

Judiciary Committee

Wednesday, February 1, 2012

8:30 AM

404 HOB

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Wednesday, February 01, 2012 08:30 am
End Date and Time: Wednesday, February 01, 2012 10:30 am
Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 189 Unauthorized Copying of Recordings by Justice Appropriations Subcommittee, Young
HB 243 Expert Testimony by Metz, Weinstein
HB 401 Effect of Dissolution or Annulment of Marriage on Certain Designations by Moraitis
CS/HB 437 Protection of Minors by Criminal Justice Subcommittee, Eisnaugle
HB 631 Terms of Courts by Weinstein
CS/HB 667 Murder by Criminal Justice Subcommittee, Corcoran
CS/HB 715 Self-service Storage Facilities by Civil Justice Subcommittee, Caldwell
CS/HB 1193 Pub. Rec./Victims of Violence by Criminal Justice Subcommittee, Jones
HB 4067 Marshals of District Courts of Appeal by Weinstein
HB 4069 County Courts by Weinstein
HB 4081 District Courts Of Appeal by Weinstein

Consideration of the following proposed committee bill(s):

PCB JDC 12-02 -- Clerks of Court

NOTICE FINALIZED on 01/30/2012 16:13 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 189 Unauthorized Copying of Recordings
SPONSOR(S): Justice Appropriations Subcommittee; Young and others
TIED BILLS: None IDEN./SIM. BILLS: CS/SB 432

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include: 1) Criminal Justice Subcommittee (13 Y, 0 N, Smith, Cunningham); 2) Justice Appropriations Subcommittee (14 Y, 0 N, As CS, Toms, Jones Darity); 3) Judiciary Committee (Smith, Havlicak, RN).

SUMMARY ANALYSIS

Section 540.11, F.S., contains a variety of provisions making it unlawful, based on specified circumstances and subject to certain exceptions, to make and sell unauthorized copies of another person's creative work. This practice is often referred to as "piracy."

Subparagraph (3)(a)3. of the statute provides that it is unlawful for a person to:

Knowingly, for commercial advantage or private financial gain, sell or resell, offer for sale or resale, advertise, cause the sale or resale of, rent, transport or cause to be rented or transported, or possess for such purposes, any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, unless the outside cover, box, or jacket clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

The penalty for violating the above provision ranges from a 1st degree misdemeanor to a 3rd degree felony, depending on the circumstances of the offense.

The bill requires those who are convicted of violating s. 540.11(3)(a)3., F.S., to make restitution to any owner or lawful producer of a master recording that has suffered injury resulting from the offense, or to the authorized trade association representing that owner or lawful producer. The bill specifies that the order of restitution must be based on the aggregate wholesale value of lawfully manufactured and authorized recordings corresponding to the number of nonconforming recordings involved in the offense unless a greater value can be proven. The order of restitution must also include investigative costs.

The bill provides that any entity that provides the transmission, routing, or connections for online communications who does not knowingly contribute to the unlawful act of a user of such online communications shall be exempt from section 540.11, F.S.

The bill also amends s. 775.089, F.S., relating to restitution, to include a victim's trade association in the definition of the term "victim."

The bill does not appear to have a fiscal impact.

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Unauthorized Copying of Recordings

Section 540.11, F.S., contains a variety of provisions making it unlawful, based on specified circumstances and subject to certain exceptions, to make and sell unauthorized copies of another person's creative work. This practice is often referred to as "piracy."

Subparagraph (3)(a)3. of the statute provides that it is unlawful for a person to:

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A person who violates the above provisions commits a 1st degree misdemeanor, punishable as provided in s. 775.082, F.S.,¹ by a fine of up to \$25,000, or both.² However, the following enhanced penalties apply in the following circumstances:

- If the offense involves at least 1,000 unauthorized articles embodying sound or at least 65 unauthorized audiovisual articles during any 180-day period, the offense is a 3rd degree felony, punishable as provided in s. 775.082, F.S.,³ by a fine of up to \$250,000, or both.
- If the offense involves more than 100 but less than 1,000 unauthorized articles embodying sound or more than 7 but less than 65 unauthorized audiovisual articles during any 180-day period, the offense is a 3rd degree felony, punishable as provided in s. 775.082, F.S., by a fine of up to \$150,000, or both.
- If the offense is a second or subsequent conviction of either of the above, the offense is a 3rd degree felony, punishable as provided in s. 775.082, F.S., by a fine of up to \$250,000, or both.⁴

