 770.11, Florida Statutes, is created to  
141 read:

142       770.11 Presumption regarding anonymous sources when the  
143 statement made about a public figure is false.—If a public  
144 figure plaintiff can establish that a published statement is  
145 false and that the publisher relied on an anonymous source for  
146 the statement, there is a rebuttable presumption that the  
147 publisher acted with actual malice in publishing the statement.

148       Section 6. Section 770.15, Florida Statutes, is created to  
149 read:

150       770.15 Using artificial intelligence to place person in  
151 false light.—

152       (1) As used in this section, the term "artificial  
153 intelligence" means a machine-based system that, for explicit or  
154 implicit objectives, infers, from the input the system receives,  
155 how to generate outputs such as predictions, content,  
156 recommendations, or decisions that can influence physical or  
157 virtual environments. Different artificial intelligence systems  
158 vary in the levels of autonomy and adaptiveness after  
159 deployment.

160       (2) A person who intentionally uses artificial  
161 intelligence to create or edit any form of media so that it

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162 attributes something false to or leads a reasonable viewer to  
163 believe something false about another person is subject to  
164 liability if all of the following apply:

165 (a) The media is published, distributed, or otherwise  
166 placed before the public.

167 (b) The false light in which the other person was placed  
168 would be highly offensive to a reasonable person.

169 (c) The person creating or editing the media had actual  
170 knowledge of or acted in reckless disregard as to the false  
171 implications of the media.

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

Remove lines 18-24 and insert:  
the Internet; providing for award of attorney fees and  
damages due to plaintiff's choice of venue in certain  
circumstances; creating s. 770.107, F.S.; providing for a  
motion for a veracity hearing in a defamation or privacy  
tort action; specifying determinations to be made on such a  
motion; providing a timeframe for a hearing; limiting the  
court's review of such a motion; specifying that a certain  
finding may not be made in ruling on such a motion;  
providing for award of attorney fees in certain  
circumstances; creating s. 770.11, F.S.;





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for CS/HB 979 Estoppel Certificates

**SPONSOR(S):** Judiciary Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Mawn	Kramer

**SUMMARY ANALYSIS**

The Florida Department of Business and Professional Regulation (“DBPR”) regulates certain community associations in the state, including condominium (“condo”) associations; cooperative (“co-op”) associations; and, to a limited degree, homeowners' associations (“HOAs”). A condo association is a form of real property ownership created under ch. 718, F.S., in which persons own condo units along with an undivided right of access to the condo’s common elements. A co-op association is a form of property ownership created under ch. 719, F.S., in which the real property is owned by the association and individual units are leased to the residents, who own shares in the association. Meanwhile, an HOA, created under ch. 720, F.S. is a form of property ownership in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership.

When a person intends to buy a unit in a condo or co-op, or a parcel in an HOA, an “estoppel certificate” helps to facilitate the closing of the sale by giving the parties a summary of the fees, fines, dues, and assessments which the seller may owe to the community association. Florida law gives an association ten business days after receiving a written or electronic request for an estoppel certificate from a unit or parcel owner to issue the estoppel certificate, which certificate must contain specified information. Any board member, authorized agent, or authorized representative of the association may complete the estoppel certificate, and such certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance.

Fees for estoppel certificate preparation and delivery are capped in Florida law and adjusted every five years in an amount equal to the total of the annual increases for that five-year period in the Consumer Price Index (“CPI”). Pursuant to the latest CPI adjustment, the fees currently may not exceed, for one unit or parcel:

- \$299 for certificate preparation and delivery if, on the date of the certificate’s issuance, the seller does not owe any money to the association;
- A \$179 additional fee if the seller owes money to the association for the unit or parcel; and
- A \$119 additional fee if the certificate is requested on an expedited basis.

PCS for CS/HB 979 limits an association’s authority to charge estoppel certificate fees and modifies provisions relating to the timing of fee payment and the renewal of an association’s fee authority.

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

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (“Division”), within the Department of Business and Professional Regulation (“DBPR”), provides consumer protection for Florida residents living in certain regulated communities through board of director educational programs, complaint resolution, alternative dispute resolution, and developer disclosure.<sup>1</sup> These regulated communities include:

- Condominium associations;
- Cooperative associations; and
- Homeowners' associations (limited to the arbitration of election and recall disputes).<sup>2</sup>

##### *Condominiums*

A condominium (“condo”) is a form of real property ownership created under ch. 718, F.S.; specifically, persons own condo units along with an undivided right of access to the condo’s common elements. A condo is created by recording a declaration of condominium, governing the relationship between condo unit owners and the condo association, in the public records of the county where the condo is located. All unit owners are members of the condo association, and the association is responsible for common elements operation and maintenance and may impose assessments against a member which, if unpaid, may become a lien on the member’s unit.

##### *Cooperatives*

A cooperative (“co-op”) is a form of property ownership created under ch. 719, F.S., in which the real property is owned by the co-op association and individual units are leased to the residents, who own shares in the association. The lease payment amount is the pro-rata share of the co-op’s operational expenses, and the association is authorized to impose assessments against any member of the co-op, which, if unpaid, may become a lien on the member’s unit. Co-ops operate similarly to condos, and the laws regulating co-ops are largely identical to those regulating condos.

##### *Homeowners’ Associations*

A homeowners’ association (“HOA”) is a form of real property ownership, created under ch. 720, F.S., in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and the association is authorized to impose assessments against any member which, if unpaid, may become a lien on the member’s parcel. An HOA’s powers and duties include those powers and duties provided by law and in the governing documents. Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes; but no state agency directly regulates HOAs.

##### Community Association Board of Directors

Each condo, co-op, and HOA (“community association”) is governed by a board of directors (“board”) elected by the association’s members or appointed by a developer prior to turnover to the association. The board has those duties described in statute and in the association’s governing documents,

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<sup>1</sup> See generally chapters 718, 719, and 720, F.S., regulating condos, co-ops, and HOAs, respectively.

<sup>2</sup> *Id.*

including association administration, policy development, and property maintenance.<sup>3</sup> A board director also has a fiduciary responsibility to the association's members and must use the highest degree of good faith in placing the interests of the members above his or her own personal interests.<sup>4</sup>

To ensure that a director is able to faithfully and competently exercise his or her duties, within 90 days of being elected or appointed to the board, each newly elected or appointed director must:

- Certify in writing that he or she has read the association's governing documents; will work to uphold the governing documents to the best of his or her ability; and will faithfully discharge his or her fiduciary responsibility to the association's members; or
- Submit a certificate showing he or she satisfactorily completed the educational curriculum administered by a Division-approved<sup>5</sup> education provider within one year before or 90 days after his or her election or appointment date.<sup>6</sup>

A director who fails to comply with such requirements is suspended from serving on the board until he or she complies, and the board may temporarily fill the vacancy during the suspension period.<sup>7</sup> However, the written certification or educational certificate is valid and does not have to be resubmitted if the director serves on the board without interruption.<sup>8</sup>

### Community Association Managers

A community association manager ("CAM") is a person hired to manage a community association with more than ten units or parcels or with an annual budget exceeding \$100,000.<sup>9</sup> The community association is not required to hire a CAM, but where it does so, the CAM is generally responsible for the association's day-to-day operation and management, including the calculation and preparation of estoppel certificates.<sup>10</sup>

### Estoppel Certificates

Where a person intends to buy a unit in a condo or co-op, or a parcel in an HOA, an "estoppel certificate" helps to facilitate the closing of the sale by giving the parties thereto a summary of the fees, fines, dues, and assessments which the seller may owe to the community association.<sup>11</sup> In most instances, the seller does not have any outstanding monetary obligations to the association; however, where the seller does owe money to the association, the amount owed must generally be collected from the seller and applied at closing.<sup>12</sup> Otherwise, under Florida law, the buyer of the unit or parcel becomes jointly and severally liable with the previous owner for any money due to the association at the time of the sale.<sup>13</sup>

#### *Estoppel Certificate Completion*

Florida law gives an association ten business days after receiving a written or electronic request for an estoppel certificate from a unit or parcel owner, a unit or parcel mortgagee, or the designee thereof, to

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<sup>3</sup> See generally chs. 718, 719, and 720, F.S.; Florida DBPR, FAQs, <http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/faqs/#1492784365590-e9ec1083-2ca1> (last visited Feb. 19, 2024).

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

<sup>5</sup> A Division-approved provider must cover specified topics in its education program, which may include budgets; reserves; elections; financial reporting; association operations; dispute resolution; and records maintenance. For a list of Division-approved education providers, see <http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf> (last visited Feb. 19, 2024). 61B-19.001 and 61B-75.0051, F.A.C.

<sup>6</sup> This requirement does not apply to the board of directors for a commercial condominium. Ss. 718.112(2)(d), 719.106(1)(d), and 720.3033(1)(a)-(c), F.S.

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

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

<sup>9</sup> DBPR, *Community Association Managers*, <http://www.myfloridalicense.com/dbpr/os/documents/CAMBrochure.pdf> (last visited Feb. 19, 2024).

<sup>10</sup> *Id.*; s. 468.431, F.S.

<sup>11</sup> Florida Realtors, *Estoppel*, <https://www.floridarealtors.org/advocacy/legislative-priorities/business-issues/estoppel#:~:text=estoppel%20letters%2Fcertificates,-.An%20estoppel%20letter%2Fcertificate%20is%20used%20to%20facilitate%20a%20closing,assessments%20owed%20to%20the%20association> (last visited Feb. 19, 2024).

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

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

issue the estoppel certificate.<sup>14</sup> Any board member, authorized agent, or authorized representative of the association may complete the estoppel certificate, and such certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance.<sup>15</sup>

An estoppel certificate that is hand-delivered or sent electronically has a 30-day effective period, while a certificate sent by regular mail has a 35-day effective period.<sup>16</sup> If additional information or a mistake becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale of the unit or parcel has not closed during the effective period.<sup>17</sup> However, an association waives the right to collect any moneys owed in excess of the amounts listed in the estoppel certificate from any person who in good faith relies upon the certificate, and from such person's successors and assigns.<sup>18</sup>

#### *Required Estoppel Certificate Information*

An estoppel certificate must contain the following information:

- The date of issuance;
- The name of the unit or parcel owner as reflected in the association's books and records;
- The unit or parcel designation and address;
- The parking or garage space number, if applicable, as reflected in the association's books and records;
- If the seller owes money to the association and his or her account has been turned over to an attorney for collection, the attorney's name and contact information;
- The amount of the fee charged for the certificate's preparation and delivery; and
- The requestor's name.<sup>19</sup>

In addition to the information specified above, an estoppel certificate must disclose:

- The amount of the regular periodic assessment levied against the unit, and the frequency of its assessment;
- The date through which the regular periodic assessment is paid;
- The date the next installment of the regular period assessment is due, and the amount thereof;
- An itemized list of all assessments, special assessments, and other moneys owed on the date of the certificate's issuance by the unit or parcel owner for the specific unit or parcel at issue;
- An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the certificate's issuance for the certificate's effective period;
- Whether there is a capital contribution fee, resale fee, transfer fee, or other fee due, and, if so, the type and amount of such fee;
- Whether there is any open violation of rule or regulation noticed to the unit or parcel owner in the association's official records;
- Whether the association's rules and regulations require the board's approval to transfer the unit or parcel and, if so, whether the board has approved the transfer;
- Whether the association's members have a right of first refusal and, if so, whether the members exercised that right;
- A list of, and contact information for, all other associations of which the unit or parcel is a member;
- Contact information for all insurance the association maintains;
- The signature of an officer or authorized agent of the association; and
- Any additional information the association chooses to provide.<sup>20</sup>

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<sup>14</sup> Ss. 718.116, 719.108, and 720.30851, F.S.

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

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

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

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

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

## *Preparation and Delivery Fees*

In 2017, the Legislature capped the maximum amount that an association, or the management company thereof, may charge for estoppel certificate preparation and delivery and required that the statutory fee caps be adjusted every five years in an amount equal to the total of the annual increases for that five-year period in the Consumer Price Index (“CPI”).<sup>21</sup> DBPR must periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.<sup>22</sup>

Pursuant to the latest CPI adjustment, which occurred in 2022, estoppel certificate fees which an association may charge may not exceed, for one unit or parcel:

- \$299 for certificate preparation and delivery if, on the date of the certificate’s issuance, the seller did not owe any money to the association;
- A \$179 additional fee if the seller owes money to the association for the unit or parcel at issue; and
- A \$119 additional fee if the certificate is requested on an expedited basis.<sup>23</sup>

Further, where an association receives requests for estoppel certificates for multiple units or parcels owned by the same person, and such person owes no money to the association, the total certificate preparation and delivery fee which the association may charge may not exceed, in the aggregate:

- \$896 for 25 or fewer units or parcels;
- \$1,194 for 26 to 50 units or parcels;
- \$1,791 for 51 to 100 units or parcels; or
- \$2,985 for more than 100 units or parcels.<sup>24</sup>

However, the association’s authority to charge estoppel certificate preparation and delivery fees must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract.<sup>25</sup> Moreover, where the association receives a request for an estoppel certificate and fails to deliver the certificate within ten business days, the association is prohibited from charging a fee for the certificate’s preparation and delivery.<sup>26</sup>

## *Payment of Fees Where Closing Does Not Occur*

If an estoppel certificate is requested in conjunction with the sale of a unit or parcel but closing does not occur, and the payor (typically a title agent) submits a written refund request along with reasonable documentation that the sale did not occur no later than 30 days after the closing date for which the certificate was sought, the association must refund the fee to the payor within 30 days after receiving the refund request.<sup>27</sup> However, the refund is the obligation of the unit or parcel owner; thus, Florida law allows the association to collect the refunded amount from the unit or parcel owner in the same manner as the association would collect an assessment.<sup>28</sup> Further, the prevailing party in any action brought to enforce a refund right is entitled to an award of his or her damages and all applicable attorney fees and costs.<sup>29</sup>

## **Effect of Proposed Changes**

PCS for CS/HB 979 prohibits an association from directly or indirectly charging any fee for an estoppel certificate other than those expressly authorized in statute and provides that unauthorized fees or charges, however described, are void and may be ignored by the certificate requestor. The PCS also:

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<sup>21</sup> Chapter 2017-93, Laws of Fla.

<sup>22</sup> *Id.*

<sup>23</sup> DBPR will release the next CPI-adjusted rates on July 1, 2027. Ss. 718.116, 719.108, and 720.30851, F.S.; DBPR, *Estoppel Certificate Fees Revised*, [http://www.myfloridalicenses.com/dbpr/lsc/documents/ESTOPPEL\\_CERTIFICATE\\_FEES.pdf](http://www.myfloridalicenses.com/dbpr/lsc/documents/ESTOPPEL_CERTIFICATE_FEES.pdf) (last visited Feb. 19, 2024).

<sup>24</sup> *Id.*

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

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

- Modifies the current requirement that the estoppel certificate fee be paid upon the certificate's preparation, and refunded by the association if the sale or mortgage does not close and the payor requests a refund, for which refund the association may seek reimbursement from the unit or parcel owner, to instead provide that:
  - If an estoppel certified is requested in conjunction with the sale or refinancing of a unit or parcel, the estoppel certificate fee must be paid to the association from the closing or settlement proceeds.
  - If the closing does not occur, the estoppel certificate fee is payable by the unit or parcel owner upon the expiration of the certificate's effective period, and the association may collect the fee in the same manner as an assessment.
- Modifies a provision requiring that the association establish its authority to charge an estoppel certificate fee (and the amount thereof) only once by a written resolution or contract, instead making the establishment an annual requirement.

The PCS makes a technical change in s. 468.436, F.S., and provides an effective date of July 1, 2024.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 468.436, F.S., relating to disciplinary proceedings.

**Section 2:** Amends s. 718.116, F.S., relating to assessments; liability; lien and priority; interest; collection.

**Section 3:** Amends s. 719.108, F.S., relating to rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.

**Section 4:** Amends s. 720.30851, F.S., relating to estoppel certificates.

**Section 5:** 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:

The PCS may have a positive economic impact on the private sector to the extent that it:

- Reduces closing costs associated with the sale of a unit in a condo or co-op unit or a parcel in an HOA;
- Prevents an estoppel fee payor from losing money as part of a sale that does not close where the payor would not have otherwise wished to request a fee refund to the seller's detriment.

However, the PCS may have a negative economic impact on the private sector to the extent that it reduces an association's revenue.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The PCS does not appear to affect counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES



1                                   A bill to be entitled  
 2           An act relating to estoppel certificates; amending s.  
 3           468.436, F.S.; making a technical change; amending ss.  
 4           718.116, 719.108, and 720.30851, F.S.; requiring a  
 5           community association to annually establish the  
 6           authority to charge a fee for an estoppel certificate;  
 7           limiting fees or charges for an estoppel certificate  
 8           to those specified by law; providing that the fee for  
 9           the preparation and delivery of an estoppel  
 10          certificate be paid from closing or settlement  
 11          proceeds in certain circumstances; providing an  
 12          effective date.

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

15  
 16           Section 1. Paragraph (b) of subsection (2) of section  
 17   468.436, Florida Statutes, is amended to read:

18           468.436 Disciplinary proceedings.—

19           (2) The following acts constitute grounds for which the  
 20   disciplinary actions in subsection (4) may be taken:

21           (b)1. Violation of ~~any provision of~~ this part.

22           2. Violation of any lawful order or rule rendered or  
 23   adopted by the department or the council.

24           3. Being convicted of or pleading nolo contendere to a  
 25   felony in any court in the United States.

26 4. Obtaining a license or certification or any other  
 27 order, ruling, or authorization by means of fraud,  
 28 misrepresentation, or concealment of material facts.

29 5. Committing acts of gross misconduct or gross negligence  
 30 in connection with the profession.

31 6. Contracting, on behalf of an association, with any  
 32 entity in which the licensee has a financial interest that is  
 33 not disclosed.

34 7. Violating any provision of chapter 718, chapter 719, or  
 35 chapter 720 during the course of performing community  
 36 association management services pursuant to a contract with a  
 37 community association as defined in s. 468.431(1).

38 Section 2. Subsection (8) of section 718.116, Florida  
 39 Statutes, is amended to read:

40 718.116 Assessments; liability; lien and priority;  
 41 interest; collection.-

42 (8) Within 10 business days after receiving a written or  
 43 electronic request therefor from a unit owner or the unit  
 44 owner's designee, or a unit mortgagee or the unit mortgagee's  
 45 designee, the association shall issue the estoppel certificate.  
 46 Each association shall designate on its website a person or  
 47 entity with a street or e-mail address for receipt of a request  
 48 for an estoppel certificate issued pursuant to this section. The  
 49 estoppel certificate must be provided by hand delivery, regular  
 50 mail, or e-mail to the requestor on the date of issuance of the

51 estoppel certificate.

52 (a) An estoppel certificate may be completed by any board  
 53 member, authorized agent, or authorized representative of the  
 54 association, including any authorized agent, authorized  
 55 representative, or employee of a management company authorized  
 56 to complete this form on behalf of the board or association. The  
 57 estoppel certificate must contain all of the following  
 58 information and must be substantially in the following form:

59 1. Date of issuance:....

60 2. Name(s) of the unit owner(s) as reflected in the books  
 61 and records of the association:....

62 3. Unit designation and address:....

63 4. Parking or garage space number, as reflected in the  
 64 books and records of the association:....

65 5. Attorney's name and contact information if the account  
 66 is delinquent and has been turned over to an attorney for  
 67 collection. No fee may be charged for this information.

68 6. Fee for the preparation and delivery of the estoppel  
 69 certificate:....

70 7. Name of the requestor:....

71 8. Assessment information and other information:  
 72

73 ASSESSMENT INFORMATION:  
 74

75 a. The regular periodic assessment levied against the unit

76 | is \$.... per ...(insert frequency of payment)....

77 |       b. The regular periodic assessment is paid through  
78 | ...(insert date paid through)....

79 |       c. The next installment of the regular periodic assessment  
80 | is due ...(insert due date)... in the amount of \$.....

81 |       d. An itemized list of all assessments, special  
82 | assessments, and other moneys owed on the date of issuance to  
83 | the association by the unit owner for a specific unit is  
84 | provided.

85 |       e. An itemized list of any additional assessments, special  
86 | assessments, and other moneys that are scheduled to become due  
87 | for each day after the date of issuance for the effective period  
88 | of the estoppel certificate is provided. In calculating the  
89 | amounts that are scheduled to become due, the association may  
90 | assume that any delinquent amounts will remain delinquent during  
91 | the effective period of the estoppel certificate.

92 |  
93 |                                   OTHER INFORMATION:  
94 |

95 |       f. Is there a capital contribution fee, resale fee,  
96 | transfer fee, or other fee due? ....(Yes) ....(No). If yes,  
97 | specify the type and the amount of the fee.

98 |       g. Is there any open violation of rule or regulation  
99 | noticed to the unit owner in the association official records?  
100 | ....(Yes) ....(No).

101 h. Do the rules and regulations of the association  
 102 applicable to the unit require approval by the board of  
 103 directors of the association for the transfer of the unit?  
 104 ....(Yes) ....(No). If yes, has the board approved the transfer  
 105 of the unit? ....(Yes) ....(No).

106 i. Is there a right of first refusal provided to the  
 107 members or the association? ....(Yes) ....(No). If yes, have  
 108 the members or the association exercised that right of first  
 109 refusal? ....(Yes) ....(No).

110 j. Provide a list of, and contact information for, all  
 111 other associations of which the unit is a member.

112 k. Provide contact information for all insurance  
 113 maintained by the association.

114 l. Provide the signature of an officer or authorized agent  
 115 of the association.

116  
 117 The association, at its option, may include additional  
 118 information in the estoppel certificate.

119 (b) An estoppel certificate that is hand delivered or sent  
 120 by electronic means has a 30-day effective period. An estoppel  
 121 certificate that is sent by regular mail has a 35-day effective  
 122 period. If additional information or a mistake related to the  
 123 estoppel certificate becomes known to the association within the  
 124 effective period, an amended estoppel certificate may be  
 125 delivered and becomes effective if a sale or refinancing of the

126 unit has not been completed during the effective period. A fee  
 127 may not be charged for an amended estoppel certificate. An  
 128 amended estoppel certificate must be delivered on the date of  
 129 issuance, and a new 30-day or 35-day effective period begins on  
 130 such date.

131 (c) An association waives the right to collect any moneys  
 132 owed in excess of the amounts specified in the estoppel  
 133 certificate from any person who in good faith relies upon the  
 134 estoppel certificate and from the person's successors and  
 135 assigns.

136 (d) If an association receives a request for an estoppel  
 137 certificate from a unit owner or the unit owner's designee, or a  
 138 unit mortgagee or the unit mortgagee's designee, and fails to  
 139 deliver the estoppel certificate within 10 business days, a fee  
 140 may not be charged for the preparation and delivery of that  
 141 estoppel certificate.

142 (e) A summary proceeding pursuant to s. 51.011 may be  
 143 brought to compel compliance with this subsection, and in any  
 144 such action the prevailing party is entitled to recover  
 145 reasonable attorney fees.

146 (f) Notwithstanding any limitation on transfer fees  
 147 contained in s. 718.112(2)(k), an association or its authorized  
 148 agent may charge a reasonable fee for the preparation and  
 149 delivery of an estoppel certificate, which may not exceed \$250,  
 150 if, on the date the certificate is issued, no delinquent amounts

151 are owed to the association for the applicable unit. If an  
 152 estoppel certificate is requested on an expedited basis and  
 153 delivered within 3 business days after the request, the  
 154 association may charge an additional fee of \$100. If a  
 155 delinquent amount is owed to the association for the applicable  
 156 unit, an additional fee for the estoppel certificate may not  
 157 exceed \$150.

158 (g) If estoppel certificates for multiple units owned by  
 159 the same owner are simultaneously requested from the same  
 160 association and there are no past due monetary obligations owed  
 161 to the association, the statement of moneys due for those units  
 162 may be delivered in one or more estoppel certificates, and, even  
 163 though the fee for each unit shall be computed as set forth in  
 164 paragraph (f), the total fee that the association may charge for  
 165 the preparation and delivery of the estoppel certificates may  
 166 not exceed, in the aggregate:

- 167 1. For 25 or fewer units, \$750.
- 168 2. For 26 to 50 units, \$1,000.
- 169 3. For 51 to 100 units, \$1,500.
- 170 4. For more than 100 units, \$2,500.

171 (h) The authority to charge a fee for the preparation and  
 172 delivery of the estoppel certificate must be established  
 173 annually by a written resolution adopted by the board or  
 174 provided by a written management, bookkeeping, or maintenance  
 175 contract ~~and is payable upon the preparation of the certificate.~~

176 ~~If the certificate is requested in conjunction with the sale or~~  
 177 ~~mortgage of a unit but the closing does not occur and no later~~  
 178 ~~than 30 days after the closing date for which the certificate~~  
 179 ~~was sought the preparer receives a written request, accompanied~~  
 180 ~~by reasonable documentation, that the sale did not occur from a~~  
 181 ~~payor that is not the unit owner, the fee shall be refunded to~~  
 182 ~~that payor within 30 days after receipt of the request. The~~  
 183 ~~refund is the obligation of the unit owner, and the association~~  
 184 ~~may collect it from that owner in the same manner as an~~  
 185 ~~assessment as provided in this section. The right to~~  
 186 ~~reimbursement may not be waived or modified by any contract or~~  
 187 ~~agreement. The prevailing party in any action brought to enforce~~  
 188 ~~a right of reimbursement shall be awarded damages and all~~  
 189 ~~applicable attorney fees and costs.~~

190 (i) An association may not directly or indirectly charge  
 191 any fee for an estoppel certificate other than those expressly  
 192 authorized by this section. Unauthorized fees or charges,  
 193 whether described as a convenience fee, archive fee, service  
 194 fee, processing fee, delivery fee, credit card fee,  
 195 certification fee, third-party fee, or any other fee or charge,  
 196 are void and may be ignored by the requestor of the certificate.

197 (j) If an estoppel certificate is requested in conjunction  
 198 with the sale or refinancing of a unit, the fee for the  
 199 preparation and delivery of the estoppel certificate shall be  
 200 paid to the association from the closing or settlement proceeds.



201 If the closing does not occur, the fee for the preparation and  
 202 delivery of the estoppel certificate is payable by the unit  
 203 owner upon the expiration of the 30-day or 35-day effective  
 204 period of the certificate. The association may collect the fee  
 205 in the same manner as an assessment against the unit.

206 (k) The fees specified in this subsection shall be  
 207 adjusted every 5 years in an amount equal to the total of the  
 208 annual increases for that 5-year period in the Consumer Price  
 209 Index for All Urban Consumers, U.S. City Average, All Items. The  
 210 Department of Business and Professional Regulation shall  
 211 periodically calculate the fees, rounded to the nearest dollar,  
 212 and publish the amounts, as adjusted, on its website.

213 Section 3. Subsection (6) of section 719.108, Florida  
 214 Statutes, is amended to read:

215 719.108 Rents and assessments; liability; lien and  
 216 priority; interest; collection; cooperative ownership.—

217 (6) Within 10 business days after receiving a written or  
 218 electronic request for an estoppel certificate from a unit owner  
 219 or the unit owner's designee, or a unit mortgagee or the unit  
 220 mortgagee's designee, the association shall issue the estoppel  
 221 certificate. Each association shall designate on its website a  
 222 person or entity with a street or e-mail address for receipt of  
 223 a request for an estoppel certificate issued pursuant to this  
 224 section. The estoppel certificate must be provided by hand  
 225 delivery, regular mail, or e-mail to the requestor on the date

226 of issuance of the estoppel certificate.

227 (a) An estoppel certificate may be completed by any board  
 228 member, authorized agent, or authorized representative of the  
 229 association, including any authorized agent, authorized  
 230 representative, or employee of a management company authorized  
 231 to complete this form on behalf of the board or association. The  
 232 estoppel certificate must contain all of the following  
 233 information and must be substantially in the following form:

- 234 1. Date of issuance:....
- 235 2. Name(s) of the unit owner(s) as reflected in the books  
 236 and records of the association:....
- 237 3. Unit designation and address:....
- 238 4. Parking or garage space number, as reflected in the  
 239 books and records of the association:....
- 240 5. Attorney's name and contact information if the account  
 241 is delinquent and has been turned over to an attorney for  
 242 collection. No fee may be charged for this information.
- 243 6. Fee for the preparation and delivery of the estoppel  
 244 certificate:....
- 245 7. Name of the requestor:....
- 246 8. Assessment information and other information:

247  
 248 ASSESSMENT INFORMATION:

249  
 250 a. The regular periodic assessment levied against the unit

251 is \$.... per ...(insert frequency of payment)....

252 b. The regular periodic assessment is paid through  
 253 ...(insert date paid through)....

254 c. The next installment of the regular periodic assessment  
 255 is due ...(insert due date)... in the amount of \$.....

256 d. An itemized list of all assessments, special  
 257 assessments, and other moneys owed by the unit owner on the date  
 258 of issuance to the association for a specific unit is provided.

259 e. An itemized list of any additional assessments, special  
 260 assessments, and other moneys that are scheduled to become due  
 261 for each day after the date of issuance for the effective period  
 262 of the estoppel certificate is provided. In calculating the  
 263 amounts that are scheduled to become due, the association may  
 264 assume that any delinquent amounts will remain delinquent during  
 265 the effective period of the estoppel certificate.

266  
 267 OTHER INFORMATION:  
 268

269 f. Is there a capital contribution fee, resale fee,  
 270 transfer fee, or other fee due? ....(Yes) ....(No). If yes,  
 271 specify the type and amount of the fee.

272 g. Is there any open violation of rule or regulation  
 273 noticed to the unit owner in the association official records?  
 274 ....(Yes) ....(No).

275 h. Do the rules and regulations of the association

276 applicable to the unit require approval by the board of  
 277 directors of the association for the transfer of the unit?  
 278 ....(Yes) ....(No). If yes, has the board approved the transfer  
 279 of the unit? ....(Yes) ....(No).

280 i. Is there a right of first refusal provided to the  
 281 members or the association? ....(Yes) ....(No). If yes, have  
 282 the members or the association exercised that right of first  
 283 refusal? ....(Yes) ....(No).

284 j. Provide a list of, and contact information for, all  
 285 other associations of which the unit is a member.

286 k. Provide contact information for all insurance  
 287 maintained by the association.

288 l. Provide the signature of an officer or authorized agent  
 289 of the association.

290

291 The association, at its option, may include additional  
 292 information in the estoppel certificate.

293 (b) An estoppel certificate that is hand delivered or sent  
 294 by electronic means has a 30-day effective period. An estoppel  
 295 certificate that is sent by regular mail has a 35-day effective  
 296 period. If additional information or a mistake related to the  
 297 estoppel certificate becomes known to the association within the  
 298 effective period, an amended estoppel certificate may be  
 299 delivered and becomes effective if a sale or refinancing of the  
 300 unit has not been completed during the effective period. A fee

301 may not be charged for an amended estoppel certificate. An  
302 amended estoppel certificate must be delivered on the date of  
303 issuance, and a new 30-day or 35-day effective period begins on  
304 such date.

305 (c) An association waives the right to collect any moneys  
306 owed in excess of the amounts specified in the estoppel  
307 certificate from any person who in good faith relies upon the  
308 estoppel certificate and from the person's successors and  
309 assigns.

310 (d) If an association receives a request for an estoppel  
311 certificate from a unit owner or the unit owner's designee, or a  
312 unit mortgagee or the unit mortgagee's designee, and fails to  
313 deliver the estoppel certificate within 10 business days, a fee  
314 may not be charged for the preparation and delivery of that  
315 estoppel certificate.

316 (e) A summary proceeding pursuant to s. 51.011 may be  
317 brought to compel compliance with this subsection, and in any  
318 such action the prevailing party is entitled to recover  
319 reasonable attorney fees.

320 (f) Notwithstanding any limitation on transfer fees  
321 contained in s. 719.106(1)(i), an association or its authorized  
322 agent may charge a reasonable fee for the preparation and  
323 delivery of an estoppel certificate, which may not exceed \$250  
324 if, on the date the certificate is issued, no delinquent amounts  
325 are owed to the association for the applicable unit. If an

326 | estoppel certificate is requested on an expedited basis and  
 327 | delivered within 3 business days after the request, the  
 328 | association may charge an additional fee of \$100. If a  
 329 | delinquent amount is owed to the association for the applicable  
 330 | unit, an additional fee for the estoppel certificate may not  
 331 | exceed \$150.

332 | (g) If estoppel certificates for multiple units owned by  
 333 | the same owner are simultaneously requested from the same  
 334 | association and there are no past due monetary obligations owed  
 335 | to the association, the statement of moneys due for those units  
 336 | may be delivered in one or more estoppel certificates, and, even  
 337 | though the fee for each unit shall be computed as set forth in  
 338 | paragraph (f), the total fee that the association may charge for  
 339 | the preparation and delivery of the estoppel certificates may  
 340 | not exceed, in the aggregate:

- 341 | 1. For 25 or fewer units, \$750.
- 342 | 2. For 26 to 50 units, \$1,000.
- 343 | 3. For 51 to 100 units, \$1,500.
- 344 | 4. For more than 100 units, \$2,500.

345 | (h) The authority to charge a fee for the preparation and  
 346 | delivery of the estoppel certificate must be established  
 347 | annually by a written resolution adopted by the board or  
 348 | provided by a written management, bookkeeping, or maintenance  
 349 | contract and ~~is payable upon the preparation of the certificate.~~  
 350 | ~~If the certificate is requested in conjunction with the sale or~~

351 ~~mortgage of a parcel but the closing does not occur and no later~~  
352 ~~than 30 days after the closing date for which the certificate~~  
353 ~~was sought the preparer receives a written request, accompanied~~  
354 ~~by reasonable documentation, that the sale did not occur from a~~  
355 ~~payor that is not the parcel owner, the fee shall be refunded to~~  
356 ~~that payor within 30 days after receipt of the request. The~~  
357 ~~refund is the obligation of the parcel owner, and the~~  
358 ~~association may collect it from that owner in the same manner as~~  
359 ~~an assessment as provided in this section. The right to~~  
360 ~~reimbursement may not be waived or modified by any contract or~~  
361 ~~agreement. The prevailing party in any action brought to enforce~~  
362 ~~a right of reimbursement shall be awarded damages and all~~  
363 ~~applicable attorney fees and costs.~~

364 (i) An association may not directly or indirectly charge  
365 any fee for an estoppel certificate other than those expressly  
366 authorized by this section. Unauthorized fees or charges,  
367 whether described as a convenience fee, archive fee, service  
368 fee, processing fee, delivery fee, credit card fee,  
369 certification fee, third-party fee, or any other fee or charge,  
370 are void and may be ignored by the requestor of the certificate.

371 (j) If an estoppel certificate is requested in conjunction  
372 with the sale or refinancing of a unit, the fee for the  
373 preparation and delivery of the estoppel certificate shall be  
374 paid to the association from the closing or settlement proceeds.  
375 If the closing does not occur, the fee for the preparation and

376 delivery of the estoppel certificate is payable by the unit  
 377 owner upon the expiration of the 30-day or 35-day effective  
 378 period of the estoppel certificate. The association may collect  
 379 the fee in the same manner as an assessment against the unit.

380 (k) The fees specified in this subsection shall be  
 381 adjusted every 5 years in an amount equal to the total of the  
 382 annual increases for that 5-year period in the Consumer Price  
 383 Index for All Urban Consumers, U.S. City Average, All Items. The  
 384 Department of Business and Professional Regulation shall  
 385 periodically calculate the fees, rounded to the nearest dollar,  
 386 and publish the amounts, as adjusted, on its website.

387 Section 4. Section 720.30851, Florida Statutes, is amended  
 388 to read:

389 720.30851 Estoppel certificates.—Within 10 business days  
 390 after receiving a written or electronic request for an estoppel  
 391 certificate from a parcel owner or the parcel owner's designee,  
 392 or a parcel mortgagee or the parcel mortgagee's designee, the  
 393 association shall issue the estoppel certificate. Each  
 394 association shall designate on its website a person or entity  
 395 with a street or e-mail address for receipt of a request for an  
 396 estoppel certificate issued pursuant to this section. The  
 397 estoppel certificate must be provided by hand delivery, regular  
 398 mail, or e-mail to the requestor on the date of issuance of the  
 399 estoppel certificate.

400 (1) An estoppel certificate may be completed by any board



401 member, authorized agent, or authorized representative of the  
 402 association, including any authorized agent, authorized  
 403 representative, or employee of a management company authorized  
 404 to complete this form on behalf of the board or association. The  
 405 estoppel certificate must contain all of the following  
 406 information and must be substantially in the following form:

- 407 (a) Date of issuance:....
- 408 (b) Name(s) of the parcel owner(s) as reflected in the  
 409 books and records of the association:....
- 410 (c) Parcel designation and address:....
- 411 (d) Parking or garage space number, as reflected in the  
 412 books and records of the association:....
- 413 (e) Attorney's name and contact information if the account  
 414 is delinquent and has been turned over to an attorney for  
 415 collection. No fee may be charged for this information.
- 416 (f) Fee for the preparation and delivery of the estoppel  
 417 certificate:....
- 418 (g) Name of the requestor:....
- 419 (h) Assessment information and other information:

420  
 421 ASSESSMENT INFORMATION:  
 422

- 423 1. The regular periodic assessment levied against the  
 424 parcel is \$.... per ... (insert frequency of payment)....
- 425 2. The regular periodic assessment is paid through

426 ... (insert date paid through)....

427 3. The next installment of the regular periodic assessment  
 428 is due ... (insert due date)... in the amount of \$.....

429 4. An itemized list of all assessments, special  
 430 assessments, and other moneys owed on the date of issuance to  
 431 the association by the parcel owner for a specific parcel is  
 432 provided.

433 5. An itemized list of any additional assessments, special  
 434 assessments, and other moneys that are scheduled to become due  
 435 for each day after the date of issuance for the effective period  
 436 of the estoppel certificate is provided. In calculating the  
 437 amounts that are scheduled to become due, the association may  
 438 assume that any delinquent amounts will remain delinquent during  
 439 the effective period of the estoppel certificate.

440

OTHER INFORMATION:

441

442  
 443 6. Is there a capital contribution fee, resale fee,  
 444 transfer fee, or other fee due? .... (Yes) .... (No). If yes,  
 445 specify the type and amount of the fee.

446 7. Is there any open violation of rule or regulation  
 447 noticed to the parcel owner in the association official records?  
 448 .... (Yes) .... (No).

449 8. Do the rules and regulations of the association  
 450 applicable to the parcel require approval by the board of

451 directors of the association for the transfer of the parcel?  
 452 ....(Yes) ....(No). If yes, has the board approved the transfer  
 453 of the parcel? ....(Yes) ....(No).

454 9. Is there a right of first refusal provided to the  
 455 members or the association? ....(Yes) ....(No). If yes, have  
 456 the members or the association exercised that right of first  
 457 refusal? ....(Yes) ....(No).

458 10. Provide a list of, and contact information for, all  
 459 other associations of which the parcel is a member.

460 11. Provide contact information for all insurance  
 461 maintained by the association.

462 12. Provide the signature of an officer or authorized  
 463 agent of the association.

464

465 The association, at its option, may include additional  
 466 information in the estoppel certificate.

467 (2) An estoppel certificate that is hand delivered or sent  
 468 by electronic means has a 30-day effective period. An estoppel  
 469 certificate that is sent by regular mail has a 35-day effective  
 470 period. If additional information or a mistake related to the  
 471 estoppel certificate becomes known to the association within the  
 472 effective period, an amended estoppel certificate may be  
 473 delivered and becomes effective if a sale or refinancing of the  
 474 parcel has not been completed during the effective period. A fee  
 475 may not be charged for an amended estoppel certificate. An

476 amended estoppel certificate must be delivered on the date of  
 477 issuance, and a new 30-day or 35-day effective period begins on  
 478 such date.

479 (3) An association waives the right to collect any moneys  
 480 owed in excess of the amounts specified in the estoppel  
 481 certificate from any person who in good faith relies upon the  
 482 estoppel certificate and from the person's successors and  
 483 assigns.

484 (4) If an association receives a request for an estoppel  
 485 certificate from a parcel owner or the parcel owner's designee,  
 486 or a parcel mortgagee or the parcel mortgagee's designee, and  
 487 fails to deliver the estoppel certificate within 10 business  
 488 days, a fee may not be charged for the preparation and delivery  
 489 of that estoppel certificate.

490 (5) A summary proceeding pursuant to s. 51.011 may be  
 491 brought to compel compliance with this section, and the  
 492 prevailing party is entitled to recover reasonable attorney  
 493 fees.

494 (6) An association or its authorized agent may charge a  
 495 reasonable fee for the preparation and delivery of an estoppel  
 496 certificate, which may not exceed \$250, if, on the date the  
 497 certificate is issued, no delinquent amounts are owed to the  
 498 association for the applicable parcel. If an estoppel  
 499 certificate is requested on an expedited basis and delivered  
 500 within 3 business days after the request, the association may

501 charge an additional fee of \$100. If a delinquent amount is owed  
 502 to the association for the applicable parcel, an additional fee  
 503 for the estoppel certificate may not exceed \$150.

504 (7) If estoppel certificates for multiple parcels owned by  
 505 the same owner are simultaneously requested from the same  
 506 association and there are no past due monetary obligations owed  
 507 to the association, the statement of moneys due for those  
 508 parcels may be delivered in one or more estoppel certificates,  
 509 and, even though the fee for each parcel shall be computed as  
 510 set forth in subsection (6), the total fee that the association  
 511 may charge for the preparation and delivery of the estoppel  
 512 certificates may not exceed, in the aggregate:

- 513 (a) For 25 or fewer parcels, \$750.
- 514 (b) For 26 to 50 parcels, \$1,000.
- 515 (c) For 51 to 100 parcels, \$1,500.
- 516 (d) For more than 100 parcels, \$2,500.

517 (8) The authority to charge a fee for the preparation and  
 518 delivery of the estoppel certificate must be established  
 519 annually by a written resolution adopted by the board or  
 520 provided by a written management, bookkeeping, or maintenance  
 521 contract ~~and is payable upon the preparation of the certificate.~~  
 522 ~~If the certificate is requested in conjunction with the sale or~~  
 523 ~~mortgage of a parcel but the closing does not occur and no later~~  
 524 ~~than 30 days after the closing date for which the certificate~~  
 525 ~~was sought the preparer receives a written request, accompanied~~

526 ~~by reasonable documentation, that the sale did not occur from a~~  
 527 ~~payor that is not the parcel owner, the fee shall be refunded to~~  
 528 ~~that payor within 30 days after receipt of the request. The~~  
 529 ~~refund is the obligation of the parcel owner, and the~~  
 530 ~~association may collect it from that owner in the same manner as~~  
 531 ~~an assessment as provided in this section. The right to~~  
 532 ~~reimbursement may not be waived or modified by any contract or~~  
 533 ~~agreement. The prevailing party in any action brought to enforce~~  
 534 ~~a right of reimbursement shall be awarded damages and all~~  
 535 ~~applicable attorney fees and costs.~~

536 (9) An association may not directly or indirectly charge  
 537 any fee for an estoppel certificate other than those expressly  
 538 authorized by this section. Unauthorized fees or charges,  
 539 whether described as a convenience fee, archive fee, service  
 540 fee, processing fee, delivery fee, credit card fee,  
 541 certification fee, third-party fee, or any other fee or charge,  
 542 are void and may be ignored by the requestor of the certificate.

543 (10) If an estoppel certificate is requested in  
 544 conjunction with the sale or refinancing of a parcel, the fee  
 545 for the preparation and delivery of the estoppel certificate  
 546 shall be paid to the association from the closing or settlement  
 547 proceeds. If the closing does not occur, the fee for the  
 548 preparation and delivery of the estoppel certificate is payable  
 549 by the unit owner upon the expiration of the 30-day or 35-day  
 550 effective period of the certificate. The association may collect

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551 | the fee in the same manner as an assessment against the parcel.

552 |       (11) The fees specified in this section shall be adjusted  
553 | every 5 years in an amount equal to the total of the annual  
554 | increases for that 5-year period in the Consumer Price Index for  
555 | All Urban Consumers, U.S. City Average, All Items. The  
556 | Department of Business and Professional Regulation shall  
557 | periodically calculate the fees, rounded to the nearest dollar,  
558 | and publish the amounts, as adjusted, on its website.

559 |       Section 5. This act shall take effect July 1, 2024.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for CS/HB 1049 Flood Disclosure in the Sale of Real Property

**SPONSOR(S):** Judiciary Committee

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 484

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Yeager	Kramer

### SUMMARY ANALYSIS

Under Florida law, a seller of residential real property must make certain disclosures to a buyer. Currently, Florida courts are split as to whether a tendency to flood must be disclosed to a buyer of real property, and no Florida statute requires a flood disclosure in a real property transaction. This may leave buyers who are not familiar with the area at a significant disadvantage. Given its history of extreme weather, several areas of Florida could be at risk for flooding, which is typically not covered by homeowner's insurance or hurricane insurance.

The PCS creates s. 689.302, F.S., to require a seller of residential real property to complete and provide a form relating to flood disclosure to a purchaser of residential real property at or before the time the sales contract is executed. The PCS requires the flood disclosure to be made in the following form:

- The title of the form must be labeled "FLOOD DISCLOSURE."
- A flood insurance disclaimer must be provided which states as follows: "Flood Insurance: Homeowners' insurance policies do not include coverage for damage resulting from floods. Buyer is encouraged to discuss the need to purchase separate flood insurance coverage with Buyer's insurance agent."
- The seller must state whether he or she has filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.
- The seller must state whether he or she has received federal assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency.

For the purposes of the disclosure, the PCS defines flooding as a general or temporary condition of partial or complete inundation of the property caused by any of the following:

- The overflow of inland or tidal waters.
- The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch.
- Sustained periods of standing water resulting from rainfall.

The PCS does not appear to have a fiscal impact on state and local government.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Disclosure of Property Defects

As to the sale of real property, Florida historically followed the doctrine of *caveat emptor*, which loosely translates to “let the buyer beware.” Under this doctrine, a seller of real property has no duty to disclose any defects in the property, and the buyer has the burden of making diligent inspections and inquiries for property defects.<sup>1</sup> Essentially, the buyer purchases real property “as-is.”

However, under Florida law, a seller of residential real property must make certain disclosures to a buyer. In *Johnson v. Davis*, the Florida Supreme Court held that “where the seller of a home knows of facts materially affecting the value of property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer.”<sup>2</sup> The Court did not provide a definition as to what is “readily observable.”

Additionally, a seller of real property in Florida is required to make the following disclosures, where applicable:

- Associations – A seller of property in a condominium, cooperative, or homeowners’ association must make specific disclosures of information related to the association.<sup>3</sup>
- Coastal – A sale of a property located partially or totally seaward of the coastal construction control line requires a written disclosure statement at the time of contract.<sup>4</sup>
- Code enforcement – If a code enforcement proceeding is pending at the time of sale, the seller must disclose it to the buyer.<sup>5</sup>
- Lead paint – Federal law requires all sellers or landlords of residential real property built before 1978 to disclose any known information concerning potential lead-based paint hazards and available records.<sup>6</sup>
- Property tax – The seller must disclose that a transfer of ownership may lead to an increased property tax assessment related to the Save Our Homes Amendment.<sup>7</sup>
- Radon gas – A specific disclosure relating to the risks of radon gas must be made in writing in connection with the sale of any building.<sup>8</sup>
- Sewer lines – The seller must disclose known defects in the property’s sanitary sewer lateral line.<sup>9</sup>
- Sinkhole damage – The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer of such property, before the

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<sup>1</sup> Gregory L. Pierson, *Striking Down the Impervious Shields: Why Caveat Emptor Must Be Abandoned in Commercial Real Estate Property Sales and Leases*, 47 STETSON L. REV. 112, 112 (2017).

<sup>2</sup> *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985).

<sup>3</sup> S. 718.503, F.S., relating to condominiums; s. 719.503, F.S., relating to cooperatives; s. 720.401, F.S., relating to homeowners’ associations.

<sup>4</sup> S. 161.57, F.S.; The seller must give a written disclosure in the following form: “The property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the property being purchased.” *Id.*

<sup>5</sup> S. 162.06(5), F.S.

<sup>6</sup> 24 CFR Part 35; 40 CFR Part 745; See also United States Environmental Protection Agency, *Lead-Based Paint Disclosure Rule* (updated Aug. 7, 2023), <https://www.epa.gov/lead/lead-based-paint-disclosure-rule-section-1018-title-x>.

<sup>7</sup> S. 689.261, F.S.; the written disclosure must state: “BUYER SHOULD NOT RELY ON THE SELLER’S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER’S OFFICE FOR INFORMATION.” *Id.*

<sup>8</sup> S. 404.056(5), F.S.

<sup>9</sup> S. 689.301, F.S.

closing, that a claim has been paid and whether or not the full amount of the proceeds was used to repair the sinkhole damage.<sup>10</sup>

- Subsurface rights – The seller must provide a prospective purchaser of residential property with a disclosure summary if the seller or an affiliated or related entity has previously severed or retained or will sever or retain any of the subsurface rights or right of entry.<sup>11</sup>

On the other hand, a seller of real property is not required to disclose that:

- An occupant is or has been infected with HIV or AIDS.<sup>12</sup>
- The property was or may have been the site of a homicide, suicide, or other death.<sup>13</sup>

### *Flood Disclosure*

Currently, Florida courts are split as to whether a tendency to flood is “readily observable” and thus a fact that must be disclosed to a buyer of real property. In *Nelson v. Wiggs*, the buyers of a home in the East Everglades area of Miami-Dade County purchased the home during the dry season, and the seller did not disclose to the buyers that the land upon which the home sat flooded annually during the rainy season.<sup>14</sup> In that case, the flooding was so severe that snakes and alligators gathered at the property to escape the waters.<sup>15</sup> The Court dismissed the case against the seller, finding that seasonal flooding of the neighborhood was common knowledge and information that was readily available to the buyers had they exercised diligent attention.<sup>16</sup>

By contrast, in *Newbern v. Mansbach*, the buyers purchased a home in Destin, Florida, and the seller did not disclose that the property was located in the Coastal Barrier Resource Area (CBRA) and thus ineligible for flood insurance.<sup>17</sup> The Court determined that CBRA designations are not easily understood by laypersons and that a prospective buyer may need assistance in interpreting the contents of public record, and thus the sellers should have disclosed such information to the buyers.<sup>18</sup>

### **States that Require Flood Disclosure**

Thirty-two states require some form of flood disclosure in a real property transaction.<sup>19</sup> However, eighteen states, including Florida, do not require a seller to disclose such information to a prospective buyer.<sup>20</sup> According to the Natural Resources Defense Council (NRDC), homeowners who unknowingly purchase a home with undisclosed flood damage are subsequently likely to be inundated with bills up to tens of thousands of dollars to repair such damage.<sup>21</sup> In an effort to let homeowners know which states have flood disclosure laws, the NRDC has graded the states from A (as the best) to F (having no flood disclosure laws):<sup>22</sup>

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<sup>10</sup> S. 627.7073(2)(c), F.S.

<sup>11</sup> S. 689.29, F.S.

<sup>12</sup> S. 689.25(1)(a), F.S.

<sup>13</sup> S. 689.25(1)(b), F.S.

<sup>14</sup> *Nelson v. Wiggs*, 699 So. 2d 258 (Fla. 3rd DCA 1997).

<sup>15</sup> *Id.* at 259.

<sup>16</sup> *Id.* at 260.

<sup>17</sup> *Newbern v. Mansbach*, 777 So.2d 1044 (Fla. 1st DCA 2001); Pursuant to the Coastal Barrier Improvement Act of 1990, Congress mandated the exclusion of CBRAs from the Federal Flood Insurance Program. See 16 U.S.C. ss. 3501, 3504.