The criminal provisions of s. 540.11, F.S., do not apply to:

- Any broadcaster who, in connection with, or as part of, a radio, television, or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording.
- Any person who transfers such sounds in the home for personal use and without compensation for such transfer.
- Any not-for-profit educational institution or any federal or state governmental entity, if certain conditions exist.⁵

Restitution

Section 775.089, F.S., requires a judge to order a defendant to make restitution to a victim for damage or loss caused directly or indirectly by the defendant's offense and damage or loss related to the defendant's criminal episode. Restitution must be ordered unless the judge finds clear and compelling reasons not to do so.⁶ The purpose of restitution is two-fold: (1) it acts to compensate the victim; and

¹ A first degree misdemeanor is punishable by a term of imprisonment not exceeding 1 year. *See* section 775.082, F.S.

² Section 540.11(3)(b), F.S.

³ A third degree felony is punishable by up to five years imprisonment. *See* section 775.082, F.S.

⁴ Section 540.11(3)(b)1., F.S.

⁵ Section 540.11(6), F.S.

⁶ Section 775.089, F.S.

(2) serves the rehabilitative, deterrent, and retributive goals of the criminal justice system.⁷ Thus, the prime concerns underlying restitution are to give the perpetrator of a crime an opportunity to make amends, and to make the victim whole again, to the extent it is possible to do so.⁸

Currently, s. 775.089(1)(c), F.S., defines "victim" as "each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense."

Effect of the Bill

The bill requires those who are convicted of violating s. 540.11(3)(a)3., to make restitution to any owner or lawful producer of a master recording⁹ that has suffered injury resulting from the offense, or to the authorized trade association representing that owner or lawful producer.

The bill requires the order of restitution to be based on the aggregate wholesale value of lawfully manufactured and authorized recordings corresponding to the number of nonconforming recordings involved in the offense unless a greater value can be proven. The order of restitution must also include investigative costs.

The bill also amends the definition of the term "victim" in s. 775.089, F.S., to include a victim's trade association if the offense is a violation of s. 540.11(3)(a)3., F.S., and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf.

The bill provides that any provider of online or network access or other entity that provides the transmission, routing, or connections for online communications, by virtue of being used by another person to transport any article unless the entity knowingly and willfully aids in the violation of the law or is substantially engaged in the unlawful reproduction, is exempt from violating section 540.11, F.S. Such providers would not be responsible for users that knowingly and willfully transfer, distribute, or manufacture any sound recordings or image without consent of the owner or performer.

B. SECTION DIRECTORY:

Section 1. Amends s. 540.11, F.S., relating to unauthorized copying of phonograph records, disk, wire, tape, film, or other article on which sounds are recorded.

Section 2. Amends s. 775.089, F.S., relating to restitution.

Section 3. Provides that the act shall take effect October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁷ 15B Fla. Jur 2d Criminal Law s. 2886 (citing *Kirby v. State*, 863 So.2d 238 (Fla. 2003)).

⁸ *Id.* (citing *L.O. v. State*, 718 So.2d 155 (Fla. 1998)).

⁹ Section 540.11(1), F.S., defines the term "master recording" as "the original fixation of sounds upon an article from which copies can be made."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There will be a fiscal impact on any persons or entities that violate s. 540.11(3)(a)3., F.S., and are ordered to pay restitution. Victims could potentially recover losses through the receipt of restitution.

D. FISCAL COMMENTS:

The bill does not appear to have a fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the terms "lawful producer" and "trade association" without providing definitions. Given that this bill substantially relates to the music industry, "lawful producer" may have a particularly confusing interpretation, because "producer" is a music industry-specific term.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 16, 2011, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that a person who is convicted of violating subparagraph 3(a) is required to make restitution to the lawful owner/producer of the recording that has suffered injury from the crime committed.
- Provides that any entity that provides the transmission, routing, or connections for online communications who does not knowingly contribute to the unlawful act of a user of such online communications shall be exempt from section 540.11, F.S.

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

1 A bill to be entitled
 2 An act relating to unauthorized copying of recordings;
 3 amending s. 540.11, F.S.; requiring restitution by
 4 persons who knowingly commit certain violations
 5 relating to recordings for commercial advantage or
 6 private financial gain; authorizing recovery by a
 7 trade association representing the owner or lawful
 8 producer of a recording; providing for calculation of
 9 a restitution amount; providing an exemption for
 10 certain providers of online services or network access
 11 and related services; amending s. 775.089, F.S.;
 12 providing that a crime victim entitled to restitution
 13 may include a trade association representing the owner
 14 or lawful producer of a pirated recording in certain
 15 circumstances; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:
 18

19 Section 1. Subsection (3) of section 540.11, Florida
 20 Statutes, is amended, and paragraph (d) is added to subsection
 21 (6) of that section, to read:

22 540.11 Unauthorized copying of phonograph records, disk,
 23 wire, tape, film, or other article on which sounds are
 24 recorded.—

25 (3) (a) It is unlawful:

26 1. To sell or offer for sale or resale, advertise, cause
 27 the sale or resale of, rent, transport or cause to be rented or
 28 transported, or possess for any of these purposes any article

29 with the knowledge, or with reasonable grounds to know, that the
 30 sounds thereon have been transferred without the consent of the
 31 owner.

32 2. To sell or offer for sale or resale, advertise, cause
 33 the sale or resale of, rent, transport or cause to be rented or
 34 transported, or possess for any of these purposes any article
 35 embodying any performance, whether live before an audience or
 36 transmitted by wire or through the air by radio or television,
 37 with the knowledge that it was recorded without the consent of
 38 the performer.

39 3. Knowingly, for commercial advantage or private
 40 financial gain to sell or resell, offer for sale or resale,
 41 advertise, cause the sale or resale of, rent, transport or cause
 42 to be rented or transported, or possess for such purposes, any
 43 phonograph record, disk, wire, tape, film, or other article on
 44 which sounds are recorded, unless the outside cover, box, or
 45 jacket clearly and conspicuously discloses the actual name and
 46 address of the manufacturer thereof, and the name of the actual
 47 performer or group.

48 (b)1. A person who violates paragraph (a) commits a felony
 49 of the third degree, punishable as provided in s. 775.082, by a
 50 fine of up to \$250,000, or both if the offense involves at least
 51 1,000 unauthorized articles embodying sound or at least 65
 52 unauthorized audiovisual articles during any 180-day period or
 53 is a second or subsequent conviction under either this
 54 subparagraph or subparagraph 2. of this subsection.

55 2. A person who violates paragraph (a) commits a felony of
 56 the third degree, punishable as provided in s. 775.082, by a

57 fine of up to \$150,000, or both if the offense involves more
 58 than 100 but less than 1,000 unauthorized articles embodying
 59 sound or more than 7 but less than 65 unauthorized audiovisual
 60 articles during any 180-day period.

61 3. A person who otherwise violates this subsection commits
 62 a misdemeanor of the first degree, punishable as provided in s.
 63 775.082, by a fine of up to \$25,000, or both.

64 4. A person who is convicted of violating subparagraph
 65 (a)3. shall be ordered to make restitution to any owner or
 66 lawful producer of a master recording that has suffered injury
 67 resulting from the crime, or to the trade association
 68 representing such owner or lawful producer. The order of
 69 restitution shall be based on the aggregate wholesale value of
 70 lawfully manufactured and authorized recordings corresponding to
 71 the number of nonconforming recordings involved in the offense
 72 unless a greater value can be proven. The order of restitution
 73 shall also include investigative costs relating to the offense.

74 (6) This section does not apply:

75 (d) To any provider of online services or network access,
 76 the operator of facilities thereof, or any entity that provides
 77 the transmission, routing, or connections for online
 78 communications, between or among points specified by a user or
 79 material of the user's choosing, without modification to the
 80 content of the material as sent or received, by virtue of being
 81 used by another person to transport any article or communicate
 82 regarding any article, unless such service provider:

83 1. Knowingly and willfully aids and abets a violation of
 84 this section; or

85 | 2. Is substantially engaged in the unlawful reproduction,
 86 | distribution, or public performance of sound recordings.

87 | Section 2. Paragraph (c) of subsection (1) of section
 88 | 775.089, Florida Statutes, is amended to read:

89 | 775.089 Restitution.—



90 | (1)

91 | (c) The term "victim" as used in this section and in any
 92 | provision of law relating to restitution means each person who
 93 | suffers property damage or loss, monetary expense, or physical
 94 | injury or death as a direct or indirect result of the
 95 | defendant's offense or criminal episode, and also includes the
 96 | victim's estate if the victim is deceased, ~~and~~ the victim's next
 97 | of kin if the victim is deceased as a result of the offense, and
 98 | the victim's trade association if the offense is a violation of
 99 | s. 540.11(3)(a)3. and the victim has granted the trade
 100 | association written authorization to represent the victim's
 101 | interests in criminal legal proceedings and to collect
 102 | restitution on the victim's behalf.