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

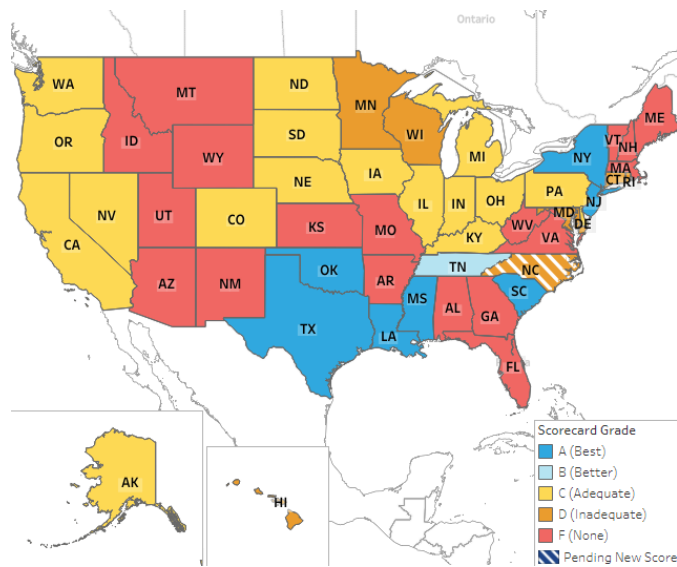
<sup>19</sup> Natural Resources Defense Council (NRDC), *How States Stack up on Flood Disclosure*, (Aug. 31, 2023),

[www.nrdc.org/resources/how-states-stack-flood-disclosure](http://www.nrdc.org/resources/how-states-stack-flood-disclosure) (last visited Feb. 2, 2024).

<sup>20</sup> Thomas Frank, *More States Are Requiring Flood Risk Disclosures. Florida Is Conspicuously Not among Them.*, Scientific American, (Oct. 5, 2023), [www.scientificamerican.com/article/more-states-are-requiring-flood-risk-disclosures-florida-is-conspicuously-not-among-them/](http://www.scientificamerican.com/article/more-states-are-requiring-flood-risk-disclosures-florida-is-conspicuously-not-among-them/) (last visited Feb. 2, 2024).

<sup>21</sup> NRDC, *supra* note 19.

<sup>22</sup> *Id.*



## Flood Insurance

Florida receives an average of 59.21 inches of rain each year, and the flat terrain makes Florida more susceptible to flooding.<sup>23</sup> As a result, one-third of properties in Florida are at risk of severe flooding in the next thirty years.<sup>24</sup> Usually, homeowner’s insurance and hurricane insurance do not cover flood-related damage.<sup>25</sup> Nonetheless, 36 percent of homeowners believe that homeowner’s insurance covers flood-related damage.<sup>26</sup>

## Inability of Buyers to Access Federal Data on Flood-Prone Homes

The Federal Emergency Management Agency (FEMA) responds to emergencies caused by natural disasters, including floods. Through the Flood Insurance Reform Act of 1004, Congress directed FEMA to develop a program to reduce future flood losses.<sup>27</sup> As part of this program, FEMA designates properties as a “severe repetitive loss property,” a designation that covers homes that have flooded twice, with damage totaling the value of the property, or which have flooded four times with at least \$5,000 of damage each time. There are about 45,000 of these properties in the United States, as of the end of 2022, with about 3,100 in Florida alone.<sup>28</sup> Florida added about 120 of those homes from 2021 to 2022.<sup>29</sup> FEMA’s policy is to share past flood history only with a property owner that holds an active flood insurance policy on a property, so prospective buyers may know the details of their property’s flood history only after they have closed the deal.<sup>30</sup>

## Effect of the PCS

PCS for CS/HB 1049 creates s. 689.302, F.S., to require a seller of residential real property to complete and provide a form relating to flood disclosure to a purchaser of residential real property at or before the

<sup>23</sup> Florida Flood Insurance, *Flood History*, (June 1, 2022), [www.floridafloodinsurance.org/flood-history/](http://www.floridafloodinsurance.org/flood-history/) (last visited Feb. 3, 2024).

<sup>24</sup> Manuel Bojorquez, *More than One-Third of Florida Properties Face Looming Flood Risk, but Some Residents Are Unaware*, CBS News, (June 1, 2023), [www.cbsnews.com/news/florida-insurance-flooding-properties/](http://www.cbsnews.com/news/florida-insurance-flooding-properties/) (last visited Feb. 3, 2024).

<sup>25</sup> Jason Metz, *Does Homeowners Insurance Cover Water Damage from Rain or a Leak?* Forbes (Oct. 27, 2023), [www.forbes.com/advisor/homeowners-insurance/water-damage/](http://www.forbes.com/advisor/homeowners-insurance/water-damage/) (last visited Feb. 2, 2024).

<sup>26</sup> Jason Metz, *72% of Homeowners Don’t Understand Essential Home Insurance Coverage*, Forbes (May 26, 2023), [www.forbes.com/advisor/homeowners-insurance-survey-homeowners-insurance-knowledge/#:~:text=36%25%20of%20homeowners%20think%20that,damage%2C%20but%20it%20does%20not](http://www.forbes.com/advisor/homeowners-insurance/survey-homeowners-insurance-knowledge/#:~:text=36%25%20of%20homeowners%20think%20that,damage%2C%20but%20it%20does%20not) (last visited Feb. 2, 2024).

<sup>27</sup> Federal Emergency Management Agency, *Guidance for Severe Repetitive Loss Properties*, [https://www.fema.gov/pdf/nfip/manual201205/content/20\\_srl.pdf](https://www.fema.gov/pdf/nfip/manual201205/content/20_srl.pdf) (last visited Feb. 16, 2024).

<sup>28</sup> Alex Harris, *Thousands of Florida homes flood repeatedly. You’re not allowed to know which ones.*, Miami Herald (Jan. 14, 2024), <https://www.wusf.org/politics-issues/2024-01-14/thousands-of-florida-homes-flood-repeatedly-youre-not-allowed-to-know-which-ones> (last visited Feb. 2, 2024).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

time the sales contract is executed. The PCS requires such flood disclosure to be made in the following form:

- The title of the form must be labeled "FLOOD DISCLOSURE."
- A flood insurance disclaimer must be provided which states as follows: "Flood Insurance: Homeowners' insurance policies do not include coverage for damage resulting from floods. Buyer is encouraged to discuss the need to purchase separate flood insurance coverage with Buyer's insurance agent."
- The seller must state whether he or she has filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.
- The seller must state whether he or she has received federal assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency.

For the purposes of the disclosure, the PCS defines flooding as a general or temporary condition of partial or complete inundation of the property caused by any of the following:

- The overflow of inland or tidal waters.
- The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch.
- Sustained periods of standing water resulting from rainfall.

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

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 689.302, F.S., relating to disclosure of flood risks to prospective purchaser.

**Section 2:** 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:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Property buyers may avoid flood-related costs, and property owners who are trying to sell their property may have a decrease in the market value of their property because of the required flood disclosure.

#### D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

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

1                                   A bill to be entitled  
 2           An act relating to flood disclosure in the sale of  
 3           real property; creating s. 689.302, F.S.; requiring a  
 4           seller of residential real property to provide  
 5           specified information to a prospective purchaser at or  
 6           before the sales contract is executed; specifying how  
 7           such information must be disclosed; providing an  
 8           effective date.

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

11  
 12           Section 1. Section 689.302, Florida Statutes, is created  
 13 to read:

14           689.302 Disclosure of flood risks to prospective  
 15 purchaser.— A seller must complete and provide a flood  
 16 disclosure to a purchaser of residential real property at or  
 17 before the time the sales contract is executed. The flood  
 18 disclosure must be made in the following form:

19                                   FLOOD DISCLOSURE

20           Flood Insurance: Homeowners' insurance policies do not  
 21 include coverage for damage resulting from floods. Buyer is  
 22 encouraged to discuss the need to purchase separate flood  
 23 insurance coverage with Buyer's insurance agent.

24           (1) Seller has .... has not .... filed a claim with an  
 25 insurance provider relating to flood damage on the

26 property, including, but not limited to, a claim with the  
 27 National Flood Insurance Program.

28 (2) Seller has .... has not .... received federal  
 29 assistance for flood damage to the property, including, but  
 30 not limited to, assistance from the Federal Emergency  
 31 Management Agency.

32 (3) For the purposes of this disclosure, the term  
 33 "flooding" means a general or temporary condition of  
 34 partial or complete inundation of the property caused by  
 35 any of the following:

36 (a) The overflow of inland or tidal waters.

37 (b) The unusual and rapid accumulation of runoff or  
 38 surface waters from any established water source, such as a  
 39 river, stream, or drainage ditch.

40 (c) Sustained periods of standing water resulting from  
 41 rainfall.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1123 Unlawful Sale Of Alcoholic Beverages

**SPONSOR(S):** Regulatory Reform & Economic Development Subcommittee, Bankson and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1090

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 1 N, As CS	Phelps	Anstead
2) Judiciary Committee		Yeager	Kramer
3) Commerce Committee			

### SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is responsible for supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of alcoholic beverages within the state. Any person who wishes to sell alcohol must file an application with the Division, and contingent on approval, will be issued a license. It is unlawful for any person to sell alcoholic beverages without a license from the Division, or to sell in a manner not permitted by his or her license. A person who violates this prohibition commits a second-degree misdemeanor. Additionally, a person who is convicted of a second or subsequent violation of any provision of the Beverage Law commits a third-degree felony.

A nuisance is an activity arising from a person's unreasonable, unwarranted, or unlawful use of his or her own property in a way that injures the rights of another person or the public and produces such material annoyance, inconvenience, and discomfort that the law presumes resulting damage. Section 893.138, F.S., permits local governments to establish a nuisance abatement board to hear public nuisance complaints. The board may impose administrative fines and other noncriminal penalties to abate such nuisance.

CS/HB 1123 amends s. 562.12, F.S., to increase the criminal penalty for the unlicensed or unlawful sale of alcoholic beverages from a second-degree misdemeanor to a third-degree felony and to require a person convicted of such an offense to pay a fine of not less than \$5,000 and not more than \$10,000. The bill creates enhanced penalties for second or subsequent violations of s. 562.12, F.S. Under the bill, a person committing a second or subsequent violation commits a second-degree felony and must pay a fine of not less than \$15,000 and not more than \$20,000.

The bill amends s. 893.138(2), F.S., to provide that a local administrative board may declare a place or premises a public nuisance if it is used on more than two occasions within a twelve-month period as the site where a violation of s. 562.12, F.S., relating to the unlawful sale of alcoholic beverages, occurred.

The bill may have an indeterminate fiscal impact on state and local governments as the bill increases criminal penalties for the unlicensed or unlawful sale of alcoholic beverages and provides additional activities and properties that may be enjoined as a public nuisance. State and local governments may incur additional expenses from legal proceedings relating to nuisance abatement. Increasing the criminal penalty for the unlicensed or unlawful sale of alcohol and creating enhanced criminal penalties for second and subsequent violations of s. 562.12, F.S., may result in more jail and prison admissions and may increase the length of incarceration a person may serve.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Alcoholic Beverage Licenses

###### *Qualifications*

In Florida, the Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) supervises the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages within the state.<sup>1</sup> The Division is also charged with issuing alcohol beverage licenses and retains primary regulatory authority over the activities of licensees under the Beverage Law.<sup>2</sup> Licenses and registrations referred to in the Beverage Law are classified into the following tiers:

- Manufacturers licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and no one else within the state, unless authorized by statute;
- Distributors licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages;
- Vendors licensed to sell alcoholic beverages at retail only;
- Brokers or sales agents, whether resident or non-resident, licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else, in this state;
- Importers, whether resident or nonresident, licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else, in this state;
- Bottle clubs; and
- Exporters registered to sell alcoholic beverages.<sup>3</sup>

A person must obtain a license from the Division before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages.<sup>4</sup> Licenses are only issued to persons of good moral character who are not less than 21 years of age.<sup>5</sup> The Division must not issue a license under the Beverage Law to any person:

- Who has been convicted within the last five years of an offense against the beverage laws of Florida, any other state, or the United States;
- Who has been convicted within the last five years in Florida or any other state of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or of any criminal violation under ch. 893, F.S.,<sup>6</sup> or the controlled substance act of any other state or federal government; or
- Who has been convicted in the past 15 years of any felony in this state or any other state or the United States.<sup>7</sup>

###### *Obtaining an Alcoholic Beverage License*

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<sup>1</sup> S. 561.02, F.S.; "Alcoholic beverages" means distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume. S. 561.01(4)(a), F.S.

<sup>2</sup> *Id.*; Florida's Beverage Law regulates the manufacturing, distribution, and sale of alcohol beverages within the state. Ch. 561 -565, 567, and 568, F.S.

<sup>3</sup> S. 561.14, F.S.

<sup>4</sup> S. 561.17(1), F.S.

<sup>5</sup> S. 561.15(1), F.S.

<sup>6</sup> Chapter 893, F.S., provides for drug abuse prevention and control.

<sup>7</sup> S. 561.15(2), F.S.

To obtain an alcoholic beverage license, a person must file a sworn application in the format prescribed by the Division with the district licensing personnel of the Division in which the place of business for which a license is sought is located.<sup>8</sup> The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of the entity that have a direct or indirect interest in the business seeking to be licensed.<sup>9</sup>

All applications for any alcoholic beverage license must be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed, and applications for consumption on the premises must be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business meets all state sanitary requirements.<sup>10</sup>

After the application has been appropriately filed, the application must be fully investigated as to the qualifications of the applicants and location sought to be licensed.<sup>11</sup> The Division must approve or disapprove the application following the investigation.<sup>12</sup> If approved, the license must be issued upon payment to the Division of the license tax.<sup>13</sup> The license must be renewed annually.<sup>14</sup>

### *Penalties for the Unauthorized Sale of Alcoholic Beverages*

Under s. 562.12, F.S., it is a second degree misdemeanor for any person to sell alcoholic beverages without a license from the Division, or for any licensee to sell alcoholic beverages in a manner not permitted by his or her license.<sup>15</sup> A licensee also commits a second-degree misdemeanor if he or she:

- Keeps or possesses alcoholic beverages not permitted to be sold by his or license;
- Keeps or possesses alcoholic beverages not permitted to be sold without a license with the intent to sell or dispose of the same unlawfully; or
- Keeps and maintains a place where alcoholic beverages are sold unlawfully.<sup>16</sup>

Additionally, under s. 562.45(1), F.S., a person who is convicted of a second or subsequent violation of any provision of the Beverage Law commits a third-degree felony. The Division has authority to revoke or suspend the license of any person holding a license under the Beverage Law, including when the licensee maintains a nuisance on the licensed premises.<sup>17</sup>

### Nuisance Abatement

A nuisance is an activity arising from a person's unreasonable, unwarranted, or unlawful use of his or her own property in a way that injures the rights of another or the public and produces such material annoyance, inconvenience, and discomfort that the law presumes resulting damage.<sup>18</sup> A nuisance may also be something that annoys and disturbs a person in possession of his or her property, making its ordinary use or occupation physically uncomfortable.<sup>19</sup>

Any place or premises may be declared a public nuisance that has been used:

- On more than two occasions within a six-month period, as the site of a violation of s. 796.07, F.S., relating to prostitution;

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

<sup>9</sup> *Id.*; However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. *Id.*

<sup>10</sup> S. 561.17(2), F.S.

<sup>11</sup> S. 561.18, F.S.

<sup>12</sup> S. 561.19(1), F.S.

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

<sup>14</sup> S. 561.26, F.S.

<sup>15</sup> S. 562.12, F.S.

<sup>16</sup> S. 562.12(1), F.S.; A person who has been convicted of a second-degree misdemeanor may be sentenced by a term of imprisonment not exceeding sixty days or by a fine not to exceed \$500. S. 775.082(4)(a), F.S.; s. 775.083(1)(e), F.S.

<sup>17</sup> S. 561.29, F.S.; s. 561.29, F.S.

<sup>18</sup> Black's Law Dictionary 736 (6th ed. 1996).

<sup>19</sup> *Id.*

- On more than two occasions within a six-month period, as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- On one occasion as the site of the unlawful possession of a controlled substance, where such possession constitutes a felony and that has been previously used on more than one occasion as the site of the unlawful sale, delivery, manufacture, or cultivation of any controlled substance;
- By a criminal gang for the purpose of conducting criminal gang activity as defined by s. 874.03, F.S.;
- On more than two occasions within a six-month period, as the site of a violation of s. 812.019, F.S., relating to dealing in stolen property;
- On two or more occasions within a six-month period, as the site of a violation of the Florida Drug and Cosmetic Act;
- On more than two occasions within a six-month period, as the site of a violation of any combination of the following:
  - Section 782.04, F.S., relating to murder;
  - Section 782.051, F.S., relating to attempted felony murder;
  - Section 784.045(1)(a)2., F.S., relating to aggravated battery with a deadly weapon; or
  - Section 784.021(1)(a), F.S., relating to aggravated assault with a deadly weapon without intent to kill.<sup>20</sup>

The persons and places identified as a public nuisance may be enjoined.<sup>21</sup> When any such nuisance exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county where the nuisance exists may bring a nuisance abatement action in the name of the state to enjoin the nuisance, the person maintaining it, and the owner or agent of the premises where the nuisance is located.<sup>22</sup>

Section 893.138(1), F.S., permits local governments to establish a nuisance abatement board to hear public nuisance complaints. The board may impose administrative fines and other noncriminal penalties to abate a violence-related, drug-related, prostitution-related, or stolen property-related public nuisance and criminal gang activity, including a closure of the place or premises.<sup>23</sup> If a board declares a place or premises to be a public nuisance, it may enter an order requiring the owner of such a place or premises to adopt abatement procedures or it may enter an order immediately prohibiting:

- The maintaining of the nuisance;
- The operating or maintaining of the place or premises, including the closure of the place or premises; or
- The conduct, operation, or maintenance of any business or activity on the premises which is conducive to nuisance.<sup>24</sup>

A county or municipal ordinance may establish additional penalties for public nuisances and supplement local administrative action under s. 893.13, F.S., by:

- Imposing fines not to exceed \$250 per day;
- Requiring the payment of reasonable costs, including reasonable attorney fees associated with investigations of and hearings on public nuisances;
- Providing continuing jurisdiction for a period of one year over any place or premises that has been or is declared to be a public nuisance;
- Imposing fines not to exceed \$500 per day for recurring public nuisances;
- Requiring the recording of orders on public nuisances so that notice must be given to subsequent purchasers, successors in interest, or assigns of the real property that is the subject of the order;
- Providing that recorded orders on public nuisances may become liens against the real property that is the subject of the order; and

<sup>20</sup> S. 893.138(2), F.S.

<sup>21</sup> S. 823.05, F.S.

<sup>22</sup> S. 60.05(1), F.S.

<sup>23</sup> S. 893.138(1), F.S.

<sup>24</sup> S. 893.138(5), F.S.

- Providing for the foreclosure of property subject to a lien and the recovery of all costs, including reasonable attorney fees, associated with the recording of orders and foreclosure. However, a lien may not be created to foreclose on real property which is a homestead under s. 4, Art. X of the State Constitution.<sup>25</sup>

### Dangers of Illicit After-Hours Clubs and Hookah Lounges

Communities across the state deal with illicit after-hours clubs or hookah lounges that operate without an alcohol license or in violation of their license.<sup>26</sup> These operations have attracted criminal activity involving dangerous drugs and violent crimes.<sup>27</sup> According to law enforcement in Orlando, these places are specifically targeted due to knowledge of their illegal operations, however, current penalties for the unlawful or unauthorized sale of alcoholic beverages do not serve as a meaningful deterrent for such operations.<sup>28</sup>

### **Effect of Proposed Changes**

CS/HB 1123 amends s. 562.12, F.S., to increase the criminal penalty for the unlicensed or unlawful sale of alcoholic beverages from a second-degree misdemeanor to a third-degree felony and to require a person convicted of such a violation to pay a fine of not less than \$5,000 and not more than \$10,000.

The bill also creates enhanced penalties for second or subsequent violations of s. 562.12, F.S. Under the bill, a person who commits a second or subsequent violation commits a second-degree felony and must pay a fine of not less than \$15,000 and not more than \$20,000.

The bill amends s. 893.138(2), F.S., to provide that a local administrative board may declare a place or premises a public nuisance if it is used on more than two occasions within a twelve-month period as the site where a violation of s. 562.12, F.S., relating to the unlawful sale of alcoholic beverages, occurred. In doing so, the local administrative board may abate such nuisance through the procedures delineated in s. 893.138, F.S.

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

### **B. SECTION DIRECTORY:**

- Section 1:** Amends s. 562.12, F.S., relating to beverages sold with improper license, or without license or registration, or held with intent to sell prohibited.
- Section 2:** Amends s. 893.138, F.S., relating to local administrative action to abate certain activities declared public nuisances.
- 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.

<sup>25</sup> S. 893.138(11), F.S.

<sup>26</sup> Cristobal Reyes, *Orange sheriff announces proposed 'legislative changes' after 2 arrested in hookah lounge shooting*, Orlando Sentinel (Oct. 30, 2023), <https://www.orlandosentinel.com/2023/10/30/orange-sheriff-announces-proposed-legislative-changes-after-2-arrested-in-hookah-lounge-shooting/> (last visited Feb. 16, 2024).

<sup>27</sup> *Id.*; see also C.T. Bowen, *Hillsborough County bans late-night hookah lounges*, Tampa Bay Times (Aug. 18, 2021), <https://www.tampabay.com/news/hillsborough/2021/08/18/hillsborough-county-bans-late-night-hookah-lounges/> (last visited Feb. 16, 2024) (Hillsborough County commissioners unanimously approved an ordinance requiring lounges to close at 3 a.m. after a string of violent incidents at or near hookah lounges).

<sup>28</sup> *Id.*

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 fiscal impact on state and local governments as the bill increases criminal penalties for the unlicensed or unlawful sale of alcoholic beverages and provides additional activities and properties that may be enjoined as a public nuisance. State and local governments may incur additional expenses from legal proceedings relating to nuisance abatement. Increasing the criminal penalty for the unlicensed or unlawful sale of alcohol and creating enhanced criminal penalties for second and subsequent violations of s. 562.12, F.S., may result in more jail and prison admissions and may increase the length of incarceration a person may serve.

### **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:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

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

On February 6, 2023, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the time period for when local administrative boards may declare a place or premise a public nuisance for the unlicensed or unlawful sale of alcohol beverages from two times in a 6-month period to two times in a 12-month period.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.





26 | person who keeps or possesses alcoholic beverages not permitted  
 27 | to be sold by her or his license, or not permitted to be sold  
 28 | without a license, with intent to sell or dispose of same  
 29 | unlawfully, or who keeps and maintains a place where alcoholic  
 30 | beverages are sold unlawfully, is guilty of a felony ~~misdemeanor~~  
 31 | of the third ~~second~~ degree, punishable as provided in s. 775.082  
 32 | or s. 775.083 and shall pay a fine of not less than \$5,000 and  
 33 | not more than \$10,000.

34 | (2) A person who commits a second or subsequent violation  
 35 | of subsection (1) commits a felony of the second degree  
 36 | punishable as provided in s. 775.082 or s. 775.083 and shall pay  
 37 | a fine of not less than \$15,000 and not more than \$20,000.

38 | Section 2. Paragraphs (f) and (g) of subsection (2) of  
 39 | section 893.138, Florida Statutes, are amended, and paragraph  
 40 | (h) is added to that subsection, to read:

41 | 893.138 Local administrative action to abate certain  
 42 | activities declared public nuisances.—

43 | (2) Any place or premises that has been used:

44 | (f) On two or more occasions within a 6-month period, as  
 45 | the site of a violation of chapter 499; ~~or~~

46 | (g) On more than two occasions within a 6-month period, as  
 47 | the site of a violation of any combination of the following:

- 48 | 1. Section 782.04, relating to murder;
- 49 | 2. Section 782.051, relating to attempted felony murder;
- 50 | 3. Section 784.045(1)(a) 2., relating to aggravated battery

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51 with a deadly weapon; or  
 52 4. Section 784.021(1)(a), relating to aggravated assault  
 53 with a deadly weapon without intent to kill; ~~or~~  
 54 (h) On more than two occasions within a 12-month period as  
 55 the site where a violation related to the unlawful sale of  
 56 alcoholic beverages under s. 562.12 occurred,  
 57  
 58 may be declared to be a public nuisance, and such nuisance may  
 59 be abated pursuant to the procedures provided in this section.  
 60 Section 3. This act shall take effect July 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Bankson offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove lines 21-37 and insert:

6 (1) (a) It is unlawful for any person to sell alcoholic  
7 beverages without a license, and it is unlawful for any licensee  
8 to sell alcoholic beverages except as permitted by her or his  
9 license, or to sell such beverages in any manner except that  
10 permitted by her or his license; and any licensee or other  
11 person who keeps or possesses alcoholic beverages not permitted  
12 to be sold by her or his license, or not permitted to be sold  
13 without a license, with intent to sell or dispose of same  
14 unlawfully, ~~or who keeps and maintains a place where alcoholic~~  
15 ~~beverages are sold unlawfully,~~ commits ~~is guilty of a~~  
16 misdemeanor of the second degree, punishable as provided in s.

Amendment No. 1

17 775.082 or s. 775.083.

18 (b) Any person, including a licensee, who unlawfully sells  
19 alcoholic beverages at a commercial establishment or keeps and  
20 maintains a place where alcoholic beverages are sold or intended  
21 to be sold unlawfully commits a felony of the third degree,  
22 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,  
23 and must pay a fine of not less than \$5,000 and not more than  
24 \$10,000.

25 (2) Any person, including a licensee, who commits a second  
26 or subsequent violation of paragraph (1) (b) commits a felony of  
27 the second degree, punishable as provided in s. 775.082, s.  
28 775.083, or s. 775.084, and must pay a fine of not less than  
29 \$15,000 and not more than \$20,000.

30  
31  
32 -----  
33 **T I T L E A M E N D M E N T**

34 Remove lines 3-6 and insert:  
35 beverages; amending s. 562.12, F.S.; prohibiting the unlawful  
36 sale of alcoholic beverages at a commercial establishment or the  
37 keeping or maintaining of a place where alcoholic beverages are  
38 sold; providing criminal penalties; amending



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1133 Violations Against Vulnerable Road Users

**SPONSOR(S):** Criminal Justice Subcommittee, Redondo and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1528

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	18 Y, 0 N, As CS	Butcher	Hall
2) Transportation & Modals Subcommittee	14 Y, 0 N	Hinshelwood	Hinshelwood
3) Judiciary Committee		Butcher	Kramer

**SUMMARY ANALYSIS**

Section 318.14(5), F.S., provides noncriminal penalties for a person who commits a traffic infraction that causes serious bodily injury or death to another person. If the person causes serious bodily injury, he or she must pay a \$500 fine in addition to any other penalties and have his or her driver license suspended for three months.

If the person causes death, he or she must pay a \$1,000 fine in addition to any other penalties and have his or her driver license suspended for six months.

Section 316.027(1), F.S., defines a “vulnerable road user” as a:

- Pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;
- Person operating a bicycle, an electric bicycle, a motorcycle, a scooter, or a moped lawfully on the roadway;
- Person riding an animal; or
- Person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway any: farm tractor or similar vehicle designed primarily for farm use; skateboard, roller skates, or in-line skates; horse-drawn carriage; electric personal assistive mobility device; or wheelchair.

CS/HB 1133 creates s. 318.195, F.S., the “Vulnerable Road User Act,” to create new penalties including:

- A noncriminal traffic infraction for a person who commits a moving violation that causes *serious bodily injury* to a vulnerable road user. The bill requires the person to pay a fine of not less than \$1,500, have his or her driver license suspended for 90 days, and complete a department approved driver improvement course relating to the rights of vulnerable road users.
- A noncriminal traffic infraction for a person who commits a moving violation that causes the *death* of a vulnerable road user. The bill requires the person to pay a fine of not less than \$5,000, have his or her driver license suspended for one year, and complete a department approved driver improvement course relating to the rights of vulnerable road users.

The bill may have an indeterminate positive fiscal impact on state revenues and an indeterminate fiscal impact on the private sector.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Noncriminal Traffic Infractions Involving Death or Personal Injury

Generally, a person who fails to obey traffic laws by engaging in conduct such as speeding, running a red light or stop sign, or texting while driving, commits a moving violation punishable by a fine under chapter 318, F.S.<sup>1</sup> Moving violations are generally *noncriminal* traffic infractions that add specified points to a person's driving record.<sup>2</sup>

Under s. 318.19, F.S., a person must appear before a designated official for a mandatory hearing if he or she commits a traffic infraction resulting in a crash that causes serious bodily injury<sup>3</sup> or death to another person. At the hearing, if the designated official determines that the person committed an infraction that caused serious bodily injury to another person, the designated official must impose a civil penalty of \$500, in addition to any other penalties, and the person's driver license must be suspended for three months. If a designated official determines that the person committed an infraction that caused the death of another person, the designated official must impose a civil penalty of \$1,000, in addition to any other penalties, and the person's driver license must be suspended for six months.<sup>4</sup>

##### Crashes Involving Death or Personal Injury

Although moving violations are generally noncriminal infractions, a person who violates specified requirements under s. 316.027, F.S., may commit a criminal offense.

Section 316.027, F.S., requires a driver involved in a crash occurring on public or private property to immediately stop his or her vehicle at the scene of a crash, or as close thereto as possible, and remain at the scene of the crash until he or she has fulfilled the requirements to stop, give his or her information, and render aid as required by s. 316.062, F.S. If a person fails to comply with such requirements he or she commits a:

- Third degree felony, if the crash resulted in injury, other than serious bodily injury.<sup>5</sup>
- Second degree felony, if the crash resulted in serious bodily injury.<sup>6</sup>
- First degree felony, if the crash resulted in the death of a person.<sup>7</sup> A person who willfully violates the above requirements must be sentenced to a mandatory minimum term of imprisonment of four years. Additionally, a person who willfully commits such a violation while driving under the influence as set forth in s. 316.193(1), F.S., must be sentenced to a mandatory minimum term of imprisonment of four years.<sup>8,9</sup>

<sup>1</sup> FLHSMV (revised July 1, 2023), [https://www.flhsmv.gov/pdf/courts/utc/appendix\\_c.pdf](https://www.flhsmv.gov/pdf/courts/utc/appendix_c.pdf) (last visited Feb. 14, 2024).

<sup>2</sup> FLHSMV, *Points & Point Suspensions*, <https://www.flhsmv.gov/driver-licenses-id-cards/driver-license-suspensions-revocations/points-point-suspensions/> (last visited Feb. 14, 2024).

<sup>3</sup> Under s. 316.027(1), F.S., the term "serious bodily injury" means an injury to any person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

<sup>4</sup> S. 318.14(5), F.S.

<sup>5</sup> S. 316.027(2)(a), F.S. A third degree felony is punishable by up to 5 years in prison and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>6</sup> S. 316.027(2)(b), F.S. 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.

<sup>7</sup> S. 316.027(2)(c), F.S. 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.

<sup>8</sup> A person who is arrested for a violation of this paragraph and who has previously been convicted of a violation of s. 316.027, F.S., s. 316.061, F.S. (crashes involving damage to vehicle or property), s. 316.191, F.S. (racing on highways, street takeovers, and stunt driving), s. 316.193, F.S. (driving under the influence), or a felony violation of s. 322.34, F.S. (driving while license suspended, revoked, canceled, or disqualified) must be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

<sup>9</sup> Under s. 316.027(2)(e), F.S., a driver who violates paragraphs (a), (b), or (c) shall have his or her driver license revoked for at least 3 years as provided in s. 322.28(4), F.S.

## *Vulnerable Road Users*

Section 316.027(1), F.S., defines a “vulnerable road user” as a:

- Pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;
- Person operating a bicycle, an electric bicycle, a motorcycle, a scooter, or a moped lawfully on the roadway;
- Person riding an animal; or
- Person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway any of the following: a farm tractor or similar vehicle designed primarily for farm use; a skateboard, roller skates, or in-line skates; a horse-drawn carriage; an electric personal assistive mobility device; or a wheelchair.

Section 316.027, F.S., applies special penalties when a person commits a moving violation that results in injury, serious bodily injury, or death to a vulnerable road user and fails to stop, give his or her information, and render aid as required by s. 316.062, F.S. Such penalties apply as follows:

- Under s. 316.027(2)(f), F.S., for purposes of sentencing under ch. 921, F.S., and determining incentive gain-time eligibility under ch. 944, F.S., an offense listed in s. 316.027(2), F.S., where the victim is a vulnerable road user, is ranked one level above the ranking specified in s. 921.0022 or s. 921.0023, F.S., for the offense committed.
- Before a person whose driving privilege was suspended under s. 316.027(2)(a)-(c), F.S., may be reinstated, he or she must present to the Department of Highway Safety and Motor Vehicles (DHSMV) proof of completion of a victim’s impact panel session in a judicial circuit if such a panel exists, or if such a panel does not exist, a DHSMV-approved driver improvement course relating to the rights of vulnerable road users relative to vehicles on the roadway as provided in s. 322.0261(2), F.S.<sup>10,11</sup>
- When a person violates s. 316.172(1)(a) or (b), F.S. (school bus passing infractions), and causes serious bodily injury to or the death of another person, he or she must, among other requirements, participate in a victim’s impact panel session in a judicial circuit if such a panel exists, or if such a panel does not exist, attend a DHSMV-approved driver improvement course relating to the rights of vulnerable road users relative to vehicles on the roadway as provided in s. 322.0261(2), F.S.<sup>12</sup> This requirement applies regardless of whether the victim is a vulnerable road user.

Under current law, a person who commits a moving violation that causes serious bodily injury or death to another person, including to a vulnerable road user, but who otherwise complies with the requirements of stopping, giving his or her information, and rendering aid under s. 316.062, F.S., is not required to take a DHSMV-approved driver improvement course relating to the rights of vulnerable road users relative to vehicles on the roadway.

### **Effect of Proposed Changes**

CS/HB 1133 creates s. 318.195, F.S., the “Vulnerable Road User Act,” to create new penalties including:

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<sup>10</sup> S. 316.027(2)(e)1., F.S. The department may reinstate an offender’s driving privilege after he or she satisfies the 3-year revocation period as provided in s. 322.28(4) and successfully completes either a victim’s impact panel session or a department-approved driver improvement course relating to the rights of vulnerable road users relative to vehicles on the roadway as provided in s. 322.0261(2). S. 316.027(2)(e)2., F.S.

<sup>11</sup> Under s. 322.0261(2), F.S., with respect to an operator convicted of, or who pleaded nolo contendere to, a traffic offense giving rise to a specified crash, the department shall require that the operator, in addition to other applicable penalties, attend a department-approved driver improvement course in order to maintain his or her driving privileges. The department shall include in the course curriculum instruction specifically addressing the rights of vulnerable road users as defined in s. 316.027, F.S., relative to vehicles on the roadway. If the operator fails to complete the course within 90 days after receiving notice from the department, the operator’s driver license shall be canceled by the department until the course is successfully completed.

<sup>12</sup> S. 316.027(4)(b)2., F.S.



- A noncriminal traffic infraction for a person who commits a moving violation that causes *serious bodily injury* to a vulnerable road user. The bill requires the person to pay a fine of not less than \$1,500, have his or her driver license suspended for 90 days, and complete a department approved driver improvement course relating to the rights of vulnerable road users.
- A noncriminal traffic infraction for a person who commits a moving violation that causes the *death* of a vulnerable road user. The bill requires the person to pay a fine of not less than \$5,000, have his or her driver license suspended for one year, and complete a department approved driver improvement course relating to the rights of vulnerable road users.

The bill specifies that s. 318.195, F.S., does not prohibit a person from being charged with, convicted of, or punished for any other violation of law.

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

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 318.195, F.S., relating to enhanced penalties for moving violations causing injury or death to vulnerable road users.

**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 by increasing the fine for a person who commits a moving violation that results in serious bodily injury or death to a vulnerable road user.

##### 2. Expenditures:

None.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill may increase costs to a person who commits a moving violation that results in serious bodily injury to or the death of a vulnerable road user.

#### 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

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

- Removed criminal penalties for a moving violation that caused serious bodily injury or death to a vulnerable road user.
- Changed the penalty for a person who committed a moving violation that caused serious bodily injury to a vulnerable road user to include a 90 day driver license revocation.
- Changed a cross-reference for the definition of “serious bodily injury.”

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 violations against vulnerable road  
 3           users; creating s. 318.195, F.S.; providing a short  
 4           title; requiring a person who commits a moving  
 5           violation that causes serious bodily injury to, or  
 6           causes the death of, a vulnerable road user to pay a  
 7           specified fine and attend a driver improvement course;  
 8           requiring the Department of Highway Safety and Motor  
 9           Vehicles to revoke the person's driver license for a  
 10          specified period; defining the terms "serious bodily  
 11          injury" and "vulnerable road user"; providing  
 12          construction; providing an effective date.

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

15  
 16           Section 1.   Section 318.195, Florida Statutes, is created  
 17   to read:

18           318.195   Enhanced penalties for moving violations causing  
 19   injury or death to vulnerable road users.-

20           (1)   This section may be cited as the "Vulnerable Road User  
 21   Act."

22           (2)   A person who commits a moving violation that causes  
 23   serious bodily injury to a vulnerable road user shall pay a fine  
 24   of not less than \$1,500 and attend a department-approved driver  
 25   improvement course relating to the rights of vulnerable road

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26 users relative to vehicles on the roadway as provided in s.  
27 322.0261(2). The department shall also revoke the person's  
28 driver license for 90 days.

29 (3) A person who commits a moving violation that causes  
30 the death of a vulnerable road user shall pay a fine of not less  
31 than \$5,000 and attend a department-approved driver improvement  
32 course relating to the rights of vulnerable road users relative  
33 to vehicles on the roadway as provided in s. 322.0261(2). The  
34 department shall also revoke the person's driver license for 1  
35 year.

36 (4) As used in this section, the terms "serious bodily  
37 injury" and "vulnerable road user" have the same meanings as in  
38 s. 316.027(1).

39 (5) This section does not prohibit a person from being  
40 charged with, convicted of, or punished for any other violation  
41 of law.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Redondo offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsections (1) and (2) of section 318.19, Florida Statutes, are republished to read:

318.19 Infractions requiring a mandatory hearing.—Any person cited for the infractions listed in this section shall not have the provisions of s. 318.14(2), (4), and (9) available to him or her but must appear before the designated official at the time and location of the scheduled hearing:

(1) Any infraction which results in a crash that causes the death of another;

(2) Any infraction which results in a crash that causes "serious bodily injury" of another as defined in s. 316.1933(1);

Amendment No. 1

17 Section 2. Subsection (5) of section 318.14, Florida  
18 Statutes, is amended to read:

19 318.14 Noncriminal traffic infractions; exception;  
20 procedures.—

21 (5) Any person electing to appear before the designated  
22 official or who is required ~~se~~ to appear shall be deemed to have  
23 waived his or her right to the civil penalty provisions of s.  
24 318.18. The official, after a hearing, shall make a  
25 determination as to whether an infraction has been committed. If  
26 the commission of an infraction has been proven, the official  
27 may impose a civil penalty not to exceed \$500, except that in  
28 cases involving unlawful speed in a school zone or involving  
29 unlawful speed in a construction zone, the civil penalty may not  
30 exceed \$1,000; or require attendance at a driver improvement  
31 school, or both. If the person is required to appear before the  
32 designated official pursuant to s. 318.19(1) and is found to  
33 have committed the infraction, the designated official shall  
34 impose a civil penalty of \$1,000 in addition to any other  
35 penalties and the person's driver license shall be suspended for  
36 6 months. If the person is required to appear before the  
37 designated official pursuant to s. 318.19(1) and is found to  
38 have committed the infraction against a vulnerable road user as  
39 defined in s. 316.027(1), the designated official shall impose a  
40 civil penalty of not less than \$5,000 in addition to any other  
41 penalties, the person's driver license shall be suspended for 1

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Amendment No. 1

42 year, and the person shall be required to attend a department-  
43 approved driver improvement course relating to the rights of  
44 vulnerable road users relative to vehicles on the roadway as  
45 provided in s. 322.0261(2). If the person is required to appear  
46 before the designated official pursuant to s. 318.19(2) and is  
47 found to have committed the infraction, the designated official  
48 shall impose a civil penalty of \$500 in addition to any other  
49 penalties and the person's driver license shall be suspended for  
50 3 months. If the person is required to appear before the  
51 designated official pursuant to s. 318.19(2) and is found to  
52 have committed the infraction against a vulnerable road user as  
53 defined in s. 316.027(1), the designated official shall impose a  
54 civil penalty of not less than \$1,500 in addition to any other  
55 penalties, the person's driver license shall be suspended for 3  
56 months, and the person shall be required to attend a department-  
57 approved driver improvement course relating to the rights of  
58 vulnerable road users relative to vehicles on the roadway as  
59 provided in s. 322.0261(2). If the official determines that no  
60 infraction has been committed, no costs or penalties shall be  
61 imposed and any costs or penalties that have been paid shall be  
62 returned. Moneys received from the mandatory civil penalties  
63 imposed pursuant to this subsection upon persons required to  
64 appear before a designated official pursuant to s. 318.19(1) or  
65 (2) shall be remitted to the Department of Revenue and deposited  
66 into the Department of Health Emergency Medical Services Trust

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Amendment No. 1

67 Fund to provide financial support to certified trauma centers to  
68 assure the availability and accessibility of trauma services  
69 throughout the state. Funds deposited into the Emergency Medical  
70 Services Trust Fund under this section shall be allocated as  
71 follows:

72 (a) Fifty percent shall be allocated equally among all  
73 Level I, Level II, and pediatric trauma centers in recognition  
74 of readiness costs for maintaining trauma services.

75 (b) Fifty percent shall be allocated among Level I, Level  
76 II, and pediatric trauma centers based on each center's relative  
77 volume of trauma cases as calculated using the hospital  
78 discharge data collected pursuant to s. 408.061.

79 Section 3. This act shall take effect July 1, 2024.  
80

81 -----

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

83 Remove lines 3-12 and insert:

84 users; republishing s. 318.19, F.S., relating to infractions  
85 requiring a mandatory hearing; amending s. 318.14, F.S.;  
86 requiring a person who commits a moving violation that causes  
87 serious bodily injury to, or causes the death of, a vulnerable  
88 road user to pay a specified fine; requiring the person's driver  
89 license to be suspended for a specified period; requiring the  
90 person to attend a driver improvement course; providing an  
91 effective date.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1135 Lewd or Lascivious Grooming  
**SPONSOR(S):** Criminal Justice Subcommittee, Yarkosky and others  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1238

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 2 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee	13 Y, 0 N	Saag	Keith
3) Judiciary Committee		Leshko	Kramer

**SUMMARY ANALYSIS**

It is estimated that in about half of all child sexual abuse cases the abuse is preceded by sexual grooming. Sexual grooming is a preparatory process in which a perpetrator selects a victim, gains access to and isolates the victim, develops trust with the victim and often other adults in the victim’s life, and desensitizes the victim to sexual content and physical contact. Post-abuse, the offender may engage in maintenance strategies in order to facilitate future sexual abuse and to prevent disclosure.

The Florida Supreme Court has held that the terms "lewd" and "lascivious" mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act. Under s. 800.04(6), F.S., a person commits lewd or lascivious conduct by soliciting a person under 16 to commit a lewd or lascivious act. Lewd or lascivious conduct is a second-degree felony if the offender is 18 years of age or older.

Under s. 800.04(7), F.S., a person commits lewd or lascivious exhibition by intentionally performing any of the following acts in the presence of a person under 16: masturbating; exposing the genitals in a lewd or lascivious manner; or committing any other sexual act that does not involve actual physical or sexual contact with the victim. Lewd or lascivious exhibition is a second-degree felony if the offender is 18 years of age or older.

Under s. 847.0135(3), F.S., a person commits a third-degree felony if he or she knowingly uses a computer online service, internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the offender to be a child, to commit any illegal act described in ch. 794, F.S. (sexual battery), ch. 800, F.S. (lewdness/indecent exposure), or ch. 827, F.S. (abuse of children) or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the offender to be a child.

While there are several offenses in current law which prohibit a person from encouraging, enticing, soliciting, or inducing a minor to engage in sexual activity, lewd or lascivious behavior, or a sexual performance, current law does not specifically criminalize the preparation of a child to engage in sexual activity, sexual conduct, or a sexual performance through a pattern of inappropriate communication or conduct directed toward the child.

CS/HB 1135 creates s. 800.045, F.S., to prohibit a person 18 years of age or older from committing lewd or lascivious grooming by engaging in a pattern of inappropriate communication or conduct directed toward a person less than 16 years of age for the purpose of preparing, encouraging, or enticing such person to engage in any unlawful sexual activity, sexual conduct, or sexual performance. A violation of this prohibition is punishable as a third-degree felony.

The Criminal Justice Impact Conference determined that the bill would have a positive indeterminate impact on prison beds. See Fiscal Comments.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Grooming

It is estimated that in about half of all child sexual abuse cases the abuse is preceded by sexual grooming. Sexual grooming is a preparatory process in which a perpetrator selects a victim, gains access to and isolates the victim, develops trust with the victim and often other adults in the victim's life, and desensitizes the victim to sexual content and physical contact.<sup>1</sup> During the desensitization phase, the perpetrator typically introduces sexual content disguised as jokes or discussions, or through exposure to pornography or other explicit material,<sup>2</sup> and utilizes frequent non-sexual touch to desensitize the victim to physical contact. Post-abuse, the offender may engage in maintenance strategies in order to facilitate future sexual abuse and to prevent disclosure.<sup>3</sup>

##### Lewd and Lascivious Offenses

The Florida Supreme Court has held that the terms "lewd" and "lascivious" mean a wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act.<sup>4, 5</sup>

Section 800.04, F.S., criminalizes the following lewd or lascivious offenses committed on or in the presence of a person less than 16 years of age:

- Lewd or lascivious battery;
- Lewd or lascivious molestation;
- Lewd or lascivious conduct; and
- Lewd or lascivious exhibition.

Neither the victim's lack of chastity nor the victim's consent is a defense to lewd or lascivious offenses. Additionally, the perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense.<sup>6</sup>

##### *Lewd or Lascivious Battery*

A person commits lewd and lascivious battery by:

- Engaging in sexual activity<sup>7</sup> with a person 12 years of age or older but younger than 16; or
- Encouraging, forcing, or enticing any person under 16 to engage in:
  - Sadomasochistic abuse;
  - Sexual bestiality;
  - Prostitution; or
  - Any other act involving sexual activity.<sup>8</sup>

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<sup>1</sup> Psychology Today, *How to Recognize the Sexual Grooming of a Minor*, (July 7, 2023)

<https://www.psychologytoday.com/us/blog/protecting-children-from-sexual-abuse/202010/how-to-recognize-the-sexual-grooming-of-a-minor> (last visited Feb. 15, 2024).

<sup>2</sup> Helping Survivors, *Sexual Grooming*, <https://helpingsurvivors.org/grooming/> (last visited Feb. 15, 2024).

<sup>3</sup> Psychology Today, *supra*, at note 1.

<sup>4</sup> *Chesebrough v. State*, 255 So.2d 675, 677 (Fla. 1971).

<sup>5</sup> Whether an act or conduct is lewd or lascivious is a factual issue to be decided on a case-by-case basis. *Andrews v. State*, 130 So. 3d 788, 790 (Fla. 1st DCA 2014).

<sup>6</sup> S. 800.04(2-3), F.S.

<sup>7</sup> Sexual activity 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. S. 800.04(1)(d), F.S.

<sup>8</sup> S. 800.04(4)(a), F.S.

Lewd or lascivious battery is generally a second-degree felony,<sup>9</sup> unless the offender is 18 years of age or older and was previously convicted of lewd or lascivious battery or another specified offense,<sup>10</sup> in which case the offense is reclassified as a first-degree felony.<sup>11, 12</sup>

### *Lewd or Lascivious Molestation*

A person commits lewd or lascivious molestation by:

- Intentionally touching in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person under 16; or
- Forcing or enticing a person under 16 to so touch the perpetrator.<sup>13</sup>

The penalty for lewd or lascivious molestation varies depending on the offender's age, the victim's age, and the circumstances surrounding the commission of the offense as follows:

- If the offender is 18 years of age or older and the victim is less than 12 years of age, the offense is a life felony.<sup>14, 15</sup>
- If the offender is less than 18 years of age and the victim is less than 12 years of age, the offense is a second-degree felony.<sup>16</sup>
- If the offender is 18 years of age or older and the victim is 12 years of age or older but less than 16 years of age, the offense is a second-degree felony.<sup>17</sup>
- If the offender is less than 18 years of age and the victim is 12 years of age or older but less than 16 years of age, the offense is a third-degree felony.<sup>18, 19</sup>
- If the offender is 18 years of age or older and the victim is 12 years of age or older but less than 16 years of age and the offender has previously been convicted of lewd or lascivious molestation or another specified offense,<sup>20</sup> the offense is a first-degree felony.<sup>21</sup>

### *Lewd or Lascivious Conduct*

A person commits lewd or lascivious conduct by:

- Intentionally touching a person under 16 in a lewd or lascivious manner; or
- Soliciting a person under 16 to commit a lewd or lascivious act.<sup>22</sup>

Lewd or lascivious conduct is a second-degree felony if the offender is 18 years of age or older<sup>23</sup> and a third-degree felony if the offender is younger than 18 years of age.<sup>24, 25</sup>

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<sup>9</sup> S. 800.04(4)(b), F.S.; 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.

<sup>10</sup> Other offenses include a violation of: ss. 787.01(2) or 787.02(2), F.S., when the victim was a minor and, in the course of committing that violation, the defendant committed sexual battery under ch. 794, F.S., or a lewd act under ss. 800.04 or 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3., F.S.; s. 787.02(3)(a)2. or 3., F.S.; ch. 794, F.S., excluding s. 794.011(10), F.S.; s. 825.1025, F.S.; or s. 847.0135(5), F.S.

<sup>11</sup> S. 800.04(4)(c), F.S.; 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.

<sup>12</sup> Both a second-degree and first-degree felony lewd or lascivious battery are ranked as a Level 8 offense on the Criminal Punishment Code's offense severity ranking chart (OSRC).

<sup>13</sup> S. 800.04(5)(a), F.S.

<sup>14</sup> A life felony is punishable by life imprisonment and a \$15,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

<sup>15</sup> Ranked as a Level 9 offense on the OSRC.

<sup>16</sup> Ranked as a Level 7 offense on the OSRC.

<sup>17</sup> Ranked as a Level 7 offense on the OSRC.

<sup>18</sup> 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.

<sup>19</sup> Ranked as a Level 6 offense on the OSRC.

<sup>20</sup> Other offenses include a violation of: ss. 787.01(2) or 787.02(2), F.S., when the victim was a minor and, in the course of committing that violation, the defendant committed sexual battery under ch. 794, F.S., or a lewd act under ss. 800.04 or 847.0135(5), F.S.; s. 787.01(3)(a)2. or 3., F.S.; s. 787.02(3)(a)2. or 3., F.S.; ch. 794, F.S., excluding s. 794.011(10), F.S.; s. 825.1025, F.S.; or s. 847.0135(5), F.S.

<sup>21</sup> Ranked as a Level 7 offense on the OSRC.

<sup>22</sup> S. 800.04(6)(a), F.S.

<sup>23</sup> Ranked as a Level 6 offense on the OSRC.

<sup>24</sup> S. 800.04(6)(b)–(c), F.S.

<sup>25</sup> Ranked as a Level 5 offense on the OSRC.