103 | Section 3. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 243 Expert Testimony
SPONSOR(S): Metz and Weinstein
TIED BILLS: None **IDEN./SIM. BILLS:** SB 378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 4 N	Caridad	Bond
2) Judiciary Committee		Caridad 	Havlicak 

SUMMARY ANALYSIS

An expert witness is a person who has developed skill or knowledge in a particular subject so that he or she may form an opinion that will assist the fact-finder during a hearing or trial. In evaluating whether testimony of a particular expert witness will be admitted in a Florida court, the court looks at whether the underlying basic principles of evidence are generally accepted within the scientific community. The standard is known as the *Frye* standard.

This bill rejects the *Frye* standard and provides a three-part test to determine whether expert testimony will be admitted in a particular case. This bill adopts a standard commonly referred to as the *Daubert* standard, which requires the court to determine if (1) the testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case.

This bill does not appear to have a fiscal impact on state or local government.

The bill takes effect July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Expert Witness

An expert witness is a person, who, through education or experience, has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder.¹ Previously, both Federal and Florida courts used the standard established in *Frye v. United States*² to determine whether scientific and expert testimony could be admitted into evidence. In *Frye*, the court established a test regarding admitting expert testimony of new or novel theories. The court held that in order to introduce expert testimony deduced from a scientific principle or discovery, the principle or discovery "must be sufficiently established to have gained general acceptance in the particular field in which it belongs."³ Under the *Frye* standard, a judge must determine that the basic underlying principles of scientific evidence have been tested and accepted by the scientific community.

The Federal Rules of Evidence were formally promulgated in 1975. Federal courts still continued to use the *Frye* standard until 1993, though, when the United States Supreme Court held in *Daubert*⁴ that the *Frye* standard had been superseded by the Federal Rules of Evidence which provides in relevant part that:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.⁵

The Florida Evidence Code was established in 1979 and was patterned after the Federal Rules of Evidence. Section 90.102, F.S., provides that the Florida Evidence Code replaces and supersedes existing statutory or common law in conflict with its provisions. Section 90.702, F.S., relates to the admissibility of expert witness testimony and provides that:

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.⁶

Florida courts still use the *Frye* standard, however, for expert testimony.⁷ The Florida Supreme Court held in *Brim v. State* that "despite the federal adoption of a more lenient standard in *Daubert* . . . we have maintained the higher standard of reliability as dictated by *Frye*."⁸

In November 2007, the Florida Supreme Court decided *Marsh v. Valyou*.⁹ In the case, the court addressed a conflict between the 1st and the 5th Florida District Courts of Appeal regarding expert

¹ Bryan A. Garner, *Black's Law Dictionary*, 9th Edition (West Publishing Co. 2009), "expert."

² *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

³ *Id.* at 1013.

⁴ *Daubert v. Merrell Dow Pharmaceuticals*, 509 US. 579 (1993).

⁵ Rule 702, Federal Rules of Evidence.

⁶ Section 90.702, F.S.

⁷ *Flanagan v. State*, 625 So.2d 827 (Fla. 1993); *Hadden v. State*, 690 So.2d 573 (Fla. 1997).

⁸ *Brim v. State*, 695 So.2d 268, 271 (Fla. 1997).

⁹ *Marsh v. Valyou*, 977 So.2d 543 (Fla. 2007).

testimony on fibromyalgia.¹⁰ The court held that the testimony should have come in under pure opinion testimony¹¹ and in the alternative should have also come in under *Frye*. In the concurring opinion, Justice Anstead questioned why Florida still uses the *Frye* standard, stating that "we have never explained how *Frye* has survived the adoption of the rules of evidence."¹² Both the concurring and dissenting opinions concluded that *Frye* was superseded by the adoption of Florida's Evidence Code.