## *Lewd or Lascivious Exhibition*

A person commits lewd or lascivious exhibition by performing any of the following acts in the presence of a person under 16:

- Intentionally masturbating;
- Intentionally exposing the genitals in a lewd or lascivious manner;
- Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.<sup>26</sup>

Lewd or lascivious exhibition is a second-degree felony if the offender is 18 years of age or older<sup>27</sup> or a third-degree felony if the offender is less than 18 years of age.<sup>28, 29</sup>

### Lewd or Lascivious Written Solicitation of Certain Minors

Section 794.053, F.S., prohibits a person 24 years of age or older from soliciting a person who is 16 or 17 years of age in writing to commit a lewd or lascivious act as a third-degree felony.<sup>30</sup>

### Sexual Performance by a Child

Section 827.071(2), F.S., prohibits a person from using a child in a sexual performance<sup>31</sup> if, knowing the content and character thereof, he or she employs, authorizes, or induces a child to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. A violation of this prohibition is a second-degree felony.<sup>32</sup>

### Prohibited Acts in Connection with Obscene Materials

Under s. 847.0133, F.S., a person commits a third-degree felony if he or she knowingly sells, rents, loans, gives away, distributes, transmits, or shows any obscene material to a minor.<sup>33</sup>

Under this section, "obscene material" means any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing paper, card, picture, drawing, photograph, motion picture film, figure, image, videotape, videocassette, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose.

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<sup>26</sup> S. 800.04(7)(a), F.S.

<sup>27</sup> Ranked as a Level 5 offense on the OSRC.

<sup>28</sup> S. 800.04(7)(b)–(c), F.S.

<sup>29</sup> Ranked as a Level 4 offense on the OSRC.

<sup>30</sup> Ranked as a Level 3 offense on the OSRC.

<sup>31</sup> Section 827.071(1)(m), F.S., defines "sexual performance" as any performance or part thereof which includes sexual conduct by a child.

<sup>32</sup> Ranked as a Level 6 offense on the OSRC.

<sup>33</sup> 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 will be ranked as a Level 1 offense on the OSRC.

Section 847.001(12), F.S., defines “obscene” as the status of material which:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct;<sup>34</sup> and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.<sup>35</sup>

### Prohibited Computer Usage

Under s. 847.0135(3), F.S., a person commits a third-degree felony if he or she knowingly uses a computer online service, internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

- Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child<sup>36</sup> or another person believed by the offender to be a child, to commit any illegal act described in ch. 794, F.S. (sexual battery), ch. 800, F.S. (lewdness/indecent exposure), or ch. 827, F.S. (abuse of children) or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the offender to be a child; or
- Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed by the offender to be the same, to consent to such child’s participation in any act described in ch. 794, F.S., ch. 800, F.S., or ch. 827, F.S., or to otherwise engage in any sexual conduct.<sup>37</sup>

### Transmission of Material Harmful to Minors

Section 847.0138, F.S., prohibits a person, in this state or in any jurisdiction other than this state, from knowingly transmitting or believing that he or she is transmitting an image, information, or data that is harmful to minors to a specific individual known by the defendant to be a minor, as a third-degree felony.<sup>38</sup>

Section 847.001(7), F.S., defines “harmful to minors” as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement<sup>39</sup> when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.<sup>40</sup>

While there are several offenses in current law which prohibit a person from encouraging, enticing, soliciting, or inducing a minor to engage in sexual activity, lewd or lascivious behavior, or a sexual performance, current law does not specifically criminalize the preparation of a child to engage in sexual activity, sexual conduct, or a sexual performance through a pattern of inappropriate communication or conduct directed toward the child.

### Criminal Punishment Code

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<sup>34</sup> “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. A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.” S. 847.001(19), F.S.

<sup>35</sup> A mother’s breastfeeding of her baby is not under any circumstance “obscene.”

<sup>36</sup> “Child” means any person, whose identity is known or unknown, younger than 18 years of age. S. 847.001(10), F.S.

<sup>37</sup> Ranked as a Level 7 offense on the OSRC.

<sup>38</sup> Ranked as a Level 5 offense on the OSRC.

<sup>39</sup> Section 847.001(20), F.S., defines “sexual excitement” as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

<sup>40</sup> A mother’s breastfeeding of her baby is not under any circumstance “harmful to minors.”

Felony offenses which are subject to the Criminal Punishment Code<sup>41</sup> are listed in a single offense severity ranking chart (OSRC),<sup>42</sup> 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.<sup>43, 44</sup> 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.<sup>45, 46</sup> 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.<sup>47</sup>

## Effect of Proposed Changes

CS/HB 1135 creates s. 800.045, F.S., to prohibit a person 18 years of age or older from committing lewd or lascivious grooming by engaging in a pattern of inappropriate communication or conduct directed toward a person less than 16 years of age for the purpose of preparing, encouraging, or enticing such person to engage in any unlawful sexual activity, sexual conduct, or sexual performance. A violation of the prohibition is a third-degree felony.

The bill defines the following terms:

- "Inappropriate communication or conduct" means any verbal, written, or electronic communication or any conduct in which a person describes, depicts, or demonstrates sexual conduct or sexual excitement.
- "Sexual activity" means the 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 activity does not include an act done for a bona fide medical purpose.
- "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. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."
- "Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.
- "Sexual performance" means any performance or part thereof which includes sexual conduct by a child.

The bill ranks the new third-degree felony as a Level 3 offense on the OSRC.

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

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<sup>41</sup> 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.

<sup>42</sup> S. 921.0022, F.S.

<sup>43</sup> S. 921.0022(2), F.S.

<sup>44</sup> 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.

<sup>45</sup> Ss. 921.0022 and 921.0024, F.S.

<sup>46</sup> 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.

<sup>47</sup> 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.

B. SECTION DIRECTORY:

**Section 1:** Creates s. 800.045, F.S., relating to lewd or lascivious grooming.

**Section 2:** Amends s. 921.0022, F.S., relating to criminal punishment code; offense severity ranking chart.

**Section 3:** 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 Criminal Justice Impact Conference determined that the bill would have a positive indeterminate impact on prison beds by creating a new felony offense for lewd or lascivious grooming of a child.<sup>48</sup>

The Department of Corrections (DOC) reported that in Fiscal Year 2022-2023, there were 241 new commitments to prison as a result of convictions of current offenses containing prohibitions similar to those contained in the bill, such as, offenses prohibiting lewd or lascivious exhibition, transmission of material harmful to minors, using computer services or devices, or traveling to meet a minor to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child to engage in unlawful sexual conduct and intentionally committing any sexual act that does not involve actual physical or sexual contact with the victim. However, DOC notes that based on the offense levels and rankings on the OSRC of all of the offenses listed above violations of such offenses are more likely to result in incarceration than a third-degree felony that is ranked a Level 3 offense on the OSRC, like the offense created in the bill. As such, DOC is unable to determine how many additional offenders would be impacted by the new offense created in the bill.<sup>49</sup>

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<sup>48</sup> Florida Office of Economic and Demographic Research, Criminal Justice Impact Conference, *CS/SB 1238 – Lewd or Lascivious Grooming (Identical CS/HB 1135)*, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1238.pdf> (last visited Feb. 15, 2024).

<sup>49</sup> *Id.*



### 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:

CS/HB 1135 may implicate the First Amendment. The First Amendment of the U.S. Constitution guarantees that “Congress shall make no law ... abridging the freedom of speech.”<sup>50</sup> The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.<sup>51</sup>

However, “the State clearly has a compelling interest in protecting minors from being lured to engage in illegal sexual acts, and speech that is used to further the sexual exploitation of children most certainly does not enjoy constitutional protection.”<sup>52</sup>

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2024, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that in order to be considered lewd or lascivious grooming, a person 18 years of age or older must be engaging in inappropriate communication or conduct directed at a person under the age of 16 for the purpose of preparing, encouraging, or enticing such a person to engage in any unlawful sexual activity, sexual conduct, or sexual performance.
- Reduced the penalty from a second-degree felony to a third-degree felony and ranked the new offense as a Level 3 offense on the OSRC.
- Added definitions for the following terms:
  - Inappropriate communication or conduct;
  - Sexual activity;
  - Sexual conduct; and
  - Sexual performance.

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

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<sup>50</sup> U.S. Const., amend. I.

<sup>51</sup> U.S. Const. amend. XIV. See *also* Art. I, Fla. Const.

<sup>52</sup> *Senger v. State*, 200 So. 3d 137, 147 (Fla. 5th DCA 2016).

1                                   A bill to be entitled  
 2           An act relating to lewd or lascivious grooming;  
 3           creating s. 800.045, F.S.; providing definitions;  
 4           creating the offense of lewd or lascivious grooming;  
 5           providing criminal penalties; amending s. 921.0022,  
 6           F.S.; ranking the offense on the offense severity  
 7           ranking chart of the Criminal Punishment Code;  
 8           providing an effective date.

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

11  
 12           Section 1. Section 800.045, Florida Statutes, is created  
 13 to read:

14           800.045 Lewd or lascivious grooming.-

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

16           (a) "Inappropriate communication or conduct" means any  
 17 verbal, written, or electronic communication or any conduct in  
 18 which a person describes, depicts, or demonstrates sexual  
 19 conduct or sexual excitement.

20           (b) "Sexual activity" has the same meaning as in s.  
 21 800.04(1).

22           (c) "Sexual conduct" and the term "sexual excitement" have  
 23 the same meanings as in s. 847.001.

24           (d) "Sexual performance" has the same meaning as in s.  
 25 827.071(1).

26        (2) A person 18 years of age or older who engages in a  
 27 pattern of inappropriate communication or conduct directed  
 28 toward a person less than 16 years of age for the purpose of  
 29 preparing, encouraging, or enticing such person to engage in any  
 30 unlawful sexual activity, sexual conduct, or sexual performance  
 31 commits lewd or lascivious grooming, a felony of the third  
 32 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 33 775.084.

34        Section 2. Paragraph (c) of subsection (3) of section  
 35 921.0022, Florida Statutes, is amended to read:

36        921.0022 Criminal Punishment Code; offense severity  
 37 ranking chart.—

38        (3) OFFENSE SEVERITY RANKING CHART

39        (c) LEVEL 3

40

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.

41

42

43

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44	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
45	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
46	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
47	319.33(1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
48	319.33(1) (c)	3rd	Procure or pass title on stolen vehicle.
49	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
50	327.35(2) (b)	3rd	Felony BUI.

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51	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
52	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
53	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
54	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
	379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts

			thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
55	379.2431 (1) (e) 7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
56	400.9935(4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
57	400.9935(4) (e)	3rd	Filing a false license application or other required information or failing to report information.
58	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
59	501.001(2) (b)	2nd	Tampers with a consumer product

			or the container using materially false/misleading information.
60	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
61	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
62	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
63	697.08	3rd	Equity skimming.
64	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.
65	794.053	3rd	Lewd or lascivious written solicitation of a person 16 or 17 years of age by a person 24 years of age or older.

66	<u>800.045 (2)</u>	<u>3rd</u>	<u>Lewd or lascivious grooming.</u>
67	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
68	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
69	810.09(2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
70	812.014(2) (c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
71	812.0145(2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
72	812.015(8) (b)	3rd	Retail theft with intent to sell; conspires with others.



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73	812.081 (2)	3rd	Theft of a trade secret.
74	815.04 (4) (b)	2nd	Computer offense devised to defraud or obtain property.
75	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
76	817.233	3rd	Burning to defraud insurer.
77	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
78	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
79	817.236	3rd	Filing a false motor vehicle insurance application.
80	817.2361	3rd	Creating, marketing, or presenting a false or

			fraudulent motor vehicle insurance card.
81	817.413(2)	3rd	Sale of used goods of \$1,000 or more as new.
82	817.49(2)(b)1.	3rd	Willful making of a false report of a crime causing great bodily harm, permanent disfigurement, or permanent disability.
83	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
84	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
85	836.13(2)	3rd	Person who promotes an altered sexual depiction of an identifiable person without

			consent.
86	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
87	860.15 (3)	3rd	Overcharging for repairs and parts.
88	870.01 (2)	3rd	Riot.
89	870.01 (4)	3rd	Inciting a riot.
90	893.13 (1) (a) 2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (2) (c) 10., (3), or (4) drugs).
91	893.13 (1) (d) 2.	2nd	Sell, manufacture, or deliver s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (2) (c) 10., (3), or (4) drugs within 1,000 feet of

92			university.
	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing facility.
93			
	893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
94			
	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
95			
	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
96			
	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud,

forgery, misrepresentation,  
etc.

97

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

98

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

99

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

100

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

obtaining a controlled substance.

101

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

102

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

103

918.13(1) 3rd Tampering with or fabricating physical evidence.

104

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

105

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

106



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Yarkosky offered the following:

**Amendment (with title amendment)**

Remove lines 26-33 and insert:

6 (2) A person 18 years of age or older who, with lewd or  
 7 lascivious intent, engages in a pattern of inappropriate  
 8 communication or conduct directed toward a person less than 16  
 9 years of age for the purpose of preparing, encouraging, or  
 10 enticing such person to engage in any unlawful sexual activity,  
 11 unlawful sexual conduct, or unlawful sexual performance commits  
 12 lewd or lascivious grooming, a felony of the third degree,  
 13 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

14 (3) This section does not apply to any act of medical  
 15 diagnosis, treatment, or educational conversation by a parent,



Amendment No. 1

16 caregiver, counselor, or educator for the purpose of sexual  
17 education, and not intended to elicit sexual excitement.

18

19

20

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21

**T I T L E   A M E N D M E N T**

22

Remove line 5 and insert:

23

providing criminal penalties; providing applicability; amending

24

s. 921.0022,



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1167 Attorney Fees and Costs in Property Rights Disputes

**SPONSOR(S):** Local Administration, Federal Affairs & Special Districts Subcommittee, Yarkosky

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 1 N	Mawn	Jones
2) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N, As CS	Mwakyanjala	Darden
3) Judiciary Committee		Mawn	Kramer

### SUMMARY ANALYSIS

The institution of private property is a fundamental element of the economic and social structure of the United States. Within this institution, different ownership principles define the existence and limits of private property rights. One such set of principles concerns the enforcement of private land use arrangements, known as “servitudes.” A servitude is, essentially, an arrangement that ties rights and obligations to property ownership or possession so that such rights and obligations run with the land to successive owners and occupiers. Because a servitude can be terminated only by expiration of its terms, by the agreement of all involved parties, by merger of the dominant and servient estates, by court order, or by abandonment by the benefiting party, servitudes are significant for their ability to foster stable, long-term property use arrangements for a variety of purposes, including shared land uses; maintenance of the character of a residential neighborhood, commercial development, or historic property; and the establishment of infrastructure and common facilities. Some of the more commonly-created servitudes convey “use rights” (that is, the rights to use a property one does not own, typically in a specified manner, for one’s own benefit) and rights of ingress and egress (that is, the legal rights to enter upon or exit from a piece of real property).

Riparian rights are rights incident to land bordering navigable waters such as rivers, channels, and streams (“riparian land”) and include rights of ingress, egress, boating, bathing, and fishing, and to an unobstructed view. Riparian rights also include the right to erect upon the bed and shores adjacent to the riparian land docks and other structures for the riparian land owner’s private use, subject to the right of the public to use the navigable waters and applicable regulatory and environmental approval schemes. Riparian rights, which inure to the riparian land owner, are appurtenant to and inseparable from the riparian land. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running with the land, whether or not such rights are mentioned in the deed or lease.

The traditional “English rule” entitled a prevailing party in civil litigation to attorney fees as a matter of right. However, Florida and a majority of other United States jurisdictions have adopted the “American rule,” where each party bears its own attorney fees unless a “fee-shifting statute” provides an entitlement to fees. In Florida, several such fee-shifting statutes entitle the prevailing party to have his or her fees paid by the other party.

CS/HB 1167 provides that, in a civil action brought against the owner of a parcel of real property to resolve a property rights dispute, the court may award reasonable attorney fees and costs to the prevailing defendant if the improvements made to the property by the defendant property owner were made in substantial compliance with, or in reliance on, environmental or regulatory approvals or permits issued by a political subdivision of the state or a state agency. However, the bill provides that attorney fees and costs may not be so awarded where the environmental or regulatory approval or permit was issued due to a material mistake of fact or law or was not issued in compliance with law.

The bill may have a fiscal impact on state or local governments. See Fiscal Comments. The bill provides an effective date of upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Servitudes

The institution of private property is a fundamental element of the economic and social structure of the United States.<sup>1</sup> Within this institution, different ownership principles define the existence and limits of private property rights.<sup>2</sup> One such set of principles concerns the enforcement of private land use arrangements, known as “servitudes.”<sup>3</sup>

A servitude is, essentially, an arrangement that ties rights and obligations to property ownership or possession so that such rights and obligations run with the land to successive owners and occupiers.<sup>4</sup> Because a servitude can be terminated only by expiration of its terms, by the agreement of all involved parties, by merger of the dominant and servient estates,<sup>5</sup> by court order, or by abandonment by the benefiting party, servitudes are significant for their ability to foster stable, long-term property use arrangements for a variety of purposes, including shared land uses; the maintenance of the character of a residential neighborhood, commercial development, or historic property; and the establishment of infrastructure and common facilities.<sup>6</sup>

Some of the more commonly-created servitudes convey “use rights” (that is, the rights to use a property one does not own, typically in a specified manner, for one’s own benefit) and rights of ingress and egress (that is, the legal rights to enter upon or exit a piece of real property). Servitudes typically come in the form of:

- Easements, which give a person a nonpossessory right of use or enjoyment in another person’s property for a specific purpose not inconsistent with the property owner’s general rights;<sup>7</sup>
- Real covenants, which limit a property owner’s use of his or her own property, typically for the benefit of other property owners in the community; or
- Profits à prendre, which give a person a non-possessory right to enter upon and remove natural resources (such as minerals, timber, produce, wildlife, or grass) from the property of another.

##### Riparian Rights

Upon attaining statehood in 1845, Florida “assumed title to and sovereignty over the navigable waters in the state and the lands thereunder” from the submerged bed up to the “ordinary high water mark.”<sup>8</sup> Under the common law Public Trust Doctrine, which recognizes the public’s right to natural resources, navigable rivers, lakes, and tidelands are held in the public trust, and the state has a legal duty to preserve and control such waters for public navigation and other lawful uses.<sup>9</sup>

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<sup>1</sup> Ronald H. Rosenberg, *Fixing a Broken Common Law— Has the Property Law of Easements and Covenants Been Reformed by a Restatement*, William & Mary Law School Scholarship Repository, Faculty Publications (2016), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2932&context=facpubs> (last visited Feb. 8, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Susan French, *Servitude*, The Encyclopaedia Britannica, Dec. 19, 2003, <https://www.britannica.com/topic/servitude-property-law> (last visited Feb. 8, 2024); Michael J.D. Sweeney, *The Changing Role of Private Land Restrictions: Reforming Servitude Law*, 64 Fordham L. Rev. 661 (1995) <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3208&context=flr> (last visited Feb. 8, 2024).

<sup>5</sup> The “dominant estate” is the property that benefits from the servitude, while the “servient estate” is the property burdened by the servitude. Legal Information Institute, *Dominant Estate*, [https://www.law.cornell.edu/wex/dominant\\_estate](https://www.law.cornell.edu/wex/dominant_estate) (last visited Feb. 8, 2024); Legal Information Institute, *Servient Estate*, [https://www.law.cornell.edu/wex/servient\\_estate](https://www.law.cornell.edu/wex/servient_estate) (last visited Feb. 8, 2024).

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

<sup>7</sup> Michael T. Olexa, et al., *Handbook of Florida Fence and Property Law: Easements and Rights of Way*, Oct. 3, 2022, <https://edis.ifas.ufl.edu/publication/FE108> (last visited Feb. 8, 2024).

<sup>8</sup> Art. X, s. 11, Fla. Const.; *Merrill-Stevens Co. v. Durkee*, 57 So. 428 (Fla. 1912).

<sup>9</sup> Art. X, s. 11, Fla. Const.; *Coastal Petroleum Co. v. Am. Cyanamid Co.*, 492 So. 2d 339, 342 (Fla. 1986); *State ex rel. Ellis v. Gerbing*, 56 Fla. 603 (1908).

Riparian rights are rights incident to land bordering navigable waters<sup>10</sup> such as rivers, channels, and streams<sup>11</sup> (“riparian land”) and include rights of ingress, egress, boating, bathing, and fishing, and to an unobstructed view.<sup>12</sup> Riparian rights also include the right to erect upon the bed and shores adjacent to the riparian land docks and other structures for the riparian land owner’s private use, subject to the right of the public to use the navigable waters and applicable regulatory and environmental approval schemes.<sup>13</sup> Riparian rights, which inure to the riparian land owner, are appurtenant to and inseparable from the riparian land.<sup>14</sup> Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running with the land, whether or not such rights are mentioned in the deed or lease.<sup>15</sup>

In order for riparian rights to attach, the riparian land must extend to the ordinary high water mark of the navigable water.<sup>16</sup> However, courts have acknowledged that there is no one proper method for establishing riparian rights boundaries, and such rights do not necessarily extend into the waters according to riparian land boundaries.<sup>17</sup> Instead, such boundaries must be apportioned and riparian rights determined in accordance with equitable principles, with consideration given to the lay of the shore line, the direction of the water body, and the co-relative rights of adjoining riparian land owners.<sup>18</sup>

## Land Use Regulation

### *Local Government Regulation*

Florida law requires each county and municipality to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.<sup>19</sup> All elements of a plan or plan amendment must be based on relevant, appropriate data,<sup>20</sup> and an analysis by the local government may include surveys, studies, aspirational goals, and other data available at the time of adopting the plan or amendment.<sup>21</sup> The data supporting a plan or amendment must be taken from professionally accepted sources and must be based on permanent and seasonal population estimates and projections published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology.<sup>22</sup>

Comprehensive plans adopted by local governments provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area.<sup>23</sup> A key purpose of such plans is to establish meaningful and predictable standards for land use and development.<sup>24</sup> Accordingly, each county and municipality must adopt and enforce land use regulations (such as zoning ordinances) that are consistent with and implement their adopted comprehensive plan.<sup>25</sup> Furthermore, all public and private development must be consistent

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<sup>10</sup> The test to determine whether water is “navigable water” is whether, at the time Florida joined the United States in 1845, the waterbody was, in its ordinary and natural state, used or capable of being used by any watercraft for a sufficient part of the year as a public highway for commerce. “Navigable waters” in the state do not extend to any permanent or transient waters in the form of so-called lakes, ponds, swamps, or overflowed lands lying over and upon areas which have heretofore been conveyed to private individuals by the United States or by the state without reservation of public rights in and to said waters. *Odum v. Deltona Corp.*, 341 So. 2d 977 (Fla. 1976); s. 253.141(2), F.S.

<sup>11</sup> Riparian rights should not be confused with littoral rights, which are rights incident to land bordering non-flowing waterbodies, such as lakes, ponds, seas, oceans, and gulfs.

<sup>12</sup> S. 253.141, F.S.; *Hayes v. Bowman*, 91 So. 2d 795 (Fla. 1957).

<sup>13</sup> The right to build such a structure does not include the right to use the structure for commercial purposes. Further, the Florida Department of Environmental Protection has established a regulatory approval scheme and setback requirements for structures built over submerged sovereign lands, including docks. *Ferry Pass Inspectors’ & Shippers’ Ass’n v. White’s River Inspectors’ & Shippers’ Ass’n*, 48 So. 643 (Fla. 1909); *Belvedere Dev. Corp. v. Dept’ of Transp.*, 476 So. 2d 649 (Fla. 1985); Fla. Admin. Code R. 18-21.

<sup>14</sup> S. 253.141, F.S.

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

<sup>16</sup> *Id.*; *Thiesen v. Gulf, Fla. & Alabama Railway Co.*, 78 So. 491 (Fla. 1917).

<sup>17</sup> *Hayes*, 91 So. 2d at 801, 802 (Fla. 1957); *Lake Conway Shores HOA, Inc. v. Driscoll*, 476 So. 2d 1306 (Fla. 5th DCA 1985).

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

<sup>19</sup> Ss. 163.3167(2), 163.3177(2), F.S.

<sup>20</sup> “To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue.” S. 163.3177(1)(f), F.S.

<sup>21</sup> S. 163.3177(1)(f), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> S. 163.3177(1), F.S.

<sup>24</sup> S. 163.3167(1)(a-c) and (2), F.S.

<sup>25</sup> S. 163.3202, F.S.

with the local comprehensive plan and all applicable land use regulations; to accomplish this, local governments implement an approval and permitting scheme for property owners wishing to make specified improvements to their properties.<sup>26</sup>

### *State Regulation*

Like local governments, the State establishes standards for land use and development through the enactment of laws and the implementation of land use regulations promulgated by state agencies; many such laws and regulations focus on state-level environmental protection and natural resource conservation.<sup>27</sup> In many instances, a state-level approval and permitting scheme governs property owners wishing to make specified improvements to their properties, thereby ensuring compliance with applicable state land use laws and regulations.<sup>28</sup>

### Attorney Fees

The traditional “English rule” entitled a prevailing party in civil litigation to attorney fees as a matter of right. However, Florida and a majority of other United States jurisdictions have adopted the “American rule,” where each party bears its own attorney fees unless a “fee-shifting statute” provides an entitlement to fees. In Florida, several such fee-shifting statutes entitle the prevailing party to have his or her fees paid by the other party.<sup>29</sup>

### **Effect of Proposed Changes**

CS/HB 1167 creates s. 57.106, F.S., to provide that, in a civil action brought against the owner of a parcel of real property to resolve a property rights dispute, the court may award reasonable attorney fees and costs to the prevailing defendant if the improvements made to the property by the defendant property owner were made in substantial compliance with, or in reliance on, environmental or regulatory approvals or permits issued by a political subdivision of the state or a state agency. Under the bill:

- “Improvement” means an act done to increase the value or benefit of real property.
- “Property rights” means zoning, future land use designations, easement rights, ingress and egress rights, environmental resource and impact permits, and those rights incident to land bordering on navigable waters.

However, the bill provides that attorney fees and costs may not be so awarded where the environmental or regulatory approval or permit was issued due to a material mistake of fact or law or was not issued in compliance with law.

The bill provides an effective date of upon becoming a law.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 57.106, F.S., relating to recovery of attorney fees and costs in certain disputes regarding property rights.

**Section 2:** Provides an effective date of upon becoming a law.

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

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

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<sup>26</sup> See ss. 163.3161(6) and 163.3194(1)(a), F.S.

<sup>27</sup> See, e.g., Florida Department of Environmental Protection, *About DEP*, <https://floridadep.gov/about-dep> (last visited Feb. 8, 2024).

<sup>28</sup> *Id.*

<sup>29</sup> See, e.g., s. 400.023, F.S. (nursing home resident); s. 440.34, F.S. (claimant in a workers’ compensation case in certain situations); s. 501.2105, F.S. (plaintiff in specified FDUTPA actions); ss. 626.9373 and 627.428, F.S. (prevailing insured party in a case brought against an insurer); s. 790.33, F.S. (plaintiff in a suit to enforce his or her firearm rights); see also 42 U.S.C. s. 1988(b) (federal fee-shifting statute for prevailing parties in actions to enforce certain civil rights statutes).

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:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have a positive fiscal impact on prevailing defendants in the types of property rights disputes contemplated by the bill to the extent that such defendants recover their attorney fees and costs where they would not otherwise have been able to do so. However, the bill may have a negative fiscal impact on non-prevailing plaintiffs in such disputes, which may be state or local government entities, to the extent that such plaintiffs have to pay a prevailing defendant's attorney fees and costs where they would not have otherwise had to do so.

### 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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 31, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised definitions of “improvement” and “property rights”;
- Made it permissive for a court to award attorney fees under the bill, rather than mandatory; and
- Provided an exception to the award of attorney fees where the environmental or regulatory approval or permit was issued due to a material mistake of fact or law or not issued in compliance with law.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.



1                                   A bill to be entitled  
 2           An act relating to attorney fees and costs in property  
 3           rights disputes; creating s. 57.106, F.S.; defining  
 4           terms; authorizing courts to award reasonable attorney  
 5           fees and costs to a prevailing defendant in certain  
 6           civil actions under specified circumstances; providing  
 7           applicability; providing an effective date.

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

10  
 11           Section 1. Section 57.106, Florida Statutes, is created to  
 12   read:

13           57.106 Recovery of attorney fees and costs in certain  
 14   disputes regarding property rights.-

15           (1) For the purposes of this section, the term:

16           (a) "Improvement" means an act done to increase the value  
 17   or benefit of real property.

18           (b) "Property rights" means zoning, future land use  
 19   designations, easement rights, ingress and egress rights,  
 20   environmental resource and impact permits, and those rights  
 21   incident to land bordering upon navigable waters as described in  
 22   s. 253.141.

23           (2) In a civil action brought against the owner of a  
 24   parcel of real property to resolve a dispute concerning property  
 25   rights, the court may award reasonable attorney fees and costs

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26 | to the prevailing defendant if the improvements made to the  
27 | property by the defendant property owner were made in  
28 | substantial compliance with, or in reliance on, environmental or  
29 | regulatory approvals or permits issued by a political  
30 | subdivision of the state or a state agency.

31 | (3) This section does not apply if the environmental or  
32 | regulatory approval or permit was issued due to a material  
33 | mistake of fact or law or was not issued in compliance with law.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for CS/HB 1171 Schemes to Defraud

**SPONSOR(S):** Judiciary Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Leshko	Kramer

### 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.
- 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.
- 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 unautho rized use and recover damages, including an amount that would have been a reasonable royalty.

PCS for 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.

# 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 obtaining<sup>1</sup> property thereby.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4, 5</sup>
- \$20,000 or more, but less than \$50,000, the offender commits a second-degree felony.<sup>6, 7</sup>
- Less than \$20,000, the offender commits a third-degree felony.<sup>8, 9, 10</sup>

##### *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, communicating<sup>11</sup> with any person with intent to obtain property from that person.<sup>12</sup>

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.<sup>13</sup>
- Less than \$300, the offender commits a first-degree misdemeanor.<sup>14</sup>

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.<sup>15</sup>
- 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

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<sup>1</sup> 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.

<sup>2</sup> S. 817.034(4)(a), F.S.

<sup>3</sup> S. 817.034(3)(d), F.S.

<sup>4</sup> 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.

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

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

<sup>7</sup> Ranked as a Level 5 offense on the OSRC.

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

<sup>9</sup> Ranked as a Level 3 offense on the OSRC.

<sup>10</sup> S. 817.034(4)(a)(1.-3.), F.S.

<sup>11</sup> 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 photooptical system.

<sup>12</sup> S. 817.034(4)(b), F.S.

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> S. 817.034(4)(c), F.S.

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.<sup>16</sup>

### Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code<sup>17</sup> are listed in a single offense severity ranking chart (OSRC),<sup>18</sup> 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.<sup>19, 20</sup> 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.<sup>21, 22</sup> 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.<sup>23</sup>

### 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 age<sup>24</sup> 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.<sup>25</sup>

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.<sup>26</sup>

### *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 treble damages,<sup>27</sup> 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.<sup>28</sup>

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

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<sup>16</sup> S. 817.034(4)(d), F.S.

<sup>17</sup> 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.

<sup>18</sup> S. 921.0022, F.S.

<sup>19</sup> S. 921.0022(2), F.S.

<sup>20</sup> 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.

<sup>21</sup> Ss. 921.0022 and 921.0024, F.S.

<sup>22</sup> 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.

<sup>23</sup> 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.

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

<sup>25</sup> S. 775.085(1)(a), F.S.

<sup>26</sup> S. 775.085(3), F.S.

<sup>27</sup> "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).

<sup>28</sup> S. 775.085(2), F.S.

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 disability<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup>

### *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.<sup>32</sup>

### 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").<sup>33</sup> Florida law also codifies this tort in s. 540.08, F.S., providing generally the same elements as the common law tort.<sup>34</sup> 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 purpose<sup>35</sup> 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;<sup>36</sup>
- 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
  - If no person is so authorized, then by the decedent's surviving spouse or any one of his or her surviving children.<sup>37</sup>

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

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<sup>29</sup> 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.

<sup>30</sup> S. 775.0863(1)(a), F.S.

<sup>31</sup> S. 775.0863(3), F.S.

<sup>32</sup> S. 775.0863(2), F.S.

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

<sup>34</sup> 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).

<sup>35</sup> 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).

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

<sup>37</sup> 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.

have been a reasonable royalty.<sup>38, 39</sup> 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.<sup>40</sup> However, only the individual whose privacy was invaded may sue for unauthorized publication at common law.<sup>41</sup>

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.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup>

### Fake Reviews and Other Misleading Endorsements

In October 2021, the Federal Trade Commission (FTC) sent a Notice of Penalty Offenses<sup>45</sup> 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

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

<sup>39</sup> 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).

<sup>40</sup> "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.

<sup>41</sup> *Loft*, 408 So. at 623-625.

<sup>42</sup> 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).

<sup>43</sup> S. 540.08(5), F.S.

<sup>44</sup> S. 540.08(7), F.S.

<sup>45</sup> 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](https://www.ftc.gov/system/files/attachments/penalty-offenses-concerning-endorsements/notice-penalty_offenses-endorsements.pdf) (last visited Feb. 16, 2024).



cases.<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup>

## Effect of Proposed Changes

PCS for 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.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

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<sup>46</sup> FTC, *Penalty Offenses Concerning Endorsements*, <https://www.ftc.gov/enforcement/notices-penalty-offenses/penalty-offenses-concerning-endorsements> (last visited Feb. 16, 2024) (see for a list of FTC administrative decisions establishing penalty offenses concerning endorsements).

<sup>47</sup> 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 Feb. 16, 2024).

<sup>48</sup> *Id.*

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 Criminal Justice Impact Conference met on February 12, 2024, and reviewed a substantially similar bill and determined that the bill would have a positive indeterminate impact on jail and prison beds<sup>49</sup> by increasing the scope of activities which constitutes a scheme to defraud. The bill creates new misdemeanor and felony offenses for engaging in a scheme to defraud by false or fraudulent endorsements of nonconsenting parties. Additionally, the bill allows for these newly-created misdemeanor and felony offenses along with currently existing misdemeanor and felony offenses of organized fraud and communications fraud to be reclassified 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.

### 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.

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<sup>49</sup> Florida Office of Economic and Demographic Research, Criminal Justice Impact Conference, *SB 1220 – Schemes to Defraud*, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/SB1220.pdf> (last visited Feb. 16, 2024).

#### **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.

1                                   A bill to be entitled  
 2           An act relating to schemes to defraud; amending s.  
 3           817.034, F.S.; revising the definition of "scheme to  
 4           defraud"; providing for reclassification of certain  
 5           offenses when committed against persons 65 years of  
 6           age or older, against minors, or against persons with  
 7           mental and physical disabilities; providing for civil  
 8           actions for damages by persons whose image or likeness  
 9           was used in a scheme to defraud without their consent;  
 10          providing an effective date.

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

13  
 14           Section 1. Paragraph (d) of subsection (3) and subsection  
 15           (4) of section 817.034, Florida Statutes, are amended to read:

16           817.034 Florida Communications Fraud Act.—

17           (3) DEFINITIONS.—As used in this section, the term:

18           (d) "Scheme to defraud" means a systematic, ongoing course  
 19           of conduct with intent to defraud one or more persons, or with  
 20           intent to obtain property from one or more persons by false or  
 21           fraudulent pretenses, representations, endorsements of  
 22           nonconsenting parties, or promises or willful misrepresentations  
 23           of a future act.

24           (4) OFFENSES.—

25           (a) Any person who engages in a scheme to defraud and

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

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 1223 Minimum Age for Firearm Purchase or Transfer

**SPONSOR(S):** Payne and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 5 N	Padgett	Hall
2) Judiciary Committee		Padgett	Kramer

### SUMMARY ANALYSIS

Both state and Federal law regulate the purchase of firearms, which can either be made through a federal firearms licensee (FFL) or through a private sale. Generally, the minimum age required to purchase a firearm varies depending on the type of firearm purchased and whether the seller is an FFL or a private citizen. The sale of a firearm by an FFL is generally subject to greater restrictions than those imposed on a sale by a private citizen.

An FFL may not sell or deliver a firearm to any person if the purchase or possession by the firearm purchaser would be in violation of any state law where the sale or delivery will occur. Thus, if a state imposes requirements for the purchase or possession of a firearm which are *greater* than Federal law, an FFL may not sell or deliver a firearm to a prospective purchaser unless he or she satisfies the more restrictive state requirements. If a state imposes requirements on the purchase or possession of a firearm that is less restrictive than Federal law, Federal law applies. In sum, Federal law relating to the purchase and sale of a firearm acts as the “floor,” but states may impose more restrictive requirements if they choose to do so.

In 2018, Florida raised the minimum age to purchase a firearm from 18 to 21. Prior to 2018, the minimum age to purchase a long gun was 18 and the minimum age to purchase a handgun was 21, consistent with Federal law. Under current law, s. 790.065(13), F.S., generally prohibits, punishable as a third degree felony:

- A person younger than 21 years of age from purchasing a firearm, which includes both a long gun and a handgun.
- A licensed importer, licensed manufacturer, or licensed dealer (i.e. an FFL) from facilitating any sale or transfer of a firearm to a person younger than 21 years of age.

HB 1223 amends s. 790.065(13), F.S., to reduce the minimum age requirement to purchase a firearm from 21 to 18, which applies to purchases from either an FFL or a private seller. The bill also reduces from 21 to 18 the minimum age of a purchaser to which an FFL may make or facilitate a sale or transfer of a firearm.

Under the bill, a person who is 18 years of age or older and who is not otherwise prohibited from purchasing a firearm may purchase a long gun from either an FFL or a private seller.

Since the sale of a handgun by an FFL to a person under 21 years of age remains prohibited under Federal law, a person under the age of 21 would *not* be able to purchase a handgun from an FFL in Florida. Under the bill, a person who is 18 years of age or older may purchase a handgun from a private seller.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Purchase and Sale of Firearms

##### *Federal Firearms Licensee*

A person may not engage in the business of importing, manufacturing, or dealing in firearms unless he or she is licensed by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF).<sup>1</sup> A federal firearms licensee (FFL) must comply with both state and Federal law when selling a firearm, including verifying that a prospective purchaser meets the minimum age requirement to purchase a firearm and verifying that a prospective purchaser is not prohibited from purchasing a firearm by completing a background check to ensure the person purchasing the firearm is not prohibited from doing so.<sup>2</sup>

Under 18 U.S.C. s. 922(g), a person is disqualified from purchasing a firearm if the person:

- Is convicted of a crime punishable by imprisonment exceeding one year;
- Is a fugitive from justice;
- Is an unlawful user or addicted to any controlled substance as defined in 21 U.S.C s. 802;
- Has been adjudicated as a mental defective or has been committed to any mental institution;
- Is an illegal alien;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced his or her U.S. citizenship;
- Is subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or child of the intimate partner; or
- Has been convicted of a misdemeanor crime of domestic violence.

Section 790.065(2), F.S., disqualifies a person from purchasing a firearm if the person:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.;
- Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;
- Has had a withhold of adjudication or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless three years have elapsed since probation or any other court set conditions have been fulfilled or an expunction has occurred;
- Has been adjudicated mentally defective, or has been committed to a mental institution by a court or by voluntary admission to a mental institution after having been involuntarily examined where additional criteria are met;
- Has been indicted or had an information filed against her or him for a felony offense;
- Has had an injunction for protection against domestic violence under s. 741.30, F.S., entered against him or her;
- Has had an injunction for protection against repeat violence under s. 784.046, F.S., entered against him or her;
- Has been arrested for a dangerous crime as specified in s. 907.041(4)(a), F.S.; or
- Has been arrested for any of the offenses enumerated in s. 790.065(2)(c)1., F.S.

##### *Private Transaction*

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<sup>1</sup> 18 U.S.C. § 922(a)(1)(A).

<sup>2</sup> 18 U.S.C. § 922(t).

A person may also purchase a firearm through a private transaction (i.e. purchasing a firearm from a person who is a private citizen and *not* an FFL). Many of the requirements that apply to the sale of a firearm by an FFL do not apply to a private transaction. A seller in a private transaction is not explicitly required to verify a purchaser's age<sup>3</sup> or required to complete a background check<sup>4</sup> prior to transferring a firearm to a purchaser.

### Minimum Purchase Age

An FFL may not sell or deliver a firearm to any person if the purchase or possession of the firearm by the purchaser would be in violation of any state law where the sale or deliver will occur.<sup>5</sup> Thus, if a state imposes requirements for the purchase or possession of a firearm which are *greater* than Federal law, an FFL may not sell or deliver a firearm to a prospective purchaser unless he or she satisfies the more restrictive state requirements. If a state imposes requirements on the purchase or possession of a firearm that is less restrictive than Federal law, Federal law applies. In sum, Federal law relating to the purchase and sale of a firearm acts as the "floor," but states may impose more restrictive requirements if they choose to do so.

#### *Federal Law*

#### **Sale or Delivery of a Firearm – Purchase from a Federal Firearms Licensee**

Type of Firearm	Minimum Age to Purchase <sup>6</sup>
Long Gun <sup>7</sup>	18
Handgun	21

#### **Sale or Delivery of a Firearm – Purchase from a Private Seller**

Type of Firearm	Minimum Age to Purchase
Long Gun	No minimum age
Handgun	18 <sup>8</sup>

#### *Florida Law*

#### **Purchase of a Firearm**

In 2018, Florida raised the minimum age to purchase a firearm from 18 to 21.<sup>9</sup> Prior to 2018, the minimum age requirement to purchase a long gun from an FFL was 18 and the minimum age to purchase a handgun from an FFL was 21, consistent with Federal law. Under current law, s. 790.065(13), F.S., generally prohibits:

<sup>3</sup> A private seller is prohibited from selling, delivering, or otherwise transferring a handgun to a person who the transferor knows or has reasonable cause to believe is under 18 years of age. 18 U.S.C. §922(x)(1)(A).

<sup>4</sup> A private seller may not sell or dispose of a firearm to any person who the seller knows, or has reasonable cause to know, is prohibited from purchasing a firearm due to his or her prior criminal history, immigration status, or mental condition. 18 U.S.C. § 922.

<sup>5</sup> 18 U.S.C. § 922(b)(2).

<sup>6</sup> 18 U.S.C. § 922(b)(1).

<sup>7</sup> A "long gun" includes firearms other than a handgun, such as a rifle or shotgun. See 18 U.S.C. § 922(b)(1).

<sup>8</sup> 18 U.S.C. § 922(x)(1)(A). There are exceptions for the temporary transfer and possession of handguns for specified activities, including employment, ranching, farming, target practice and hunting. 18 U.S.C. § 922(x)(3).

<sup>9</sup> Ch. 2018-3, Laws of Fla.

- A person younger than 21 years of age from purchasing a firearm,<sup>10</sup> which includes both a long gun or a handgun.
- A licensed importer, licensed manufacturer, or licensed dealer (i.e. an FFL) from facilitating any sale or transfer of a firearm to a person younger than 21 years of age.<sup>11</sup>

A person who violates this prohibition commits a third degree felony.<sup>12</sup>

Under Florida law, it is not a crime for a private party to *sell or transfer* a firearm to a person who is 18 years of age or older but less than 21 years of age.

### **Furnishing Firearms to Minors**

Section 790.17(2), F.S., prohibits a person from knowingly or willfully selling or transferring a firearm to a minor under 18 years of age without the permission of the minor's parent or guardian, a violation of which is punishable as a third degree felony.

### **Possession of Firearms by a Minor**

Section 790.22, F.S., prohibits a minor under 18 years of age from possessing a firearm, other than an unloaded firearm at his or her home unless:

- The minor is engaged in a lawful hunting activity and:
  - Is at least 16 years of age; or
  - Under 16 years of age and supervised by an adult.
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and:
  - Is at least 16 years of age; or
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from a lawful hunting or recreational shooting event.

A first violation is punishable as a first degree misdemeanor.<sup>13</sup> A second or subsequent violation is punishable as a third degree felony.<sup>14</sup>

### *Other States*

The states that require a person to be 21 years of age or older to purchase a long gun are reflected in blue in the map below.<sup>15</sup> The states in green require a person to be 21 or older to purchase a semi-

<sup>10</sup> This restriction applies only to the *purchase* of a firearm by a person under 21 years of age. A person under 21 years of age may legally possess a firearm he or she receives as a gift or by other lawful means *other* than a purchase.

<sup>11</sup> A person who is a law enforcement officer, correctional officer, or servicemember may purchase a rifle or shotgun from a licensed importer, licensed manufacturer, or licensed dealer, or a private seller. S. 790.065(13), F.S.

<sup>12</sup> 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.

<sup>13</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083.

<sup>14</sup> S. 790.22(5)(b), F.S.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the number of people who are eligible to purchase a firearm by lowering the minimum purchase age for a firearm from 21 to 18. To the extent that people who are newly eligible to purchase a firearm under the bill choose to purchase a firearm, the bill may have a positive fiscal impact on businesses engaged in the sale of firearms and firearm-related products.

### 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:

Florida increased the minimum age requirement to 21 to purchase all firearms in 2018. The National Rifle Association challenged the law, alleging the increased minimum age requirement violated the Second and Fourteenth Amendments to the United States Constitution. On March 9, 2023, the United States Court of Appeals for the Eleventh Circuit ruled in favor of Florida, holding that prohibiting a person under 21 years of age from purchasing a firearm was consistent with the historical tradition of firearm regulation at the time the Fourteenth Amendment, which makes the Second Amendment applicable to the states, was ratified in 1868. The court also found the prohibition on a person under 21 years of age from purchasing a firearm was analogous to historical statutes from other states that were in effect when the Fourteenth Amendment was ratified, was no more restrictive than those statutes, and was enacted with the same goal of improving public safety. *Nat'l Rifle Ass'n. v. Bondi*, 2023 WL 2416683 (11th Cir. 2023). However, on July 14, 2023, the Eleventh Circuit granted a motion for a rehearing en banc and vacated the opinion. A decision in the case remains pending.

### B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to minimum age for firearm purchase or  
 3           transfer; amending s. 790.065, F.S.; reducing the  
 4           minimum age at which a person may purchase a firearm  
 5           and the age of purchasers to which specified licensees  
 6           are prohibited from selling or transferring a firearm;  
 7           repealing an exception; providing an effective date.

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

10  
 11           Section 1. Subsection (13) of section 790.065, Florida  
 12           Statutes, is amended to read:

13           790.065 Sale and delivery of firearms.—

14           (13) A person younger than 18 ~~21~~ years of age may not  
 15           purchase a firearm. The sale or transfer of a firearm to a  
 16           person younger than 18 ~~21~~ years of age may not be made or  
 17           facilitated by a licensed importer, licensed manufacturer, or  
 18           licensed dealer. A person who violates this subsection commits a  
 19           felony of the third degree, punishable as provided in s.  
 20           775.082, s. 775.083, or s. 775.084. ~~The prohibitions of this~~  
 21           ~~subsection do not apply to the purchase of a rifle or shotgun by~~  
 22           ~~a law enforcement officer or correctional officer, as those~~  
 23           ~~terms are defined in s. 943.10(1), (2), (3), (6), (7), (8), or~~  
 24           ~~(9), or a servicemember as defined in s. 250.01.~~

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

CODING: Words ~~stricken~~ are deletions; words underlined are additions.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1337 Department of Corrections  
**SPONSOR(S):** Criminal Justice Subcommittee, Stark and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Padgett	Hall
2) Judiciary Committee		Padgett	Kramer

### SUMMARY ANALYSIS

CS/HB 1337 makes several changes to statutes relating to the Florida Department of Corrections (FDC).

The bill amends s. 944.31, F.S., to authorize a law enforcement officer employed by the FDC Office of the Inspector General to:

- Conduct all criminal investigations involving matters over which FDC has jurisdiction at private correctional facilities;
- Arrest, with or without a warrant, any prisoner of, or visitor to, any state correctional institution, including a private correctional facility, for violating *any* criminal law involving matters over which FDC has jurisdiction, including both felony and misdemeanor offenses;
- Arrest, with or without a warrant, any FDC or private correctional facility staff member, contract employee, subcontractor, or volunteer for violating *any* criminal law that occurs on property owned or leased by FDC or at any private correctional facility, including both felony and misdemeanor offenses.

The bill also amends s. 957.04, F.S., to specify that a contract for operating a private correctional facility is *not* exempt from ch. 287, F.S., including competitive solicitation requirements. Under the bill, the provisions of ch. 957, F.S., will control if there is a direct conflict between ch. 287, F.S., and ch. 957, F.S. The bill also specifies that contracts for operating a private correctional facility are not considered to be an “outsource” under s. 287.012, F.S., and that the specific outsourcing requirements in s. 287.0571, F.S., are not required under the bill. The bill also amends ss. 957.07, and 957.12, F.S., to make changes to conform with the provisions of the bill which specify that FDC may use *any* competitive solicitation process in ch. 287, F.S., to procure a contract for the operation of a private correctional facility, not just a request for proposal.

The bill amends s. 957.07, F.S., to delete references to the obsolete Prison Per-Diem Workgroup that was previously tasked with determining the inmate per diem that is used in determining the cost of operating a correctional institution, which is used in the competitive solicitation and legislative appropriations process for private correctional facilities. As such, FDC will continue to provide the per diem calculations required as part of the competitive solicitation process for private correctional facilities.

The bill amends s. 957.15, F.S., to delete the provision in current law that prohibits FDC from having authority over funds appropriated for the operation, maintenance, and lease-purchase of private correctional facilities, thereby reflecting FDC’s contract monitoring authority of private correctional facilities.

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

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Inspector General

##### Background

##### *Arrest Powers of a Law Enforcement Officer - Generally*

A judge may issue a warrant authorizing a person's arrest for a felony<sup>1</sup> or misdemeanor<sup>2</sup> crime upon finding probable cause that the person committed a crime in the judge's jurisdiction.<sup>3</sup> However, the United States Supreme Court has held that the Fourth Amendment to the United States Constitution does not forbid warrantless arrest, even for a misdemeanor offense.<sup>4</sup>

In Florida, a law enforcement officer may arrest a person without a warrant under certain statutorily enumerated circumstances, such as when:

- An officer reasonably believes a person committed a felony;
- There is probable cause to believe a person has committed certain enumerated misdemeanor offenses, such as a battery, criminal mischief or graffiti, an act of domestic violence, an injunction violation, or sexual cyberharassment; or
- A person commits a misdemeanor in an officer's presence.<sup>5</sup>

##### *Office of the Inspector General*

The Office of Inspector General (OIG) under the Florida Department of Corrections (FDC) is responsible for prison inspection and investigation, internal affairs investigations, and management reviews.<sup>6</sup> The OIG conducts criminal investigations that occur on property owned or leased by FDC or that involve matters over which FDC has jurisdiction.<sup>7</sup> The Secretary of FDC may designate a person employed by the OIG as a law enforcement officer (OIG law enforcement officer) provided such person meets specified certification and training requirements.<sup>8</sup>

An OIG law enforcement officer has more limited arrest authority than that of other law enforcement officers, such as a deputy sheriff or municipal police officer. An OIG law enforcement officer has the authority to arrest, with or without a warrant, any prisoner or visitor to a state correctional institution for committing any felony that occurs on property owned or leased by FDC, or any FDC staff member or contract employee for committing any felony under ch. 944, F.S.,<sup>9</sup> or ch. 893, F.S.,<sup>10</sup> that occurs on property owned or leased by FDC.<sup>11</sup> An OIG law enforcement officer may also arrest any person for whom an arrest warrant was issued, including an offender who has escaped from custody.<sup>12</sup> Thus, an OIG law enforcement officer may *not* arrest any person for committing a misdemeanor, regardless of

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<sup>1</sup> The term "felony" means any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. S. 775.08(1), F.S.

<sup>2</sup> The term "misdemeanor" means any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility, except an extended term, not in excess of one year. The term "misdemeanor" does not mean a conviction for any noncriminal traffic violation of any provision of ch. 316, F.S., or any municipal or county ordinance. S. 775.08(2), F.S.

<sup>3</sup> S. 901.02, F.S.

<sup>4</sup> *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

<sup>5</sup> S. 901.15, F.S.

<sup>6</sup> S. 944.31, F.S.

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

<sup>8</sup> *Id.* To be designated as an OIG law enforcement officer, a person must be certified as law enforcement officer under s. 943.1395, F.S., and have a minimum of three years' experience as an inspector in the OIG or three years' experience as a law enforcement officer at another law enforcement agency. *Id.*

<sup>9</sup> For example, s. 944.47, F.S., prohibits a person from introducing contraband into a state correctional institution.

<sup>10</sup> Generally, ch. 893, F.S., provides offenses related to controlled substances.

<sup>11</sup> S. 944.31, F.S.

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

whether such person commits the misdemeanor in the officer's presence, unless a warrant has been issued for his or her arrest. An OIG law enforcement officer who makes any such arrest must surrender the arrestee to the sheriff of the county in which the arrest is made "without delay."<sup>13</sup>

In circumstances where an OIG law enforcement officer lacks the authority to make a warrantless arrest, such as when a prisoner or visitor commits a misdemeanor offense, arrests are made by the law enforcement agency which has jurisdiction over the FDC facility, such as the sheriff or municipal police department.

### Effect of Proposed Changes – Inspector General

CS/HB 1337 amends s. 944.31, F.S., to authorize an OIG law enforcement officer to:

- Conduct all criminal investigations involving matters over which FDC has jurisdiction at private correctional facilities;<sup>14</sup>
- Arrest, with or without a warrant, any prisoner of, or visitor to, any state correctional institution, including a private correctional facility, for violating *any* criminal law involving matters over which FDC has jurisdiction, including both felony and misdemeanor offenses;
- Arrest, with or without a warrant, any FDC or private correctional facility staff member, contract employee, subcontractor, or volunteer for violating *any* criminal law that occurs on property owned or leased by FDC or at any private correctional facility, including both felony and misdemeanor offenses.

### **Private Correctional Facilities**

#### Background

Section 944.105, F.S., authorizes FDC to enter into contracts with private vendors<sup>15</sup> to operate and maintain correctional facilities and supervise inmates.<sup>16</sup> Generally, ch. 957, F.S., provides requirements with which FDC must comply in contracting with private vendors to operate private correctional facilities, specifies minimum standards for such private vendors, and establishes certain criteria for the operation of private correctional facilities.

#### *Methods of Competitive Solicitation*

Chapter 287, F.S., generally provides requirements and procedures with which a state agency must comply when procuring commodities and contractual services. The three types of competitive solicitation that a state agency may use for procuring a commodity or service greater than \$35,000 are as follows:

- Invitation to bid, which is used when an agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.<sup>17</sup> In an invitation to bid, a contract is awarded to the responsible<sup>18</sup> and responsive vendor<sup>19</sup> who submits the lowest bid.<sup>20</sup>
- Request for proposal, which is used when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the

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

<sup>14</sup> "Private correctional facility" means any facility, which is not operated by the department, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the department. S. 944.710(3), F.S.

<sup>15</sup> "Private vendor" means any individual, partnership, corporation, or unincorporated association bound by contract with the department to construct, lease, or operate a private correctional facility. S. 944.710(5), F.S.

<sup>16</sup> Prior to October 1, 2023, the Florida Department of Management Services was responsible for negotiating and overseeing contracts for private correctional facilities. See Ch. 2023-268, L.O.F.

<sup>17</sup> S. 287.057(1)(a), F.S.

<sup>18</sup> "Responsible vendor" means a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance. S. 287.012(25), F.S.

<sup>19</sup> "Responsive vendor" means a vendor that has submitted a bid, proposal, or reply that conforms in all material respects to the solicitation. S. 287.012(27), F.S.

<sup>20</sup> S. 287.057(1)(a)4., F.S.

state agency is capable of identifying necessary deliverables.<sup>21</sup> In a request for proposal, the contract is awarded to the responsible and responsive vendor whose proposal is determined in writing to be the most advantageous to the state, taking into consideration the price and other criteria set forth in the request for proposals.<sup>22</sup>

- Invitation to negotiate, which used by a state agency to determine the best method for achieving a specific goal or solving a particular problem and which identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.<sup>23, 24</sup> In an invitation to negotiate, a state agency must award a contract to the responsible and responsive vendor that such agency determines will provide the best value to the state, based on the selection criteria.<sup>25</sup>

In addition to the requirements for the competitive solicitation of commodities and contractual services, there are additional requirements for state procurement if such procurement results in the outsourcing<sup>26</sup> of state services. Prior to proceeding with outsourcing with any service, the business case for any outsourcing that has an expected cost in excess of \$10 million within a single fiscal year must be evaluated for feasibility, cost-effectiveness and efficiency.<sup>27</sup> Generally, the business case for outsourcing any service must specify the service for which outsourcing is proposed, the goals of outsourcing the service, an analysis of the advantages and disadvantages of outsourcing a service, a cost-benefit analysis for such outsourcing, performance standards, the projected timeframe for key events in the outsourcing contract, and a contingency plan for contractor nonperformance.<sup>28</sup>

FDC is currently limited to using a request for proposal in procuring contracts for the operation of private correctional facilities.<sup>29</sup> During such a request for proposal, a bidder or potential bidder is prohibited from contacting an FDC employee or consultant until the time a notification of intent to award the contract is announced.<sup>30</sup>

### *Inmate Per Diem*

FDC is prohibited from entering into a contract with a private vendor to operate a correctional facility unless the contract will result in cost savings to the state of at least seven percent over a similar state-operated correctional facility.<sup>31</sup> FDC is responsible for calculating the inmate per diem that is used to determine cost of operating and maintaining such a state-operated correctional facility.<sup>32</sup> In the alternative, current law authorizes the Speaker of the House of Representatives and the President of the Senate to develop consensus per diem rates for legislative use by convening the Prison Per-diem Workgroup (Workgroup) comprised of appropriations staff from the House of Representatives and the Senate, as well as staff from the Office of Program Policy Analysis and Government Accountability. The inmate per diem calculated by the Workgroup is used in the competitive solicitation and legislative appropriations process for private correctional facilities. According to FDC, this Workgroup has not existed for over 20 years and all inmate per diem calculations are provided directly by FDC.<sup>33</sup>

### *FDC Authority over Appropriations*

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<sup>21</sup> S. 287.057(1)(b), F.S.

<sup>22</sup> S. 287.057(1)(b)4., F.S.

<sup>23</sup> S. 287.057(1)(c), F.S.

<sup>24</sup> "Best value" means the highest overall value to the state based on factors that include, but are not limited to, price, quality, design, and workmanship. S. 287.012(4), F.S.

<sup>25</sup> S. 287.057(1)(c)4., F.S.

<sup>26</sup> "Outsource" means the process of contracting with a vendor to provide a service as defined in s. 216.011(1)(g), F.S., in whole or in part, or an activity as defined in s. 216.011(1)(a), F.S., while a state agency retains the responsibility and accountability for the service or activity and there is a transfer of management responsibility for the delivery of resources and the performance of those resources. S. 287.012(20), F.S.

<sup>27</sup> S. 287.0571(2) and (4), F.S.

<sup>28</sup> S. 287.0571(4), F.S.

<sup>29</sup> Ss. 957.04, 957.07, 957.12, F.S.

<sup>30</sup> S. 957.12, F.S.

<sup>31</sup> S. 957.07(1), F.S.

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

<sup>33</sup> Florida Department of Corrections, Agency Analysis of 2024 House Bill 1337, p. 2-3 (Jan. 19, 2024).

Section 957.15, F.S., requires FDC to request legislative appropriations for funds for the operation, maintenance, and lease-purchase of private correctional facilities as separately identified items in its budget request. Following such an appropriation from the Legislature, FDC is prohibited from having any authority over such funds other than to pay a private vendor the appropriate amounts that are certified for payment by FDC.<sup>34</sup>

## Effect of Proposed Changes – Private Correctional Facilities

### *Methods of Competitive Solicitation*

The bill amends s. 957.04, F.S., to specify that a contract for operating a private correctional facility is *not* exempt from ch. 287, F.S., including competitive solicitation requirements. Under the bill, the provisions of ch. 957, F.S., will control if there is a direct conflict between ch. 287, F.S., and ch. 957, F.S. The bill also specifies that contracts for operating a private correctional facility are not considered to be an “outsource” under s. 287.012, F.S., and that the specific outsourcing requirements in s. 287.0571, F.S., are not required under the bill.

The bill amends ss. 957.04, 957.07, and 957.12, F.S., to make changes to conform with the provisions of the bill which specify that FDC may use *any* competitive solicitation process in ch. 287, F.S., to procure a contract for the operation of a private correctional facility, not just a request for proposal.

### *Inmate Per Diem*

The bill amends. 957.07, F.S., to delete references to the obsolete Prison Per-Diem Workgroup. As such, FDC will continue to provide the per diem calculations required as part of the competitive solicitation process for private correctional facilities.

### *FDC Authority over Appropriations*

The bill amends s. 957.15, F.S., to delete the provision in current law that prohibits FDC from having authority over funds appropriated for the operation, maintenance, and lease-purchase of private correctional facilities, thereby reflecting FDC’s contract monitoring authority of private correctional facilities.<sup>35</sup>

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

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 944.31, F.S., relating to inspector general; inspectors; power and duties.

**Section 2:** Amends s. 957.04, F.S., relating to contract requirements.

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

**Section 4:** Amends s. 957.12, F.S., relating to prohibition on contact.

**Section 5:** Amends s. 957.15, F.S., relating to funding of contracts for operation, maintenance, and lease-purchase of private correctional facilities.

**Section 6:** 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:

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<sup>34</sup> S. 957.15, F.S.

<sup>35</sup> See note 16, *supra*.

According to FDC, the bill will not have a fiscal impact to FDC or state government.<sup>36</sup>

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. 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:**

FDC has sufficient rulemaking authority to implement the provisions of the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2024, the Criminal Justice Subcommittee adopted an amendment to the bill and reported the bill favorably as a committee substitute. The amendment made non-substantive technical changes to clarify a provision in the bill and correct a punctuation error.

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

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<sup>36</sup> Florida Department of Corrections, Agency Analysis of 2024 House Bill 1337, p. 5 (Jan. 19, 2024).

1                                    A bill to be entitled  
 2                    An act relating to Department of Corrections; amending  
 3                    s. 944.31, F.S.; providing additional authority for  
 4                    law enforcement officers of the office of the  
 5                    inspector general concerning department and private  
 6                    corrections facilities; amending s. 957.04, F.S.;  
 7                    providing that correctional privatization contracts  
 8                    are not exempted from specified state contracting  
 9                    provisions unless otherwise specified; providing  
 10                   construction; amending s. 957.07, F.S.; revising  
 11                   terminology; removing provisions concerning  
 12                   development of consensus per diem rates by the Prison  
 13                   Per-Diem Workgroup; amending s. 957.12, F.S.; revising  
 14                   provisions concerning contact with the department by  
 15                   specified persons; amending s. 957.15, F.S.; removing  
 16                   a provision concerning department control over certain  
 17                   funds appropriated for private correctional  
 18                   facilities; providing an effective date.

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

21  
 22                    Section 1.    Section 944.31, Florida Statutes, is amended to  
 23                    read:

24                    944.31    Inspector general; inspectors; power and duties.—

25                    (1)    The inspector general shall be responsible for prison



26 inspection and investigation, internal affairs investigations,  
27 and management reviews. The office of the inspector general  
28 shall be charged with the duty of inspecting the penal and  
29 correctional systems of the state.

30 (2) The office of the inspector general shall inspect each  
31 correctional institution or any place in which state prisoners  
32 are housed, worked, or kept within the state, with reference to  
33 its physical conditions, cleanliness, sanitation, safety, and  
34 comfort; the quality and supply of all bedding; the quality,  
35 quantity, and diversity of food served and the manner in which  
36 it is served; the number and condition of the prisoners confined  
37 therein; and the general conditions of each institution.

38 (3) The office of inspector general shall see that all the  
39 rules and regulations issued by the department are strictly  
40 observed and followed by all persons connected with the  
41 correctional systems of the state. The office of the inspector  
42 general shall coordinate and supervise the work of inspectors  
43 throughout the state.

44 (4) The inspector general and inspectors may enter any  
45 place where prisoners in this state are kept and shall be  
46 immediately admitted to such place as they desire and may  
47 consult and confer with any prisoner privately and without  
48 molestation.

49 (5) (a) The inspector general and inspectors shall be  
50 responsible for criminal and administrative investigation of

51 matters relating to the Department of Corrections.

52 (b) The secretary may designate persons within the office  
53 of the inspector general as law enforcement officers to conduct  
54 any criminal investigation that occurs on property owned or  
55 leased by the department or involves matters over which the  
56 department has jurisdiction. All criminal investigations  
57 involving matters over which the department has jurisdiction at  
58 private correctional facilities, as defined in s. 944.710, may  
59 be conducted by the law enforcement officers of the office of  
60 the inspector general.

61 (c) A person designated as a law enforcement officer must  
62 be certified pursuant to s. 943.1395 and must have a minimum of  
63 3 years' experience as an inspector in the inspector general's  
64 office or as a law enforcement officer.

65 (d) The department shall maintain a memorandum of  
66 understanding with the Department of Law Enforcement for the  
67 notification and investigation of mutually agreed-upon predicate  
68 events that shall include, but are not limited to, suspicious  
69 deaths and organized criminal activity.

70 (e) During investigations, the inspector general and  
71 inspectors may consult and confer with any prisoner or staff  
72 member privately and without molestation and persons designated  
73 as law enforcement officers under this section shall have the  
74 authority to arrest, with or without a warrant, any prisoner of  
75 or visitor to a state correctional institution for a violation

76 | of the criminal laws of the state. Law enforcement officers  
 77 | under this section shall have the authority to arrest, with or  
 78 | without a warrant, any prisoner of or visitor to any state  
 79 | correctional institution, as defined in s. 944.02, including all  
 80 | private correctional facilities, for any violation of the  
 81 | criminal laws of the state involving matters over which the  
 82 | department has jurisdiction, ~~involving an offense classified as~~  
 83 | ~~a felony that occurs on property owned or leased by the~~  
 84 | ~~department~~ and may arrest offenders who have escaped or  
 85 | absconded from custody.

86 |       (f) Persons designated as law enforcement officers have  
 87 | the authority to arrest with or without a warrant a staff member  
 88 | of the department, including any contract employee,  
 89 | subcontractor, or volunteer, for a violation of the criminal  
 90 | laws of the state that occurs ~~involving an offense classified as~~  
 91 | ~~a felony under this chapter or chapter 893~~ on property owned or  
 92 | leased by the department, or any private correctional facility  
 93 | staff member, contract employee, subcontractor, or volunteer,  
 94 | for a violation of the criminal laws of the state involving  
 95 | matters over which the department has jurisdiction at any  
 96 | private correctional facility. A person designated as a law  
 97 | enforcement officer under this section may make arrests of  
 98 | persons against whom arrest warrants have been issued, including  
 99 | arrests of offenders who have escaped or absconded from custody.  
 100 | The arrested person shall be surrendered without delay to the

101 sheriff of the county in which the arrest is made, with a formal  
 102 complaint subsequently made against her or him in accordance  
 103 with law.

104 Section 2. Paragraphs (a) through (h) of subsection (1) of  
 105 section 957.04, Florida Statutes, are redesignated as paragraphs  
 106 (b) through (i), respectively, a new paragraph (a) is added to  
 107 that subsection, and present paragraphs (a) and (e) of that  
 108 subsection are amended, to read:

109 957.04 Contract requirements.—

110 (1) A contract entered into under this chapter for the  
 111 operation of private correctional facilities shall maximize the  
 112 cost savings of such facilities and ~~shall~~:

113 (a) Unless otherwise specified herein, contracts entered  
 114 into under this chapter are not exempt from chapter 287,  
 115 including the competitive solicitation requirements thereof.  
 116 However, if there is a direct conflict between this chapter and  
 117 chapter 287, the provisions of this chapter shall control.  
 118 Contracts entered into under this chapter for the operation of  
 119 private correctional facilities are not considered to be an  
 120 outsourcing, as defined in s. 287.012. The specific outsourcing  
 121 requirements in s. 287.0571 are not required under this section.

122 (b)-(a) Be executed negotiated with the contractor firm  
 123 found most qualified. However, a contract for private  
 124 correctional services may not be entered into by the department  
 125 unless the department determines that the contractor has

126 | demonstrated that it has:

127 |       1. The qualifications, experience, and management  
128 | personnel necessary to carry out the terms of the contract.

129 |       2. The ability to expedite the siting, design, and  
130 | construction of correctional facilities.

131 |       3. The ability to comply with applicable laws, court  
132 | orders, and national correctional standards.

133 |       (f)~~(e)~~ Establish operations standards for correctional  
134 | facilities subject to the contract. However, if the department  
135 | and the contractor disagree with an operations standard, the  
136 | contractor may propose to waive any rule, policy, or procedure  
137 | of the department related to the operations standards of  
138 | correctional facilities which is inconsistent with the mission  
139 | of the contractor to establish cost-effective, privately  
140 | operated correctional facilities. The department shall be  
141 | responsible for considering all requests ~~proposals~~ from the  
142 | contractor to waive any rule, policy, or procedure and shall  
143 | render a final decision granting or denying such request.

144 |       Section 3. Subsections (4) and (5) of section 957.07,  
145 | Florida Statutes, are amended to read:

146 |       957.07 Cost-saving requirements.—

147 |       (4) The department shall provide a report detailing the  
148 | state cost to design, finance, acquire, lease, construct, and  
149 | operate a facility similar to the private correctional facility  
150 | on a per diem basis. This report shall be provided to the

151 Auditor General in sufficient time that it may be certified to  
 152 be included in the competitive solicitation ~~request for~~  
 153 ~~proposals.~~

154 ~~(5)(a) At the request of the Speaker of the House of~~  
 155 ~~Representatives or the President of the Senate, the Prison Per-~~  
 156 ~~Diem Workgroup shall develop consensus per diem rates for use by~~  
 157 ~~the Legislature. The Office of Program Policy Analysis and~~  
 158 ~~Government Accountability and the staffs of the appropriations~~  
 159 ~~committees of both the Senate and the House of Representatives~~  
 160 ~~are the principals of the workgroup. The workgroup may consult~~  
 161 ~~with other experts to assist in the development of the consensus~~  
 162 ~~per diem rates. All meetings of the workgroup shall be open to~~  
 163 ~~the public as provided in chapter 286.~~

164 ~~(b) When developing the consensus per diem rates, the~~  
 165 ~~workgroup must:~~

166 ~~1. Use data provided by the department from the most~~  
 167 ~~recent fiscal year to determine per diem costs for the following~~  
 168 ~~activities:~~

- 169 ~~a. Custody and control;~~
- 170 ~~b. Health services;~~
- 171 ~~c. Substance abuse programs; and~~
- 172 ~~d. Educational programs;~~

173 ~~2. Include the cost of departmental, regional,~~  
 174 ~~institutional, and program administration and any other fixed~~  
 175 ~~costs of the department;~~

176           ~~3. Calculate average per diem rates for the following~~  
177 ~~offender populations: adult male, youthful offender male, and~~  
178 ~~female; and~~

179           ~~4. Make per diem adjustments, as appropriate, to account~~  
180 ~~for variations in size and location of correctional facilities.~~

181           ~~(c) The consensus per diem rates determined by the~~  
182 ~~workgroup may be used to assist the Legislature in determining~~  
183 ~~the level of funding provided to privately operated prisons to~~  
184 ~~meet the 7-percent savings required of private prisons by this~~  
185 ~~chapter.~~

186           ~~(d) If a private vendor chooses not to renew the contract~~  
187 ~~at the appropriated level, the department shall terminate the~~  
188 ~~contract as provided in s. 957.14.~~

189           Section 4. Section 957.12, Florida Statutes, is amended to  
190 read:

191           957.12 Prohibition on contact.—Except in writing to the  
192 procurement office or as provided in the solicitation documents,  
193 a bidder or potential bidder is not permitted to have any  
194 contact with any member or employee of or consultant to the  
195 department regarding a competitive solicitation ~~request for~~  
196 ~~proposal~~, a proposal, or the evaluation or selection process  
197 from the time a request for proposals for a private correctional  
198 facility is issued until the time a notification of intent to  
199 award is announced, ~~except if such contact is in writing or in a~~  
200 ~~meeting for which notice was provided in the Florida~~

201 ~~Administrative Register.~~

202       Section 5. Section 957.15, Florida Statutes, is amended to  
203 read:

204       957.15 Funding of contracts for operation, maintenance,  
205 and lease-purchase of private correctional facilities.—The  
206 request for appropriation of funds to make payments pursuant to  
207 contracts entered into by the department for the operation,  
208 maintenance, and lease-purchase of the private correctional  
209 facilities authorized by this chapter shall be included in its  
210 budget request to the Legislature as a separately identified  
211 item. ~~After an appropriation has been made by the Legislature to~~  
212 ~~the department for the private correctional facilities, the~~  
213 ~~department shall have no authority over such funds other than to~~  
214 ~~pay from such appropriation to the appropriate private vendor~~  
215 ~~such amounts as are certified for payment by the department.~~

216       Section 6. This act shall take effect July 1, 2024.



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COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Stark offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:  
 6 Section 1. Section 944.31, Florida Statutes, is amended to  
 7 read:

8 944.31 Inspector general; inspectors; power and duties.—

9 (1) The inspector general shall be responsible for prison  
 10 inspection and investigation, internal affairs investigations,  
 11 and management reviews. The office of the inspector general  
 12 shall be charged with the duty of inspecting the penal and  
 13 correctional systems of the state.

14 (2) The office of the inspector general shall inspect each  
 15 correctional institution or any place in which state prisoners  
 16 are housed, worked, or kept within the state, with reference to

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17 its physical conditions, cleanliness, sanitation, safety, and  
18 comfort; the quality and supply of all bedding; the quality,  
19 quantity, and diversity of food served and the manner in which  
20 it is served; the number and condition of the prisoners confined  
21 therein; and the general conditions of each institution.

22 (3) The office of inspector general shall see that all the  
23 rules and regulations issued by the department are strictly  
24 observed and followed by all persons connected with the  
25 correctional systems of the state. The office of the inspector  
26 general shall coordinate and supervise the work of inspectors  
27 throughout the state.

28 (4) The inspector general and inspectors may enter any  
29 place where prisoners in this state are kept and shall be  
30 immediately admitted to such place as they desire and may  
31 consult and confer with any prisoner privately and without  
32 molestation.

33 (5)(a) The inspector general and inspectors shall be  
34 responsible for criminal and administrative investigation of  
35 matters relating to the Department of Corrections.

36 (b) The secretary may designate persons within the office  
37 of the inspector general as law enforcement officers to conduct  
38 any criminal investigation that occurs on property owned or  
39 leased by the department or involves matters over which the  
40 department has jurisdiction. All criminal investigations  
41 involving matters over which the department has jurisdiction at

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42 contractor-operated correctional facilities, as defined in s.  
43 944.710, may be conducted by the law enforcement officers of the  
44 office of the inspector general.

45 (c) A person designated as a law enforcement officer must  
46 be certified pursuant to s. 943.1395 and must have a minimum of  
47 3 years' experience as an inspector in the inspector general's  
48 office or as a law enforcement officer.

49 (d) The department shall maintain a memorandum of  
50 understanding with the Department of Law Enforcement for the  
51 notification and investigation of mutually agreed-upon predicate  
52 events that shall include, but are not limited to, suspicious  
53 deaths and organized criminal activity.

54 (e) During investigations, the inspector general and  
55 inspectors may consult and confer with any prisoner or staff  
56 member privately and without molestation. ~~and~~

57 (f) For matters over which the department has  
58 jurisdiction, persons designated as law enforcement officers  
59 under this subsection ~~section~~ shall have the same arrest  
60 authority ~~to arrest~~ as provided for law enforcement officers  
61 generally in ch. 901, with or without a warrant, and may make  
62 arrests consistent with such authority in the following  
63 circumstances, including an arrest of:

64 1. Any prisoner of or visitor to a state correctional  
65 institution or a contractor-operated correctional facility, for  
66 a violation of the criminal laws of the state involving an

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67 ~~offense classified as a felony that occurs on property owned or~~  
68 ~~leased by the department or on the property of a contractor-~~  
69 ~~operated correctional facility; and may arrest~~

70 2. ~~Offenders who have escaped or absconded from custody; -~~  
71 ~~Persons designated as law enforcement officers have the~~  
72 ~~authority to arrest with or without a warrant~~

73 3. A staff member of the department, including any  
74 contract employee, subcontractor, or volunteer, for a violation  
75 of the criminal laws of the state that occurs involving an  
76 ~~offense classified as a felony under this chapter or chapter 893~~  
77 ~~on property owned or leased by the department, or any~~  
78 ~~contractor-operated correctional facility staff member, contract~~  
79 ~~employee, subcontractor, or volunteer at any contractor-operated~~  
80 ~~correctional facility for a violation of the criminal laws of~~  
81 ~~the state that occurs on the property of a contractor-operated~~  
82 ~~correctional facility; or ~~. A person designated as a law~~~~  
83 ~~enforcement officer under this section may make arrests of~~

84 4. ~~Persons against whom arrest warrants have been issued,~~  
85 ~~including arrests of offenders who have escaped or absconded~~  
86 ~~from custody.~~

87 (g) For any arrest made by a person designated as a law  
88 ~~enforcement officer under this subsection, the arrested person~~  
89 ~~shall be surrendered without delay to the sheriff of the county~~  
90 ~~in which the arrest is made, with a formal complaint~~  
91 ~~subsequently made against her or him in accordance with law.~~

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92 Section 2. Section 944.710, Florida Statutes, is amended  
93 to read:

94 944.710 Definitions of terms relating to contractor-  
95 operated ~~private operation~~ of state correctional facilities and  
96 s. 944.105.—As used with respect to contractor-operated ~~private~~  
97 ~~operation~~ of state correctional facilities and s. 944.105, the  
98 term:

99 (1) "Bidder" means any individual, partnership,  
100 corporation, or unincorporated association that submits a  
101 proposal with the department to construct, lease, or operate a  
102 contractor-operated ~~private~~ correctional facility.

103 (2) "Department" means the Department of Corrections.

104 ~~(4)-(3)~~ "Contractor-operated ~~private~~ correctional facility"  
105 means any facility, which is not operated by the department, for  
106 the incarceration of adults or juveniles who have been sentenced  
107 by a court and committed to the custody of the department.

108 ~~(3)-(4)~~ "Contractor-employed ~~Private~~ correctional officer"  
109 means any full-time or part-time employee of a private vendor  
110 whose primary responsibility is the supervision, protection,  
111 care, and control of prisoners within a contractor-operated  
112 ~~private~~ correctional facility.

113 (5) "Private vendor" means any individual, partnership,  
114 corporation, or unincorporated association bound by contract  
115 with the department to construct, lease, or operate a  
116 contractor-operated ~~private~~ correctional facility.

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117 Section 3. Subsections (1), (2), and (3) of section  
118 957.04, Florida Statutes, are amended to read:

119 957.04 Contract requirements.—

120 (1) A contract entered into under this chapter for the  
121 operation of contractor-operated ~~private~~ correctional facilities  
122 shall maximize the cost savings of such facilities and ~~shall~~:

123 (a) Unless otherwise specified herein, is not exempt from  
124 chapter 287, including the competitive solicitation requirements  
125 thereof. However, if there is a direct conflict between this  
126 chapter and chapter 287, this chapter shall control. Contracts  
127 entered into under this chapter for the operation of contractor-  
128 operated correctional facilities are not considered to be  
129 outsourced as defined in s. 287.012. The specific outsourcing  
130 requirements in s. 287.0571 are not required under this section.

131 (b)-(a) Be executed negotiated with the contractor firm  
132 found most qualified. However, a contract for contractor-  
133 operated ~~private~~ correctional services may not be entered into  
134 by the department unless the department determines that the  
135 contractor has demonstrated that it has:

136 1. The qualifications, experience, and management  
137 personnel necessary to carry out the terms of the contract.

138 2. The ability to expedite the siting, design, and  
139 construction of correctional facilities.

140 3. The ability to comply with applicable laws, court  
141 orders, and national correctional standards.

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142        ~~(c)-(b)~~ Indemnify the state and the department, including  
143 their officials and agents, against any and all liability,  
144 including, but not limited to, civil rights liability. Proof of  
145 satisfactory insurance is required in an amount to be determined  
146 by the department.

147        ~~(d)-(e)~~ Require that the contractor seek, obtain, and  
148 maintain accreditation by the American Correctional Association  
149 for the facility under that contract. Compliance with amendments  
150 to the accreditation standards of the association is required  
151 upon the approval of such amendments by the department.

152        ~~(e)-(d)~~ Require that the proposed facilities and the  
153 management plans for the inmates meet applicable American  
154 Correctional Association standards and the requirements of all  
155 applicable court orders and state law.

156        ~~(f)-(e)~~ Establish operations standards for correctional  
157 facilities subject to the contract. However, if the department  
158 and the contractor disagree with an operations standard, the  
159 contractor may propose to waive any rule, policy, or procedure  
160 of the department related to the operations standards of  
161 correctional facilities which is inconsistent with the mission  
162 of the contractor to establish cost-effective, contractor-  
163 operated ~~privately operated~~ correctional facilities. The  
164 department shall be responsible for considering all requests  
165 ~~proposals~~ from the contractor to waive any rule, policy, or

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166 procedure and shall render a final decision granting or denying  
167 such request.

168 ~~(g)-(f)~~ Require the contractor to be responsible for a  
169 range of dental, medical, and psychological services; diet;  
170 education; and work programs at least equal to those provided by  
171 the department in comparable facilities. The work and education  
172 programs must be designed to reduce recidivism, and include  
173 opportunities to participate in such work programs as authorized  
174 pursuant to s. 946.523.

175 ~~(h)-(g)~~ Require the selection and appointment of a full-  
176 time contract monitor. The contract monitor shall be appointed  
177 and supervised by the department. The contractor is required to  
178 reimburse the department for the salary and expenses of the  
179 contract monitor. It is the obligation of the contractor to  
180 provide suitable office space for the contract monitor at the  
181 correctional facility. The contract monitor shall have unlimited  
182 access to the correctional facility.

183 ~~(i)-(h)~~ Be for a period of 3 years and may be renewed for  
184 successive 2-year periods thereafter. However, the state is not  
185 obligated for any payments to the contractor beyond current  
186 annual appropriations.

187 (2) Each contract entered into for the design and  
188 construction of a contractor-operated ~~private~~ correctional  
189 facility or juvenile commitment facility must include:



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190 (a) Notwithstanding any provision of chapter 255 to the  
191 contrary, a specific provision authorizing the use of tax-exempt  
192 financing through the issuance of tax-exempt bonds, certificates  
193 of participation, lease-purchase agreements, or other tax-exempt  
194 financing methods. Pursuant to s. 255.25, approval is hereby  
195 provided for the lease-purchase of up to two contractor-operated  
196 ~~private~~ correctional facilities and any other facility  
197 authorized by the General Appropriations Act.

198 (b) A specific provision requiring the design and  
199 construction of the proposed facilities to meet the applicable  
200 standards of the American Correctional Association and the  
201 requirements of all applicable court orders and state law.

202 (c) A specific provision requiring the contractor, and not  
203 the department, to obtain the financing required to design and  
204 construct the contractor-operated ~~private~~ correctional facility  
205 or juvenile commitment facility built under this chapter.

206 (d) A specific provision stating that the state is not  
207 obligated for any payments that exceed the amount of the current  
208 annual appropriation.

209 (3)(a) Each contract for the designing, financing,  
210 acquiring, leasing, constructing, and operating of a contractor-  
211 operated ~~private~~ correctional facility shall be subject to ss.  
212 255.2502 and 255.2503.

213 (b) Each contract for the designing, financing, acquiring,  
214 leasing, and constructing of a contractor-operated ~~private~~

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215 juvenile commitment facility shall be subject to ss. 255.2502  
216 and 255.2503.

217 Section 4. Subsections (4) and (5) of section 957.07,  
218 Florida Statutes, are amended to read:

219 957.07 Cost-saving requirements.—

220 (4) The department shall provide a report detailing the  
221 state cost to design, finance, acquire, lease, construct, and  
222 operate a facility similar to the contractor-operated ~~private~~  
223 correctional facility on a per diem basis. This report shall be  
224 provided to the Auditor General in sufficient time that it may  
225 be certified to be included in the competitive solicitation  
226 ~~request for proposals.~~

227 ~~(5)(a) At the request of the Speaker of the House of~~  
228 ~~Representatives or the President of the Senate, the Prison Per-~~  
229 ~~Diem Workgroup shall develop consensus per diem rates for use by~~  
230 ~~the Legislature. The Office of Program Policy Analysis and~~  
231 ~~Government Accountability and the staffs of the appropriations~~  
232 ~~committees of both the Senate and the House of Representatives~~  
233 ~~are the principals of the workgroup. The workgroup may consult~~  
234 ~~with other experts to assist in the development of the consensus~~  
235 ~~per diem rates. All meetings of the workgroup shall be open to~~  
236 ~~the public as provided in chapter 286.~~

237 ~~(b) When developing the consensus per diem rates, the~~  
238 ~~workgroup must:~~

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239 ~~1. Use data provided by the department from the most~~  
240 ~~recent fiscal year to determine per diem costs for the following~~  
241 ~~activities:~~

242 ~~a. Custody and control;~~

243 ~~b. Health services;~~

244 ~~c. Substance abuse programs; and~~

245 ~~d. Educational programs;~~

246 ~~2. Include the cost of departmental, regional,~~  
247 ~~institutional, and program administration and any other fixed~~  
248 ~~costs of the department;~~

249 ~~3. Calculate average per diem rates for the following~~  
250 ~~offender populations: adult male, youthful offender male, and~~  
251 ~~female; and~~

252 ~~4. Make per diem adjustments, as appropriate, to account~~  
253 ~~for variations in size and location of correctional facilities.~~

254 ~~(c) The consensus per diem rates determined by the~~  
255 ~~workgroup may be used to assist the Legislature in determining~~  
256 ~~the level of funding provided to privately operated prisons to~~  
257 ~~meet the 7-percent savings required of private prisons by this~~  
258 ~~chapter.~~

259 ~~(d) If a private vendor chooses not to renew the contract~~  
260 ~~at the appropriated level, the department shall terminate the~~  
261 ~~contract as provided in s. 957.14.~~

262 Section 5. Section 957.12, Florida Statutes, is amended to  
263 read:

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264           957.12 Prohibition on contact.—Except in writing to the  
265 procurement office or as provided in the solicitation documents,  
266 a bidder or potential bidder is not permitted to have any  
267 contact with any member or employee of or consultant to the  
268 department regarding a competitive solicitation ~~request for~~  
269 ~~proposal~~, a proposal, or the evaluation or selection process  
270 from the time a request for proposals for a contractor-operated  
271 ~~private~~ correctional facility is issued until the time a  
272 notification of intent to award is announced, ~~except if such~~  
273 ~~contact is in writing or in a meeting for which notice was~~  
274 ~~provided in the Florida Administrative Register.~~

275           Section 6. Section 957.15, Florida Statutes, is amended to  
276 read:

277           957.15 Funding of contracts for operation, maintenance,  
278 and lease-purchase of contractor-operated ~~private~~ correctional  
279 facilities.—The request for appropriation of funds to make  
280 payments pursuant to contracts entered into by the department  
281 for the operation, maintenance, and lease-purchase of the  
282 contractor-operated ~~private~~ correctional facilities authorized  
283 by this chapter shall be included in its budget request to the  
284 Legislature as a separately identified item. ~~After an~~  
285 ~~appropriation has been made by the Legislature to the department~~  
286 ~~for the private correctional facilities, the department shall~~  
287 ~~have no authority over such funds other than to pay from such~~

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288 ~~appropriation to the appropriate private vendor such amounts as~~  
289 ~~are certified for payment by the department.~~

290 Section 7. Paragraph (a) of subsection (2) of section  
291 330.41, Florida Statutes, is amended to read:

292 330.41 Unmanned Aircraft Systems Act.—

293 (2) DEFINITIONS.—As used in this act, the term:

294 (a) "Critical infrastructure facility" means any of the  
295 following, if completely enclosed by a fence or other physical  
296 barrier that is obviously designed to exclude intruders, or if  
297 clearly marked with a sign or signs which indicate that entry is  
298 forbidden and which are posted on the property in a manner  
299 reasonably likely to come to the attention of intruders:

- 300 1. A power generation or transmission facility,  
301 substation, switching station, or electrical control center.
- 302 2. A chemical or rubber manufacturing or storage facility.
- 303 3. A water intake structure, water treatment facility,  
304 wastewater treatment plant, or pump station.
- 305 4. A mining facility.
- 306 5. A natural gas or compressed gas compressor station,  
307 storage facility, or natural gas or compressed gas pipeline.
- 308 6. A liquid natural gas or propane gas terminal or storage  
309 facility.
- 310 7. Any portion of an aboveground oil or gas pipeline.
- 311 8. A refinery.

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312 9. A gas processing plant, including a plant used in the  
313 processing, treatment, or fractionation of natural gas.

314 10. A wireless communications facility, including the  
315 tower, antennae, support structures, and all associated ground-  
316 based equipment.

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

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

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

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

326 15. A military installation as defined in 10 U.S.C. s.  
327 2801(c)(4) and an armory as defined in s. 250.01.

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

331 17. A state correctional institution as defined in s.  
332 944.02 or a contractor-operated ~~private~~ correctional facility  
333 authorized under chapter 957.

334 18. A secure detention center or facility as defined in s.  
335 985.03, or a nonsecure residential facility, a high-risk

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336 residential facility, or a maximum-risk residential facility as  
337 those terms are described in s. 985.03(44).

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

339 20. A critical infrastructure facility as defined in s.  
340 692.201.

341 Section 8. Paragraph (b) of subsection (3) of section  
342 553.865, Florida Statutes, is amended to read:

343 553.865 Private spaces.—

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

345 (b) "Correctional institution" means any state  
346 correctional institution as defined in s. 944.02 or contractor-  
347 operated ~~private~~ correctional facility as defined in s. 944.710.

348 Section 9. Paragraph (e) of subsection (1) of section  
349 633.218, Florida Statutes, is amended to read:

350 633.218 Inspections of state buildings and premises; tests  
351 of firesafety equipment; building plans to be approved.—

352 (1)

353 (e) For purposes of this section:

354 1.a. The term "high-hazard occupancy" means any building  
355 or structure:

356 (I) That contains combustible or explosive matter or  
357 flammable conditions dangerous to the safety of life or  
358 property;

359 (II) At which persons receive educational instruction;

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360 (III) At which persons reside, excluding private  
361 dwellings; or

362 (IV) Containing three or more floor levels.

363 b. As used in this subparagraph, the phrase "building or  
364 structure":

365 (I) Includes, but is not limited to, all hospitals and  
366 residential health care facilities, nursing homes and other  
367 adult care facilities, correctional or detention facilities,  
368 public schools, public lodging establishments, migrant labor  
369 camps, residential child care facilities, and self-service  
370 gasoline stations.

371 (II) Does not include any residential condominium where  
372 the declaration of condominium or the bylaws provide that the  
373 rental of units shall not be permitted for less than 90 days.

374 2. The term "state-owned building" includes contractor-  
375 operated ~~private~~ correctional facilities as defined under s.  
376 944.710 ~~s. 944.710(3)~~.

377 Section 10. Paragraph (e) of subsection (2), paragraphs  
378 (b) and (e) of subsection (6), and paragraph (g) of subsection  
379 (10) of section 775.21, Florida Statutes, are amended to read:

380 775.21 The Florida Sexual Predators Act.—

381 (2) DEFINITIONS.—As used in this section, the term:

382 (e) "Conviction" means a determination of guilt which is  
383 the result of a trial or the entry of a plea of guilty or nolo  
384 contendere, regardless of whether adjudication is withheld. A

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385 conviction for a similar offense includes, but is not limited  
386 to, a conviction by a federal or military tribunal, including  
387 courts-martial conducted by the Armed Forces of the United  
388 States, and includes a conviction or entry of a plea of guilty  
389 or nolo contendere resulting in a sanction in any state of the  
390 United States or other jurisdiction. A sanction includes, but is  
391 not limited to, a fine, probation, community control, parole,  
392 conditional release, control release, or incarceration in a  
393 state prison, federal prison, contractor-operated ~~private~~  
394 correctional facility, or local detention facility.

395 (6) REGISTRATION.—

396 (b) If the sexual predator is in the custody or control  
397 of, or under the supervision of, the Department of Corrections,  
398 or is in the custody of a contractor-operated ~~private~~  
399 correctional facility, the sexual predator shall register with  
400 the Department of Corrections. A sexual predator who is under  
401 the supervision of the Department of Corrections but who is not  
402 incarcerated shall register with the Department of Corrections  
403 within 3 business days after the court finds the offender to be  
404 a sexual predator. The Department of Corrections shall provide  
405 to the department registration information and the location of,  
406 and local telephone number for, any Department of Corrections  
407 office that is responsible for supervising the sexual predator.  
408 In addition, the Department of Corrections shall notify the

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409 department if the sexual predator escapes or absconds from  
410 custody or supervision or if the sexual predator dies.

411 (e)1. If the sexual predator is not in the custody or  
412 control of, or under the supervision of, the Department of  
413 Corrections or is not in the custody of a contractor-operated  
414 ~~private~~ correctional facility, the sexual predator shall  
415 register in person:

416 a. At the sheriff's office in the county where he or she  
417 establishes or maintains a residence within 48 hours after  
418 establishing or maintaining a residence in this state; and

419 b. At the sheriff's office in the county where he or she  
420 was designated a sexual predator by the court within 48 hours  
421 after such finding is made.

422 2. Any change that occurs after the sexual predator  
423 registers in person at the sheriff's office as provided in  
424 subparagraph 1. in any of the following information related to  
425 the sexual predator must be reported as provided in paragraphs  
426 (g), (i), and (j): permanent, temporary, or transient residence;  
427 name; vehicles owned; electronic mail addresses; Internet  
428 identifiers and each Internet identifier's corresponding website  
429 homepage or application software name; home and cellular  
430 telephone numbers; employment information; and change in status  
431 at an institution of higher education. When a sexual predator  
432 registers with the sheriff's office, the sheriff shall take a  
433 photograph, a set of fingerprints, and palm prints of the

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434 predator and forward the photographs, palm prints, and  
435 fingerprints to the department, along with the information that  
436 the predator is required to provide pursuant to this section.

437 (10) PENALTIES.—

438 (g) Any person who has reason to believe that a sexual  
439 predator is not complying, or has not complied, with the  
440 requirements of this section and who, with the intent to assist  
441 the sexual predator in eluding a law enforcement agency that is  
442 seeking to find the sexual predator to question the sexual  
443 predator about, or to arrest the sexual predator for, his or her  
444 noncompliance with the requirements of this section:

445 1. Withholds information from, or does not notify, the law  
446 enforcement agency about the sexual predator's noncompliance  
447 with the requirements of this section, and, if known, the  
448 whereabouts of the sexual predator;

449 2. Harbors, or attempts to harbor, or assists another  
450 person in harboring or attempting to harbor, the sexual  
451 predator;

452 3. Conceals or attempts to conceal, or assists another  
453 person in concealing or attempting to conceal, the sexual  
454 predator; or

455 4. Provides information to the law enforcement agency  
456 regarding the sexual predator which the person knows to be false  
457 information,

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459 commits a felony of the third degree, punishable as provided in  
460 s. 775.082, s. 775.083, or s. 775.084. This paragraph does not  
461 apply if the sexual predator is incarcerated in or is in the  
462 custody of a state correctional facility, a contractor-operated  
463 ~~private~~ correctional facility, a local jail, or a federal  
464 correctional facility.

465 Section 11. Paragraph (a) of subsection (3) and paragraph  
466 (a) of subsection (4) of section 775.261, Florida Statutes, are  
467 amended to read:

468 775.261 The Florida Career Offender Registration Act.—

469 (3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—

470 (a) A career offender released on or after July 1, 2002,  
471 from a sanction imposed in this state must register as required  
472 under subsection (4) and is subject to community and public  
473 notification as provided under subsection (5). For purposes of  
474 this section, a sanction imposed in this state includes, but is  
475 not limited to, a fine, probation, community control, parole,  
476 conditional release, control release, or incarceration in a  
477 state prison, contractor-operated ~~private~~ correctional facility,  
478 or local detention facility, and:

479 1. The career offender has not received a pardon for any  
480 felony or other qualified offense that is necessary for the  
481 operation of this paragraph; or

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482           2. A conviction of a felony or other qualified offense  
483 necessary to the operation of this paragraph has not been set  
484 aside in any postconviction proceeding.

485           (4) REGISTRATION.—

486           (a) A career offender must register with the department by  
487 providing the following information to the department, or to the  
488 sheriff's office in the county in which the career offender  
489 establishes or maintains a permanent or temporary residence,  
490 within 2 working days after establishing permanent or temporary  
491 residence in this state or within 2 working days after being  
492 released from the custody, control, or supervision of the  
493 Department of Corrections or from the custody of a contractor-  
494 operated ~~private~~ correctional facility:

495           1. Name, social security number, age, race, gender, date  
496 of birth, height, weight, hair and eye color, photograph,  
497 address of legal residence and address of any current temporary  
498 residence within the state or out of state, including a rural  
499 route address or a post office box, date and place of any  
500 employment, date and place of each conviction, fingerprints, and  
501 a brief description of the crime or crimes committed by the  
502 career offender. A career offender may not provide a post office  
503 box in lieu of a physical residential address. If the career  
504 offender's place of residence is a motor vehicle, trailer,  
505 mobile home, or manufactured home, as defined in chapter 320,  
506 the career offender shall also provide to the department written

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507 notice of the vehicle identification number; the license tag  
508 number; the registration number; and a description, including  
509 color scheme, of the motor vehicle, trailer, mobile home, or  
510 manufactured home. If a career offender's place of residence is  
511 a vessel, live-aboard vessel, or houseboat, as defined in  
512 chapter 327, the career offender shall also provide to the  
513 department written notice of the hull identification number; the  
514 manufacturer's serial number; the name of the vessel, live-  
515 aboard vessel, or houseboat; the registration number; and a  
516 description, including color scheme, of the vessel, live-aboard  
517 vessel, or houseboat.

518 2. Any other information determined necessary by the  
519 department, including criminal and corrections records;  
520 nonprivileged personnel and treatment records; and evidentiary  
521 genetic markers when available.

522 Section 12. Subsection (1) of section 784.078, Florida  
523 Statutes, is amended to read:

524 784.078 Battery of facility employee by throwing, tossing,  
525 or expelling certain fluids or materials.—

526 (1) As used in this section, the term "facility" means a  
527 state correctional institution defined in s. 944.02(8); a  
528 contractor-operated ~~private~~ correctional facility defined in s.  
529 944.710 or under chapter 957; a county, municipal, or regional  
530 jail or other detention facility of local government under  
531 chapter 950 or chapter 951; or a secure facility operated and

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532 maintained by the Department of Corrections or the Department of  
533 Juvenile Justice.

534 Section 13. Subsection (1) of section 800.09, Florida  
535 Statutes, is amended to read:

536 800.09 Lewd or lascivious exhibition in the presence of an  
537 employee.—

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

539 (a) "Employee" means:

540 1. Any person employed by or performing contractual  
541 services for a public or private entity operating a state  
542 correctional institution or contractor-operated ~~private~~  
543 correctional facility;

544 2. Any person employed by or performing contractual  
545 services for the corporation operating the prison industry  
546 enhancement programs or the correctional work programs under  
547 part II of chapter 946;

548 3. Any person who is a parole examiner with the Florida  
549 Commission on Offender Review; or

550 4. Any person employed at or performing contractual  
551 services for a county detention facility.

552 (b) "Facility" means a state correctional institution as  
553 defined in s. 944.02, a contractor-operated ~~private~~ correctional  
554 facility as defined in s. 944.710, or a county detention  
555 facility as defined in s. 951.23.

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556 Section 14. Paragraphs (b) and (h) of subsection (1) and  
557 paragraph (a) of subsection (2) of section 943.0435, Florida  
558 Statutes, are amended to read:

559 943.0435 Sexual offenders required to register with the  
560 department; penalty.—

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

562 (b) "Convicted" means that there has been a determination  
563 of guilt as a result of a trial or the entry of a plea of guilty  
564 or nolo contendere, regardless of whether adjudication is  
565 withheld, and includes an adjudication of delinquency of a  
566 juvenile as specified in this section. Conviction of a similar  
567 offense includes, but is not limited to, a conviction by a  
568 federal or military tribunal, including courts-martial conducted  
569 by the Armed Forces of the United States, and includes a  
570 conviction or entry of a plea of guilty or nolo contendere  
571 resulting in a sanction in any state of the United States or  
572 other jurisdiction. A sanction includes, but is not limited to,  
573 a fine, probation, community control, parole, conditional  
574 release, control release, or incarceration in a state prison,  
575 federal prison, contractor-operated ~~private~~ correctional  
576 facility, or local detention facility.

577 (h)1. "Sexual offender" means a person who meets the  
578 criteria in sub-subparagraph a., sub-subparagraph b., sub-  
579 subparagraph c., or sub-subparagraph d., as follows:

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580 a.(I) Has been convicted of committing, or attempting,  
581 soliciting, or conspiring to commit, any of the criminal  
582 offenses proscribed in the following statutes in this state or  
583 similar offenses in another jurisdiction: s. 393.135(2); s.  
584 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
585 the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former  
586 s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s.  
587 794.05; former s. 796.03; former s. 796.035; s. 800.04; s.  
588 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,  
589 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;  
590 s. 895.03, if the court makes a written finding that the  
591 racketeering activity involved at least one sexual offense  
592 listed in this sub-sub-subparagraph or at least one offense  
593 listed in this sub-sub-subparagraph with sexual intent or  
594 motive; s. 916.1075(2); or s. 985.701(1); or any similar offense  
595 committed in this state which has been redesignated from a  
596 former statute number to one of those listed in this sub-sub-  
597 subparagraph; and

598 (II) Has been released on or after October 1, 1997, from a  
599 sanction imposed for any conviction of an offense described in  
600 sub-sub-subparagraph (I) and does not otherwise meet the  
601 criteria for registration as a sexual offender under chapter 944  
602 or chapter 985. For purposes of this sub-sub-subparagraph, a  
603 sanction imposed in this state or in any other jurisdiction  
604 means probation, community control, parole, conditional release,

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605 control release, or incarceration in a state prison, federal  
606 prison, contractor-operated ~~private~~ correctional facility, or  
607 local detention facility. If no sanction is imposed, the person  
608 is deemed to be released upon conviction;

609 b. Establishes or maintains a residence in this state and  
610 who has not been designated as a sexual predator by a court of  
611 this state but who has been designated as a sexual predator, as  
612 a sexually violent predator, or by another sexual offender  
613 designation in another state or jurisdiction and was, as a  
614 result of such designation, subjected to registration or  
615 community or public notification, or both, or would be if the  
616 person were a resident of that state or jurisdiction, without  
617 regard to whether the person otherwise meets the criteria for  
618 registration as a sexual offender;

619 c. Establishes or maintains a residence in this state who  
620 is in the custody or control of, or under the supervision of,  
621 any other state or jurisdiction as a result of a conviction for  
622 committing, or attempting, soliciting, or conspiring to commit,  
623 any of the criminal offenses proscribed in the following  
624 statutes or similar offense in another jurisdiction: s.  
625 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
626 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b),  
627 (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding  
628 s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035;  
629 s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133;

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630 s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138;  
631 s. 847.0145; s. 895.03, if the court makes a written finding  
632 that the racketeering activity involved at least one sexual  
633 offense listed in this sub-subparagraph or at least one offense  
634 listed in this sub-subparagraph with sexual intent or motive; s.  
635 916.1075(2); or s. 985.701(1); or any similar offense committed  
636 in this state which has been redesignated from a former statute  
637 number to one of those listed in this sub-subparagraph; or  
638 d. On or after July 1, 2007, has been adjudicated  
639 delinquent for committing, or attempting, soliciting, or  
640 conspiring to commit, any of the criminal offenses proscribed in  
641 the following statutes in this state or similar offenses in  
642 another jurisdiction when the juvenile was 14 years of age or  
643 older at the time of the offense:  
644 (I) Section 794.011, excluding s. 794.011(10);  
645 (II) Section 800.04(4)(a)2. where the victim is under 12  
646 years of age or where the court finds sexual activity by the use  
647 of force or coercion;  
648 (III) Section 800.04(5)(c)1. where the court finds  
649 molestation involving unclothed genitals;  
650 (IV) Section 800.04(5)(d) where the court finds the use of  
651 force or coercion and unclothed genitals; or  
652 (V) Any similar offense committed in this state which has  
653 been redesignated from a former statute number to one of those  
654 listed in this sub-subparagraph.