Effect of the Bill

This bill provides a standard regarding witness testimony that is more closely related to *Daubert* and the Federal Code of Evidence than *Frye*. This bill provides a three-part test to be used in determining whether an expert may testify. The test provides that an expert may testify in the particular field in which he or she is qualified in the form of an opinion or otherwise if:

- The testimony is based on sufficient facts or data,
- The testimony is the product of reliable principles and methods, and
- The witness has applied the principles and methods reliably to the facts.

The bill requires the courts of this state to interpret and apply the above requirements and s. 90.704, F.S., in accordance with *Daubert v. Merrel Dow Pharmaceuticals, Inc.*, and subsequent U.S. Supreme Court cases that reaffirm expert witness testimony under the *Daubert* standard. The *Daubert* standard laid out in the bill will also apply to all proposed expert testimony, including pure opinion testimony as discussed in *Marsh v. Valyou*. The bill also provides that *Frye v. United States* and subsequent Florida decisions applying and implementing *Frye* no longer apply to s. 90.702, F.S., or s. 90.704, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 90.702, F.S., regarding testimony by experts.

Section 2 amends s. 90.704, F.S., regarding the basis of opinion testimony by experts.

Section 3 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The change in standard to admit expert opinions in Florida courts may have an impact on the number of pre-trial hearings needed, but it is difficult to estimate due to the unavailability of data needed to quantify any increase or decrease in judicial workload.

In criminal proceedings, the state may incur costs, and it is difficult to affirmatively quantify, in that well-established evidentiary standards in areas involving mental health, substance abuse, cognitive dysfunction, dual diagnosis, psychosis, and other areas litigated in some criminal cases may be expanded beyond the already extensive body of testimony and evidence currently litigated.

¹⁰ Fibromyalgia is a chronic condition characterized by widespread pain in the muscles, ligaments and tendons, as well as fatigue and multiple tender points. See <http://www.mayoclinic.com/health/fibromyalgia/DS00079> (last visited November 28, 2011).

¹¹ Pure opinion testimony is based on the expert's personal experience and training and does not have to meet the *Frye* standard. See *Flanagan*, 625 So. 2d at 828.

¹² *Marsh* at 551.

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:

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

2. Other:

There is a balance between enactments of the Legislature and the Florida Supreme Court on matters relating to rules of evidence. The Legislature has enacted and continues to revise ch. 90, F.S. (the Evidence Code), and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's rule authority over practice and procedure in state courts, it may refuse to adopt the changes in the bill as a court rule.¹³

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

None.

¹³ See, e.g., *In re Florida Evidence Code*, 782 So.2d 339 (Fla. 2000) (Florida Supreme Court adopting Evidence Code to the extent it is procedural and rejecting hearsay exception as a rule of court); compare *In re Florida Evidence Code*, 372 So.2d 1369 (Fla. 1979) (Florida Supreme Court adopting Florida Evidence Code to the extent it is procedural), clarified, *In re Florida Evidence Code*, 376 So.2d 1161 (Fla. 1979).

1 A bill to be entitled
 2 An act relating to expert testimony; amending s.
 3 90.702, F.S.; providing that a witness qualified as an
 4 expert by knowledge, skill, experience, training, or
 5 education may testify in the form of an opinion as to
 6 the facts at issue in a case under certain
 7 circumstances; requiring the courts of this state to
 8 interpret and apply the principles of expert testimony
 9 in conformity with specified United States Supreme
 10 Court decisions; subjecting pure opinion testimony to
 11 such requirements; amending s. 90.704, F.S.; providing
 12 that facts or data that are otherwise inadmissible in
 13 evidence may not be disclosed to the jury by the
 14 proponent of the opinion or inference unless the court
 15 determines that the probative value of the facts or
 16 data in assisting the jury to evaluate the expert's
 17 opinion substantially outweighs the prejudicial effect
 18 of the facts or data; providing an effective date.

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

21
 22 Section 1. Section 90.702, Florida Statutes, is amended to
 23 read:

24 90.702 Testimony by experts.—

25 (1) If scientific, technical, or other specialized
 26 knowledge will assist the trier of fact in understanding the
 27 evidence or in determining a fact in issue, a witness qualified
 28 as an expert by knowledge, skill, experience, training, or

29 education may testify about it in the form of an opinion or
 30 otherwise, if:

31 (a) The testimony is based upon sufficient facts or data;

32 (b) The testimony is the product of reliable principles
 33 and methods; and

34 (c) The witness has applied the principles and methods
 35 reliably to the facts of the case; ~~however, the opinion is~~
 36 ~~admissible only if it can be applied to evidence at trial.~~