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655           2. For all qualifying offenses listed in sub-subparagraph  
656 1.d., the court shall make a written finding of the age of the  
657 offender at the time of the offense.

658  
659 For each violation of a qualifying offense listed in this  
660 subsection, except for a violation of s. 794.011, the court  
661 shall make a written finding of the age of the victim at the  
662 time of the offense. For a violation of s. 800.04(4), the court  
663 shall also make a written finding indicating whether the offense  
664 involved sexual activity and indicating whether the offense  
665 involved force or coercion. For a violation of s. 800.04(5), the  
666 court shall also make a written finding that the offense did or  
667 did not involve unclothed genitals or genital area and that the  
668 offense did or did not involve the use of force or coercion.

669           (2) Upon initial registration, a sexual offender shall:

670           (a) Report in person at the sheriff's office:

671           1. In the county in which the offender establishes or  
672 maintains a permanent, temporary, or transient residence within  
673 48 hours after:

674           a. Establishing permanent, temporary, or transient  
675 residence in this state; or

676           b. Being released from the custody, control, or  
677 supervision of the Department of Corrections or from the custody  
678 of a contractor-operated ~~private~~ correctional facility; or

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679           2. In the county where he or she was convicted within 48  
680 hours after being convicted for a qualifying offense for  
681 registration under this section if the offender is not in the  
682 custody or control of, or under the supervision of, the  
683 Department of Corrections, or is not in the custody of a  
684 contractor-operated ~~private~~ correctional facility.

685

686 Any change in the information required to be provided pursuant  
687 to paragraph (b), including, but not limited to, any change in  
688 the sexual offender's permanent, temporary, or transient  
689 residence; name; electronic mail addresses; Internet identifiers  
690 and each Internet identifier's corresponding website homepage or  
691 application software name; home telephone numbers and cellular  
692 telephone numbers; employment information; and any change in  
693 status at an institution of higher education after the sexual  
694 offender reports in person at the sheriff's office must be  
695 reported in the manner provided in subsections (4), (7), and  
696 (8).

697

698 When a sexual offender reports at the sheriff's office, the  
699 sheriff shall take a photograph, a set of fingerprints, and palm  
700 prints of the offender and forward the photographs, palm prints,  
701 and fingerprints to the department, along with the information  
702 provided by the sexual offender. The sheriff shall promptly

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703 provide to the department the information received from the  
704 sexual offender.

705 Section 15. Subsections (5) and (8) of section 943.13,  
706 Florida Statutes, are amended to read:

707 943.13 Officers' minimum qualifications for employment or  
708 appointment.—On or after October 1, 1984, any person employed or  
709 appointed as a full-time, part-time, or auxiliary law  
710 enforcement officer or correctional officer; on or after October  
711 1, 1986, any person employed as a full-time, part-time, or  
712 auxiliary correctional probation officer; and on or after  
713 October 1, 1986, any person employed as a full-time, part-time,  
714 or auxiliary correctional officer by a private entity under  
715 contract to the Department of Corrections or to a county  
716 commission shall:

717 (5) Have documentation of his or her processed  
718 fingerprints on file with the employing agency or, if a  
719 contractor-employed ~~private~~ correctional officer, have  
720 documentation of his or her processed fingerprints on file with  
721 the Department of Corrections or the Criminal Justice Standards  
722 and Training Commission. The department shall retain and enter  
723 into the statewide automated biometric identification system  
724 authorized by s. 943.05 all fingerprints submitted to the  
725 department as required by this section. Thereafter, the  
726 fingerprints shall be available for all purposes and uses  
727 authorized for arrest fingerprints entered in the statewide

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728 automated biometric identification system pursuant to s.  
729 943.051. The department shall search all arrest fingerprints  
730 received pursuant to s. 943.051 against the fingerprints  
731 retained in the statewide automated biometric identification  
732 system pursuant to this section and report to the employing  
733 agency any arrest records that are identified with the retained  
734 employee's fingerprints. These fingerprints must be forwarded to  
735 the department for processing and retention.

736 (8) Execute and submit to the employing agency or, if a  
737 contractor-employed ~~private~~ correctional officer, submit to the  
738 appropriate governmental entity an affidavit-of-applicant form,  
739 adopted by the commission, attesting to his or her compliance  
740 with subsections (1)-(7). The affidavit shall require the  
741 applicant to disclose any pending investigation by a local,  
742 state, or federal agency or entity for criminal, civil, or  
743 administrative wrongdoing and whether the applicant separated or  
744 resigned from previous criminal justice employment while he or  
745 she was under investigation. The affidavit shall be executed  
746 under oath and constitutes an official statement within the  
747 purview of s. 837.06. The affidavit shall include conspicuous  
748 language that the intentional false execution of the affidavit  
749 constitutes a misdemeanor of the second degree. The affidavit  
750 shall be retained by the employing agency.

751 Section 16. Paragraph (g) of subsection (2) of section  
752 943.325, Florida Statutes, is amended to read:

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753 943.325 DNA database.—  
754 (2) DEFINITIONS.—As used in this section, the term:  
755 (g) "Qualifying offender" means any person, including  
756 juveniles and adults, who is:  
757 1.a. Committed to a county jail;  
758 b. Committed to or under the supervision of the Department  
759 of Corrections, including persons incarcerated in a contractor-  
760 operated ~~private~~ correctional institution operated under  
761 contract pursuant to s. 944.105;  
762 c. Committed to or under the supervision of the Department  
763 of Juvenile Justice;  
764 d. Transferred to this state under the Interstate Compact  
765 on Juveniles, part XIII of chapter 985; or  
766 e. Accepted under Article IV of the Interstate Corrections  
767 Compact, part III of chapter 941; and who is:  
768 2.a. Convicted of any felony offense or attempted felony  
769 offense in this state or of a similar offense in another  
770 jurisdiction;  
771 b. Convicted of a misdemeanor violation of s. 784.048, s.  
772 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an  
773 offense that was found, pursuant to s. 874.04, to have been  
774 committed for the purpose of benefiting, promoting, or  
775 furthering the interests of a criminal gang as defined in s.  
776 874.03;

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777 c. Arrested for any felony offense or attempted felony  
778 offense in this state; or

779 d. In the custody of a law enforcement agency and is  
780 subject to an immigration detainer issued by a federal  
781 immigration agency.

782 Section 17. Subsections (4), (5), and (7) of section  
783 944.105, Florida Statutes, are amended to read:

784 944.105 Contractual arrangements with contractor-operated  
785 ~~private~~ entities for operation and maintenance of correctional  
786 facilities and supervision of inmates.-

787 (4) A contractor-employed ~~private~~ correctional officer may  
788 use force only while on the grounds of a facility, while  
789 transporting inmates, and while pursuing escapees from a  
790 facility. A contractor-employed ~~private~~ correctional officer may  
791 use nondeadly force in the following situations:

792 (a) To prevent the commission of a felony or a  
793 misdemeanor, including escape.

794 (b) To defend oneself or others against physical assault.

795 (c) To prevent serious damage to property.

796 (d) To enforce institutional regulations and orders.

797 (e) To prevent or quell a riot.

798

799 Contractor-employed ~~Private~~ correctional officers may carry and  
800 use firearms and may use deadly force only as a last resort, and

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801 then only to prevent an act that could result in death or  
802 serious bodily injury to oneself or to another person.

803 (5) Contractor-employed ~~Private~~ correctional officers  
804 shall be trained in the use of force and the use of firearms and  
805 shall be trained at the contractor-operated ~~private~~ firm's  
806 expense, at the facilities that train correctional officers  
807 employed by the department.

808 (7) The department shall require the certification of  
809 contractor-employed ~~private~~ correctional officers at the private  
810 vendor's expense under s. 943.1395, and all such officers must  
811 meet the minimum qualifications established in s. 943.13. All  
812 other employees of the private vendor that perform their duties  
813 at the contractor-operated ~~private~~ correctional facility shall  
814 receive, at a minimum, the same quality and quantity of training  
815 as that required by the state for employees of state-operated  
816 correctional facilities. All training expenses shall be the  
817 responsibility of the private vendor. The department shall be  
818 the contributor and recipient of all criminal background  
819 information necessary for certification by the Criminal Justice  
820 Standards and Training Commission.

821 Section 18. Subsections (1), (2), (3), and (4) of section  
822 944.151, Florida Statutes, are amended to read:

823 944.151 Safe operation and security of correctional  
824 institutions and facilities.—It is the intent of the Legislature  
825 that the Department of Corrections shall be responsible for the

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826 safe operation and security of the correctional institutions and  
827 facilities. The safe operation and security of the state's  
828 correctional institutions and facilities are critical to ensure  
829 public safety and the safety of department employees and  
830 offenders, and to contain violent and chronic offenders until  
831 offenders are otherwise released from the department's custody  
832 pursuant to law. The Secretary of Corrections shall, at a  
833 minimum:

834 (1) Appoint appropriate department staff to a safety and  
835 security review committee that shall evaluate new safety and  
836 security technology, review and discuss current issues impacting  
837 state and contractor-operated ~~private~~ correctional institutions  
838 and facilities, and review and discuss other issues as requested  
839 by department management.

840 (2) Direct appropriate department staff to establish a  
841 periodic schedule for the physical inspection of buildings and  
842 structures of each state and contractor-operated ~~private~~  
843 correctional institution and facility to determine safety and  
844 security deficiencies. In scheduling the inspections, priority  
845 shall be given to older institutions and facilities;  
846 institutions and facilities that house a large proportion of  
847 violent offenders; institutions and facilities that have  
848 experienced a significant number of inappropriate incidents of  
849 use of force on inmates, assaults on employees, or inmate sexual

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850 abuse; and institutions and facilities that have experienced a  
851 significant number of escapes or escape attempts in the past.

852 (3) Direct appropriate department staff to conduct or  
853 cause to be conducted announced and unannounced comprehensive  
854 security audits of all state and contractor-operated ~~private~~  
855 correctional institutions and facilities. Priority shall be  
856 given to those institutions and facilities that have experienced  
857 a significant number of inappropriate incidents of use of force  
858 on inmates, assaults on employees, or sexual abuse. At a  
859 minimum, the audit must include an evaluation of the physical  
860 plant, landscaping, fencing, security alarms and perimeter  
861 lighting, and confinement, arsenal, key and lock, and entrance  
862 and exit policies. The evaluation of the physical plant policies  
863 must include the identification of blind spots or areas where  
864 staff or inmates may be isolated and the deployment of video  
865 monitoring systems and other appropriate monitoring technologies  
866 in such spots or areas. Each correctional institution and  
867 facility shall be audited at least annually. The secretary shall  
868 annually report the audit findings to the Governor and the  
869 Legislature.

870 (4) Direct appropriate department staff to investigate and  
871 evaluate the usefulness and dependability of existing safety and  
872 security technology at state and contractor-operated ~~private~~  
873 correctional institutions and facilities, investigate and  
874 evaluate new available safety and security technology, and make

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875 periodic written recommendations to the secretary on the  
876 discontinuation or purchase of various safety and security  
877 devices.

878 Section 19. Paragraph (b) of subsection (3) of section  
879 944.17, Florida Statutes, is amended to read:

880 944.17 Commitments and classification; transfers.—

881 (3)

882 (b) Notwithstanding paragraph (a), any prisoner  
883 incarcerated in the state correctional system or contractor-  
884 operated ~~private~~ correctional facility operated pursuant to  
885 chapter 957 who is convicted in circuit or county court of a  
886 crime committed during that incarceration shall serve the  
887 sentence imposed for that crime within the state correctional  
888 system regardless of the length of sentence or classification of  
889 the offense.

890 Section 20. Paragraph (b) of subsection (3) of section  
891 944.35, Florida Statutes, is amended to read:

892 944.35 Authorized use of force; malicious battery and  
893 sexual misconduct prohibited; reporting required; penalties.—

894 (3)

895 (b)1. As used in this paragraph, the term:

896 a. "Female genitals" includes the labia minora, labia  
897 majora, clitoris, vulva, hymen, and vagina.

898 b. "Contractor-operated ~~Private~~ correctional facility" has  
899 the same meaning as in s. 944.710.

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900 c. "Sexual misconduct" means the oral, anal, or female  
901 genital penetration by, or union with, the sexual organ of  
902 another or the anal or female genital penetration of another by  
903 any other object, but does not include an act done for a bona  
904 fide medical purpose or an internal search conducted in the  
905 lawful performance of the employee's duty.

906 d. "Volunteer" means a person registered with the  
907 department or a contractor-operated ~~private~~ correctional  
908 facility who is engaged in specific voluntary service activities  
909 on an ongoing or continual basis.

910 2. Any employee of the department or a contractor-operated  
911 ~~private~~ correctional facility or any volunteer in, or any  
912 employee of a contractor or subcontractor of, the department or  
913 a contractor-operated ~~private~~ correctional facility who engages  
914 in sexual misconduct with an inmate or an offender supervised by  
915 the department in the community, without committing the crime of  
916 sexual battery, commits a felony of the third degree, punishable  
917 as provided in s. 775.082, s. 775.083, or s. 775.084.

918 3. The consent of the inmate or offender supervised by the  
919 department in the community to any act of sexual misconduct may  
920 not be raised as a defense to a prosecution under this  
921 paragraph.

922 4. This paragraph does not apply to any employee,  
923 volunteer, or employee of a contractor or subcontractor of the  
924 department or any employee, volunteer, or employee of a

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925 contractor or subcontractor of a contractor-operated ~~private~~  
926 correctional facility who is legally married to an inmate or an  
927 offender supervised by the department in the community, nor does  
928 it apply to any employee, volunteer, or employee of a contractor  
929 or subcontractor who has no knowledge, and would have no reason  
930 to believe, that the person with whom the employee, volunteer,  
931 or employee of a contractor or subcontractor has engaged in  
932 sexual misconduct is an inmate or an offender under community  
933 supervision of the department.

934 Section 21. Section 944.40, Florida Statutes, is amended  
935 to read:

936 944.40 Escapes; penalty.—Any prisoner confined in, or  
937 released on furlough from, any prison, jail, contractor-operated  
938 ~~private~~ correctional facility, road camp, or other penal  
939 institution, whether operated by the state, a county, or a  
940 municipality, or operated under a contract with the state, a  
941 county, or a municipality, working upon the public roads, or  
942 being transported to or from a place of confinement who escapes  
943 or attempts to escape from such confinement commits a felony of  
944 the second degree, punishable as provided in s. 775.082, s.  
945 775.083, or s. 775.084. The punishment of imprisonment imposed  
946 under this section shall run consecutive to any former sentence  
947 imposed upon any prisoner.

948 Section 22. Subsections (1) and (2) of section 944.605,  
949 Florida Statutes, are amended to read:

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950 944.605 Inmate release; notification; identification  
951 card.—

952 (1) Within 6 months before the release of an inmate from  
953 the custody of the Department of Corrections or a contractor-  
954 operated ~~private~~ correctional facility by expiration of sentence  
955 under s. 944.275, any release program provided by law, or parole  
956 under chapter 947, or as soon as possible if the offender is  
957 released earlier than anticipated, notification of such  
958 anticipated release date shall be made known by the Department  
959 of Corrections to the chief judge of the circuit in which the  
960 offender was sentenced, the appropriate state attorney, the  
961 original arresting law enforcement agency, the Department of Law  
962 Enforcement, and the sheriff as chief law enforcement officer of  
963 the county in which the inmate plans to reside. In addition,  
964 unless otherwise requested by the victim, the victim's parent or  
965 guardian if the victim is a minor, the lawful representative of  
966 the victim or of the victim's parent or guardian if the victim  
967 is a minor, the victim's next of kin in the case of a homicide,  
968 the state attorney or the Department of Corrections, whichever  
969 is appropriate, shall notify such person within 6 months before  
970 the inmate's release, or as soon as possible if the offender is  
971 released earlier than anticipated, when the name and address of  
972 such victim, or the name and address of the parent, guardian,  
973 next of kin, or lawful representative of the victim has been  
974 furnished to the agency. The state attorney shall provide the

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975 latest address documented for the victim, or for the victim's  
976 parent, guardian, next of kin, or lawful representative, as  
977 applicable, to the sheriff with the other documents required by  
978 law for the delivery of inmates to those agencies for service of  
979 sentence. Upon request, within 30 days after an inmate is  
980 approved for community work release, the state attorney, the  
981 victim, the victim's parent or guardian if the victim is a  
982 minor, the victim's next of kin in the case of a homicide, or  
983 the lawful representative of the victim or of the victim's  
984 parent or guardian if the victim is a minor shall be notified  
985 that the inmate has been approved for community work release.  
986 This section does not imply any repeal or modification of any  
987 provision of law relating to notification of victims.

988 (2) Within 60 days before the anticipated release of an  
989 inmate under subsection (1), a digitized photograph of the  
990 inmate to be released shall be made by the Department of  
991 Corrections or a contractor-operated ~~private~~ correctional  
992 facility, whichever has custody of the inmate. If a contractor-  
993 operated ~~private~~ correctional facility makes the digitized  
994 photograph, this photograph shall be provided to the Department  
995 of Corrections. Additionally, the digitized photograph, whether  
996 made by the Department of Corrections or a contractor-operated  
997 ~~private~~ correctional facility, shall be placed in the inmate's  
998 file. The Department of Corrections shall make the digitized  
999 photograph available electronically to the Department of Law

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1000 Enforcement as soon as the digitized photograph is in the  
1001 department's database and must be in a format that is compatible  
1002 with the requirements of the Florida Crime Information Center.  
1003 The department shall provide a copy of the digitized photograph  
1004 to a local law enforcement agency upon request.

1005 Section 23. Paragraph (a) of subsection (1) and paragraph  
1006 (a) of subsection (3) of section 944.606, Florida Statutes, are  
1007 amended to read:

1008 944.606 Sexual offenders; notification upon release.—

1009 (1) As used in this section, the term:

1010 (a) "Convicted" means there has been a determination of  
1011 guilt as a result of a trial or the entry of a plea of guilty or  
1012 nolo contendere, regardless of whether adjudication is withheld.  
1013 A conviction for a similar offense includes, but is not limited  
1014 to, a conviction by a federal or military tribunal, including  
1015 courts-martial conducted by the Armed Forces of the United  
1016 States, and includes a conviction or entry of a plea of guilty  
1017 or nolo contendere resulting in a sanction in any state of the  
1018 United States or other jurisdiction. A sanction includes, but is  
1019 not limited to, a fine; probation; community control; parole;  
1020 conditional release; control release; or incarceration in a  
1021 state prison, federal prison, contractor-operated ~~private~~  
1022 correctional facility, or local detention facility.

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1023 (3) (a) The department shall provide information regarding  
1024 any sexual offender who is being released after serving a period  
1025 of incarceration for any offense, as follows:

1026 1. The department shall provide: the sexual offender's  
1027 name, any change in the offender's name by reason of marriage or  
1028 other legal process, and any alias, if known; the correctional  
1029 facility from which the sexual offender is released; the sexual  
1030 offender's social security number, race, sex, date of birth,  
1031 height, weight, and hair and eye color; tattoos or other  
1032 identifying marks; address of any planned permanent residence or  
1033 temporary residence, within the state or out of state, including  
1034 a rural route address and a post office box; if no permanent or  
1035 temporary address, any transient residence within the state;  
1036 address, location or description, and dates of any known future  
1037 temporary residence within the state or out of state; date and  
1038 county of sentence and each crime for which the offender was  
1039 sentenced; a copy of the offender's fingerprints, palm prints,  
1040 and a digitized photograph taken within 60 days before release;  
1041 the date of release of the sexual offender; all electronic mail  
1042 addresses and all Internet identifiers required to be provided  
1043 pursuant to s. 943.0435(4)(e); employment information, if known,  
1044 provided pursuant to s. 943.0435(4)(e); all home telephone  
1045 numbers and cellular telephone numbers required to be provided  
1046 pursuant to s. 943.0435(4)(e); information about any  
1047 professional licenses the offender has, if known; and passport

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1048 information, if he or she has a passport, and, if he or she is  
1049 an alien, information about documents establishing his or her  
1050 immigration status. The department shall notify the Department  
1051 of Law Enforcement if the sexual offender escapes, absconds, or  
1052 dies. If the sexual offender is in the custody of a contractor-  
1053 operated ~~private~~ correctional facility, the facility shall take  
1054 the digitized photograph of the sexual offender within 60 days  
1055 before the sexual offender's release and provide this photograph  
1056 to the Department of Corrections and also place it in the sexual  
1057 offender's file. If the sexual offender is in the custody of a  
1058 local jail, the custodian of the local jail shall register the  
1059 offender within 3 business days after intake of the offender for  
1060 any reason and upon release, and shall notify the Department of  
1061 Law Enforcement of the sexual offender's release and provide to  
1062 the Department of Law Enforcement the information specified in  
1063 this paragraph and any information specified in subparagraph 2.  
1064 that the Department of Law Enforcement requests.

1065 2. The department may provide any other information deemed  
1066 necessary, including criminal and corrections records,  
1067 nonprivileged personnel and treatment records, when available.

1068 Section 24. Paragraphs (b) and (f) of subsection (1),  
1069 paragraph (g) of subsection (6), and subsection (12) of section  
1070 944.607, Florida Statutes, are amended to read:

1071 944.607 Notification to Department of Law Enforcement of  
1072 information on sexual offenders.-

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1073 (1) As used in this section, the term:

1074 (b) "Conviction" means a determination of guilt which is  
1075 the result of a trial or the entry of a plea of guilty or nolo  
1076 contendere, regardless of whether adjudication is withheld.  
1077 Conviction of a similar offense includes, but is not limited to,  
1078 a conviction by a federal or military tribunal, including  
1079 courts-martial conducted by the Armed Forces of the United  
1080 States, and includes a conviction or entry of a plea of guilty  
1081 or nolo contendere resulting in a sanction in any state of the  
1082 United States or other jurisdiction. A sanction includes, but is  
1083 not limited to, a fine; probation; community control; parole;  
1084 conditional release; control release; or incarceration in a  
1085 state prison, federal prison, contractor-operated ~~private~~  
1086 correctional facility, or local detention facility.

1087 (f) "Sexual offender" means a person who is in the custody  
1088 or control of, or under the supervision of, the department or is  
1089 in the custody of a contractor-operated ~~private~~ correctional  
1090 facility:

1091 1. On or after October 1, 1997, as a result of a  
1092 conviction for committing, or attempting, soliciting, or  
1093 conspiring to commit, any of the criminal offenses proscribed in  
1094 the following statutes in this state or similar offenses in  
1095 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,  
1096 s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s.  
1097 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.

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1098 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
1099 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
1100 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
1101 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court  
1102 makes a written finding that the racketeering activity involved  
1103 at least one sexual offense listed in this subparagraph or at  
1104 least one offense listed in this subparagraph with sexual intent  
1105 or motive; s. 916.1075(2); or s. 985.701(1); or any similar  
1106 offense committed in this state which has been redesignated from  
1107 a former statute number to one of those listed in this  
1108 paragraph; or

1109 2. Who establishes or maintains a residence in this state  
1110 and who has not been designated as a sexual predator by a court  
1111 of this state but who has been designated as a sexual predator,  
1112 as a sexually violent predator, or by another sexual offender  
1113 designation in another state or jurisdiction and was, as a  
1114 result of such designation, subjected to registration or  
1115 community or public notification, or both, or would be if the  
1116 person were a resident of that state or jurisdiction, without  
1117 regard as to whether the person otherwise meets the criteria for  
1118 registration as a sexual offender.

1119 (6) The information provided to the Department of Law  
1120 Enforcement must include:

1121 (g) A digitized photograph of the sexual offender which  
1122 must have been taken within 60 days before the offender is

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1123 released from the custody of the department or a contractor-  
1124 operated ~~private~~ correctional facility by expiration of sentence  
1125 under s. 944.275 or must have been taken by January 1, 1998, or  
1126 within 60 days after the onset of the department's supervision  
1127 of any sexual offender who is on probation, community control,  
1128 conditional release, parole, provisional release, or control  
1129 release or who is supervised by the department under the  
1130 Interstate Compact Agreement for Probationers and Parolees. If  
1131 the sexual offender is in the custody of a contractor-operated  
1132 ~~private~~ correctional facility, the facility shall take a  
1133 digitized photograph of the sexual offender within the time  
1134 period provided in this paragraph and shall provide the  
1135 photograph to the department.

1136

1137 If any information provided by the department changes during the  
1138 time the sexual offender is under the department's control,  
1139 custody, or supervision, including any change in the offender's  
1140 name by reason of marriage or other legal process, the  
1141 department shall, in a timely manner, update the information and  
1142 provide it to the Department of Law Enforcement in the manner  
1143 prescribed in subsection (2).

1144 (12) Any person who has reason to believe that a sexual  
1145 offender is not complying, or has not complied, with the  
1146 requirements of this section and who, with the intent to assist  
1147 the sexual offender in eluding a law enforcement agency that is

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1148 seeking to find the sexual offender to question the sexual  
1149 offender about, or to arrest the sexual offender for, his or her  
1150 noncompliance with the requirements of this section:

1151 (a) Withholds information from, or does not notify, the  
1152 law enforcement agency about the sexual offender's noncompliance  
1153 with the requirements of this section, and, if known, the  
1154 whereabouts of the sexual offender;

1155 (b) Harbors, or attempts to harbor, or assists another  
1156 person in harboring or attempting to harbor, the sexual  
1157 offender; or

1158 (c) Conceals or attempts to conceal, or assists another  
1159 person in concealing or attempting to conceal, the sexual  
1160 offender; or

1161 (d) Provides information to the law enforcement agency  
1162 regarding the sexual offender which the person knows to be false  
1163 information,

1164  
1165 commits a felony of the third degree, punishable as provided in  
1166 s. 775.082, s. 775.083, or s. 775.084. This subsection does not  
1167 apply if the sexual offender is incarcerated in or is in the  
1168 custody of a state correctional facility, a contractor-operated  
1169 ~~private~~ correctional facility, a local jail, or a federal  
1170 correctional facility.

1171 Section 25. Subsection (1) and paragraph (e) of subsection  
1172 (5) of section 944.608, Florida Statutes, are amended to read:

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1173 944.608 Notification to Department of Law Enforcement of  
1174 information on career offenders.—

1175 (1) As used in this section, the term "career offender"  
1176 means a person who is in the custody or control of, or under the  
1177 supervision of, the department or is in the custody or control  
1178 of, or under the supervision of, a contractor-operated ~~private~~  
1179 correctional facility, and who is designated as a habitual  
1180 violent felony offender, a violent career criminal, or a three-  
1181 time violent felony offender under s. 775.084 or as a prison  
1182 releasee reoffender under s. 775.082(9).

1183 (5) The information provided to the Department of Law  
1184 Enforcement must include:

1185 (e) A digitized photograph of the career offender, which  
1186 must have been taken within 60 days before the career offender  
1187 is released from the custody of the department or a contractor-  
1188 operated ~~private~~ correctional facility or within 60 days after  
1189 the onset of the department's supervision of any career offender  
1190 who is on probation, community control, conditional release,  
1191 parole, provisional release, or control release. If the career  
1192 offender is in the custody or control of, or under the  
1193 supervision of, a contractor-operated ~~private~~ correctional  
1194 facility, the facility shall take a digitized photograph of the  
1195 career offender within the time period provided in this  
1196 paragraph and shall provide the photograph to the department.

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1197 Section 26. Subsection (1) and paragraph (a) of subsection  
1198 (3) of section 944.609, Florida Statutes, are amended to read:

1199 944.609 Career offenders; notification upon release.—

1200 (1) As used in this section, the term "career offender"  
1201 means a person who is in the custody or control of, or under the  
1202 supervision of, the department or is in the custody or control  
1203 of, or under the supervision of a contractor-operated ~~private~~  
1204 correctional facility, who is designated as a habitual violent  
1205 felony offender, a violent career criminal, or a three-time  
1206 violent felony offender under s. 775.084 or as a prison releasee  
1207 reoffender under s. 775.082(9).

1208 (3)(a) The department must provide information regarding  
1209 any career offender who is being released after serving a period  
1210 of incarceration for any offense, as follows:

1211 1. The department must provide the career offender's name,  
1212 any change in the career offender's name by reason of marriage  
1213 or other legal process, and any alias, if known; the  
1214 correctional facility from which the career offender is  
1215 released; the career offender's social security number, race,  
1216 gender, date of birth, height, weight, and hair and eye color;  
1217 date and county of sentence and each crime for which the career  
1218 offender was sentenced; a copy of the career offender's  
1219 fingerprints and a digitized photograph taken within 60 days  
1220 before release; the date of release of the career offender; and  
1221 the career offender's intended residence address, if known. The

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1222 department shall notify the Department of Law Enforcement if the  
1223 career offender escapes, absconds, or dies. If the career  
1224 offender is in the custody of a contractor-operated ~~private~~  
1225 correctional facility, the facility shall take the digitized  
1226 photograph of the career offender within 60 days before the  
1227 career offender's release and provide this photograph to the  
1228 Department of Corrections and also place it in the career  
1229 offender's file. If the career offender is in the custody of a  
1230 local jail, the custodian of the local jail shall notify the  
1231 Department of Law Enforcement of the career offender's release  
1232 and provide to the Department of Law Enforcement the information  
1233 specified in this paragraph and any information specified in  
1234 subparagraph 2. which the Department of Law Enforcement  
1235 requests.

1236 2. The department may provide any other information deemed  
1237 necessary, including criminal and corrections records and  
1238 nonprivileged personnel and treatment records, when available.

1239 Section 27. Section 944.7031, Florida Statutes, is amended  
1240 to read:

1241 944.7031 Eligible inmates released from contractor-  
1242 operated ~~private~~ correctional facilities.-

1243 (1) It is the intent of the Legislature that state inmates  
1244 nearing release from a contractor-operated ~~private~~ correctional  
1245 facility managed under chapter 957 are eligible for assistance  
1246 under ss. 944.701-944.708, and all laws that provide for or

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1247 mandate transition assistance services to inmates nearing  
1248 release also apply to inmates who reside in contractor-operated  
1249 ~~private~~ correctional facilities.

1250 (2) To assist an inmate nearing release from a contractor-  
1251 operated ~~private~~ correctional facility, the department and the  
1252 transition assistance specialist shall coordinate with a  
1253 designated staff person at each contractor-operated ~~private~~  
1254 correctional facility to ensure that a state inmate released  
1255 from the contractor-operated ~~private~~ correctional facility is  
1256 informed of and provided with the same level of transition  
1257 assistance services that are provided by the department for an  
1258 inmate in a state correctional facility. Any inmate released  
1259 from a contractor-operated ~~private~~ correctional facility shall  
1260 also have equal access to placement consideration in a  
1261 contracted substance abuse transition housing program, including  
1262 those programs that have a faith-based component.

1263 Section 28. Section 944.714, Florida Statutes, is amended  
1264 to read:

1265 944.714 Quality assurance and standards of operation.—

1266 (1) The level and quality of programs provided by a  
1267 private vendor at a contractor-operated ~~private~~ correctional  
1268 facility must be at least equal to programs provided at a  
1269 correctional facility operated by the department that houses  
1270 similar types of inmates and must be at a cost that provides the

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1271 state with a substantial savings, as determined by a private  
1272 accounting firm selected by the Department of Corrections.

1273 (2) All contractor-employed ~~private~~ correctional officers  
1274 employed by a private vendor must be certified, at the private  
1275 vendor's expense, as having met the minimum qualifications  
1276 established for correctional officers under s. 943.13.

1277 (3) Pursuant to the terms of the contract, a private  
1278 vendor shall design, construct, and operate a contractor-  
1279 operated ~~private~~ correctional facility in accordance with the  
1280 standards established by the American Correctional Association  
1281 and approved by the department at the time of the contract. In  
1282 addition, a contractor-operated ~~private~~ correctional facility  
1283 shall meet any higher standard mandated in the full or partial  
1284 settlement of any litigation challenging the constitutional  
1285 conditions of confinement to which the department is a named  
1286 defendant. The standards required under a contract for operating  
1287 a contractor-operated ~~private~~ correctional facility may be  
1288 higher than the standards required for accreditation by the  
1289 American Correctional Association. A private vendor shall comply  
1290 with all federal and state constitutional requirements, federal,  
1291 state, and local laws, department rules, and all court orders.

1292 Section 29. Section 944.715, Florida Statutes, is amended  
1293 to read:

1294 944.715 Delegation of authority.—

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1295 (1) A private vendor shall incarcerate all inmates  
1296 assigned to the contractor-operated ~~private~~ correctional  
1297 facility by the department and as specified in the contract. The  
1298 department may not exceed the maximum occupancy designated for  
1299 the facility in the contract.

1300 (2) Inmates incarcerated in a contractor-operated ~~private~~  
1301 ~~correctional~~ facility are in the legal custody of the  
1302 department. A private vendor may not award gain-time or release  
1303 credits, determine inmate eligibility for furlough or work  
1304 release, calculate inmate release dates, approve inmate  
1305 transfers, place inmates in less restrictive custody than that  
1306 ordered by the department or approve inmate work assignments. A  
1307 private vendor may not benefit financially from the labor of  
1308 inmates except to the extent authorized under chapter 946.

1309 Section 30. Section 944.716, Florida Statutes, is amended  
1310 to read:

1311 944.716 Contract termination and control of a correctional  
1312 facility by the department.—A detailed plan shall be provided by  
1313 a private vendor under which the department shall assume control  
1314 of a contractor-operated ~~private~~ correctional facility upon  
1315 termination of the contract. The department may terminate the  
1316 contract with cause after written notice of material  
1317 deficiencies and after 60 workdays in order to correct the  
1318 material deficiencies. If any event occurs that involves the  
1319 noncompliance with or violation of contract terms and that

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1320 presents a serious threat to the safety, health, or security of  
1321 the inmates, employees, or the public, the department may  
1322 temporarily assume control of the contractor-operated ~~private~~  
1323 correctional facility. A plan shall also be provided by a  
1324 private vendor for the purchase and assumption of operations of  
1325 a correctional facility by the department in the event of  
1326 bankruptcy or the financial insolvency of the private vendor.  
1327 The private vendor shall provide an emergency plan to address  
1328 inmate disturbances, employee work stoppages, strikes, or other  
1329 serious events in accordance with standards of the American  
1330 Correctional Association.

1331 Section 31. Subsection (1) of section 944.717, Florida  
1332 Statutes, is amended to read:

1333 944.717 Conflicts of interest.—

1334 (1) An employee of the department or any governmental  
1335 entity that exercises any functions or responsibilities in the  
1336 review or approval of a contractor-operated ~~private~~ correctional  
1337 facility contract or the operation of a contractor-operated  
1338 ~~private~~ correctional facility, or a member of the immediate  
1339 family of any such person, may not solicit or accept, directly  
1340 or indirectly, any personal benefit or promise of a benefit from  
1341 a bidder or private vendor.

1342 Section 32. Subsection (1) of section 944.718, Florida  
1343 Statutes, is amended to read:

1344 944.718 Withdrawal of request for proposals.—

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1345 (1) When soliciting proposals for the construction, lease,  
1346 or operation of a contractor-operated ~~private~~ correctional  
1347 facility, the department may reserve the right to withdraw the  
1348 request for proposals at any time and for any reason. Receipt of  
1349 proposal materials by the department or submission of a proposal  
1350 to the department does not confer any rights upon the proposer  
1351 or obligations upon the department.

1352 Section 33. Paragraphs (a) and (f) of subsection (1),  
1353 subsection (3), and paragraph (b) of subsection (5) of section  
1354 944.719, Florida Statutes, are amended to read:

1355 944.719 Adoption of rules, monitoring, and reporting.—

1356 (1) The department shall adopt rules pursuant to chapter  
1357 120 specifying criteria for contractual arrangements and  
1358 standards for the operation of correctional facilities by  
1359 private vendors. Such rules shall define:

1360 (a) Various categories of contractor-operated ~~private~~  
1361 correctional facilities.

1362 (f) The characteristics of inmates to be incarcerated in  
1363 contractor-operated ~~private~~ correctional facilities.

1364 (3) The private vendor shall provide a work area at the  
1365 contractor-operated ~~private~~ correctional facility for use by the  
1366 contract monitor appointed by the department and shall provide  
1367 the monitor with access to all data, reports, and other  
1368 materials that the monitor, the Auditor General, and the Office  
1369 of Program Policy Analysis and Government Accountability

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1370 determine are necessary to carry out monitoring and auditing  
1371 responsibilities.

1372 (5) The Office of Program Policy Analysis and Government  
1373 Accountability shall conduct a performance audit, including a  
1374 review of the annual financial audit of the private entity and  
1375 shall deliver a report to the Legislature by February 1 of the  
1376 third year following any contract awarded by the department for  
1377 the operation of a correctional facility by a private vendor.

1378 (b) In preparing the report, the office shall consider, in  
1379 addition to other factors it determines are significant:

1380 1. The extent to which the private vendor and the  
1381 department have complied with the terms of the contract and ss.  
1382 944.710-944.719.

1383 2. The wages and benefits that are provided to the staff  
1384 of the contractor-operated ~~private~~ correctional facility as  
1385 compared to wages and benefits provided to employees of the  
1386 department performing comparable tasks.

1387 Section 34. Subsection (1) of section 944.72, Florida  
1388 Statutes, is amended to read:

1389 944.72 Contractor-Operated ~~Privately-Operated~~ Institutions  
1390 Inmate Welfare Trust Fund.-

1391 (1) There is hereby created in the Department of  
1392 Corrections the Contractor-Operated ~~Privately-Operated~~  
1393 Institutions Inmate Welfare Trust Fund. The purpose of the trust  
1394 fund shall be the benefit and welfare of inmates incarcerated in

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1395 contractor-operated ~~private~~ correctional facilities under  
1396 contract with the department pursuant to this chapter or chapter  
1397 957. Moneys shall be deposited in the trust fund and  
1398 expenditures made from the trust fund as provided in s. 945.215.

1399 Section 35. Subsection (9) of section 944.801, Florida  
1400 Statutes, is amended to read:

1401 944.801 Education for state prisoners.—

1402 (9) Notwithstanding s. 120.81(3), all inmates under 22  
1403 years of age who qualify for special educational services and  
1404 programs pursuant to the Individuals with Disabilities Education  
1405 Act, 20 U.S.C. ss. 1400 et seq., and who request a due process  
1406 hearing as provided by that act shall be entitled to such  
1407 hearing before the Division of Administrative Hearings.

1408 Administrative law judges shall not be required to travel to  
1409 state or contractor-operated ~~private~~ correctional institutions  
1410 and facilities in order to conduct these hearings.

1411 Section 36. Subsections (1) and (3) of section 944.803,  
1412 Florida Statutes, are amended to read:

1413 944.803 Faith- and character-based programs.—

1414 (1) The Legislature finds and declares that faith- and  
1415 character-based programs offered in state and contractor-  
1416 operated ~~private~~ correctional institutions and facilities have  
1417 the potential to facilitate inmate institutional adjustment,  
1418 help inmates assume personal responsibility, and reduce  
1419 recidivism.

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1420 (3) It is the intent of the Legislature that the  
1421 department and the private vendors operating contractor-operated  
1422 ~~private~~ correctional facilities continuously:

1423 (a) Measure recidivism rates for inmates who have  
1424 participated in faith- and character-based programs.

1425 (b) Increase the number of volunteers who minister to  
1426 inmates from various faith-based and secular institutions in the  
1427 community.

1428 (c) Develop community linkages with secular institutions  
1429 as well as churches, synagogues, mosques, and other faith-based  
1430 institutions to assist inmates in their release back into the  
1431 community.

1432 Section 37. Paragraphs (a) and (b) of subsection (2) of  
1433 section 945.10, Florida Statutes, are amended to read:

1434 945.10 Confidential information.—

1435 (2) The records and information specified in paragraphs  
1436 (1)(a)-(i) may be released as follows unless expressly  
1437 prohibited by federal law:

1438 (a) Information specified in paragraphs (1)(b), (d), and  
1439 (f) to the Executive Office of the Governor, the Legislature,  
1440 the Florida Commission on Offender Review, the Department of  
1441 Children and Families, a contractor-operated ~~private~~  
1442 correctional facility or program that operates under a contract,  
1443 the Department of Legal Affairs, a state attorney, the court, or

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1444 a law enforcement agency. A request for records or information  
1445 pursuant to this paragraph need not be in writing.

1446 (b) Information specified in paragraphs (1)(c), (e), and  
1447 (i) to the Executive Office of the Governor, the Legislature,  
1448 the Florida Commission on Offender Review, the Department of  
1449 Children and Families, a contractor-operated ~~private~~  
1450 correctional facility or program that operates under contract,  
1451 the Department of Legal Affairs, a state attorney, the court, or  
1452 a law enforcement agency. A request for records or information  
1453 pursuant to this paragraph must be in writing and a statement  
1454 provided demonstrating a need for the records or information.

1455  
1456 Records and information released under this subsection remain  
1457 confidential and exempt from the provisions of s. 119.07(1) and  
1458 s. 24(a), Art. I of the State Constitution when held by the  
1459 receiving person or entity.

1460 Section 38. Subsection (3) of section 945.215, Florida  
1461 Statutes, is amended to read:

1462 945.215 Inmate welfare and employee benefit trust funds.—

1463 (3) CONTRACTOR-OPERATED ~~PRIVATELY-OPERATED~~ INSTITUTIONS  
1464 INMATE WELFARE TRUST FUND; CONTRACTOR-OPERATED ~~PRIVATE~~  
1465 CORRECTIONAL FACILITIES.—

1466 (a) For purposes of this subsection, contractor-operated  
1467 ~~privately-operated~~ institutions or contractor-operated ~~private~~  
1468 correctional facilities are those correctional facilities under

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1469 contract with the department pursuant to chapter 944 or chapter  
1470 957.

1471 (b)1. The net proceeds derived from inmate canteens,  
1472 vending machines used primarily by inmates, telephone  
1473 commissions, and similar sources at contractor-operated ~~private~~  
1474 correctional facilities shall be deposited in the Contractor-  
1475 Operated ~~Privately Operated~~ Institutions Inmate Welfare Trust  
1476 Fund.

1477 2. Funds in the Contractor-Operated ~~Privately Operated~~  
1478 Institutions Inmate Welfare Trust Fund shall be expended only  
1479 pursuant to legislative appropriation.

1480 (c) The department shall annually compile a report that  
1481 documents Contractor-Operated ~~Privately Operated~~ Institutions  
1482 Inmate Welfare Trust Fund receipts and expenditures at each  
1483 contractor-operated ~~private~~ correctional facility. This report  
1484 must specifically identify receipt sources and expenditures. The  
1485 department shall compile this report for the prior fiscal year  
1486 and shall submit the report by September 1 of each year to the  
1487 chairs of the appropriate substantive and fiscal committees of  
1488 the Senate and House of Representatives and to the Executive  
1489 Office of the Governor.

1490 Section 39. Subsections (2) and (3) of section 945.6041,  
1491 Florida Statutes, are amended to read:

1492 945.6041 Inmate medical services.—

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1493 (2) Compensation to a health care provider to provide  
1494 inmate medical services may not exceed 110 percent of the  
1495 Medicare allowable rate if the health care provider does not  
1496 have a contract to provide services with the department or the  
1497 contractor-operated ~~private~~ correctional facility, as defined in  
1498 s. 944.710, which houses the inmate. However, compensation to a  
1499 health care provider may not exceed 125 percent of the Medicare  
1500 allowable rate if:

1501 (a) The health care provider does not have a contract to  
1502 provide services with the department or the contractor-operated  
1503 ~~private~~ correctional facility, as defined in s. 944.710, which  
1504 houses the inmate; and

1505 (b) The health care provider reported a negative operating  
1506 margin for the previous year to the Agency for Health Care  
1507 Administration through hospital-audited financial data.

1508 (3) Compensation to an entity to provide emergency medical  
1509 transportation services for inmates may not exceed 110 percent  
1510 of the Medicare allowable rate if the entity does not have a  
1511 contract with the department or a contractor-operated ~~private~~  
1512 correctional facility, as defined in s. 944.710, to provide the  
1513 services.

1514 Section 40. Section 946.5025, Florida Statutes, is amended  
1515 to read:

1516 946.5025 Authorization of corporation to enter into  
1517 contracts.—The corporation established under this part may enter

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1518 into contracts to operate correctional work programs with any  
1519 county or municipal authority that operates a correctional  
1520 facility or with a contractor authorized under chapter 944 or  
1521 chapter 957 to operate a contractor-operated ~~private~~  
1522 correctional facility. The corporation has the same powers,  
1523 privileges, and immunities in carrying out such contracts as it  
1524 has under this chapter.

1525 Section 41. Subsections (5) and (6) of section 946.503,  
1526 Florida Statutes, are amended to read:

1527 946.503 Definitions to be used with respect to  
1528 correctional work programs.—As used in this part, the term:

1529 (5) "Inmate" means any person incarcerated within any  
1530 state, county, municipal, or contractor-operated ~~private~~  
1531 correctional facility.

1532 (6) "Contractor-operated ~~Private~~ correctional facility"  
1533 means a facility authorized by chapter 944 or chapter 957.

1534 Section 42. Subsection (6) of section 951.062, Florida  
1535 Statutes, is amended to read:

1536 951.062 Contractual arrangements for operation and  
1537 maintenance of county detention facilities.—

1538 (6) Contractor-employed ~~Private~~ correctional officers  
1539 responsible for supervising inmates within the facility shall  
1540 meet the requirements necessary for certification by the  
1541 Criminal Justice Standards and Training Commission pursuant to

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1542 s. 943.1395. However, expenses for such training shall be the  
1543 responsibility of the private entity.

1544 Section 43. Section 951.063, Florida Statutes, is amended  
1545 to read:

1546 951.063 Contractor-operated ~~privately-operated~~ county  
1547 correctional facilities.—Each contractor-employed ~~private~~  
1548 correctional officer employed by a private entity under contract  
1549 to a county commission must be certified as a correctional  
1550 officer under s. 943.1395 and must meet the minimum  
1551 qualifications established in s. 943.13. The county shall  
1552 provide to the Criminal Justice Standards and Training  
1553 Commission all necessary fingerprints for Florida Department of  
1554 Law Enforcement and Federal Bureau of Investigation background  
1555 checks. The Criminal Justice Standards and Training Commission  
1556 shall advise the county as to those employees whose  
1557 certification has been denied or revoked. Neither the county nor  
1558 the private entity shall be the direct recipient of criminal  
1559 records.

1560 Section 44. Section 957.05, Florida Statutes, is amended  
1561 to read:

1562 957.05 Requirements for contractors operating contractor-  
1563 operated ~~private~~ correctional facilities.—

1564 (1) Each contractor entering into a contract under this  
1565 chapter is liable in tort with respect to the care and custody  
1566 of inmates under its supervision and for any breach of contract.

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1567 Sovereign immunity may not be raised by a contractor, or the  
1568 insurer of that contractor on the contractor's behalf, as a  
1569 defense in any action arising out of the performance of any  
1570 contract entered into under this chapter or as a defense in  
1571 tort, or any other application, with respect to the care and  
1572 custody of inmates under the contractor's supervision and for  
1573 any breach of contract.

1574 (2) (a) The training requirements, including inservice  
1575 training requirements, for employees of a contractor that  
1576 assumes the responsibility for the operation and maintenance of  
1577 a contractor-operated ~~private~~ correctional facility must meet or  
1578 exceed the requirements for similar employees of the department  
1579 or the training requirements mandated for accreditation by the  
1580 American Correctional Association, whichever of those  
1581 requirements are the more demanding. All employee training  
1582 expenses are the responsibility of the contractor.

1583 (b) Employees of a contractor who are responsible for the  
1584 supervision of inmates shall have the same legal authority to  
1585 rely on nondeadly and deadly force as do similar employees of  
1586 the department.

1587 (3) Any contractor or person employed by a contractor  
1588 operating a correctional or detention facility pursuant to a  
1589 contract executed under this chapter shall be exempt from the  
1590 requirements of chapter 493, relating to licensure of private  
1591 investigators and security officers.

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1592 Section 45. Subsection (2) of section 957.06, Florida  
1593 Statutes, is amended to read:

1594 957.06 Powers and duties not delegable to contractor.—A  
1595 contract entered into under this chapter does not authorize,  
1596 allow, or imply a delegation of authority to the contractor to:

1597 (2) Choose the facility to which an inmate is initially  
1598 assigned or subsequently transferred. The contractor may  
1599 request, in writing, that an inmate be transferred to a facility  
1600 operated by the department. The contractor and the department  
1601 shall develop and implement a cooperative agreement for  
1602 transferring inmates between a correctional facility operated by  
1603 the department and a contractor-operated ~~private~~ correctional  
1604 facility. The department and the contractor must comply with the  
1605 cooperative agreement.

1606 Section 46. Section 957.08, Florida Statutes, is amended  
1607 to read:

1608 957.08 Capacity requirements.—The department shall  
1609 transfer and assign prisoners to each contractor-operated  
1610 ~~private~~ correctional facility opened pursuant to this chapter in  
1611 an amount not less than 90 percent or more than 100 percent of  
1612 the capacity of the facility pursuant to the contract. The  
1613 prisoners transferred by the department shall represent a cross-  
1614 section of the general inmate population, based on the grade of  
1615 custody or the offense of conviction, at the most comparable  
1616 facility operated by the department.

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1617 Section 47. Subsection (1) of section 957.09, Florida  
1618 Statutes, is amended to read:

1619 957.09 Applicability of chapter to other provisions of  
1620 law.—

1621 (1)(a) Any offense that if committed at a state  
1622 correctional facility would be a crime is a crime if committed  
1623 by or with regard to inmates at contractor-operated ~~private~~  
1624 correctional facilities operated pursuant to a contract entered  
1625 into under this chapter.

1626 (b) All laws relating to commutation of sentences, release  
1627 and parole eligibility, and the award of sentence credits apply  
1628 to inmates incarcerated in a contractor-operated ~~private~~  
1629 correctional facility operated pursuant to a contract entered  
1630 into under this chapter.

1631 Section 48. Section 957.13, Florida Statutes, is amended  
1632 to read:

1633 957.13 Background checks.—

1634 (1) The Florida Department of Law Enforcement may accept  
1635 fingerprints of individuals who apply for employment at a  
1636 contractor-operated ~~private~~ correctional facility and who are  
1637 required to have background checks under the provisions of this  
1638 chapter.

1639 (2) The Florida Department of Law Enforcement may, to the  
1640 extent provided for by federal law, provide for the exchange of  
1641 state, multistate, and federal criminal history records of

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1642 individuals who apply for employment at a contractor-operated  
1643 ~~private~~ correctional facility for the purpose of conducting  
1644 background checks as required by law or contract.

1645 Section 49. Section 957.14, Florida Statutes, is amended  
1646 to read:

1647 957.14 Contract termination and control of a correctional  
1648 facility by the department.—A detailed plan shall be provided by  
1649 a private vendor under which the department shall assume  
1650 temporary control of a contractor-operated ~~private~~ correctional  
1651 facility upon termination of the contract. The department may  
1652 terminate the contract with cause after written notice of  
1653 material deficiencies and after 60 workdays in order to correct  
1654 the material deficiencies. If any event occurs that involves the  
1655 noncompliance with or violation of contract terms and that  
1656 presents a serious threat to the safety, health, or security of  
1657 the inmates, employees, or the public, the department may  
1658 temporarily assume control of the contractor-operated ~~private~~  
1659 correctional facility. A plan shall also be provided by a  
1660 private vendor for the purchase and temporary assumption of  
1661 operations of a correctional facility by the department in the  
1662 event of bankruptcy or the financial insolvency of the private  
1663 vendor. The private vendor shall provide an emergency plan to  
1664 address inmate disturbances, employee work stoppages, strikes,  
1665 or other serious events in accordance with standards of the  
1666 American Correctional Association.

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1667 Section 50. Paragraph (p) of subsection (1) of section  
1668 960.001, Florida Statutes, is amended to read:

1669 960.001 Guidelines for fair treatment of victims and  
1670 witnesses in the criminal justice and juvenile justice systems.—

1671 (1) The Department of Legal Affairs, the state attorneys,  
1672 the Department of Corrections, the Department of Juvenile  
1673 Justice, the Florida Commission on Offender Review, the State  
1674 Courts Administrator and circuit court administrators, the  
1675 Department of Law Enforcement, and every sheriff's department,  
1676 police department, or other law enforcement agency as defined in  
1677 s. 943.10(4) shall develop and implement guidelines for the use  
1678 of their respective agencies, which guidelines are consistent  
1679 with the purposes of this act and s. 16(b), Art. I of the State  
1680 Constitution and are designed to implement s. 16(b), Art. I of  
1681 the State Constitution and to achieve the following objectives:

1682 (p) *Information concerning escape from a state*  
1683 *correctional institution, county jail, juvenile detention*  
1684 *facility, or residential commitment facility.*—In any case where  
1685 an offender escapes from a state correctional institution,  
1686 contractor-operated ~~private~~ correctional facility, county jail,  
1687 juvenile detention facility, or residential commitment facility,  
1688 the institution of confinement shall immediately notify the  
1689 state attorney of the jurisdiction where the criminal charge or  
1690 petition for delinquency arose and the judge who imposed the  
1691 sentence of incarceration. The state attorney shall thereupon

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1692 make every effort to notify the victim, material witness,  
1693 parents or legal guardian of a minor who is a victim or witness,  
1694 or immediate relatives of a homicide victim of the escapee. The  
1695 state attorney shall also notify the sheriff of the county where  
1696 the criminal charge or petition for delinquency arose. The  
1697 sheriff shall offer assistance upon request. When an escaped  
1698 offender is subsequently captured or is captured and returned to  
1699 the institution of confinement, the institution of confinement  
1700 shall again immediately notify the appropriate state attorney  
1701 and sentencing judge pursuant to this section.

1702 Section 51. Paragraph (a) of subsection (3) of section  
1703 985.481, Florida Statutes, is amended to read:

1704 985.481 Sexual offenders adjudicated delinquent;  
1705 notification upon release.—

1706 (3)(a) The department shall provide information regarding  
1707 any sexual offender who is being released after serving a period  
1708 of residential commitment under the department for any offense,  
1709 as follows:

1710 1. The department shall provide the sexual offender's  
1711 name, any change in the offender's name by reason of marriage or  
1712 other legal process, and any alias, if known; the correctional  
1713 facility from which the sexual offender is released; the sexual  
1714 offender's social security number, race, sex, date of birth,  
1715 height, weight, and hair and eye color; tattoos or other  
1716 identifying marks; the make, model, color, vehicle

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1717 identification number (VIN), and license tag number of all  
1718 vehicles owned; address of any planned permanent residence or  
1719 temporary residence, within the state or out of state, including  
1720 a rural route address and a post office box; if no permanent or  
1721 temporary address, any transient residence within the state;  
1722 address, location or description, and dates of any known future  
1723 temporary residence within the state or out of state; date and  
1724 county of disposition and each crime for which there was a  
1725 disposition; a copy of the offender's fingerprints, palm prints,  
1726 and a digitized photograph taken within 60 days before release;  
1727 the date of release of the sexual offender; all home telephone  
1728 numbers and cellular telephone numbers required to be provided  
1729 pursuant to s. 943.0435(4)(e); all electronic mail addresses and  
1730 Internet identifiers required to be provided pursuant to s.  
1731 943.0435(4)(e); information about any professional licenses the  
1732 offender has, if known; and passport information, if he or she  
1733 has a passport, and, if he or she is an alien, information about  
1734 documents establishing his or her immigration status. The  
1735 department shall notify the Department of Law Enforcement if the  
1736 sexual offender escapes, absconds, or dies. If the sexual  
1737 offender is in the custody of a contractor-operated ~~private~~  
1738 correctional facility, the facility shall take the digitized  
1739 photograph of the sexual offender within 60 days before the  
1740 sexual offender's release and also place it in the sexual  
1741 offender's file. If the sexual offender is in the custody of a

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1742 local jail, the custodian of the local jail shall register the  
1743 offender within 3 business days after intake of the offender for  
1744 any reason and upon release, and shall notify the Department of  
1745 Law Enforcement of the sexual offender's release and provide to  
1746 the Department of Law Enforcement the information specified in  
1747 this subparagraph and any information specified in subparagraph  
1748 2. which the Department of Law Enforcement requests.

1749 2. The department may provide any other information  
1750 considered necessary, including criminal and delinquency  
1751 records, when available.

1752 Section 52. Paragraph (h) of subsection (1), paragraph (a)  
1753 of subsection (6), and subsection (12) of section 985.4815,  
1754 Florida Statutes, are amended to read:

1755 985.4815 Notification to Department of Law Enforcement of  
1756 information on juvenile sexual offenders.—

1757 (1) As used in this section, the term:

1758 (h) "Sexual offender" means a person who is in the care or  
1759 custody or under the jurisdiction or supervision of the  
1760 department or is in the custody of a contractor-operated ~~private~~  
1761 correctional facility and who:

1762 1. Has been adjudicated delinquent as provided in s.  
1763 943.0435(1)(h)1.d.; or

1764 2. Establishes or maintains a residence in this state and  
1765 has not been designated as a sexual predator by a court of this  
1766 state but has been designated as a sexual predator, as a

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1767 sexually violent predator, or by another sexual offender  
1768 designation in another state or jurisdiction and was, as a  
1769 result of such designation, subjected to registration or  
1770 community or public notification, or both, or would be if the  
1771 person were a resident of that state or jurisdiction, without  
1772 regard to whether the person otherwise meets the criteria for  
1773 registration as a sexual offender.

1774 (6) (a) The information provided to the Department of Law  
1775 Enforcement must include the following:

1776 1. The information obtained from the sexual offender under  
1777 subsection (4).

1778 2. The sexual offender's most current address and place of  
1779 permanent, temporary, or transient residence within the state or  
1780 out of state, and address, location or description, and dates of  
1781 any current or known future temporary residence within the state  
1782 or out of state, while the sexual offender is in the care or  
1783 custody or under the jurisdiction or supervision of the  
1784 department in this state, including the name of the county or  
1785 municipality in which the offender permanently or temporarily  
1786 resides, or has a transient residence, and address, location or  
1787 description, and dates of any current or known future temporary  
1788 residence within the state or out of state; and, if known, the  
1789 intended place of permanent, temporary, or transient residence,  
1790 and address, location or description, and dates of any current

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1791 or known future temporary residence within the state or out of  
1792 state upon satisfaction of all sanctions.

1793 3. The legal status of the sexual offender and the  
1794 scheduled termination date of that legal status.

1795 4. The location of, and local telephone number for, any  
1796 department office that is responsible for supervising the sexual  
1797 offender.

1798 5. An indication of whether the victim of the offense that  
1799 resulted in the offender's status as a sexual offender was a  
1800 minor.

1801 6. The offense or offenses at adjudication and disposition  
1802 that resulted in the determination of the offender's status as a  
1803 sex offender.

1804 7. A digitized photograph of the sexual offender, which  
1805 must have been taken within 60 days before the offender was  
1806 released from the custody of the department or a contractor-  
1807 operated ~~private~~ correctional facility by expiration of sentence  
1808 under s. 944.275, or within 60 days after the onset of the  
1809 department's supervision of any sexual offender who is on  
1810 probation, postcommitment probation, residential commitment,  
1811 nonresidential commitment, licensed child-caring commitment,  
1812 community control, conditional release, parole, provisional  
1813 release, or control release or who is supervised by the  
1814 department under the Interstate Compact Agreement for  
1815 Probationers and Parolees. If the sexual offender is in the

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1816 custody of a contractor-operated ~~private~~ correctional facility,  
1817 the facility shall take a digitized photograph of the sexual  
1818 offender within the time period provided in this subparagraph  
1819 and shall provide the photograph to the department.

1820 (12) Any person who has reason to believe that a sexual  
1821 offender is not complying, or has not complied, with the  
1822 requirements of this section and who, with the intent to assist  
1823 the sexual offender in eluding a law enforcement agency that is  
1824 seeking to find the sexual offender to question the sexual  
1825 offender about, or to arrest the sexual offender for, his or her  
1826 noncompliance with the requirements of this section:

1827 (a) Withholds information from, or does not notify, the  
1828 law enforcement agency about the sexual offender's noncompliance  
1829 with the requirements of this section and, if known, the  
1830 whereabouts of the sexual offender;

1831 (b) Harbors, attempts to harbor, or assists another person  
1832 in harboring or attempting to harbor the sexual offender;

1833 (c) Conceals, attempts to conceal, or assists another  
1834 person in concealing or attempting to conceal the sexual  
1835 offender; or

1836 (d) Provides information to the law enforcement agency  
1837 regarding the sexual offender that the person knows to be false  
1838  
1839 commits a felony of the third degree, punishable as provided in  
1840 s. 775.082, s. 775.083, or s. 775.084. This subsection does not

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1841 apply if the sexual offender is incarcerated in or is in the  
1842 custody of a state correctional facility, a contractor-operated  
1843 ~~private~~ correctional facility, a local jail, or a federal  
1844 correctional facility.

1845 Section 53. This act shall take effect July 1, 2024.

1846

1847 -----

1848 **T I T L E A M E N D M E N T**

1849 Remove everything before the enacting clause and insert:

1850 An act relating to Department of Corrections; amending

1851 s. 944.31, F.S.; providing additional authority for

1852 law enforcement officers of the office of the

1853 inspector general concerning department and

1854 contractor-operated correctional facilities; amending

1855 s. 957.04, F.S.; providing that correctional

1856 privatization contracts are not exempt from specified

1857 state contracting provisions unless otherwise

1858 specified; providing construction; conforming

1859 provisions to changes made by the act; amending s.

1860 944.710, F.S.; renaming the term "private correctional

1861 facility" as "contractor-operated correctional

1862 facility"; renaming the term "private correctional

1863 officer" as "contractor-employed correctional

1864 officer"; conforming provisions to changes made by the

1865 act; amending s. 957.07, F.S.; revising terminology;

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1337 (2024)

Amendment No. 1

1866 deleting provisions concerning development of  
1867 consensus per diem rates by the Prison Per-Diem  
1868 Workgroup; conforming a provision to changes made by  
1869 the act; amending s. 957.12, F.S.; revising provisions  
1870 concerning contact with the department by specified  
1871 persons; conforming a provision to changes made by the  
1872 act; amending s. 957.15, F.S.; deleting a provision  
1873 concerning department control over certain funds  
1874 appropriated for contractor-operated correctional  
1875 facilities; conforming a provision to changes made by  
1876 the act; amending ss. 330.41, 553.865, 633.218,  
1877 775.21, 775.261, 784.078, 800.09, 943.0435, 943.13,  
1878 943.325, 944.105, 944.151, 944.17, 944.35, 944.40,  
1879 944.605, 944.606, 944.607, 944.608, 944.609, 944.7031,  
1880 944.714, 944.715, 944.716, 944.717, 944.718, 944.719,  
1881 944.72, 944.801, 944.803, 945.10, 945.215, 945.6041,  
1882 946.5025, 946.503, 951.062, 951.063, 957.05, 957.06,  
1883 957.08, 957.09, 957.13, 957.14, 960.001, 985.481, and  
1884 985.4815, F.S.; conforming provisions to changes made  
1885 by the act; providing an effective date.

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1443 Electronic Access to Official Records

**SPONSOR(S):** Persons-Mulicka

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N	Mathews	Jones
2) Justice Appropriations Subcommittee	12 Y, 0 N	Smith	Keith
3) Judiciary Committee		Mathews	Kramer

### SUMMARY ANALYSIS

Protective injunctions are available under Florida law for victims of the following forms of violence:

- Domestic violence;
- Repeat violence;
- Sexual violence;
- Dating violence; and
- Stalking.

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing each person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Independent of constitutional and statutory provisions that require court files to be generally open to the public, the courts have found that both civil and criminal court proceedings in Florida are public events, and that courts must adhere to the well-established common law right of access to court proceedings and records.

Through administrative rule, the Florida Supreme Court has adopted standards for access to electronic court records; however, clerk of court websites differ as to the level of case detail available electronically. Section 28.2221, F.S., requires the clerk of court or county recorder to make electronically available the identity of an adult respondent against whom a final judgment for an injunction for the protection of a minor has been entered. Current law only requires that such information be made available to the general public on an internet website. As such, it may be difficult for an interested party to find such information, despite it being made available somewhere on the internet.

HB 1443 amends s. 28.2221, F.S., to clarify that each clerk of court must make the identities of adults against whom a final judgment for an injunction for the protection of a minor has been entered, as specified under s. 28.2221, F.S., viewable to the general public through a searchable database on the clerk's own website. The database must be easily accessible in a clear and conspicuous location on the homepage of the clerk's website. The identity of the adult respondent and the fact that he or she is the subject of a final judgment for an injunction for the protection of a minor must be made available for search by the general public. Additionally, the bill requires each clerk to post a notice on its homepage that any affected party may request the addition of the identity of such a respondent to the database if he or she is not already included.

The bill has no impact on state government and an indeterminate fiscal impact on local government. See Fiscal Analysis & Economic Impact Statement.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Protective Injunctions

An injunction is a court order prohibiting a person from doing a specified act or commanding a person to undo some wrong or injury.<sup>1</sup> Protective injunctions are available under Florida law for victims of the following forms of violence:

- Domestic violence;<sup>2</sup>
- Repeat violence;<sup>3</sup>
- Sexual violence;<sup>4</sup>
- Dating violence;<sup>5</sup> and
- Stalking.<sup>6</sup>

Depending on the type of injunction issued, a protective injunction may prohibit a person from:

- Remaining in the dwelling that the respondent shares with the petitioner;
- Going to or being within 500 feet of the petitioner's residence, school, place of employment, or other specified place;
- Committing an act of domestic violence or threatening to commit an act of violence against the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle;
- Defacing or destroying the petitioner's personal property; or
- Maintaining possession of firearms or ammunition.<sup>7</sup>

A court may also require a respondent to complete a batterer's intervention program.<sup>8</sup> Violation of a protective injunction is a first-degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.<sup>9</sup>

A petitioner seeking a protective injunction must allege in a sworn petition that:

- He or she is a victim of domestic violence; repeat, sexual, or dating violence; or stalking; or
- In the case of a petition for a domestic violence injunction, he or she has reasonable cause to believe he or she is in imminent danger of such violence.<sup>10</sup>

As soon as possible following the filing of the petition, a court must review the petition and determine whether stalking exists, or whether an immediate and present danger of alleged violence exists, as applicable.<sup>11</sup> If the court finds the petitioner is a victim of stalking or is in immediate and present danger of violence, it may grant a temporary injunction in an ex parte proceeding,<sup>12</sup> pending a final hearing,

---

<sup>1</sup> Black's Law Dictionary 540 (6th ed. 1995).

<sup>2</sup> Domestic violence is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Ss. 741.28(2) and 741.30, F.S.

<sup>3</sup> S. 784.046, F.S.

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

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

<sup>6</sup> S. 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This process largely parallels the provisions and procedures relating to domestic violence injunctions.

<sup>7</sup> S. 741.31, F.S.

<sup>8</sup> *Id.*; s. 741.30, F.S.

<sup>9</sup> Ss. 741.31, 775.082, 775.083, 784.047, and 784.0487, F.S.

<sup>10</sup> Ss. 741.30(1)(a), 784.046, and 784.0485, F.S.



and grant relief including, but not limited to, restraining the respondent from committing any acts of domestic violence or stalking, as applicable; and in the case of domestic violence:

- Awarding to the petitioner the temporary exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence; and
- Providing to the petitioner a temporary parenting plan,<sup>13</sup> including a timesharing schedule,<sup>14</sup> which may award the petitioner up to 100 percent of the timesharing.<sup>15</sup>

Upon review of the petition, a court must set a final evidentiary hearing with notice to the respondent, and upon such hearing with notice, may grant protective injunctive relief as it deems proper.<sup>16</sup> Such injunctive relief may be for a set period of time as ordered by the court or may be granted indefinitely or permanently.

### Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>17</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act (OGSRA)<sup>18</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>19</sup> However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protecting trade or business secrets.<sup>20</sup>

The OGSRA does not apply to an exemption that applies solely to the Legislature or the State Court System.<sup>21</sup> Further, the OGSRA does not apply to an amendment to public records law that narrows the scope of an existing exemption.<sup>22</sup>

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<sup>11</sup> Ss. 741.30(5)(a), 784.046, and 784.0485, F.S.

<sup>12</sup> "Ex parte," Latin for "from one party," refers to motions for orders that can be granted without waiting for a response from the other side. These are generally orders that are in place only until further hearings can be held. Legal Information Institute, *Ex Parte*, [https://www.law.cornell.edu/wex/ex\\_parte](https://www.law.cornell.edu/wex/ex_parte) (last visited Feb. 6, 2024).

<sup>13</sup> A "parenting plan" governs the relationship between parents relating to decisions that must be made regarding the minor child and must contain a timesharing schedule for the parents and child. S. 61.046(14), F.S.

<sup>14</sup> "Timesharing schedule" means a timetable that must be included in a parenting plan that specifies the time, including overnights and holidays, which a minor child will spend with each parent. S. 61.046(23), F.S.

<sup>15</sup> S. 741.30(5)(a), F.S.

<sup>16</sup> Ss. 741.30(6)(a), 784.046, and 784.0485, F.S.

<sup>17</sup> Art. I, s. 24(c), Fla. Const.

<sup>18</sup> S. 119.15, F.S.

<sup>19</sup> S. 119.15(6)(b), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 119.15(2)(b), F.S.

<sup>22</sup> S. 119.15(4)(b), F.S.

Independent of constitutional and statutory provisions that require court files to be generally open to the public, case law provides that "both civil and criminal court proceedings in Florida are public events" and that courts must "adhere to the well-established common law right of access to court proceedings and records."<sup>23</sup> A court may close a court file or a portion thereof on equitable grounds, but its ability to do so is limited. The Florida Supreme Court has ruled that closure of court proceedings or records should occur only when necessary to:

- Comply with established public policy set forth in the constitution, statutes, rules, or case law.
- Protect trade secrets.
- Protect a compelling governmental interest such as national security or the identity of confidential informants.
- Obtain evidence to properly determine legal issues in a case.
- Avoid substantial injury to innocent third parties, such as to protect a child in a divorce.
- Avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.<sup>24</sup>

Currently, s. 119.0714(1), F.S., provides public record exemptions for several types of personal information contained in court files, including, but not limited to:

- Records prepared by an agency attorney;<sup>25</sup>
- Various law enforcement confidential records;<sup>26</sup>
- Social security numbers;<sup>27</sup>
- Bank account numbers; and
- A petition for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking and cyberstalking that has been dismissed without a hearing, dismissed due failure to state a claim or lack of jurisdiction, or dismissed for any other reason having to do with the sufficiency of the petition itself without an injunction being issued.<sup>28</sup>

#### *Access to Electronic Court Records*

Through administrative rule, the Florida Supreme Court has adopted standards for access to electronic court records and an access security matrix.<sup>29</sup> There are different levels of permissible access depending on "the user's role and applicable statutes, court rules, and applicable administrative policy. Access may be restricted to certain user roles based on case type, document type, or information contained within court records."<sup>30</sup>

Current law authorizes access for the general public for all records except those that are expunged or sealed, automatically confidential under Rule 2.420(d)(1), Fla. R. Jud. Admin.,<sup>31</sup> or made confidential by court order. However, the general public may not remotely access images of records in cases governed

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<sup>23</sup> *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 116 (Fla. 1988).

<sup>24</sup> *Id.* at 118.

<sup>25</sup> S. 119.0714(1)(a), F.S.

<sup>26</sup> S. 119.0714, F.S.

<sup>27</sup> S. 119.0714(1)(i), F.S.

<sup>28</sup> S. 119.0714(1)(j), F.S.

<sup>29</sup> Fla. Office of the State Courts Administrator, *Standards for Access to Electronic Court Records* (Sept. 2022), <https://www.flcourts.gov/content/download/850949/file/standards-for-access-to-electronic-court-records-september-2022.pdf> (last visited Feb. 6, 2024).

<sup>30</sup> *Id.*

<sup>31</sup> Pursuant to Rule 2.420(d)(1), Fla. R. of Judicial Admin., certain matters are automatically confidential, including, but not limited to, adoption records, chapter 39 records relating to dependency matters and termination of parental rights, clinical records under the Baker Act, the victim's address in domestic violence matters, protected information regarding victims of child abuse or sexual offenses, and information that can be used to identify a petitioner or respondent in a petition for injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking.

by the Florida Family Law Rules of Procedure, Florida Rules of Juvenile Procedure, or Florida Probate Rules, pursuant to s. 28.2221(5)(a), F.S.<sup>32</sup>

### *Serena's Law*

Pursuant to s. 28.2221, F.S., each county recorder or clerk of court must post on its website the identity of a respondent against whom a final judgment for an injunction for protection of a minor under ss. 741.30 (relating to domestic violence), 784.046 (relating to repeat, sexual, or dating violence), or 784.0485 (relating to stalking), F.S., is issued, unless the respondent is a minor.

Although administrative rules require electronic access to certain court records, clerk of court websites differ on how much case detail is available electronically. As a result, when a criminal case is not prosecuted but a civil protective injunction is obtained against a perpetrator, potential employers and other members of the public may have difficulty discovering or be unable to discover that injunction, including through the use of a third-party background check.

### **Effect of Proposed Changes**

HB 1443 amends s. 28.2221, F.S., to clarify that each clerk of court, as opposed to either a clerk of court or the county recorder, must make available the identity of a respondent against whom a final judgment for an injunction for protection of a minor from domestic violence, repeat violence, sexual violence, dating violence, or stalking is issued, unless the respondent is also a minor. Such information must be viewable through a searchable database that is available in a clear and conspicuous location on the homepage of the clerk's official website. The required information must be made available for search by the general public.

The bill requires that the clerk's website must provide clear and conspicuous notice of the right of any affected party to request the addition to the database of the identity of a respondent against whom such an injunction has been issued if the respondent's identity is not already included. The notice provision informs a victim or other affected party of the manner by which he or she may request that the identity of a respondent which is not currently published online under s. 28.2221, F.S., be added to the database.

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

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 28.2221, F.S., relating to electronic access to official records.

**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:

None.

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

1. Revenues:

None.

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<sup>32</sup> *Supra* note 33 at 6.  
**STORAGE NAME:** h1443d.JDC  
**DATE:** 2/19/2024

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an insignificant, yet indeterminate fiscal impact on clerks of the court expenditures related to creating the searchable database as prescribed under the bill. If current databases or indices of Official Records could be utilized, there would be no additional cost to the clerks. In the event that individual clerks' offices are required to create a new database in order to comply with the provisions of the bill, an indeterminate negative fiscal impact could be realized.<sup>33</sup> However, statewide revenue projections for funding received by the clerks' Fine and Forfeiture Funds are forecasted to increase by \$5.7 million in Fiscal Year 2023-24 and by \$5.4 million in Fiscal Year 2024-25<sup>34</sup>, which could help offset any potential impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill creates new requirements for a clerk of court; however, an exemption may apply because the fiscal impact may be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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<sup>33</sup> Florida Association of Court Clerks and Comptrollers, Agency Analysis of 2024 House Bill 1443, p. 2 (Feb. 1, 2024).

<sup>34</sup> Office of Economic and Demographic Research, Revenue Estimating Conference, Article V Fees & Transfers, Executive Summary, p. 2 (Dec. 20, 2023). <http://edr.state.fl.us/Content/conferences/articleV/ArticleVsummary.pdf> (last visited Feb. 6, 2024).

1                                   A bill to be entitled  
 2           An act relating to electronic access to official  
 3           records; amending s. 28.2221, F.S.; requiring the  
 4           county clerk of the court to make certain information  
 5           available in a searchable database on the clerk's  
 6           official website; providing an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Subsection (8) of section 28.2221, Florida  
 11           Statutes, is amended to read:

12           28.2221 Electronic access to official records.—

13           (8)(a) Each county ~~recorder or~~ clerk of the court must  
 14           make the identity of each respondent against whom a final  
 15           judgment for an injunction for the protection of a minor under  
 16           s. 741.30, s. 784.046, or s. 784.0485 is entered, as well as the  
 17           fact that a final judgment for an injunction for the protection  
 18           of a minor under s. 741.30, s. 784.046, or s. 784.0485 has been  
 19           entered against that respondent, publicly available on the  
 20           clerk's official website, ~~an Internet website for general public~~  
 21           ~~display, which may include the Internet website required by this~~  
 22           ~~section,~~ unless the respondent is a minor. The identity and  
 23           information required under this subsection must be viewable  
 24           through a searchable database that is available in a clear and  
 25           conspicuous location on the homepage of the clerk's official

26 | website and must be available for search by the general public.

27 |       (b) Any information specified in this subsection not made  
 28 | available by the county ~~recorder or~~ clerk of the court as  
 29 | provided in this subsection ~~on a publicly available Internet~~  
 30 | ~~website for general public display~~ before July 1, 2024 ~~2021~~,  
 31 | must be made publicly available on the clerk of the court's  
 32 | official ~~an Internet~~ website if the affected party identifies  
 33 | the information and requests that such information be added ~~to a~~  
 34 | ~~publicly available Internet website~~ for general public display.  
 35 | Such request must be in writing and delivered by mail,  
 36 | facsimile, or electronic transmission or in person to the county  
 37 | ~~recorder or~~ clerk of the court. The request must specify the  
 38 | case number assigned to the final judgment for an injunction for  
 39 | the protection of a minor under s. 741.30, s. 784.046, or s.  
 40 | 784.0485. A fee may not be charged for the addition of  
 41 | information pursuant to such request.

42 |       (c) No later than 30 days after July 1, 2024 ~~2021~~, notice  
 43 | of the right of any affected party to request the addition of  
 44 | information to the searchable database on the clerk of court's  
 45 | official ~~a publicly available Internet~~ website pursuant to this  
 46 | subsection must ~~shall~~ be conspicuously and clearly displayed by  
 47 | the county ~~recorder or~~ clerk of the court on the clerk's  
 48 | official ~~publicly available Internet~~ website on which images or  
 49 | copies of the county's public records are placed and in the  
 50 | office of each county ~~recorder or~~ clerk of the court. Such

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51 notice must contain appropriate instructions for making the  
52 addition of information request in person, by mail, by  
53 facsimile, or by electronic transmission. The notice must state,  
54 in substantially similar form, that any person has a right to  
55 request that a county ~~recorder or~~ clerk of the court add  
56 information to the searchable database on the clerk of court's  
57 official ~~a publicly available Internet~~ website if that  
58 information involves the identity of a respondent against whom a  
59 final judgment for an injunction for the protection of a minor  
60 under s. 741.30, s. 784.046, or s. 784.0485 is entered, unless  
61 the respondent is a minor. Such request must be made in writing  
62 and delivered by mail, facsimile, or electronic transmission or  
63 in person to the county ~~recorder or~~ clerk of the court. The  
64 request must specify the case number assigned to the final  
65 judgment for an injunction for the protection of a minor under  
66 s. 741.30, s. 784.046, or s. 784.0485. A fee may not be charged  
67 for the addition of a document pursuant to such request.

68 (d) Any affected person may petition the circuit court for  
69 an order directing compliance with this subsection.

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

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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Persons-Mulicka offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsection (8) of section 28.2221, Florida Statutes, is amended to read:

28.2221 Electronic access to official records.—

(8) (a) Each county recorder or clerk of the court must make the identity of each respondent against whom a final judgment for an injunction for the protection of a minor under s. 741.30, s. 784.046, or s. 784.0485 is entered, as well as the fact that a final judgment for an injunction for the protection of a minor under s. 741.30, s. 784.046, or s. 784.0485 has been entered against that respondent, publicly available on the county recorder or clerk's official website, ~~an Internet website~~



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17 ~~for general public display, which may include the Internet~~  
18 ~~website required by this section,~~ unless the respondent is a  
19 minor. The identity and information required under this  
20 subsection must be viewable through a searchable database that  
21 is available in a clear and conspicuous location on the homepage  
22 of the county recorder or clerk's official website and must be  
23 available for search by the general public.

24 (b) The requirement in paragraph (a) may be satisfied by  
25 providing a standalone link to the official records index. Such  
26 link must be located in a clear and conspicuous location on the  
27 homepage of the county recorder or clerk of court's official  
28 website and must be available for search by the general public.  
29 The link must be titled in a manner that clearly informs the  
30 user that by clicking the link, the user will be redirected to a  
31 searchable database where information available pursuant to this  
32 section relating to the identity of an individual against whom a  
33 final judgment for injunction for the protection of a minor can  
34 be found.

35 (c) ~~(b)~~ Any information specified in this subsection not  
36 made available by the county recorder or clerk of the court as  
37 provided in this subsection ~~on a publicly available Internet~~  
38 website for general public display before July 1, 2024 ~~2021~~,  
39 must be made publicly available on the county recorder or clerk  
40 of the court's official ~~an Internet~~ website if the affected  
41 party identifies the information and requests that such

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42 information be added ~~to a publicly available Internet website~~  
43 for general public display. Such request must be in writing and  
44 delivered by mail, facsimile, or electronic transmission or in  
45 person to the county recorder or clerk of the court. The request  
46 must specify the case number assigned to the final judgment for  
47 an injunction for the protection of a minor under s. 741.30, s.  
48 784.046, or s. 784.0485. A fee may not be charged for the  
49 addition of information pursuant to such request.

50 (c) No later than 30 days after July 1, 2024 ~~2021~~, notice  
51 of the right of any affected party to request the addition of  
52 information to the searchable database on the county recorder or  
53 clerk of court's official ~~a publicly available Internet website~~  
54 pursuant to this subsection must ~~shall~~ be conspicuously and  
55 clearly displayed by the county recorder or clerk of the court  
56 on the county recorder or clerk's official ~~publicly available~~  
57 ~~Internet~~ website on which images or copies of the county's  
58 public records are placed and in the office of each county  
59 recorder or clerk of the court. Such notice must contain  
60 appropriate instructions for making the addition of information  
61 request in person, by mail, by facsimile, or by electronic  
62 transmission. The notice must state, in substantially similar  
63 form, that any person has a right to request that a county  
64 recorder or clerk of the court add information to the searchable  
65 database on the county recorder or clerk of court's official ~~a~~  
66 ~~publicly available Internet~~ website if that information involves

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67 the identity of a respondent against whom a final judgment for  
68 an injunction for the protection of a minor under s. 741.30, s.  
69 784.046, or s. 784.0485 is entered, unless the respondent is a  
70 minor. The notice must also state that the information related  
71 to the identity of each respondent against whom a final judgment  
72 for an injunction for the protection of a minor under s. 741.30,  
73 s. 784.046, or s. 784.0485 is entered is available for search by  
74 the general public. The notice must include step by step  
75 instructions detailing how a user can access the searchable  
76 database and search for such information. Such request must be  
77 made in writing and delivered by mail, facsimile, or electronic  
78 transmission or in person to the county recorder or clerk of the  
79 court. The request must specify the case number assigned to the  
80 final judgment for an injunction for the protection of a minor  
81 under s. 741.30, s. 784.046, or s. 784.0485. A fee may not be  
82 charged for the addition of a document pursuant to such request.

83 (d) Any affected person may petition the circuit court for  
84 an order directing compliance with this subsection.

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

86  
87 -----

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

89 Remove everything before the enacting clause and insert:  
90 An act relating to electronic access to official records;  
91 amending s. 28.2221, F.S.; requiring the county recorder or

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1443 (2024)

Amendment No. 1

92 clerk of the court to make certain information available at a  
93 link to a searchable database on the county recorder or clerk's  
94 official website; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1449    Reclassification of Criminal Penalties

**SPONSOR(S):** Michael

**TIED BILLS:**            **IDEN./SIM. BILLS:**    SB 1036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 3 N	Leshko	Hall
2) Justice Appropriations Subcommittee	8 Y, 4 N	Smith	Keith
3) Judiciary Committee		Leshko	Kramer

### SUMMARY ANALYSIS

The United States Customs and Border Protection (CBP) is the federal law enforcement agency responsible for securing the nation's borders and facilitating international travel and trade. The CBP's top priority is to keep terrorists and their weapons from entering the United States. In Federal Fiscal Year (FFY) 2023, the total enforcement actions of the Office of Field Operations and the U.S. Border Patrol were 1,137,452, and are 354,753 to date in FFY 2024, including apprehensions, inadmissibles, and expulsions. Criminal noncitizens encountered at the United States borders are a subset of the total inadmissibles encountered and United States Border Patrol arrests of criminal noncitizens are a subset of total apprehensions. Encounters with criminal noncitizens in FFY 2023 was 20,166 and has been 4,805 in FFY 2024 to date.

“Organized crime has been defined as ‘illegal activities, conducted by groups or networks acting in concert by engaging in violence, corruption or related activities in order to obtain, directly or indirectly, a financial or material benefit.’ Transnational organized crime occurs when these activities, or these groups or networks, operate in two or more countries.” Transnational criminal organizations engage in a broad range of criminal activities, including, but not limited to, drug and weapons trafficking, human smuggling, human trafficking, cybercrime, and money laundering, generating an estimated revenue of between \$1.6 trillion and \$2.2 trillion annually.

HB 1449 creates s. 775.0848, F.S., to require reclassification of any new felony committed by a person who unlawfully reenters the United States after having been deported or otherwise removed from the United States under federal immigration proceedings for committing a felony; or departing the United States while such an order of deportation or removal was outstanding.

The bill also creates s. 908.12, F.S., to require reclassification of any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, if a person committed the offense for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization. The bill defines “transnational crime organization” to mean an organization that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans.

Under the bill, qualifying offenses under ss. 775.0848 and 908.12, F.S., are reclassified 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.

The Criminal Justice Impact Conference met on February 12, 2024 and determined that the bill would have a positive insignificant 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:** h1449d.JDC

**DATE:** 2/19/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Immigration

The Federal Government establishes and enforces immigration laws. The federal Immigration and Nationality Act (INA) contains many of the most important provisions of immigration law.<sup>1</sup>

The Department of Homeland Security, the United States Immigration and Customs Enforcement, Enforcement and Removal Operations, is responsible for enforcing the immigration laws and identifying, apprehending, and removing aliens who are a risk to national security or public safety, who are in the country illegally, or who undermine the integrity of the country's immigration laws or border control efforts.<sup>2</sup>

The United States Customs and Border Protection (CBP) is the federal law enforcement agency responsible for securing the nation's borders and facilitating international travel and trade. The CBP's top priority is to keep terrorists and their weapons from entering the United States.

In Federal Fiscal Year (FFY) 2023,<sup>3</sup> the total enforcement actions of the Office of Field Operations (OFO) and the U.S. Border Patrol (USBP)<sup>4</sup> were 1,137,452, and are 354,753 to date in FFY 2024, including apprehensions, inadmissibles, and expulsions,<sup>5, 6</sup>

Criminal noncitizens<sup>7</sup> encountered at the United States borders are a subset of the total inadmissibles encountered and United States Border Patrol arrests of criminal noncitizens are a subset of total apprehensions. Encounters with criminal noncitizens for the past five years at all land borders were:<sup>8</sup>

FFY 2020	FFY 2021	FFY 2022	FFY 2023	FFY 2024 (to date)
7,009	6,567	16,993	20,166	4,805

##### Transnational Crime Organizations

"Organized crime has been defined as 'illegal activities, conducted by groups or networks acting in concert by engaging in violence, corruption or related activities in order to obtain, directly or indirectly, a financial or material benefit.' Transnational organized crime occurs when these activities, or these

<sup>1</sup> 8 U.S.C. §§ 1101-1778.

<sup>2</sup> U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations, Mission*, <https://www.ice.gov/ero> (last visited Jan. 27, 2024).

<sup>3</sup> The federal fiscal year runs October 1 – September 30.

<sup>4</sup> Both are federal law enforcement agencies under CBP.

<sup>5</sup> CBP, *CBP Enforcement Statistics Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Feb. 15, 2024).

<sup>6</sup> These figures include both Title 8 enforcement actions and Title 42 expulsions. Title 8 enforcement actions include apprehensions or inadmissibles. Inadmissibles refers to individuals encountered at ports of entry who are seeking lawful admission into the U.S. but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe. Apprehensions refers to the physical control or temporary detainment of a person who is not lawfully in the U.S. which may or may not result in an arrest. Title 42 expulsions refers to individuals encountered by USBP or OFO and expelled to the country of last transit or home country in the interest of public health. CBP, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last visited Feb. 15, 2024).

<sup>7</sup> "Criminal noncitizens" refers to noncitizens who have been convicted of a crime, whether in the U.S. or abroad, so long as the conviction is for conduct which is deemed criminal in the United States. CBP, *CBP Enforcement Statistics Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Feb. 15, 2024).

<sup>8</sup> CBP, *supra* at note 5.

groups or networks, operate in two or more countries.”<sup>9</sup> Transnational crime organizations (TCOs) engage in a broad range of criminal activities, including, but not limited to, drug and weapons trafficking, human smuggling, human trafficking, cybercrime, and money laundering, generating an estimated revenue of between \$1.6 trillion and \$2.2 trillion annually.<sup>10</sup>

### *Drug Trafficking*

Drug trafficking is TCOs’ second-highest most profitable illicit activity.<sup>11</sup> TCOs’ expansion of drug trafficking is often accompanied by dramatic increases in local crime and corruption.<sup>12</sup>

Florida law prohibits a person from drug trafficking by knowingly selling, purchasing, manufacturing, delivering, or bringing into the state, or being in actual or constructive possession of, a specified quantity of a controlled substance.<sup>13</sup> Section 893.135, F.S., outlines threshold amounts of the applicable controlled substance for each trafficking offense.

### *Human Trafficking*

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person.<sup>14</sup> A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;<sup>15</sup>
- With or of a child or person believed to be a child younger than 18;<sup>16</sup> or
- If for commercial sexual activity, with a mentally defective<sup>17</sup> or mentally incapacitated<sup>18</sup> person.<sup>19</sup>

### *Human Smuggling*

Section 787.07, F.S., prohibits a person from transporting an individual into this state who the person knows, or should know, is illegally entering the United States from another country. A person commits a separate offense for each individual he or she transports into this state.

### Enhanced Penalties for Gang-Related Offenses

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<sup>9</sup> Dr. Marina Caparini, *Transnational organized crime A threat to global public goods*, Stockholm International Peace Research Institute (Sept. 2, 2022), <https://www.sipri.org/commentary/topical-backgrounder/2022/transnational-organized-crime-threat-global-public-goods> (last visited Feb. 15, 2024).

<sup>10</sup> Executive Order 14060, Establishing the United States Council on Transnational Organized Crime, 86 Fed. Reg. 71793 (Dec. 15, 2021).; See The White House, *FACT SHEET: The Biden Administration Launches New Efforts to Counter Transnational Criminal Organizations and Illicit Drugs*, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/15/fact-sheet-the-biden-administration-launches-new-efforts-to-counter-transnational-criminal-organizations-and-illicit-drugs/> (last visited Feb. 15, 2024) and Channing Mavrellis, *Transnational Crime and the Developing World*, Global Financial Integrity (Mar. 27, 2017), <https://gfintegrity.org/report/transnational-crime-and-the-developing-world/> (last visited Feb. 15, 2024).

<sup>11</sup> Channing Mavrellis, *supra* at note 11.

<sup>12</sup> National Security Council, *Transnational Organized Crime: A Growing Threat to National and International Security*, <https://obamawhitehouse.archives.gov/administration/eop/nsc/transnational-crime/threat> (last visited Feb. 15, 2024).

<sup>13</sup> Florida law criminalizes trafficking in cannabis; cocaine; illegal drugs, which include morphine, opium, hydromorphone, or any salt derivative, isomer, or salt of an isomer thereof, including heroin; hydrocodone, oxycodone, fentanyl; phenclidine; methaqualone; amphetamine; flunitrazepam; gamma-hydroxybutyric (GHB); gamma-butyrolactone (GBL); 1,4-Butanediol; phenethylamines; lysergic acid diethylamide (LSD); synthetic cannabinoids; and n-benzyl phenethylamines. S. 893.135, F.S.

<sup>14</sup> S. 787.06(2)(d), F.S.

<sup>15</sup> Ss. 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S.

<sup>16</sup> Ss. 787.06(3)(a)1., (c)1., (e)1., (f)1., and (g), F.S.

<sup>17</sup> Mentally defective means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. S. 794.011(1)(c), F.S.

<sup>18</sup> Mentally incapacitated means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. S. 794.011(1)(d), F.S.

<sup>19</sup> S. 787.06(3)(g), F.S.



Section 874.04, F.S., enhances the penalty for any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, if the commission of the offense is found to be for the purpose of benefiting, promoting, or furthering the interests of a criminal gang<sup>20</sup> as follows:

- A misdemeanor of the second-degree may be punished as if it were a misdemeanor of the first-degree.
- A misdemeanor of the first-degree may be punished as if it were a felony of the third-degree.<sup>21</sup>
- A felony of the third-degree may be punished as if it were a felony of the second-degree.
- A felony of the second-degree may be punished as if it were a felony of the first-degree.
- A felony of the first-degree may be punished as if it were a life felony.<sup>22</sup>

### Effect of Proposed Changes

HB 1449 creates s. 775.0848, F.S., to require reclassification of any new felony committed by a person who unlawfully reenters the United States after:

- Having been deported or otherwise removed from the United States under federal immigration proceedings for committing a felony; or
- Departing the United States while such an order of deportation or removal was outstanding.

The bill defines “removal” to mean any agreement in which a person stipulates to removal during a criminal proceeding under federal or state law.

The bill also creates s. 908.12, F.S., to require reclassification of any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, if a person committed the offense for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization.

The bill defines “transnational crime organization” to mean an organization that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans.

Under the bill, qualifying offenses under ss. 775.0848 and 908.12, F.S., are reclassified 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.

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

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 775.0848, F.S., relating to commission of a felony after unlawful reentry into the United States; reclassification.

**Section 2:** Creates s. 908.12, F.S., relating to transnational crime organizations; reclassification.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

<sup>20</sup> Section 874.03(1), F.S., defines “criminal gang” to mean a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols, including, but not limited to, terrorist organizations and hate groups.

<sup>21</sup> For purposes of sentencing such an offense is ranked as a level 1 offense on the Criminal Punishment Code offense severity ranking chart. S. 874.04(1)(b), F.S.

<sup>22</sup> For purposes of sentencing any such felony offenses enhanced under s. 874.04, F.S., are to be ranked on the OSRC without regard to the penalty enhancement.

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 Criminal Justice Impact Conference met on February 12, 2024 and determined that the bill would have a positive insignificant impact on jail and prison beds.<sup>23</sup> A positive insignificant impact would result in an impact of ten or fewer prison beds.

Per the Department of Corrections (DOC), in fiscal year 2022-23, 1,131 offenders designated as aliens were admitted to prison. Furthermore, 363 of these aliens were born in Cuba. However, aliens in the DOC database include suspected and confirmed aliens, and are also made up of inmates who were legal and illegal immigrants at the time of their offenses. It is not known how many of these inmates would fit this bill's criteria. Furthermore, it is not known how many misdemeanor or felony offenders committed their crimes to benefit, promote, or further the interests of a transnational crime organization.<sup>24</sup>

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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<sup>23</sup> Florida Office of Economic and Demographic Research, Criminal Justice Impact Conference, 2024 CS/SB 1036 (Similar HB 1449) February 12, 2024. <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSSB1036.pdf> (last visited Feb. 15, 2024).

<sup>24</sup> *Id.*

1 A bill to be entitled

2 An act relating to reclassification of criminal  
3 penalties; creating s. 775.0848, F.S.; defining the  
4 term "removal"; requiring reclassification of the  
5 penalty for the commission of a new felony committed  
6 by a person who unlawfully reenters the United States  
7 and while remaining unlawfully present after having  
8 been deported or removed from the United States under  
9 federal immigration proceedings for committing a  
10 felony, or who has departed the United States while  
11 such an order of deportation or removal was  
12 outstanding; creating s. 908.12, F.S.; defining the  
13 term "transnational crime organization"; authorizing  
14 reclassification of the penalty for any felony or  
15 misdemeanor offenses or certain other acts or  
16 violations upon a specified finding by the factfinder;  
17 specifying that the penalty enhancement affects only  
18 the applicable statutory maximum sentence; requiring  
19 that each of the findings required as a basis for such  
20 sentence be found beyond a reasonable doubt; providing  
21 an effective date.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25 Section 1. Section 775.0848, Florida Statutes, is created

26 | to read:

27 |       775.0848 Commission of a felony after unlawful reentry  
 28 | into the United States; reclassification.-

29 |       (1) As used in this section, the term "removal" means any  
 30 | agreement in which a person stipulates to removal during a  
 31 | criminal proceeding under federal or state law.

32 |       (2) A person who has been deported or removed from the  
 33 | United States under federal immigration proceedings for  
 34 | committing a felony, or has departed the United States while  
 35 | such an order of deportation or removal is outstanding, shall  
 36 | have the penalty for committing a new felony after unlawfully  
 37 | reentering the United States and while remaining unlawfully  
 38 | present reclassified in the following manner:

39 |       (a) A felony of the third degree is reclassified to a  
 40 | felony of the second degree.

41 |       (b) A felony of the second degree is reclassified to a  
 42 | felony of the first degree.

43 |       (c) A felony of the first degree is reclassified to a life  
 44 | felony.

45 |       Section 2. Section 908.12, Florida Statutes, is created to  
 46 | read:

47 |       908.12 Transnational crime organizations;  
 48 | reclassification.-

49 |       (1) As used in this section, the term "transnational crime  
 50 | organization" means an organization that routinely facilitates

51 the international trafficking of drugs, humans, or weapons or  
52 the international smuggling of humans.

53 (2) Upon a finding by the factfinder that a defendant  
54 committed the charged offense for the purpose of benefiting,  
55 promoting, or furthering the interests of a transnational crime  
56 organization, the penalty for any felony or misdemeanor, or for  
57 any delinquent act or violation of law which would be a felony  
58 or misdemeanor if committed by an adult, may be reclassified  
59 under this subsection. A penalty enhancement affects only the  
60 applicable statutory maximum sentence, and each of the findings  
61 required as a basis for such sentence must be found beyond a  
62 reasonable doubt. The reclassification is as follows:

63 (a) A misdemeanor of the second degree is reclassified to  
64 a misdemeanor of the first degree.

65 (b) A misdemeanor of the first degree is reclassified to a  
66 felony of the third degree.

67 (c) A felony of the third degree is reclassified to a  
68 felony of the second degree.

69 (d) A felony of the second degree is reclassified to a  
70 felony of the first degree.

71 (e) A felony of the first degree is reclassified to a life  
72 felony.

73 Section 3. This act shall take effect October 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Michael offered the following:

**Amendment (with title amendment)**

Remove lines 29-62 and insert:

6 (1) As used in this section, the term "removal" includes  
 7 any agreement in which a person stipulates to removal during a  
 8 criminal proceeding under federal or state law.

9 (2) A person who has been deported or removed from the  
 10 United States under federal immigration proceedings for  
 11 committing a felony, or has departed the United States while  
 12 such an order of deportation or removal is outstanding, shall  
 13 have the penalty for committing a new felony after unlawfully  
 14 reentering the United States and while remaining unlawfully  
 15 present reclassified in the following manner:

Amendment No. 1

16 (a) A felony of the third degree is reclassified to a  
17 felony of the second degree.

18 (b) A felony of the second degree is reclassified to a  
19 felony of the first degree.

20 (c) A felony of the first degree is reclassified to a life  
21 felony.

22 Section 2. Section 908.12, Florida Statutes, is created to  
23 read:

24 908.12 Transnational crime organizations;  
25 reclassification.-

26 (1) As used in this section, the term "transnational crime  
27 organization" means an organization that routinely facilitates  
28 the international trafficking of drugs, humans, or weapons or  
29 the international smuggling of humans.

30 (2) The penalty for any misdemeanor or felony may be  
31 reclassified if the commission of such misdemeanor or felony was  
32 for the purpose of benefiting, promoting, or furthering the  
33 interests of a transnational crime organization. The  
34 reclassification is as follows:

35  
36 -----

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

38 Remove lines 15-20 and insert:  
39 misdemeanor offenses if the commission of such offense was for  
40 specified purposes; providing





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1459 Advanced Technology  
**SPONSOR(S):** Appropriations Committee, Commerce Committee, McFarland  
**TIED BILLS:** CS/HB 1461 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Commerce Committee	20 Y, 0 N, As CS	Wright	Hamon
2) Appropriations Committee	25 Y, 0 N, As CS	Mullins	Pridgeon
3) Judiciary Committee		Leshko	Kramer

### SUMMARY ANALYSIS

Artificial intelligence (AI) encompasses a large field of existing and emerging technologies, methodologies, and application areas. AI is generally thought of as computerized systems that work and react in ways commonly thought to require intelligence. The application of AI extends to areas such as natural language processing, facial recognition, and robotics. As the use of AI technologies has grown, so too have discussions of whether and how to regulate them. Potential regulatory options include a broad regulation of AI technologies that could be used a cross sectors, or a more targeted approach, regulating its use in particular sectors.

CS/CS/HB 1459 creates s. 282.802, F.S., to establish an advisory council called the Government Technology Modernization Council to study and monitor the development and deployment of new technologies and provide an annual report including recommendations on procuring and regulating such systems to the Governor and the Legislature.

The bill also creates s. 501.174, F.S., to:

- Require an entity or person who produces or offers for use or interaction AI content or technology for a commercial purpose, and makes such content or technology available to the Florida public, to create safety and transparency standards that:
  - Alert consumers that such content or technology is generated by AI.
  - Allow such content or technology to be recognizable as generated by AI to other AI.
- Require an entity or a person to provide a clear and conspicuous notice on its Internet homepage or landing page if it provides an AI mechanism to communicate or interact with Florida consumers for a commercial purpose.
- Prohibit any entity or person from knowingly producing, generating, incorporating, or synthesizing child pornography through AI using an image of an identifiable child.
- Require any state agency that uses AI to disclose if a person is interacting with AI when interacting with the agency and ensure that any confidential information accessible to an AI system remains confidential.

Under the bill, any violation of the AI transparency requirements by a person or entity is considered an unfair and deceptive trade practice actionable under the Florida Deceptive and Unfair Trade Practices Act solely by the Department of Legal Affairs. The bill does not establish a private cause of action.

The bill amends ss. 775.0847 and 827.071, F.S., to expand the definition of child pornography to include “any image or presentation produced, generated, incorporated, or synthesized through artificial intelligence that uses an image of an identifiable minor to depict or portray a minor engaged in sexual conduct,” thereby prohibiting the production, possession, control, intentional viewing, promotion, or transmission of such an image as a criminal offense.

The bill may have an indeterminate fiscal impact on state government and the private sector. See Fiscal Comments.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Artificial Intelligence

In the 1950s, a generation of scientists, mathematicians, and philosophers, including Alan Turing, conceptualized the possibility of artificial intelligence (AI). In his 1950 paper *Computing Machinery and Intelligence*, Turing discussed “how to build intelligent machines and how to test their intelligence.”<sup>1</sup>

The term “artificial intelligence” itself was coined at the Dartmouth Summer Research Project on Artificial Intelligence, a conference held in 1956. Since 2010, there have been many advancements in AI research which have been attributed to the “availability of large datasets, improved machine learning approaches and algorithms, and more powerful computers.”<sup>2</sup>

AI encompasses a large field of existing and emerging technologies, methodologies, and application areas. AI is “generally thought of as computerized systems that work and react in ways commonly thought to require intelligence.”<sup>3</sup> The application of AI extends to areas such as “natural language processing, facial recognition, and robotics.”<sup>4</sup>

##### Generative Artificial Intelligence

Generative AI (GenAI), which refers to “machine learning models developed through training on large volumes of data” for the purpose of generating new content, has undergone rapid advancement over the past few years.<sup>5</sup>

GenAI uses advanced machine learning models<sup>6</sup> such as large language models and generative adversarial networks (GANs) to generate text, images, video, and computer code responses with “human-like quality” based on user prompts.<sup>7</sup> Recent technological advances combined with the open availability of these tools to the public has led to widespread use.<sup>8</sup>

Specifically, GANs synthesize content by pitting two neural networks<sup>9</sup>—a generator and discriminator—against each other. “To synthesize an image of a fictional person, the generator starts with a random array of pixels and iteratively learns to synthesize a realistic face. On each iteration, the discriminator learns to distinguish the synthesized face from a corpus of real faces; if the synthesized face is distinguishable from the real faces, then the discriminator penalizes the generator. Over multiple

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<sup>1</sup> Rockwell Anyoha, *Can Machines Think?*, Harvard University, Aug. 28, 2017, <https://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/> (last visited Feb. 16, 2024).

<sup>2</sup> Congressional Research Service (CRS), *Artificial Intelligence: Overview, Recent Advances, and Considerations for the 118<sup>th</sup> Congress*, <https://crsreports.congress.gov/product/pdf/R/R47644> (last visited Feb. 16, 2024).

<sup>3</sup> *Id.*

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

<sup>5</sup> *Id.*; See also CRS, *Generative Artificial Intelligence: Overview, Issues, and Questions for Congress*, <https://crsreports.congress.gov/product/pdf/IF/IF12426> (last visited Feb. 16, 2024).

<sup>6</sup> Advanced machine learning models are designed to understand, interpret, generate, and respond to human language in a way that is as close to human-like communication as possible. Yana Ihnatchyck, *Introduction to GenAI: What are LLM Models, and How Are They Used in GenAI?*, Data Floq (Oct. 27, 2023), <https://datafloq.com/read/introduction-gen-ai-llm-models/> (last visited Feb. 16, 2024).

<sup>7</sup> CRS, *supra* note 2.; Scribble Data, *GenAI vs. LLMs vs. NLP: A Complete Guide*, <https://www.scribbledata.io/blog/genai-vs-llms-vs-nlp-a-complete-guide/> (last visited Feb. 16, 2024).

<sup>8</sup> CRS, *supra* note 2.

<sup>9</sup> Neural networks, a subset of machine learning, are computational models that mimic the complex functions of the human brain. The neural networks consist of interconnected nodes or neurons that process and learn from data, enabling tasks such as pattern recognition and decision making in machine learning. Geeks for Geeks, *What is a neural network?*, <https://www.geeksforgeeks.org/neural-networks-a-beginners-guide/> (last visited Feb. 16, 2024); see IBM, *What is a neural network?*, <https://www.ibm.com/topics/neural-networks> (last visited Feb. 16, 2024).

iterations, the generator learns to synthesize increasingly more realistic faces until the discriminator is unable to distinguish it from real faces.”<sup>10</sup>

## Potential Benefits and Risks of Artificial Intelligence

It has been estimated that “AI technologies could increase global GDP by \$15.7 trillion, a full 14 [percent], by 2030,” with health, retail, and financial services experiencing the most growth.<sup>11</sup> The use of AI and algorithms may benefit various sectors and services by:

- **Financial sector**<sup>12</sup>
  - Making decision-making relating to investing, portfolio management, loan applications, mortgages, and retirement planning more efficient, less emotional, and more analytic.
  - Preventing fraud and detecting financial anomalies in large institutions.
- **Health Sector**
  - Helping diagnose and predict disease or illness.
  - Helping predict potential challenges and allocating resources to patient education, sensing, and proactive interventions to keep patients out of the hospital.
  - Creating a multifaceted and highly personalized picture of a person’s well-being.
- **Transportation Sector**
  - Developing vehicle guidance, braking, and lane-changing systems for cars, trucks, buses, and drone delivery systems.
  - Developing systems to prevent collisions with the use of cameras and sensors.
  - Providing real-time information analysis and safety measures for the development of autonomous vehicles.
- **Government Sector**
  - Helping to create smart cities and e-governance. Examples of e-governance include:
    - The George AI chatbot, a customer service virtual assistant created by the Georgia Department of Labor.
    - AI monitoring of live footage from cameras in forests and mountains for signs of smoke by western states including California, Nevada, and Oregon.
  - Helping metropolitan areas adopt systems for citizen service delivery, urban and environmental planning, energy use, and crime prevention.
- **Customer Service**<sup>13</sup>
  - Providing customer service to consumers through the use of chatbots and other customer service-oriented tools to increase customer engagement, resulting in increased sales opportunities with reduced costs to the business.

However, developments in AI also raise important policy, regulatory, and ethical issues. Potential risks are associated with removing humans from the decision-making process, as may be the case when AI technology becomes more advanced over time. Some potential risks include:

- **Bias**
  - Because AI algorithms are based on training data input by humans, and because the initial data collection and actual data itself is based on human choices, responses, or decisions, there is a risk that such algorithms can contain inaccuracies and bias, which may take many forms including historical, racial, or other discrimination. Additionally, ethical considerations and value choices may be embedded into algorithms.
- **Workforce Replacement**
  - Integrating AI into the workforce brings uncertainty and challenge to the labor market, e.g., concerns regarding the extent to which AI will replace jobs. Business leaders and

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<sup>10</sup> Sophie Nightingale and Hany Ford, *AI-synthesized faces are indistinguishable from real faces and more trustworthy*, Proceedings of the National Academy of Sciences of the United States of America (Feb. 14, 2022), <https://www.pnas.org/doi/epdf/10.1073/pnas.2120481119> (last visited Feb. 16, 2024).

<sup>11</sup> National Conference of State Legislatures (NCSL), *Approaches to Regulating Artificial Intelligence: A Primer*, Aug. 10, 2023, <https://www.ncsl.org/technology-and-communication/approaches-to-regulating-artificial-intelligence-a-primer> (last visited Feb. 16, 2024).

<sup>12</sup> *Id.*; Darrell West and John Allen, *How artificial intelligence is transforming the world*, Brookings Institute, Apr. 24, 2018, <https://www.brookings.edu/articles/how-artificial-intelligence-is-transforming-the-world/> (last visited Feb. 16, 2024).

<sup>13</sup> NCSL, *supra* note 11.

governments may need to make significant investments in retraining and reskilling the workforce.

- **Legal Liability**
  - There are questions concerning who is legally liable when AI systems harm or discriminate against people, especially as new and emerging uses for AI platforms are developed and integrated.
- **Security Risks<sup>14</sup>**
  - AI systems present cybersecurity and national security risks, due to:
    - AI companies collecting large amounts of personal data for AI training and use.
    - The potential for bad actors to use AI to develop advanced cyberattacks, bypass security measures, and exploit vulnerabilities in various private and public systems.
  - Traditional cybersecurity risk assessment tools are generally inadequate for addressing risks associated with AI.

## Efforts to Regulate Artificial Intelligence

As the use of AI technologies has grown, so too have discussions of whether and how to regulate them. Potential regulatory options include a broad regulation of AI technologies that could be used across sectors, or a more targeted approach, regulating the use of AI technologies in particular sectors.<sup>15</sup>

In 2023, 31 states introduced at least 191 bills concerning AI, with 14 bills becoming laws.<sup>16</sup> As reported by the National Conference of State Legislatures:<sup>17</sup>

- Connecticut required the state's Department of Administrative Services to conduct an inventory of all systems employing AI that are in use by any state agency and, beginning February 1, 2024, to perform ongoing assessments of such systems to ensure that the use of any such system does not result in unlawful discrimination or disparate impact.
- Louisiana adopted a resolution requesting its Joint Legislative Committee on Technology and Cybersecurity to study the impact of AI in operations, procurement, and policy.
- Maryland established the Industry 4.0 Technology Grant Program to assist certain small and medium-sized manufacturing enterprises with implementing new "industry 4.0" technology or related infrastructure. The definition of industry 4.0 includes AI.
- Texas, North Dakota, Puerto Rico, and West Virginia created AI advisory councils to study and monitor AI systems developed, employed, or procured by state agencies.

Additionally, the following laws were passed in previous years:

- California prohibits any person from using a bot to communicate or interact with another person online with the intent to mislead the other person about its artificial identity in order to incentivize a purchase or sale of goods or services in a commercial transaction or to influence a vote in an election.<sup>18</sup>
- Illinois requires an employer that asks applicants to record video interviews and uses an AI analysis of applicant-submitted videos to:<sup>19</sup>
  - Notify each applicant in writing before the interview that AI may be used to analyze the applicant's facial expressions and consider the applicant's fitness for the position;
  - Provide each applicant with an information sheet before the interview explaining how the AI works and what characteristics it uses to evaluate applicants; and
  - Obtain written consent from the applicant to be evaluated by the AI program.

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<sup>14</sup> *Id*; Bernard Marr, *The 15 Biggest Risks Of Artificial Intelligence*, Forbes, Jun. 2, 2023, <https://www.forbes.com/sites/bernardmarr/2023/06/02/the-15-biggest-risks-of-artificial-intelligence/?sh=603d66292706> (last visited Feb. 16, 2024).

<sup>15</sup> CRS, *supra* note 2.

<sup>16</sup> NCSL, *State of Play | An Inside Look at Artificial Intelligence Policy and State Actions*, Jan. 9, 2024, <https://www.ncsl.org/state-legislatures-news/details/state-of-play-an-inside-look-at-artificial-intelligence-policy-and-state-actions> (last visited Feb. 16, 2024).

<sup>17</sup> NCSL, *Artificial Intelligence 2023 Legislation*, Jan. 12, 2024, <https://www.ncsl.org/technology-and-communication/artificial-intelligence-2023-legislation> (last visited Feb. 16, 2024).

<sup>18</sup> Cal. B&P Code §§ 17940-17943.

<sup>19</sup> 2019 IL Public Act 101-0260.

While there is no broad framework for AI regulation in the United States, federal laws on AI have been enacted over the past few years to guide actions within the federal government. For example, the National Artificial Intelligence Initiative Act of 2020 establishes the American AI Initiative and provides directions for AI research, development, and evaluation activities at federal science agencies.<sup>20</sup>

Globally, the European Union has proposed the Artificial Intelligence Act (AIA), which would create broad regulatory oversight for the development and use of a wide range of AI applications, with requirements varying by risk category, from banning systems with unacceptable risk to allowing free use of those with minimal or no risk.<sup>21</sup> In an effort to begin implementation of the AIA, a related new rule was agreed to in December 2023, which includes requiring human oversight in creating and deploying the systems and banning indiscriminate scraping of images from the internet to create a facial recognition database.<sup>22</sup>

## Artificial Intelligence Used to Create Child Pornography

Recently, there has been an increase in AI production of child pornography. Offenders may use downloadable open source GenAI and GAN models, which can produce images quickly, to devastating effects.<sup>23</sup> Hidden inside the foundation of some popular AI image-generators are thousands of images of child sexual abuse, which have made it easier for offenders and AI systems to produce realistic and explicit imagery of fake children as well as transform social media photos of fully clothed children into child sexual abuse material (CSAM).<sup>24</sup>

In September 2023, analysts at the Internet Watch Foundation (IWF)<sup>25</sup> found in one dark web CSAM forum, a total of 20,254 AI-generated photos posted within the prior month. The analysts spent 87.5 hours assessing 11,108 of these images. Half of the images were found to be indecent, with 564 photos showing the most severe types of abuse.<sup>26</sup>

Additionally, the Stanford Internet Observatory recently found more than 3,200 images of suspected child sexual abuse in the giant AI database LAION, an index of online images and captions that's been used to train leading AI generators.<sup>27</sup>

Nishant Vishwamitra, an assistant professor at the University of Texas at San Antonio who is working on the detection of deepfakes and AI-generated CSAM images online, stated that “the scale at which such images can be created is worrisome.”<sup>28</sup>

## Child Pornography Laws

### *Federal Law*

Generally, the First Amendment does not protect child pornography. In *New York v. Ferber*,<sup>29</sup> the United States Supreme Court (Supreme Court) recognized that states have a compelling interest in

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<sup>20</sup> CRS, *supra* note 2.

<sup>21</sup> *Id.*; European Commission, *Regulatory Framework Proposal on Artificial Intelligence*, <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai> (last visited Feb. 16, 2024).

<sup>22</sup> Adam Satariano, *E.U. Agrees on Landmark Artificial Intelligence Rules*, NY Times, Dec. 8, 2023, <https://www.nytimes.com/2023/12/08/technology/eu-ai-act-regulation.html> (last visited Feb. 16, 2024).

<sup>23</sup> Matt Burgess, *The AI-Generated Child Abuse Nightmare Is Here*, Wired, Oct. 24, 2023, <https://www.wired.com/story/generative-ai-images-child-sexual-abuse/> (last visited Feb. 16, 2024).

<sup>24</sup> Matt O'Brien and Haleluya Hadero, *Study shows AI image-generators are being trained on explicit photos of children*, PBS NewsHour, Dec. 20, 2023, <https://www.pbs.org/newshour/science/study-shows-ai-image-generators-are-being-trained-on-explicit-photos-of-children> (last visited Feb. 16, 2024).

<sup>25</sup> A nonprofit organization based in the UK that scours and removes abuse content from the web. *Supra*, note 23.

<sup>26</sup> *Id.*

<sup>27</sup> O'Brien and Hadero, *supra* note 24.

<sup>28</sup> *Id.*

<sup>29</sup> 458 U.S. 747 (1982).

safeguarding the physical and psychological well-being of minors and in preventing their sexual exploitation and abuse. The Supreme Court noted that it was “unlikely that visual depictions of children . . . lewdly exhibiting their genitals would often constitute an important and necessary part of a literary performance or scientific or educational work.”<sup>30</sup> Under these principles, states have criminalized possessing, distributing, and other acts involving child pornography.

Additionally, many federal courts have held that morphed child pornography, which is created when an innocent image of a child is combined with a separate, sexually explicit image, usually of an adult, is not protected expressive speech under the First Amendment.<sup>31</sup> For instance, in *United States v. Bach*, the defendant was convicted of possessing morphed child pornography. The image at issue showed a young nude boy sitting in a tree, grinning, with his pelvis tilted upward, his legs opened wide, and a full erection. The photograph of a well-known child entertainer’s head had been “skillfully inserted onto the photograph of the nude boy so that the resulting image appeared to be a nude picture of the child entertainer sitting in the tree.” The defendant appealed, arguing that his conviction was invalid because the definition of morphed child pornography violated the First Amendment. The court disagreed, holding that morphed child pornography “implicate[s] the interests of real children” and creates a lasting record of an identifiable minor child seemingly engaged in sexually explicit activity.<sup>32</sup>

In 2014, in *United States v. Anderson*,<sup>33</sup> the defendant was charged with distribution of morphed child pornography relating to an image in which the face of a minor female was superimposed over the face of an adult female engaging in sex with an adult male. The defendant moved to dismiss the charge, arguing that the definition of morphed child pornography was unconstitutionally overbroad. The court noted that in the image at issue “no minor was sexually abused.”<sup>34</sup> However, the court held that because such images falsely portray identifiable children engaging in sexual activity, they implicate the compelling governmental interest in protecting minors.<sup>35</sup> Using this reasoning, the court applied a strict scrutiny balancing test and held that the definition of morphed child pornography was constitutional as applied to the facts of *Anderson*.

To date, the federal statutes relating to morphed child pornography have been upheld.<sup>36</sup>

### *Child Pornography Prevention Action of 1996*

Prior to 1996, federal law criminalized a variety of acts relating to child pornography.<sup>37</sup> At that time, federal statutes described images of a minor actually engaging in sexually explicit conduct.<sup>38</sup> In 1996, Congress passed the Child Pornography Prevention Action of 1996 (CPPA),<sup>39</sup> creating a definition of “child pornography” that for the first time criminalized acts relating to virtual child pornography.

In 2002, the Supreme Court decided *Ashcroft v. Free Speech Coalition*,<sup>40</sup> a case in which a California trade association for the adult entertainment industry challenged the CPPA as unconstitutionally overbroad. One provision of the CPPA prohibited “any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, that is or *appears to be*, of a minor engaging in sexually explicit conduct.” This prohibition did not depend at all on how the depiction was produced and did not require the use of an image of a real child to create the depiction. The provision captured a range of depictions, referred to as “virtual child pornography,” which may include wholly

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<sup>30</sup> *Id.* at 762-63.

<sup>31</sup> *U.S. v. Hotaling*, 634 F.3d 725, 728 (2d Cir. 2011).

<sup>32</sup> 400 F.3d 622, 632 (8th Cir. 2005).

<sup>33</sup> 759 F.3d 891 (8th Cir. 2014).

<sup>34</sup> *Id.* at 895.

<sup>35</sup> *Id.* at 896.

<sup>36</sup> *United States v. Ramos*, 685 F.3d 120, 134 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 567 (2012); *see also Doe v. Boland*, 630 F.3d 491, 497 (6th Cir. 2011); *see also United States v. Hotaling*, 634 F.3d 725 (2d Cir. 2008), *cert. denied*, 132 S.Ct. 843 (2011) (citing *Bach*, the Court held that “child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment.”)

<sup>37</sup> *See*, e.g., 18 USC §2252 (1994 ed.).

<sup>38</sup> *U.S. v. Hotaling*, 599 F.Supp.2d 306, 309 (N.D.N.Y. 2008); *see also* 18 USC §§ 2252 and 2256 (1994 ed.).

<sup>39</sup> Pub. L. No. 104-208.

<sup>40</sup> 535 U.S. 234 (2002).

computer-generated images, as well as images produced by more traditional means.<sup>41</sup>

The Supreme Court held that the speech criminalized in the challenged provision of the CPPA violated the First Amendment since it extended the federal prohibition against child pornography to sexually explicit images that **“appeared to” depict minors but were “produced without using any real children.”**<sup>42</sup> The Supreme Court decided that “by prohibiting child pornography that did not depict an actual child,” the CPPA “abridged the freedom to engage in a substantial amount of lawful speech” and was therefore overbroad and unconstitutional.<sup>43</sup>

Congress attempted to remedy the constitutional issues raised in *Ashcroft* by passing the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act (Protect Act) in 2003.<sup>44</sup> The Protect Act narrowed the definition of virtual child pornography in the CPPA to prohibit a visual depiction that is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct. Additionally, the Act defined “indistinguishable” to mean, when used with respect to a depiction, virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.<sup>45</sup>

### *Florida Law*

Section 827.01, F.S., defines:

- “Child pornography” as:
  - 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.<sup>46</sup>
- “Sexual conduct” as:
  - Actual or simulated<sup>47</sup> sexual intercourse, deviate sexual intercourse, sexual bestiality,<sup>48</sup> masturbation, or sadomasochistic abuse;<sup>49</sup>
  - 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<sup>50</sup> or simulates that sexual battery is being or will be committed.<sup>51, 52</sup>
- “Identifiable minor” as a person:
  - Who was a minor at the time the image was created, altered, adapted, or modified, or whose image as a minor was used in the creating, altering, adapting, or modifying of the image; and

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<sup>41</sup> *Ashcroft*, 535 U.S. at 241.

<sup>42</sup> *Id.* at 239.

<sup>43</sup> *Id.* at 256.

<sup>44</sup> Pub. L. No. 108-21.

<sup>45</sup> 18 USC §2256(8)(B) and (11).

<sup>46</sup> S. 827.071(1)(b), F.S.

<sup>47</sup> “Simulated” means the explicit depiction of sexual conduct which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks. S. 827.071(1)(n), F.S.

<sup>48</sup> “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.

<sup>49</sup> “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.

<sup>50</sup> “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.

<sup>51</sup> S. 827.071(1)(l), F.S.

<sup>52</sup> A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.” *Id.*



- Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark, or other recognizable feature.<sup>53, 54</sup>

Florida law contains a variety of provisions prohibiting acts relating to child pornography, including:

- Section 827.071(4), F.S., which prohibits a person from possessing with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child pornography, as a second-degree felony. Possession of three or more copies of such photographs, etc., is prima facie evidence of a person's intent to promote.
- Section 827.071(5), F.S., which prohibits a person from knowingly possessing, controlling, or intentionally viewing<sup>55</sup> a photograph, motion picture, or other image that, in whole or in part, he or she knows includes any child pornography, as a third-degree felony.<sup>56</sup>
- Section 847.0137, F.S., which prohibits a person from knowingly, or under circumstances when he or she reasonably should have known, transmitting child pornography to another person, as a third-degree felony.

While the definition of "child pornography" in Florida law currently captures morphed child pornography, it does not capture virtual child pornography. As such, Florida law does not currently prohibit the production, possession, control, intentional viewing, promotion, or transmission of an image that, although not containing or being derived from an image of a real minor, is indistinguishable from an image of a real minor engaging in sexual conduct.

### Advisory Councils

Section 20.03, F.S., defines an "advisory council" as an advisory body created by specific statutory enactment and appointed to function on a continuing basis. Generally, an advisory council is enacted to study the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.<sup>57</sup>

The Code of Ethics for Public Officers and Employees<sup>58</sup> establishes ethical standards for public officials, which includes any person elected or appointed to hold office in any agency and any person serving on an advisory council.<sup>59</sup> The code is intended to ensure that public officials conduct themselves independently and impartially, and do not use their offices for private gain other than compensation provided by law. The code pertains to various ethical issues, such as ethics trainings, voting conflicts, full and public disclosure of financial interests, and standards of conduct.<sup>60</sup>

#### *Florida Cybersecurity Advisory Council*

The Department of Management Services (DMS) oversees information technology (IT)<sup>61</sup> governance and security for the executive branch in Florida.<sup>62</sup> The Florida Digital Service (FLDS) is housed within

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<sup>53</sup> S. 827.071(1)(e), F.S.

<sup>54</sup> The term may not be construed to require proof of the actual identity of the identifiable minor. *Id.*

<sup>55</sup> "Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation was viewed over any period of time. S. 827.071(1)(b), F.S.

<sup>56</sup> The statute also specifies that the possession, control, or intentional viewing of each such photograph, or other image, is a separate offense. If such photograph or other image includes child pornography depicting more than one child, then each child in each photograph or image that is knowingly possessed, controlled, or intentionally viewed is a separate offense.

<sup>57</sup> S. 20.03(7), F.S.; *See also* s. 20.052, F.S.

<sup>58</sup> *See* Part III, Chapter 112, F.S.

<sup>59</sup> S. 112.313(1), F.S.

<sup>60</sup> *See* Part III, Chapter 112, F.S.

<sup>61</sup> The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. S. 282.0041(19), F.S.

<sup>62</sup> *See* s. 20.22, F.S.



DMS and was established in 2020 to replace the Division of State Technology.<sup>63</sup> FLDS works under DMS to implement policies for IT and cybersecurity for state agencies.<sup>64</sup>

The Florida Cybersecurity Advisory Council (CAC) is an advisory council within DMS.<sup>65</sup> The purpose of the CAC is to assist state agencies in protecting IT resources from cybersecurity threats and incidents and advise counties and municipalities on cybersecurity.<sup>66</sup> The CAC must assist FLDS in implementing best cybersecurity practices.<sup>67</sup> The CAC meets at least quarterly to:

- Review existing state agency cybersecurity policies;
- Assess ongoing risks to state agency IT;
- Recommend a reporting and information sharing system to notify state agencies of new risks;
- Recommend data breach simulation exercises;
- Assist FLDS in developing cybersecurity best practice recommendations;
- Examine inconsistencies between state and federal law regarding cybersecurity;
- Review information relating to cybersecurity incidents and ransomware incidents to determine commonalities and develop best practice recommendations for state agencies, counties, and municipalities; and
- Recommend any additional information that a county or municipality should report to the FLDS as part of its cybersecurity incident or ransomware incident notification under s. 282.3185, F.S.<sup>68</sup>

The CAC must work with the National Institute of Standards and Technology<sup>69</sup> and other federal agencies, private sector businesses, and private cybersecurity experts to identify which local infrastructure sectors, not covered by federal law, are at the greatest risk of cyber-attacks and need the most enhanced cybersecurity measures and to identify categories of critical infrastructure as critical cyber infrastructure if cyber damage to the infrastructure could result in catastrophic consequences.<sup>70</sup>

The CAC must also prepare and submit a comprehensive report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that includes data, trends, analysis, findings, and recommendations for state and local action regarding ransomware incidents, including:

- Descriptive statistics including the amount of ransom requested, the duration of the ransomware incident, and the overall monetary cost to taxpayers of the ransomware incident.
- A detailed statistical analysis of the circumstances that led to the ransomware incident which does not include the name of the state agency, county, or municipality; network information; or system identifying information.
- A detailed statistical analysis of the level of cybersecurity employee training and frequency of data backup for the state agency, county, or municipality that reported the ransomware incident.
- Specific issues identified with current policies, procedures, rules, or statutes and recommendations to address such issues.
- Any other recommendations to prevent ransomware incidents.

## Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

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<sup>63</sup> Ch. 2020-161, L.O.F.

<sup>64</sup> See s. 20.22(2)(b), F.S.

<sup>65</sup> S. 282.319(1), F.S.

<sup>66</sup> S. 282.319(2), F.S.

<sup>67</sup> S. 282.319(3), F.S.

<sup>68</sup> S. 282.319(9), F.S.

<sup>69</sup> The National Institute of Standards and Technology (NIST) is a non-regulatory federal agency housed within the United States Department of Commerce. NIST's role is to facilitate and support the development of cybersecurity risk frameworks. NIST is charged with providing a prioritized, flexible, repeatable, performance-based, and cost-effective approach, including information security measures and controls that may be voluntarily adopted by owners and operators of critical infrastructure to help them identify, assess, and manage cyber risks. NIST, *NIST General Information*, <https://www.nist.gov/director/pao/nist-general-information> (last visited Feb. 16, 2024); NIST, *Framework for Improving Critical Infrastructure Cybersecurity*, p. 1, <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf> (last visited Feb. 16, 2024).

<sup>70</sup> S. 282.319(10), F.S.

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition and unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce.<sup>71</sup> FDUTPA was modeled after the Federal Trade Commission Act.<sup>72</sup>

The Department of Legal Affairs (DLA) or an Office of the State Attorney (SAO) may bring actions on behalf of consumers or governmental entities when it serves the public interest.<sup>73</sup> The SAO may enforce violations of FDUTPA if the violations take place within its jurisdiction. The DLA has enforcement authority when the violation is multi-jurisdictional, the state attorney defers to the DLA in writing, or the state attorney fails to act within 90 days after a written complaint is filed.<sup>74</sup> In certain circumstances, consumers may also file suit through private actions.<sup>75</sup>

The DLA and the SAO have powers to investigate FDUTPA claims, which include:<sup>76</sup>

- Administering oaths and affirmations;
- Subpoenaing witnesses or matter; and
- Collecting evidence.

The DLA and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to \$10,000 per willful violation.<sup>77</sup>

FDUTPA may not be applied to certain entities in certain circumstances, including:<sup>78</sup>

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services; or
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

## **Effect of Proposed Changes**

### **Government Technology Modernization Council**

CS/CS/HB 1459 creates s. 282.802, F.S., to establish the Government Technology Modernization Council (council) to serve as an advisory council within DMS.

The bill provides that the purpose of the council is to study and monitor the development and deployment of new technologies and provide reports on recommendations for procurement and regulation of such systems to the Governor and the Legislature.

The bill requires the council to meet at least quarterly to:

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<sup>71</sup> Ch. 73-124, L.O.F.; s. 501.202, F.S.

<sup>72</sup> D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).

<sup>73</sup> S. 501.207(1)(c) and (2), F.S.; see s. 501.203(2), F.S. (defining “enforcing authority” and referring to the office of the state attorney if a violation occurs in or affects the judicial circuit under the office’s jurisdiction; or the Department of Legal Affairs if the violation occurs in more than one circuit; or if the office of the state attorney defers to the department in writing; or fails to act within a specified period); see also David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 Florida Bar Journal 52, Dec. 2002 (analyzing the merits of FDUTPA and the potential for deterrence of anticompetitive conduct in Florida), [http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0.business.Division\\*](http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0.business.Division*) (last visited on Feb. 16, 2024).

<sup>74</sup> S. 501.203(2), F.S.

<sup>75</sup> S. 501.211, F.S.

<sup>76</sup> S. 501.206(1), F.S.

<sup>77</sup> Ss. 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into the General Revenue Fund. Enforcing authorities may also request attorney fees and costs of investigation or litigation. S. 501.2105, F.S.

<sup>78</sup> S. 501.212(4), F.S.

- Recommend legislative and administrative actions that the Legislature and state agencies may take to promote the development of data modernization in Florida.
- Assess and provide guidance on necessary legislative reforms and the creation of a state code of ethics for AI systems in state government.
- Assess the effect of automated decision systems or identity management on constitutional and other legal rights, duties, and privileges of residents of this state.
- Evaluate common standards for AI safety and security measures, including the benefits of requiring disclosure of the digital provenance for all images and audio created using generative AI as a means of revealing the origin and edit of the image or audio, as well as the best methods for such disclosure.
- Assess how governmental entities and the private sector are using AI with a focus on opportunity areas for deployments in systems across this state.
- Determine how AI is being exploited by bad actors, including foreign countries of concern.<sup>79</sup>
- Evaluate the need for curriculum to prepare school-age audiences with the digital media and visual literacy skills needed to navigate the digital information landscape.

The bill requires the council to annually submit any legislative recommendations it considers necessary to modernize government technology to the Governor, the President of the Senate, and the Speaker of the House of Representatives beginning June 30, 2024. The bill requires such recommendations to include any information the council considers relevant, including policies necessary to:

- Accelerate adoption of technologies that will increase productivity of state enterprise information technology systems, improve customer service levels of government, and reduce administrative or operating costs.
- Promote the development and deployment of AI systems, financial technology, education technology, or other enterprise management software in Florida.
- Protect Floridians from bad actors who use AI.

The bill requires the council to be comprised of the following members:

- The Lieutenant Governor.
- The state chief information officer.
- The Secretary of Commerce.
- The Secretary of Health Care Administration.
- The Commissioner of Education.
- Seven representatives with senior level experience or expertise in AI, cloud computing, identity management, data science, machine learning, government procurement, financial technology, educational technology, and constitutional law, with five appointed by the Governor, one appointed by the President of the Senate, and one appointed by the Speaker of the House of Representatives.
- One member of the Senate, appointed by the President of the Senate, or his or her designee.
- One member of the House of Representatives, appointed by the Speaker of the House of Representatives, or his or her designee.
- The Secretary of DMS, or his or her designee, who shall serve as the ex officio, nonvoting executive director of the council.

The bill provides that council members shall serve for terms of four years, except that sitting members of the Senate and the House of Representatives shall serve terms that correspond with their terms of office. For the purpose of providing staggered terms, the initial appointments of members made by the Governor are for terms of two years. Under the bill, a vacancy is filled for the remainder of the unexpired term in the same manner as the initial appointment. All members of the council are eligible for reappointment.

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<sup>79</sup> Section 287.138(1), F.S., lists the following countries as foreign countries of concern: the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, and the Syrian Arab Republic.

The bill provides that members of the council shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses.<sup>80</sup>

The bill requires members of the council to maintain the confidential and exempt status of information received in the performance of their duties and responsibilities. A current or former member of the council must follow the Code of Ethics for Public Officers and Employees, and may not disclose or use information not available to the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity. Members of the council must sign an agreement acknowledging such requirements.

### **Artificial Intelligence Transparency**

The bill creates s. 501.174, F.S., to establish certain requirements related to AI transparency. The bill defines "artificial intelligence" as software that is developed with machine-learning, logic and knowledge-based, or statistical approaches and can, for a given set of human-defined objectives, generate or synthesize outputs such as content, predictions, recommendations, or decisions influencing certain environments.

The bill requires an entity or person who produces or offers for use or interaction AI content or technology for a commercial purpose, and makes such content or technology available to the Florida public, to create safety and transparency standards that:

- Alert consumers that such content or technology is generated by AI.
- Allow such content or technology to be recognizable as generated by AI to other AI.

If a natural person in Florida is able to communicate or interact with an entity or person for commercial purposes through an AI mechanism, the bill requires such entity or person to provide a clear and conspicuous statement on its Internet homepage or landing page indicating that such mechanism is generated by AI.

The bill prohibits any entity or person from knowingly producing, generating, incorporating, or synthesizing child pornography through AI using an image of an identifiable child.

The bill requires any state agency<sup>81</sup> that uses AI to disclose if a person is interacting with AI when interacting with the agency and to ensure that any confidential information accessible to an AI system remains confidential.

Under the bill, any violation of the AI transparency requirements by a person or entity is considered an unfair and deceptive trade practice actionable under FDUTPA solely by DLA.<sup>82</sup> In addition to other FDUTPA remedies, the bill authorizes DLA to collect a civil penalty of up to \$50,000 per violation. The bill authorizes DLA to adopt rules to implement the bill.

The bill does not establish a private cause of action.

For purposes of being subject to the jurisdiction of the courts in this state related to an action for a violation of AI transparency standards, the bill specifies that any entity or person who produces or uses AI that is distributed to or viewable by the public in this state is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business, and doing business in this state.

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<sup>80</sup> As allowed under s. 112.061, F.S.

<sup>81</sup> As defined in s. 282.318(2), which is any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities.

<sup>82</sup> Unlike under general FDUTPA actions, DLA is not prohibited from bringing an action against a social media platform that is also a:

- Person or activity regulated under laws administered by OIR or DFS; and
- Bank, credit union, and savings and loan association regulated by OFR or federal agencies.

## Child Pornography

The bill amends ss. 775.0847 and 827.071, F.S., to expand the definition of “child pornography” to include any image or presentation produced, generated, incorporated, or synthesized through artificial intelligence that uses an image of an identifiable minor to depict or portray a minor engaged in sexual conduct, thereby prohibiting the production, possession, control, intentional viewing, promoting, or transmitting of such an image as a criminal offense.

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

### B. SECTION DIRECTORY:

- Section 1:** Creates s. 282.802, F.S., relating to the Government Technology Modernization Council.  
**Section 2:** Creates s. 501.174, F.S., relating to artificial intelligence transparency.  
**Section 3:** Amends s. 775.0847, F.S., relating to possession or promotion of certain images of child pornography; reclassification.  
**Section 4:** Amends s. 827.071, F.S., relating to sexual performance by a child; child pornography; penalties.  
**Section 5:** 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 DLA due to an increase in civil penalties collected for violations of the AI transparency requirements.

#### 2. Expenditures:

The bill may have an indeterminate negative impact on DMS to the extent that it requires new additional expenditures by DMS to create and run the Government Technology Modernization Council. Additionally, the bill may have an indeterminate negative impact on DLA due to expenditures required to enforce the AI transparency requirements.

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 negative impact on the private sector as it requires entities that use AI in certain circumstances to provide certain disclaimers which may require additional expenditures to develop and employ.

### D. FISCAL COMMENTS:

Based on the provisions of the bill, DMS will likely incur the following recurring costs that can be absorbed by existing resources:

1. Administrative support staff.
2. AI subject matter experts.

3. Travel expenses for council members and administration staff.
4. Policy analyst staff for drafting annual legislative recommendations.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

The First Amendment to the U.S. Constitution guarantees that “Congress shall make no law ... abridging the freedom of speech.”<sup>83</sup> Generally, “government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”<sup>84</sup> The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.<sup>85</sup>

As a general rule, pornography can only be banned if obscene, however, in *New York v. Ferber*,<sup>86</sup> the Supreme Court held that pornography showing minors can be proscribed whether or not the images are obscene under the definition set forth in *Miller*.<sup>87</sup> The Supreme Court held that the *Miller* standard does not reflect a state’s particular and more compelling interest in prosecuting those who promote the sexual exploitation of children, and that where the images are themselves the product of child sexual abuse a state has an interest in stamping it out without regard to any judgment about its content.<sup>88</sup>

Additionally, while the Supreme Court has not resolved whether the First Amendment protects morphed pornography, it has noted that using photos of identifiable minors to make it appear they are engaged in sexual acts implicates the interests of real children and in that sense are closer to real child pornography.<sup>89</sup> To date, the federal statutes relating to morphed child pornography have been upheld.<sup>90</sup>

However, the Supreme Court has held that virtual pornography (i.e. sexually explicit conduct created by using advanced computer imaging techniques to create realistic images of children who do not exist) is not “intrinsically related” to the sexual abuse of children. And, unlike real child pornography, which results in injury to the child’s reputation and emotional well-being, no child is involved in the creation of virtual pornography.<sup>91</sup> While the Supreme Court has struck down as unconstitutional prohibitions on a visual depiction or computer-generated image or picture that *appears to be* of a minor engaging in sexually explicit conduct, it has not yet determined whether a more narrow prohibition on a visual depiction that is a digital image, computer image, or computer-generated image that *is indistinguishable* from that of a minor engaging in sexually explicit conduct is constitutional under the First Amendment.

As such, the bill’s expansion of the definition of “child pornography” to include any image or

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<sup>83</sup> U.S. Const., amend. I.

<sup>84</sup> *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

<sup>85</sup> U.S. Const. amend. XIV. *See also* Art. I, Fla. Const.

<sup>86</sup> 458 U.S. 747 (1982).

<sup>87</sup> *Miller v. California*, 413 U.S. 15 (1973)(The *Miller* test considers whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interests and that the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law; and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.).

<sup>88</sup> *Ashcroft*, 535 U.S. at 240 and 249.

<sup>89</sup> *United States v. Mecham*, 950 F.3d 257, 263 (5th Cir. 2020).

<sup>90</sup> *United States v. Ramos*, 685 F.3d 120, 134 (2d Cir. 2012), *cert. denied*, 133 S.Ct. 567 (2012); *see also Doe v. Boland*, 630 F.3d 491, 497 (6th Cir. 2011); *see also United States v. Hotaling*, 634 F.3d 725 (2d Cir. 2008), *cert. denied*, 132 S.Ct. 843 (2011) (citing *Bach*, the Court held that “child pornography created by digitally altering sexually explicit photographs of adults to display the face of a child is not protected expressive speech under the First Amendment.).

<sup>91</sup> *Mecham*, 950 F.3d at 263.

presentation produced, generated, incorporated, or synthesized through artificial intelligence that uses an image of an identifiable minor to depict or portray a minor, regardless of whether the minor is identifiable or not, engaged in sexual conduct may implicate the First Amendment.

**B. RULE-MAKING AUTHORITY:**

The bill authorizes DLA to adopt rules related to enforcing provisions related to AI transparency.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

On Line 116, the bill provides for submission of legislative recommendations by June 30, 2024, and each June 30 thereafter. The effective date of the bill is July 1, 2024.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 23, 2024, the Commerce Committee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute changed the bill in the following ways:

- Removed provisions requiring certain permissions or disclosures for political advertisements produced and image and likeness used by AI, and conformed related provisions.
- Expanded the criminal definition of “child pornography” to include AI creations.
- Clarified language.
- Changed the enacting clause from “An act related to artificial intelligence transparency” to “An act relating to advanced technology”.

On January 31, 2024, the Appropriations Committee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute changed the bill in the following ways:

- Revised the membership of the advisory council.
- Revised the responsibilities of the advisory council.
- Removed the provision requiring a comprehensive annual ransomware report.
- Added a provision for the advisory council to hold at least one joint quarterly meeting with the Cybersecurity Advisory Council.
- Added policy recommendations to include in the annual council submission of recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

This analysis is drafted to the committee substitute as passed by the Appropriations Committee.

1                                   A bill to be entitled  
2           An act relating to advanced technology; creating s.  
3           282.802, F.S.; creating the Government Technology  
4           Modernization Council within the Department of  
5           Management Services for a specified purpose; providing  
6           for council membership, meetings, and duties;  
7           requiring the council to submit specified reports to  
8           the Governor and Legislature by specified dates;  
9           creating s. 501.174, F.S.; providing definitions;  
10          requiring certain entities and persons to create  
11          safety and transparency standards for artificial  
12          intelligence content or technology; requiring certain  
13          entities and persons to provide certain statements;  
14          prohibiting a person or entity from producing child  
15          pornography through artificial intelligence; requiring  
16          certain state agencies to provide certain disclosures;  
17          authorizing the Department of Legal Affairs to bring  
18          an action for violations under the Florida Deceptive  
19          and Unfair Trade Practices Act; providing civil  
20          penalties; providing that the act does not establish  
21          private causes of action; providing that certain  
22          entities and persons are subject to the jurisdiction  
23          of state courts; authorizing the department to adopt  
24          rules; amending ss. 775.0847 and 827.071, F.S.;  
25          revising the definition of the term "child



26 | pornography"; providing an effective date.

27 |

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

29 |

30 | Section 1. Section 282.802, Florida Statutes, is created  
31 | to read:

32 | 282.802 Government Technology Modernization Council.—

33 | (1) The Government Technology Modernization Council, an  
34 | advisory council as defined in s. 20.03(7), is created within  
35 | the department. Except as otherwise provided in this section,  
36 | the advisory council shall operate in a manner consistent with  
37 | s. 20.052.

38 | (2) The purpose of the council is to study and monitor the  
39 | development and deployment of new technologies and provide  
40 | reports on recommendations for procurement and regulation of  
41 | such systems to the Governor, the President of the Senate, and  
42 | the Speaker of the House of Representatives.

43 | (3) The council shall be comprised of the following  
44 | members:

45 | (a) The Lieutenant Governor.

46 | (b) The state chief information officer.

47 | (c) The Secretary of Commerce.

48 | (d) The Secretary of Health Care Administration.

49 | (e) The Commissioner of Education.

50 | (f) Seven representatives with senior level experience or

51 expertise in artificial intelligence, cloud computing, identity  
52 management, data science, machine learning, government  
53 procurement, financial technology, education technology, and  
54 constitutional law, with five appointed by the Governor, one  
55 appointed by the President of the Senate, and one appointed by  
56 the Speaker of the House of Representatives.

57 (g) One member of the Senate, appointed by the President  
58 of the Senate or his or her designee.

59 (h) One member of the House of Representatives, appointed  
60 by the Speaker of the House of Representatives or his or her  
61 designee.

62 (4) Members shall serve for terms of 4 years, except that  
63 sitting members of the Senate and the House of Representatives  
64 shall serve terms that correspond with their terms of office.  
65 For the purpose of providing staggered terms, the initial  
66 appointments of members made by the Governor shall be for terms  
67 of 2 years. A vacancy shall be filled for the remainder of the  
68 unexpired term in the same manner as the initial appointment.  
69 All members of the council are eligible for reappointment.

70 (5) The Secretary of Management Services, or his or her  
71 designee, shall serve as the ex officio, nonvoting executive  
72 director of the council.

73 (6) Members of the council shall serve without  
74 compensation but are entitled to receive reimbursement for per  
75 diem and travel expenses pursuant to s. 112.061.

76       (7) Members of the council shall maintain the confidential  
 77 and exempt status of information received in the performance of  
 78 their duties and responsibilities as members of the council. In  
 79 accordance with s. 112.313, a current or former member of the  
 80 council may not disclose or use information not available to the  
 81 general public and gained by reason of his or her official  
 82 position, except for information relating exclusively to  
 83 governmental practices, for his or her personal gain or benefit  
 84 or for the personal gain or benefit of any other person or  
 85 business entity. Members of the council shall sign an agreement  
 86 acknowledging the provisions of this subsection.

87       (8)(a) The council shall meet at least quarterly to:

88       1. Recommend legislative and administrative actions that  
 89 the Legislature and state agencies as defined in s. 282.318(2)  
 90 may take to promote the development of data modernization in  
 91 this state.

92       2. Assess and provide guidance on necessary legislative  
 93 reforms and the creation of a state code of ethics for  
 94 artificial intelligence systems in state government.

95       3. Assess the effect of automated decision systems or  
 96 identity management on constitutional and other legal rights,  
 97 duties, and privileges of residents of this state.

98       4. Evaluate common standards for artificial intelligence  
 99 safety and security measures, including the benefits of  
 100 requiring disclosure of the digital provenance for all images

101 and audio created using generative artificial intelligence as a  
102 means of revealing the origin and edit of the image or audio, as  
103 well as the best methods for such disclosure.

104 5. Assess how governmental entities and the private sector  
105 are using artificial intelligence with a focus on opportunity  
106 areas for deployments in systems across this state.

107 6. Determine how artificial intelligence is being  
108 exploited by bad actors, including foreign countries of concern  
109 as defined in s. 287.138(1).

110 7. Evaluate the need for curriculum to prepare school-age  
111 audiences with the digital media and visual literacy skills  
112 needed to navigate the digital information landscape.

113 (b) At least one quarterly meeting of the council must be  
114 a joint meeting with the Florida Cybersecurity Advisory Council.

115 (9) By June 30, 2024, and each June 30 thereafter, the  
116 council shall submit to the Governor, the President of the  
117 Senate, and the Speaker of the House of Representatives any  
118 legislative recommendations considered necessary by the council  
119 to modernize government technology, including:

120 (a) Recommendations for policies necessary to:

121 1. Accelerate adoption of technologies that will increase  
122 productivity of state enterprise information technology systems,  
123 improve customer service levels of government, and reduce  
124 administrative or operating costs.

125 2. Promote the development and deployment of artificial

126 intelligence systems, financial technology, education  
 127 technology, or other enterprise management software in this  
 128 state.

129 3. Protect Floridians from bad actors who use artificial  
 130 intelligence.

131 (b) Any other information the council considers relevant.

132 Section 2. Section 501.174, Florida Statutes, is created  
 133 to read:

134 501.174 Artificial intelligence transparency.-

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

136 (a) "Artificial intelligence" means software that is  
 137 developed with machine-learning, logic and knowledge-based, or  
 138 statistical approaches and can, for a given set of human-defined  
 139 objectives, generate or synthesize outputs such as content,  
 140 predictions, recommendations, or decisions influencing certain  
 141 environments.

142 (b) "Department" means the Department of Legal Affairs.

143 (2) An entity or person who produces or offers for use or  
 144 interaction artificial intelligence content or technology for a  
 145 commercial purpose, and makes such content or technology  
 146 available to the Florida public, must create safety and  
 147 transparency standards that:

148 (a) Alert consumers that such content or technology is  
 149 generated by artificial intelligence.

150 (b) Allow such content or technology to be recognizable as

151 generated by artificial intelligence to other artificial  
152 intelligence.

153 (3) If a natural person in this state is able to  
154 communicate or interact with an entity or person for commercial  
155 purposes through an artificial intelligence mechanism, such  
156 entity or person must provide a clear and conspicuous statement  
157 on the entity's or person's Internet homepage or landing page  
158 that such mechanism is generated by artificial intelligence.

159 (4) An entity or person may not knowingly produce,  
160 generate, incorporate, or synthesize through artificial  
161 intelligence child pornography as defined in s. 775.0847(1).

162 (5) Any state agency as defined in s. 282.318(2) which  
163 uses artificial intelligence must disclose if a person is  
164 interacting with artificial intelligence when interacting with  
165 the agency and ensure that any confidential information  
166 accessible to an artificial intelligence system remains  
167 confidential.

168 (6) (a) Any violation of subsection (2), subsection (3), or  
169 subsection (4) is an unfair and deceptive trade practice  
170 actionable under part II of chapter 501 solely by the  
171 department. If the department has reason to believe that a  
172 violation of this section has occurred, the department, as the  
173 enforcing authority, may bring an action for an unfair or  
174 deceptive act or practice. For the purpose of bringing an action  
175 pursuant to this section, ss. 501.211 and 501.212 do not apply.

176 In addition to other remedies under part II of chapter 501, the  
 177 department may collect a civil penalty of up to \$50,000 per  
 178 violation of this section.

179 (b) This section does not establish a private cause of  
 180 action.

181 (7) For purposes of bringing an action pursuant to this  
 182 section, any entity or person who produces or uses artificial  
 183 intelligence that is distributed to or viewable by the public in  
 184 this state is considered to be both engaged in substantial and  
 185 not isolated activities within this state and operating,  
 186 conducting, engaging in, or carrying on a business, and doing  
 187 business in this state, and is therefore subject to the  
 188 jurisdiction of the courts of this state.

189 (8) The department may adopt rules to implement this  
 190 section.

191 Section 3. Paragraph (b) of subsection (1) of section  
 192 775.0847, Florida Statutes, is amended to read:

193 775.0847 Possession or promotion of certain images of  
 194 child pornography; reclassification.—

195 (1) For purposes of this section:

196 (b) "Child pornography" means:

197 1. Any image depicting a minor engaged in sexual conduct;

198 ~~or~~

199 2. Any image that has been created, altered, adapted, or  
 200 modified by electronic, mechanical, or other means, ~~7~~ to portray

201 an identifiable minor engaged in sexual conduct; or  
 202 3. Any image or presentation produced, generated,  
 203 incorporated, or synthesized through artificial intelligence as  
 204 defined in s. 501.174 which uses an image of an identifiable  
 205 minor to depict or portray a minor engaged in sexual conduct.  
 206

207 For purposes of sentencing under chapter 921 and determining  
 208 incentive gain-time eligibility under chapter 944, a felony  
 209 offense that is reclassified under this section is ranked one  
 210 level above the ranking under s. 921.0022 or s. 921.0023 of the  
 211 offense committed.

212 Section 4. Paragraph (b) of subsection (1) of section  
 213 827.071, Florida Statutes, is amended to read:

214 827.071 Sexual performance by a child; child pornography;  
 215 penalties.—

216 (1) As used in this section, the following definitions  
 217 shall apply:

218 (b) "Child pornography" means:

219 1. Any image depicting a minor engaged in sexual conduct;

220 ~~or~~

221 2. Any image that has been created, altered, adapted, or  
 222 modified by electronic, mechanical, or other means, ~~to~~ to portray  
 223 an identifiable minor engaged in sexual conduct; or

224 3. Any image or presentation produced, generated,  
 225 incorporated, or synthesized through artificial intelligence as



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226 | defined in s. 501.174 which uses an image of an identifiable  
227 | minor to depict or portray a minor engaged in sexual conduct.

228 | Section 5. This act shall take effect July 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative McFarland offered the following:

**Amendment (with title amendment)**

Remove lines 45-227 and insert:

6 (a) The Lieutenant Governor or his or her designee.

7 (b) The state chief information officer.

8 (c) The Secretary of Commerce or his or her designee.

9 (d) The Secretary of Health Care Administration or his or  
10 her designee.

11 (e) The Commissioner of Education or his or her designee.

12 (f) The Secretary of Transportation or his or her  
13 designee.

14 (g) The Executive Director of the Department of Law  
15 Enforcement or his or her designee.

Amendment No. 1

16 (h) Eight representatives with senior level experience or  
17 expertise in artificial intelligence, cloud computing, identity  
18 management, data science, machine learning, government  
19 procurement, financial technology, education technology, and  
20 constitutional law, with six appointed by the Governor, one  
21 appointed by the President of the Senate, and one appointed by  
22 the Speaker of the House of Representatives.

23 (i) One member of the Senate, appointed by the President  
24 of the Senate or his or her designee.

25 (j) One member of the House of Representatives, appointed  
26 by the Speaker of the House of Representatives or his or her  
27 designee.

28 (4) Members shall serve for terms of 4 years, except that  
29 sitting members of the Senate and the House of Representatives  
30 shall serve terms that correspond with their terms of office.  
31 For the purpose of providing staggered terms, the initial  
32 appointments of members made by the Governor shall be for terms  
33 of 2 years. A vacancy shall be filled for the remainder of the  
34 unexpired term in the same manner as the initial appointment.  
35 All members of the council are eligible for reappointment.

36 (5) The Secretary of Management Services, or his or her  
37 designee, shall serve as the ex officio, nonvoting executive  
38 director of the council.

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39 (6) Members of the council shall serve without  
40 compensation but are entitled to receive reimbursement for per  
41 diem and travel expenses pursuant to s. 112.061.

42 (7) Members of the council shall maintain the confidential  
43 and exempt status of information received in the performance of  
44 their duties and responsibilities as members of the council. In  
45 accordance with s. 112.313, a current or former member of the  
46 council may not disclose or use information not available to the  
47 general public and gained by reason of his or her official  
48 position, except for information relating exclusively to  
49 governmental practices, for his or her personal gain or benefit  
50 or for the personal gain or benefit of any other person or  
51 business entity. Members of the council shall sign an agreement  
52 acknowledging the provisions of this subsection.

53 (8)(a) The council shall meet at least quarterly to:

54 1. Recommend legislative and administrative actions that  
55 the Legislature and state agencies as defined in s. 282.318(2)  
56 may take to promote the development of data modernization in  
57 this state.

58 2. Assess and provide guidance on necessary legislative  
59 reforms and the creation of a state code of ethics for  
60 artificial intelligence systems in state government.

61 3. Assess the effect of automated decision systems or  
62 identity management on constitutional and other legal rights,  
63 duties, and privileges of residents of this state.

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64 4. Evaluate common standards for artificial intelligence  
65 safety and security measures, including the benefits of  
66 requiring disclosure of the digital provenance for all images  
67 and audio created using generative artificial intelligence as a  
68 means of revealing the origin and edit of the image or audio, as  
69 well as the best methods for such disclosure.

70 5. Assess how governmental entities and the private sector  
71 are using artificial intelligence with a focus on opportunity  
72 areas for deployments in systems across this state.

73 6. Determine how artificial intelligence is being  
74 exploited by bad actors, including foreign countries of concern  
75 as defined in s. 287.138(1).

76 7. Evaluate the need for curriculum to prepare school-age  
77 audiences with the digital media and visual literacy skills  
78 needed to navigate the digital information landscape.

79 (b) At least one quarterly meeting of the council must be  
80 a joint meeting with the Florida Cybersecurity Advisory Council.

81 (9) By December 31, 2024, and each December 31 thereafter,  
82 the council shall submit to the Governor, the President of the  
83 Senate, and the Speaker of the House of Representatives any  
84 legislative recommendations considered necessary by the council  
85 to modernize government technology, including:

86 (a) Recommendations for policies necessary to:

87 1. Accelerate adoption of technologies that will increase  
88 productivity of state enterprise information technology systems,

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89 improve customer service levels of government, and reduce  
90 administrative or operating costs.

91 2. Promote the development and deployment of artificial  
92 intelligence systems, financial technology, education  
93 technology, or other enterprise management software in this  
94 state.

95 3. Protect Floridians from bad actors who use artificial  
96 intelligence.

97 (b) Any other information the council considers relevant.

98 Section 2. Section 501.174, Florida Statutes, is created  
99 to read:

100 501.174 Artificial intelligence transparency.-

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

102 (a) "Artificial intelligence" means software that is  
103 developed with machine-learning, logic and knowledge-based, or  
104 statistical approaches and can, for a given set of human-defined  
105 objectives, generate or synthesize outputs such as content,  
106 predictions, recommendations, or decisions influencing certain  
107 environments.

108 (b) "Department" means the Department of Legal Affairs.

109 (2) An entity or person who offers for viewing or  
110 interaction a chatbot, image, audio, or video output generated  
111 by artificial intelligence for a commercial purpose to the  
112 Florida public in a manner where the public would reasonably  
113 believe that such output is not generated using artificial

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114 intelligence, must adopt safety and transparency standards that  
115 disclose to consumers that such chatbot, image, audio, or video  
116 is generated by artificial intelligence.

117 (3) An entity or person who develops a chatbot, image,  
118 audio, or video generated by artificial intelligence must allow  
119 such chatbot, image, audio, or video to be recognizable as  
120 generated by artificial intelligence to other artificial  
121 intelligence.

122 (4) If a natural person in this state is able to  
123 communicate or interact with an entity or person for commercial  
124 purposes through a chatbot, image, audio, or video generated by  
125 artificial intelligence, such entity or person must provide a  
126 clear and conspicuous statement on the entity's or person's  
127 Internet homepage or landing page that such chatbot, image,  
128 audio, or video is generated by artificial intelligence.

129 (5) Any state agency as defined in s. 282.318(2) which  
130 uses artificial intelligence must disclose if a person is  
131 interacting with artificial intelligence when interacting with  
132 the agency and ensure that any confidential information  
133 accessible to an artificial intelligence system remains  
134 confidential.

135 (6)(a) Any violation of subsection (2) or subsection (3)  
136 is an unfair and deceptive trade practice actionable under part  
137 II of chapter 501 solely by the department. If the department  
138 has reason to believe that a violation of this section has

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139 occurred, the department, as the enforcing authority, may bring  
140 an action for an unfair or deceptive act or practice. For the  
141 purpose of bringing an action pursuant to this section, ss.  
142 501.211 and 501.212 do not apply.

143  
144 In addition to other remedies under part II of chapter 501, the  
145 department may collect a civil penalty of up to \$50,000 per  
146 violation of this section.

147 (b) This section does not establish a private cause of  
148 action.

149 (7) For purposes of bringing an action pursuant to this  
150 section, any entity or person who produces or uses artificial  
151 intelligence that is distributed to or viewable by the public in  
152 this state is considered to be both engaged in substantial and  
153 not isolated activities within this state and operating,  
154 conducting, engaging in, or carrying on a business, and doing  
155 business in this state, and is therefore subject to the  
156 jurisdiction of the courts of this state.

157 (8) The department may adopt rules to implement this  
158 section.

159 Section 3. Section 827.072, Florida Statutes, is created  
160 to read:

161 827.072 Generated child pornography.—

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



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163 (a) "Artificial intelligence" means software that is  
164 developed with machine-learning, logic and knowledge-based, or  
165 statistical approaches and can, for a given set of human-defined  
166 objectives, generate or synthesize outputs such as content,  
167 predictions, recommendations, or decisions influencing certain  
168 environments.

169 (b) "Child" or "minor" means any person younger than 18  
170 years of age.

171 (c) "Generated child pornography" means any image that has  
172 been created, altered, adapted, modified, generated, or  
173 synthesized by electronic, mechanical, artificial intelligence,  
174 or other computer-generated means to portray a fictitious minor,  
175 that a person viewing the image would reasonably believe is a  
176 real minor, engaged in sexual conduct.

177 (d) "Intentionally view" and the term "sexual conduct"  
178 have the same meanings as in s. 827.071(1).

179 (2)(a) It is unlawful for a person to knowingly possess,  
180 control, or intentionally view a photograph, a motion picture, a  
181 representation, an image, a data file, a computer depiction, or  
182 any other presentation which, in whole or in part, he or she  
183 knows includes generated child pornography. The possession,  
184 control, or intentional viewing of each such photograph, motion  
185 picture, representation, image, data file, computer depiction,  
186 or other presentation is a separate offense. A person who

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187 violates this paragraph commits a felony of the third degree,  
188 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

189 (b) A person who intentionally creates generated child  
190 pornography commits a felony of the third degree, punishable as  
191 provided in s. 775.082, s. 775.083, or s. 775.084.

192 (c) Paragraph (a) does not apply to any material  
193 possessed, controlled, or intentionally viewed as part of a law  
194 enforcement investigation.

195 (3) In addition to the criminal penalties provided in this  
196 section, any violation of paragraph (2)(b) committed in the  
197 conduct of any trade or commerce is an unfair and deceptive  
198 trade practice actionable under part II of chapter 501 solely by  
199 the Department of Legal Affairs. If the department has reason to  
200 believe that a violation of paragraph (2)(b) has occurred, the  
201 department, as the enforcing authority, may bring an action for  
202 an unfair or deceptive act or practice. For the purpose of  
203 bringing an action pursuant to this subsection, s. 501.211 does  
204 not apply. In addition to other remedies under part II of  
205 chapter 501, the department may collect a civil penalty of up to  
206 \$50,000 per violation of paragraph (2)(b).

207 Section 4. Section 92.561, Florida Statutes, is amended to  
208 read:

209 92.561 Prohibition on reproduction of child pornography.—

210 (1) In a criminal proceeding, any property or material  
211 that portrays sexual performance by a child as defined in s.

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212 827.071, constitutes generated child pornography as defined in  
213 s. 827.072, or constitutes child pornography as defined in s.  
214 847.001, must remain secured or locked in the care, custody, and  
215 control of a law enforcement agency, the state attorney, or the  
216 court.

217 (2) Notwithstanding any law or rule of court, a court  
218 shall deny, in a criminal proceeding, any request by the  
219 defendant to copy, photograph, duplicate, or otherwise reproduce  
220 any property or material that portrays sexual performance by a  
221 child, constitutes generated child pornography, or constitutes  
222 child pornography so long as the state attorney makes the  
223 property or material reasonably available to the defendant.

224 (3) For purposes of this section, property or material is  
225 deemed to be reasonably available to the defendant if the state  
226 attorney provides ample opportunity at a designated facility for  
227 the inspection, viewing, and examination of the property or  
228 material that portrays sexual performance by a child,  
229 constitutes generated child pornography, or constitutes child  
230 pornography by the defendant, his or her attorney, or any  
231 individual whom the defendant uses as an expert during the  
232 discovery process or at a court proceeding.

233

234

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

235

236 Remove lines 11-26 and insert:

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 1459 (2024)

Amendment No. 1

237 safety and transparency standards for chatbots, images, audio,  
238 and video generated by artificial intelligence; requiring  
239 certain entities and persons to provide certain statements;  
240 requiring certain state agencies to provide certain disclosures;  
241 authorizing the Department of Legal Affairs to bring an action  
242 for violations under the Florida Deceptive and Unfair Trade  
243 Practices Act; providing civil penalties; providing that the act  
244 does not establish private causes of action; providing that  
245 certain entities and persons are subject to the jurisdiction of  
246 state courts; authorizing the department to adopt rules;  
247 creating s. 827.072, F.S.; providing definitions; prohibiting a  
248 person from knowingly possessing, controlling, or intentionally  
249 viewing generated child pornography; prohibiting a person from  
250 intentionally creating generated child pornography; providing  
251 criminal penalties; providing applicability; authorizing the  
252 Department of Legal Affairs to bring an action for specified  
253 violations under the Florida Deceptive and Unfair Trade  
254 Practices Act; providing civil penalties; amending s. 92.561,  
255 F.S.; prohibiting the reproduction of generated child  
256 pornography; providing an effective date.

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## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1461 Pub. Rec./Investigations by the Department of Legal Affairs

**SPONSOR(S):** Commerce Committee, McFarland

**TIED BILLS:** CS/CS/HB 1459 **IDEN./SIM. BILLS:** SB 1682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Commerce Committee	19 Y, 0 N, As CS	Wright	Hamon
2) State Affairs Committee	19 Y, 0 N	Skinner	Williamson
3) Judiciary Committee		Leshko	Kramer

### SUMMARY ANALYSIS

CS/CS/HB 1459 (2024), to which this bill is linked creates s. 501.174, F.S., to:

- Require certain entities and persons that produce or offer artificial intelligence (AI) content to the Florida public to:
  - Create certain safety and transparency standards; and
  - Make certain disclosures.
- Prohibit any entity or person from knowingly producing, generating, incorporating, or synthesizing child pornography through AI.
- Authorize the Department of Legal Affairs (DLA), upon belief that any entity or person is in violation of the AI transparency requirements of CS/CS/HB 1459, to bring an action under the Florida Deceptive and Unfair Trade Practices Act.

CS/HB 1461 amends s. 501.174, F.S., to make confidential and exempt from public record requirements all information held by DLA pursuant to a notification of a violation of the AI transparency requirements or an investigation of such a violation until such time as the investigation is complete or ceases to be active. The bill provides that such confidential and exempt information may be released by DLA during an active investigation only in the furtherance of its official duties and responsibilities; for print, publication, or broadcast in certain instances; or to another governmental entity in the furtherance of the receiving entity's official duties and responsibilities.

Under the bill, once an investigation is completed or ceases to be active, the following information held by DLA remains confidential and exempt:

- Information that is otherwise confidential or exempt;
- Personal identifying information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in the data security of an entity or person; and
- Information that would disclose proprietary information of an entity or person.

The bill provides that the newly-created public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. The bill includes a statement of public necessity as required by the Florida Constitution.

The bill provides an effective date of the same date that CS/CS/HB 1459 or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an extension thereof, and becomes a law.

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

### FULL ANALYSIS

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

STORAGE NAME: h1461d.JDC

DATE: 2/19/2024

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law an exemption<sup>1</sup> from public record requirements provided the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>2</sup>

Section 119.01, F.S., also addresses the public policy regarding access to government records by guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review (OGSR) Act<sup>3</sup> provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>4</sup> An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.<sup>5</sup>

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2nd of the fifth year following enactment, unless reviewed and saved from repeal through reenactment by the Legislature.<sup>6</sup>

Furthermore, there is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute.<sup>7</sup>

#### *Active Criminal Intelligence and Criminal Investigative Information Exemption*

Section 119.071, F.S., exempts active criminal intelligence information and active criminal investigative information from public record requirements.<sup>8</sup> Additionally, a law enforcement agency's request to inspect or copy a public record that is in another agency's custody and the custodian's response to the

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<sup>1</sup> A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

<sup>2</sup> Art. I, s. 24(c), Fla. Const.

<sup>3</sup> S. 119.15, F.S.

<sup>4</sup> S. 119.15(6)(b), F.S.

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

<sup>6</sup> S. 119.15(3), F.S.

<sup>7</sup> See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991); See Op. Att'y Gen. Fla. 04- 09 (2004).

<sup>8</sup> S. 119.071(2)(c), F.S.

request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from public record requirements during the period the information constitutes active criminal intelligence information or active criminal investigative information.<sup>9</sup>

“Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency<sup>10</sup> in an effort to anticipate, prevent, or monitor possible criminal activity.<sup>11</sup>

“Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.<sup>12</sup> Criminal investigative information does not include documents given to the person arrested, except that a court in a criminal case may order that the information given to the person arrested be maintained in a confidential manner and be exempt from public records requirements until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness.<sup>13</sup>

Criminal intelligence and investigative information is considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated crimes; or is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future, respectively.<sup>14</sup>

### Artificial Intelligence

The term “artificial intelligence” (AI) was coined at the Dartmouth Summer Research Project on Artificial Intelligence, a conference held in 1956. Since 2010, there has been a lot of advancement in AI research, which has been attributed to the “availability of large datasets (i.e., big data), improved [machine learning]<sup>15</sup> approaches and algorithms, and more powerful computers.”<sup>16</sup>

AI encompasses a large field of existing and emerging technologies, methodologies, and application areas. AI is “generally thought of as computerized systems that work and react in ways commonly thought to require intelligence.”<sup>17</sup> The application of AI extends to areas such as “natural language processing, facial recognition, and robotics.”<sup>18</sup>

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<sup>9</sup> S. 119.071(2)(c)2.a., F.S.

<sup>10</sup> “Criminal justice agency” means: 1) any law enforcement agency, court, or prosecutor; 2) any other agency charged by law with criminal law enforcement duties; 3) any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; and 4) the Department of Corrections. S. 119.011(4), F.S.

<sup>11</sup> S. 119.011(3)(a), F.S.

<sup>12</sup> S. 119.011(3)(b), F.S.

<sup>13</sup> S. 119.011(3)(c)5., F.S.

<sup>14</sup> S. 119.011(3)(d), F.S.

<sup>15</sup> Machine learning (ML) examines how to build computer programs that improve their performance automatically for a task, through experience, without relying on explicit rules-based programming. Congressional Research Service, *Artificial Intelligence: Overview, Recent Advances, and Considerations for the 118th Congress*, <https://crsreports.congress.gov/product/pdf/R/R47644> (last visited Feb. 16, 2024).

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

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

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



## Department of Legal Affairs

The Department of Legal Affairs (DLA) provides a wide variety of legal services, including defending the state in civil litigation cases; representing the people of Florida in criminal appeals in state and federal courts; protecting the rights of children, consumers, and victims through its various protection programs; and investigating and litigating against businesses that seek to limit competition and defraud taxpayers.<sup>19</sup>

### CS/CS/HB 1459 (2024)

CS/CS/HB 1459 creates s. 501.174, F.S., to:

- Require an entity or person who produces or offers for use or interaction AI content or technology for a commercial purpose, and makes such content or technology available to the Florida public, to create safety and transparency standards that:
  - Alert consumers that such content or technology is generated by AI.
  - Allow such content or technology to be recognizable as generated by AI to other AI.
- Require an entity or a person to provide a clear and conspicuous notice on its Internet homepage or landing page if it provides an AI mechanism to communicate or interact with Florida consumers for a commercial purpose.
- Prohibit any entity or person from knowingly producing, generating, incorporating, or synthesizing child pornography through AI.
- Require any state agency that uses AI to disclose if a person is interacting with AI when interacting with the agency and ensure that any confidential information accessible to an AI system remains confidential.

Under the bill, any violation of the AI transparency requirements by a person or entity is considered an unfair and deceptive trade practice actionable under the Florida Deceptive and Unfair Trade Practices Act<sup>20</sup> solely by DLA. The bill does not establish a private cause of action.

### **Effect of Proposed Changes**

CS/HB 1461 amends s. 501.174, F.S., to make confidential and exempt from public record requirements all information held by DLA pursuant to a notification of a violation of AI transparency requirements or an investigation of such a violation until the investigation is completed or is no longer active. The bill requires the public record exemption to be construed in conformity with s. 119.071(2)(c), F.S., relating to active criminal intelligence information and active criminal investigative information.

During an active investigation, the confidential and exempt information may be disclosed by DLA only:

- In the furtherance of its official duties and responsibilities.
- For print, publication, or broadcast if DLA determines that such release would assist in notifying the public or locating or identifying a person DLA believes to be a victim of an improper use or disposal of customer records, except that information which remains confidential and exempt after an investigation may not be released in this manner.
- To another governmental entity in the furtherance of the receiving entity's official duties and responsibilities.

Once an investigation is completed or ceases to be active, the following information held by DLA remains confidential and exempt:

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<sup>19</sup> Office of Program Policy Analysis and Government Accountability, *Office of the Attorney General (Department of Legal Affairs)*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026> (last visited Feb. 16, 2024); see also ch. 16 and s. 20.11, F.S.

<sup>20</sup> Part II of ch. 501, F.S., is known as the "Florida Deceptive and Unfair Trade Practices Act." S. 501.201, F.S. The Florida Deceptive and Unfair Trade Practices Act is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce. S. 501.202, F.S.

- Information that is otherwise confidential or exempt from s. 119.071(1) and s. 24(a), Art. I, of the Florida Constitution.
- Personal identifying information.
- A computer forensic report.
- Information that would otherwise reveal weaknesses in an entity or person's data security.
- Information that would disclose an entity or person's proprietary information.<sup>21</sup>

The bill provides that the public record exemption is subject to the OGSR Act and will repeal on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides an effective date of the same date that CS/CS/HB 1459 or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an extension thereof, and becomes a law.

**B. SECTION DIRECTORY:**

- Section 1:** Amends s. 501.174, F.S., relating to artificial intelligence transparency.  
**Section 2:** Provides a public necessity statement.  
**Section 3:** Provides an effective date contingent on the passage of CS/CS/HB 1459 or other similar legislation.

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

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

1. Revenues:

None.

2. Expenditures:

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

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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<sup>21</sup> The bill defines the term "proprietary information" to mean information that is owned or controlled by the entity or person; is intended to be private and is treated by the entity or person as private because disclosure would harm the entity or person or its business operations; has not been disclosed except as required by law or through a private agreement that provides that the information will not be released to the public; is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by DLA; and reveals competitive interests.

### 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:

###### Vote Requirement

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

###### Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that the Legislature finds that the release of information held by DLA pursuant to a notification of a violation of the AI transparency requirements of the bill, or an investigation of such a violation, could:

- Frustrate or thwart such an investigation and impair the ability of DLA to perform assigned functions;
- Undo specific statutory exemptions otherwise protecting the information;
- Be used for the purpose of identity theft;
- Destroy the value of proprietary information resulting in financial loss to an entity or person; and
- Result in the identification of cybersecurity vulnerabilities of an entity or person and be used to harm the entity or person.

###### Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating to alleged violations of the AI transparency requirements of the bill, which does not appear to be broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking, nor does the bill confer or alter DLA's rulemaking authority.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 23, 2024, the Commerce Committee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that the public record exemption applies to information held by the Department of Legal Affairs to ensure records received or created by the department relating to its investigations of certain entities and persons is protected.
- Clarifies that information that is otherwise confidential or exempt remains protected at the conclusion of the investigation.
- Removes a duplicative public record exemption for trade secrets.
- Confirms the public necessity statement to the changes made to the public record exemption.

- Makes a technical change to conform the bill to changes made in the PCS for HB 1459, to which this bill is linked.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.



26 (b) During an active investigation, information made  
 27 confidential and exempt pursuant to paragraph (a) may be  
 28 disclosed by the department:

29 1. In the furtherance of its official duties and  
 30 responsibilities;

31 2. For print, publication, or broadcast if the department  
 32 determines that such release would assist in notifying the  
 33 public or locating or identifying a person that the department  
 34 believes to be a victim of an improper use or disposal of  
 35 customer records, except that information made confidential and  
 36 exempt by paragraph (c) may not be released pursuant to this  
 37 subparagraph; or

38 3. To another governmental entity in the furtherance of  
 39 its official duties and responsibilities.

40 (c) Upon completion of an investigation or once an  
 41 investigation ceases to be active, the following information  
 42 held by the department shall remain confidential and exempt from  
 43 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

44 1. Information that is otherwise confidential or exempt  
 45 from s. 119.07(1) and s. 24(a), Art. I of the State  
 46 Constitution.

47 2. Personal identifying information.

48 3. A computer forensic report.

49 4. Information that would otherwise reveal weaknesses in  
 50 the data security of an entity or person.

51 5. Information that would disclose the proprietary  
 52 information of an entity or person.

53 (d) For purposes of this section, the term "proprietary  
 54 information" means information that:

55 1. Is owned or controlled by the entity or person.

56 2. Is intended to be private and is treated by the entity  
 57 or person as private because disclosure would harm the entity or  
 58 person or its business operations.

59 3. Has not been disclosed except as required by law or a  
 60 private agreement that provides that the information may not be  
 61 released to the public.

62 4. Is not publicly available or otherwise readily  
 63 ascertainable through proper means from another source in the  
 64 same configuration as received by the department.

65 5. Reveals competitive interests, the disclosure of which  
 66 would impair the competitive advantage of the entity or person  
 67 who is the subject of the information.

68 (e) This subsection is subject to the Open Government  
 69 Sunset Review Act in accordance with s. 119.15 and shall stand  
 70 repealed on October 2, 2029, unless reviewed and saved from  
 71 repeal through reenactment by the Legislature.

72 Section 2. The Legislature finds that it is a public  
 73 necessity that all information held by the Department of Legal  
 74 Affairs pursuant to a notification of a violation of s. 501.174,  
 75 Florida Statutes, or an investigation of a violation of that

76 section, be made confidential and exempt from s. 119.07(1),  
 77 Florida Statutes, and s. 24(a), Article I of the State  
 78 Constitution for the following reasons:

79 (1) A notification of a violation of s. 501.174, Florida  
 80 Statutes, may result in an investigation of such violation. The  
 81 premature release of such information could frustrate or thwart  
 82 the investigation and impair the ability of the department to  
 83 effectively and efficiently administer s. 501.174, Florida  
 84 Statutes. In addition, release of such information before  
 85 completion of an active investigation could jeopardize the  
 86 ongoing investigation.

87 (2) Release of information that is otherwise confidential  
 88 or exempt from public records requirements once an investigation  
 89 is completed or ceases to be active would undo the specific  
 90 statutory exemption protecting that information; thus,  
 91 clarifying that any protections currently afforded to such  
 92 information are not removed.

93 (3) An investigation of a violation of s. 501.174, Florida  
 94 Statutes, is likely to result in the gathering of sensitive  
 95 personal identifying information, which could include  
 96 identification numbers, unique identifiers, professional or  
 97 employment-related information, and personal financial  
 98 information. Such information could be used for the purpose of  
 99 identity theft. The release of such information could subject  
 100 families to possible privacy violations, as it would reveal



101 information of a sensitive personal nature.

102 (4) Notices received by the department and information  
103 generated during an investigation of a violation of s. 501.174,  
104 Florida Statutes, are likely to contain proprietary information.  
105 Such information derives independent, economic value, actual or  
106 potential, from being generally unknown to, and not readily  
107 ascertainable by, other persons who might obtain economic value  
108 from its disclosure or use. Allowing public access to  
109 proprietary information through a public records request could  
110 destroy the value of the proprietary information and cause a  
111 financial loss to the entity or person. Release of such  
112 information could give business competitors an unfair advantage.

113 (5) Information held by the department may contain a  
114 computer forensic report or information that could reveal  
115 weaknesses in the data security of an entity or person. The  
116 release of this information could result in the identification  
117 of vulnerabilities in the cybersecurity system of the entity or  
118 person and be used to harm the entity or person and clients.

119 (6) The harm that may result from the release of  
120 information held by the department pursuant to a notification or  
121 investigation of a violation of s. 501.174, Florida Statutes,  
122 could impair the effective and efficient administration of the  
123 investigation and, thus, outweighs the public benefit that may  
124 be derived from the disclosure of the information.

125 Section 3. This act shall take effect on the same date

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126 | that HB 1459 or similar legislation takes effect, if such  
127 | legislation is adopted in the same legislative session or an  
128 | extension thereof and becomes a law.





## Special Master's Final Report

The Honorable Paul Renner  
Speaker, The Florida House of Representatives  
Suite 420, The Capitol  
Tallahassee, Florida 32399-1300

Re: CS/HB 6017 - Representative Andrade  
Relief/Marcus Button/Pasco County School Board

### SUMMARY

This is a contested excess judgment claim against the Pasco County School Board (“Respondent”) for a total of \$1,507,364.24, based on a jury verdict awarding damages to Marcus Button and his parents<sup>1</sup> (“Claimants”) for the damages caused by the negligence of a Pasco County school bus driver. The school board has paid the statutory limit pursuant to section 768.28, F.S.

### FINDINGS OF FACT

#### **Background**

This matter arises out of a motor vehicle accident that occurred on September 22, 2006, in Pasco County, Florida, at the intersection of Meadow Pointe Boulevard and State Road 54. Meadow Pointe Boulevard runs north to south and dead ends into State Road 54, a straight, flat road which runs east to west. As the single eastbound lane of State Road 54 nears its intersection with Meadow Pointe Boulevard, it splits into two lanes—one for turning right at the intersection and one for continuing on straight through the intersection.

Crucially, at the time of the accident, drivers on State Road 54 had the right-of-way at the intersection. Meadow Pointe Boulevard was controlled by a stop sign, while State Road 54 had no traffic controls.<sup>2</sup>

On the morning of September 22, 2006, Jessica Juettner, a student at Wesley Chapel High School, picked up 16-year-old Marcus Button, her fellow schoolmate, at his home around 7:00 a.m. to drive them both to school. Jessica sat in the driver's seat, and Marcus sat in the front passenger seat. At some point, Marcus told Jessica that he had forgotten some of his things, and Jessica turned the car around to go back to Marcus's house.

As Jessica drove her Dodge Neon east on State Road 54, a Pasco County school bus driven by

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<sup>1</sup> Marcus's father, Mark Button, one of the original plaintiffs in the underlying case, died of cancer in April 2019.

<sup>2</sup> At some point after the accident, a traffic light was installed at the intersection.

John Kinne<sup>3</sup> proceeded northbound on Meadow Pointe Boulevard and pulled up to the intersection with State Road 54. Mr. Kinne stopped the bus at the stop sign, prepared to make a left-hand turn, and drove the school bus into the intersection, straight into Jessica's path.

Jessica tried to brake to avoid hitting the school bus, but to no avail. Jessica's Neon collided with the school bus and slid underneath the bus, ultimately coming to rest facing the opposite direction it had been traveling. The Neon's driver-side and passenger-side airbags both deployed.

The windshield splintered and collapsed inward towards Jessica and Marcus. The dashboard was crushed, pinning and contorting Marcus's body inside the car. A witness, William Fox, was in a large SUV waiting in line behind the school bus and saw the accident. He got out of his SUV and ran to the Neon immediately to help Jessica and Marcus, where he observed Marcus in the passenger seat pinned in, covered in glass, and bleeding from the head.

Mr. Fox testified that the Neon was going a normal speed for the highway and that it was "incredible that the bus pulled out because there was absolutely no place for the car to go." Mr. Fox said he believed the Neon could not have done anything to avoid the accident.

Mr. Kinne, the bus driver, testified in his deposition that even though he looked both ways and saw several vehicles coming from his left traveling eastbound, it appeared they were making a right-hand turn at the intersection, and so he believed the intersection was clear. Mr. Kinne said he did not see the Neon until it was very close to his bus—too late to avoid the accident. Mr. Kinne was issued a citation as a result of his fault on the roadway.

Marcus sustained facial and skull fractures, brain damage, and vision loss. He was airlifted to St. Joseph's Children's Hospital, where he recovered in a medically-induced coma. Marcus was later transferred to Tampa General Hospital for rehabilitation.

### **Aftermath of Injury**

Marcus's injuries from the accident were life-altering, causing pain, discomfort, loss of sensory ability, and numerous visits to doctors and specialists.<sup>4</sup> Marcus is legally blind in one eye and has no sense of smell. He continues to suffer from memory loss, difficulty sleeping, and pain in his neck; and he struggles to concentrate and stay on task.

Jessica Juettner, the driver of the car and friend of Marcus, testified at trial that Marcus changed after the accident. She stated that after the accident, Marcus had "a completely different personality," looked different, was a lot skinnier, and had problems with his eye. She further testified that although Marcus used to be shy, after the accident Marcus became loud, began saying "the first thing that comes to his mind," and made inappropriate jokes.

During the proceedings, Respondent maintained that Marcus has always had behavioral problems. However, at the Special Master hearing, Marcus's mother, Mrs. Button, testified that Marcus's overall problems became exponentially worse as a result of the accident. According to Mrs. Button, Marcus sometimes would hit his head against a wall or walk out in front of traffic. Mrs. Button stated her belief that Marcus would not be able to live on his own.<sup>5</sup>

### **Seatbelt Issue**

There is conflicting evidence as to whether Marcus was wearing a seatbelt at the time of the accident. Marcus asserts that he was wearing a seatbelt, though at trial his own expert witness testified that he had no opinion as to whether Marcus was wearing a seatbelt. Respondent offered testimony indicating that Marcus was not wearing a seatbelt.

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<sup>3</sup> Mr. Kinne testified that he began driving buses for the Pasco County School Board in August of 2006—that is, about a month before the accident occurred.

<sup>4</sup> A Medicaid lien was imposed for care that Marcus received after the accident.

<sup>5</sup> Marcus was 16 years old at the time of the accident and is now in his early thirties.

Respondent also argued at trial that the driver of the Neon, Jessica Juettner, was negligent. Respondent sought to elicit testimony regarding the lack of skid marks on the road to imply that Jessica was not paying attention to the road and thus did not have sufficient time to brake to avoid the collision. At trial, the jury, apparently believing Marcus was not wearing a seatbelt, allocated 15 percent of the fault to Marcus himself as a passenger and 20 percent of the fault to the driver, Jessica Juettner.

After considering the arguments offered at the Special Master hearing, I see no reason to disturb the jury's apparent finding that Marcus was not wearing a seatbelt; and I find that the jury's allocation of 15 percent of the fault to Marcus and 20 percent of the fault to Jessica Juettner is reasonable and supported by the evidence.

### **Litigation History**

On July 9, 2009, Marcus Button and his parents, Mark and Robin Button ("Claimants"), filed an amended complaint against the Pasco County School Board ("Respondent") in the Sixth Judicial Circuit. The case went to a jury, which awarded \$455,225.92 in damages to Mark and Robin Button<sup>6</sup> and \$2,142,565.21 in damages to Marcus Button. The jury apportioned the fault as follows:

- 65 percent of the fault to Respondent Pasco County;
- 20 percent of the fault to Jessica Juettner, as the driver of the car in which Marcus was riding; and
- 15 percent of the fault to Marcus Button.

After reducing the total awards to account for the fault of other parties, the court entered a final judgment against Respondent in the amount of \$289,396.85 for Mark and Robin Button and \$1,380,967.39 for Marcus Button. Because Respondent had already paid \$37,000 for property damages and to settle with Jessica Juettner, Respondent paid Claimants \$163,000, the maximum amount remaining under the sovereign immunity cap of \$200,000. Claimants seek a total of \$1,507,364.24 in this claim bill, based on the jury verdict.

### POSITIONS OF CLAIMANTS AND RESPONDENT

#### **Claimants' Position**

Claimants argue Marcus has suffered a multi-million dollar injury and that Respondent caused the injury:

- By negligently mapping its bus routes.
- By allowing a poorly-trained bus driver to drive its bus.
- Through its employee's negligent act of making a left-hand turn into traffic without the right-of-way.

Claimants object to the jury's allocation of 20 percent of the fault to Jessica Juettner as the driver of the car and assert that Marcus was wearing his seatbelt at the time of the accident.

#### **Respondent's Position**

Respondent strongly objects to the passage of this claim bill, arguing a lack of causation between the accident and Marcus's current health problems. Respondent asserts that Marcus has always had poor grades and behavioral problems. Respondent also argues that the driver of the car in which Marcus was riding, Jessica Juettner, contributed to the accident by paying insufficient attention to the road.

Respondent requests that if the claim bill passes, the amount should be "discounted," and that payments should be structured over a six-year period. Respondent also requests that a

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<sup>6</sup> Of the amount of damages awarded to Marcus's parents, \$105,225.92 was for medical expenses and \$350,000 was for loss of consortium.

discontinuation clause and a reverter clause should be added to the bill providing that payable funds will discontinue and paid funds will revert to the Respondent upon the death or criminal conviction of a particular Claimant.

### CONCLUSIONS OF LAW

Regardless of whether there is a jury verdict or settlement, each claim bill is reviewed *de novo* in light of the elements of negligence.

#### **Duty & Breach**

It is clear that Respondent breached a duty owed to Marcus Button. Under Florida law, a driver approaching an intersection with a stop sign must stop, and after stopping, must "yield the right of way to any vehicle" in the intersection or which is approaching so closely as to constitute a hazard.<sup>7</sup> Mr. Kinne, the driver of the county bus, owed a duty of care to Marcus, who was riding in the car driven by Jessica Juettner, which car had no stop sign at the intersection and enjoyed the right-of-way. Mr. Kinne breached this duty to Marcus when Mr. Kinne negligently drove his school bus through the intersection, even though he had a stop sign and did not have the right-of-way.

At the time Mr. Kinne breached this duty of care, he was driving a Pasco County school bus as a Pasco County employee on his bus route. Thus, Respondent is liable for Mr. Kinne's actions under the doctrine of respondeat superior.

#### **Causation**

The most closely contested issue between the parties is whether the accident caused Marcus's health issues. Claimants argue that the accident caused or at least contributed to Marcus's problems; while Respondent counters that Marcus has always had those problems.

I find that Claimants have carried their burden to prove the causation issue, and I conclude that there is no reason to disturb the jury's similar finding. While it is apparent that Marcus has always had poor grades, the record reflects that Marcus sustained life-altering injuries as a result of the accident. Testimony received at the Special Master hearing indicates that the accident has had a severe impact on Marcus, leaving him worse off physically, mentally, and emotionally than he was before the accident.

#### **Damages**

A life care plan prepared for Marcus indicates future costs of care between \$6,000,000 and \$11,000,000 and that lost wages over the course of his life will be between \$365,000 and \$570,000.<sup>8</sup> Based on the evidence in the record, I find that the total amount of \$1,507,364.24, as sought by the Claimants, is reasonable.

### RESPONDENT'S ABILITY TO PAY

Respondent is self-insured. There is a general liability fund set aside, but Respondent asserts that as of June 30, 2023, the balance of the fund was \$(302,845.02). Respondent states that it does not have a budget set up for this claim, and that in turn, payment of the claim bill would come from Respondent's fund balance account, affecting district operations.

### ATTORNEY AND LOBBYING FEES

If the claim bill passes, Claimants attest that the attorney fee will not exceed 21 percent of the total amount awarded, and lobbying fees will not exceed 4 percent of the total amount awarded.

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<sup>7</sup> S. 316.123(2)(a), F.S.

<sup>8</sup> Additionally, on May 7, 2010, a federal Social Security Disability hearing officer found Marcus to be disabled according to Social Security regulations.

Outstanding costs total \$5,059.61.

#### LEGISLATIVE HISTORY

This claim bill was first introduced in 2012 as HB 647. In 2018, HB 6525 passed the House, but the Senate companion died in committee. In 2019, HB 6531 passed all House committees of reference but died on the second reading calendar. Similarly, in 2020, HB 6519 passed all House committees of reference but died on the second reading calendar. The claim bill was not re-filed in the House until this legislative session.

#### RECOMMENDATION

Based on the foregoing, I recommend that CS/HB 6017 be reported **FAVORABLY**.

Respectfully submitted,

A handwritten signature in black ink that reads "W. Jordan Jones". The signature is written in a cursive style.

**JORDAN JONES**

House Special Master



1 A bill to be entitled

2 An act for the relief of Marcus Button by the Pasco  
3 County School Board; providing an appropriation to  
4 compensate Marcus Button for harms and losses he  
5 sustained as a result of the negligence of two  
6 employees of the Pasco County School Board; providing  
7 an appropriation to repay Mark Button and Robin  
8 Button, as parents and natural guardians of Marcus  
9 Button, for harms and losses they sustained as a  
10 result of the injury to their child, Marcus Button;  
11 providing a limitation on the payment of compensation  
12 and attorney fees; providing an effective date.

13  
14 WHEREAS, on the morning of September 22, 2006, Jessica  
15 Juettner picked up 16-year-old Marcus Button at his home in  
16 order to drive him to Wesley Chapel High School, where both were  
17 students, and

18 WHEREAS, as Ms. Juettner drove to school west on State Road  
19 54, Pasco County, Florida, Marcus Button realized he had left  
20 his wallet at home, and Ms. Juettner turned her Dodge Neon  
21 subcompact car around and headed back to his home, and

22 WHEREAS, as Ms. Juettner's car approached Meadow Pointe  
23 Boulevard, John E. Kinne, an employee of Pasco County School  
24 Board who was driving a 35-foot school bus owned by the Pasco  
25 County School Board, pulled out in front of her, and

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26           WHEREAS, although Ms. Juettner slammed on the brakes, her  
27 car's left front struck the bus between the wheels and continued  
28 under the bus which crushed the car's right front and roof, and

29           WHEREAS, while Ms. Juettner suffered a knee and other minor  
30 injuries, Marcus Button, who was riding in the front passenger  
31 seat, sustained facial and skull fractures, brain damage, and  
32 bleeding and vision loss, and

33           WHEREAS, Mr. Kinne and his "relief" driver, Linda Bone,  
34 were the only people on the bus and were not seriously injured,  
35 and

36           WHEREAS, Marcus Button was airlifted to St. Joseph's  
37 Children's Hospital, where he spent three (3) weeks recovering,  
38 and then was transferred to Tampa General Hospital for  
39 rehabilitation for an additional six (6) weeks, and

40           WHEREAS, Marcus Button sustained severe, widespread  
41 neurologic systems damage, had to relearn how to walk and  
42 currently cannot walk for any substantial length of time without  
43 pain, lost the use of his right eye, cannot look up or down with  
44 his left eye, and suffered facial fractures that twisted and  
45 left his face badly disfigured with one side of his face higher  
46 than the other, and

47           WHEREAS, in addition, Marcus Button can no longer smell,  
48 has limited ability to taste, cannot feel textures, and, as a  
49 result of the brain damage from the crash, has severe  
50 hallucinations unless he takes psychotropic medications daily,

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51 and he sees and hears things that are not there, has spoken with  
52 a British or a Southern accent, has no short-term memory, has no  
53 ability of judgment for his safety, and is paranoid, and

54 WHEREAS, Marcus Button returned from the hospital in  
55 November 2006, but his mother, Robin Button, testified, "My son  
56 who woke up [in the hospital] was not the same son I gave birth  
57 to. He was, but he wasn't. It was him, his skin, but it wasn't  
58 him in his skin. Different kid. The son I knew is gone. He died  
59 on that day," and

60 WHEREAS, as the operator of a school bus, Mr. Kinne had the  
61 duty to drive the bus in a safe manner and in accordance with  
62 Florida law, but failed to do so, and the "relief" driver had a  
63 job duty to help Mr. Kinne, but failed to do so, and

64 WHEREAS, Mr. Kinne was later cited by the Florida Highway  
65 Patrol trooper for failing to yield the right-of-way to Ms.  
66 Juettner's car, and

67 WHEREAS, in 2007, Marcus Button's parents, Mark Button and  
68 Robin Button, sued the Pasco County School Board for the harms  
69 and losses caused by its negligence, and, during the subsequent  
70 trial, a pediatric rehabilitation doctor and a neuropsychologist  
71 testified unopposed that, because of the crash injuries, Marcus  
72 Button will require 24-hour care, counseling, interventions,  
73 medical care, and medications for the remainder of his life to  
74 cope with his physical symptoms and to control his psychotic and  
75 delusional behavior from the crash injuries, and that Marcus

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76 Button continues to suffer crash-related memory loss, has  
77 trouble sleeping, and struggles to concentrate and stay on task,  
78 and

79 WHEREAS, an expert economist who testified unopposed at  
80 trial estimated Marcus Button's future care will cost between  
81 \$6,000,000.00 and \$10,000,000.00 and his inability to work will  
82 result in the loss of between \$365,000.00 and \$570,000.00 in  
83 wages over his lifetime, and

84 WHEREAS, the trial court ordered the Pasco County School  
85 Board to pay final judgments of \$1,380,967.39 to Marcus Button  
86 and \$289,396.85 to Mark Button and Robin Button, and

87 WHEREAS, the Pasco County School Board has paid \$163,000 of  
88 the \$200,000 statutory limit applicable at the time the claim  
89 arose pursuant to s. 768.28, Florida Statutes 2009, to Marcus  
90 Button and to Mark Button and Robin Button, as parents and  
91 natural guardians of Marcus Button, as partial compensation for  
92 the harms and losses caused by the crash, and

93 WHEREAS, the pro rata share of the statutory limit pursuant  
94 to s. 768.28, Florida Statutes, paid to Marcus Button is  
95 \$134,752.10, but the balance of \$1,246,215.29 remains unpaid,  
96 and

97 WHEREAS, the pro rata share of the statutory limit pursuant  
98 to s. 768.28, Florida Statutes, paid to Mark Button and Robin  
99 Button is \$28,247.90, but the balance of \$261,148.95 remains  
100 unpaid, and

101 WHEREAS, since the judgments were entered, the Pasco County  
 102 School Board did not appeal these judgments, has opposed bills  
 103 ordering payment of any amounts ordered by the judge, has  
 104 refused to negotiate or participate in any discussions until the  
 105 2024 Regular Session, and has not taken steps to pay any part of  
 106 these 13-year-old judgments entered by the judge after a full  
 107 trial, NOW, THEREFORE,

108

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

110

111 Section 1. The facts stated in the preamble to this act  
 112 are found and declared to be true.

113 Section 2. The Pasco County School Board is authorized and  
 114 directed to appropriate from funds of the school board not  
 115 otherwise encumbered and to draw a warrant in the sum of  
 116 \$1,246,215.29 made payable to Marcus Button as compensation for  
 117 harms and losses he sustained due to the negligence of employees  
 118 of the Pasco County School Board.

119 Section 3. The Pasco County School Board is authorized and  
 120 directed to appropriate from funds of the school board not  
 121 otherwise encumbered and to draw a warrant in the sum of  
 122 \$261,148.95 made payable to Mark Button and Robin Button, as  
 123 parents and natural guardians of Marcus Button, as compensation  
 124 for harms and losses sustained by them for injuries to Marcus  
 125 Button in the September 22, 2006, crash which was due to the

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126 negligence of employees of the Pasco County School Board.

127       Section 4. The amount paid by the Pasco County School  
128 Board pursuant to s. 768.28, Florida Statutes 2009, and the  
129 amounts awarded under this act are intended to provide the sole  
130 compensation for all present and future claims arising out of  
131 the factual situation described in this act which resulted in  
132 injuries sustained by Marcus Button and his parents, Mark Button  
133 and Robin Button. The total amount paid for attorney fees may  
134 not exceed 25 percent of the total amounts awarded under this  
135 act.

136       Section 5. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Andrade offered the following:

**Amendment (with title amendment)**

Remove lines 116-132 and insert:

6 \$1,000,000.00 made payable to a trust for the sole and exclusive  
7 benefit of Marcus Button as compensation for harms and losses he  
8 sustained due to the negligence of an employee of the Pasco  
9 County School Board.

10 Section 3. The Pasco County School Board is authorized and  
11 directed to appropriate from funds of the school board  
12 \$200,000.00 made payable to Robin Button, as the surviving  
13 parent and natural guardian of Marcus Button, as compensation  
14 for harms and losses sustained by her and Mark Button, now  
15 deceased, for injuries to Marcus Button due to the negligence of  
16 an employee of the Pasco County School Board.

Amendment No. 1

17           Section 4. The amount paid by the Pasco County School  
18 Board pursuant to s. 768.28, Florida Statutes 2009, and the  
19 amounts awarded under this act are intended to provide the sole  
20 compensation for all past, present, and future claims arising  
21 out of the crash that occurred on September 22, 2006, and the  
22 factual situation described in this act which resulted in  
23 injuries sustained by Marcus Button and his parents, Mark  
24 Button, now deceased,

25  
26 -----

**T I T L E   A M E N D M E N T**

27           Remove lines 7-107 and insert:  
28           an appropriation to repay Mark Button, now deceased,  
29           and Robin Button, as surviving parent and natural  
30           guardian of Marcus Button, for harms and losses they  
31           sustained as a result of the injury to their child,  
32           Marcus Button; providing a limitation on the payment  
33           of compensation and attorney fees; providing an  
34           effective date.  
35

36  
37           WHEREAS, on the morning of September 22, 2006, Jessica  
38           Juettner picked up 16-year-old Marcus Button at his home in  
39           order to drive him to Wesley Chapel High School, where both were  
40           students, and



Amendment No. 1

41 WHEREAS, as Ms. Juettner drove to school west on State Road  
42 54, Pasco County, Florida, Marcus Button realized he had left  
43 his wallet at home, and Ms. Juettner turned her Dodge Neon  
44 subcompact car around and headed back to his home, and

45 WHEREAS, as Ms. Juettner's car approached Meadow Pointe  
46 Boulevard, John E. Kinne, an employee of the Pasco County School  
47 Board, acting within the course and scope of his employment, was  
48 driving a 35-foot school bus owned by the Pasco County School  
49 Board, and pulled out in front of her, and

50 WHEREAS, although Ms. Juettner slammed on the brakes, her  
51 car's left front struck the bus between the wheels and continued  
52 under the bus which crushed the car's left front and roof, and

53 WHEREAS, while Ms. Juettner suffered a knee and other minor  
54 injuries, Marcus Button, who was riding in the front passenger  
55 seat, sustained facial and skull fractures, brain damage, and  
56 bleeding and vision loss, and

57 WHEREAS, Mr. Kinne and his "relief" driver, Linda Bone,  
58 were the only people on the bus and were not seriously injured,  
59 and

60 WHEREAS, Marcus Button was airlifted to St. Joseph's  
61 Children's Hospital, where he spent three (3) weeks recovering,  
62 and then was transferred to Tampa General Hospital for  
63 rehabilitation for an additional six (6) weeks, and

64 WHEREAS, Marcus Button sustained severe, widespread  
65 neurologic systems damage, had to relearn how to walk and

## Amendment No. 1

66 currently cannot walk for any substantial length of time without  
67 pain, lost the use of his right eye, cannot look up or down with  
68 his left eye, and suffered facial fractures that twisted and  
69 left his face badly disfigured with one side of his face higher  
70 than the other, and

71 WHEREAS, as the operator of a school bus, Mr. Kinne had the  
72 duty to drive the bus in a safe manner and in accordance with  
73 Florida law, but he failed to do so, and

74 WHEREAS, in 2007, Marcus Button's parents, Mark Button and  
75 Robin Button, sued the Pasco County School Board for the harms  
76 and losses caused by the negligence of its employee, and,

77 WHEREAS, during the subsequent trial, a pediatric  
78 rehabilitation doctor and a neuropsychologist testified  
79 unopposed that, because of the crash injuries, Marcus Button  
80 will require 24-hour care, counseling, interventions, medical  
81 care, and medications for the remainder of his life to cope with  
82 his physical symptoms and to control his psychotic and  
83 delusional behavior from the crash injuries, and that Marcus  
84 Button continues to suffer crash-related memory loss, has  
85 trouble sleeping, and struggles to concentrate and stay on task,  
86 and

87 WHEREAS, an expert economist who testified unopposed at  
88 trial estimated Marcus Button's future care will cost between  
89 \$6,000,000.00 and \$10,000,000.00 and his inability to work will  
90 result in the loss of between \$365,000.00 and \$570,000.00 in

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91 wages over his lifetime, and

92 WHEREAS, the trial court ordered the Pasco County School  
93 Board to pay final judgments of \$1,380,967.39 to Marcus Button  
94 and \$289,396.85 to Mark Button, now deceased, and Robin Button,  
95 and

96 WHEREAS, the Pasco County School Board has paid \$163,000 of  
97 the \$200,000 statutory limit applicable at the time the claim  
98 arose pursuant to s. 768.28, Florida Statutes 2009, to Marcus  
99 Button and to Mark Button, now deceased, and Robin Button, as  
100 the surviving parent and natural guardian of Marcus Button, as  
101 partial compensation for the harms and losses caused by the  
102 crash, and

103 WHEREAS, since the judgments were entered, the Pasco County  
104 School Board did not appeal these judgments, and the parties  
105 have agreed to a total settlement in the amount of \$1,200,00.00  
106 to forever and completely relieve the Pasco County School Board  
107 of any and all further responsibility regarding the crash that  
108 occurred on September 22, 2006, NOW, THEREFORE,