37 (2) The courts of this state shall interpret and apply the
 38 requirements of subsection (1) and s. 90.704 in accordance with
 39 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579
 40 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); and
 41 *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999). *Frye v.*
 42 *United States*, 293 F. 1013 (D.C. Cir. 1923) and subsequent
 43 Florida decisions applying or implementing *Frye* no longer apply
 44 to subsection (1) or s. 90.704. All proposed expert testimony,
 45 including pure opinion testimony as discussed in *Marsh v.*
 46 *Valyou*, 977 So. 2d 543 (Fla. 2007), is subject to subsection (1)
 47 and s. 90.704.

48 Section 2. Section 90.704, Florida Statutes, is amended to
 49 read:

50 90.704 Basis of opinion testimony by experts.—The facts or
 51 data upon which an expert bases an opinion or inference may be
 52 those perceived by, or made known to, the expert at or before
 53 the trial. If the facts or data are of a type reasonably relied
 54 upon by experts in the subject to support the opinion expressed,
 55 the facts or data need not be admissible in evidence. Facts or
 56 data that are otherwise inadmissible shall not be disclosed to

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57 | the jury by the proponent of the opinion or inference unless the
58 | court determines that their probative value in assisting the
59 | jury to evaluate the expert's opinion substantially outweighs
60 | their prejudicial effect.

61 | Section 3. This act shall take effect July 1, 2012.

HB 401

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 401 Effect of Dissolution or Annulment of Marriage on Certain Designations

SPONSOR(S): Moraitis

TIED BILLS: None IDEN./SIM. BILLS: CS/SB 1146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Caridad	Bond
2) Judiciary Committee		Caridad	Havlicak RN

SUMMARY ANALYSIS

Current law provides that a provision of a will which affects a decedent's spouse is void upon the dissolution or annulment of the marriage. As a result, if the individual dies without changing the will following divorce or annulment, the will is executed as though the former spouse predeceased the decedent. In contrast, there is no such provision under Florida Statute for the disposition of certain non-probate or non-trust assets (i.e., a life insurance policy; an employee benefit plan) where the decedent is no longer married but has failed to remove the former spouse as the designated beneficiary. Neither does the law provide for instances where an individual fails to remove his or her former spouse as health care surrogate or surrogate appointed under a living will following the dissolution of marriage or annulment.

The bill provides that when an individual dies after a dissolution or annulment of marriage, a beneficiary designation, created by the individual prior to the divorce, which designates the spouse as a beneficiary, becomes void. Whether a payor must make payment to or transfer an interest in an asset to a beneficiary is governed by the information provided in the decedent's death certificate.

The bill also terminates the authority of a health care surrogate or surrogate appointed under a living will upon the divorce or annulment of the marriage between the surrogate and the principal. After the dissolution of marriage, the living will or document designating the former spouse as health care surrogate is administered as though the former spouse predeceased the principal unless the document or final judgment of dissolution of marriage provides otherwise.

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

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Disposition of Non-probate or Non-trust Assets at Death

Chapter 732 governs wills. Section 732.507(2), F.S., provides that a provision of a will which affects a decedent's spouse is void upon the dissolution or annulment of the marriage. As a result, if the individual dies without changing the will following the dissolution or annulment, the will is executed as though the former spouse predeceased the decedent.

There is no such provision regarding the disposition of non-probate or non-trust assets (i.e., a life insurance policy; an employee benefit plan) where the decedent is no longer married at the time of death but has failed to remove the former spouse as the designated beneficiary.¹ Currently, when an individual dies after a divorce or annulment without removing his or her former spouse as the designated beneficiary of certain assets, the former spouse will remain the designated beneficiary, despite the dissolution or annulment of marriage. The company or entity administering the policy or account then pays the beneficiary listed on the governing document. Under current law, the company or entity is under no obligation to investigate the claim beyond looking to the governing document for the named beneficiary.

There are many cases where a decedent owned an interest in non-probate assets, divorced, and subsequently died without changing the beneficiary designation to remove the former spouse. When a party challenges the distribution of assets to the former spouse, the court's determination turns on the specificity of the language in the marital settlement agreement.² In *Crawford v. Barker*, the Florida Supreme Court explained that:

[A]bsent the marital settlement agreement providing who is or is not to receive the death benefits or specifying who is to be the beneficiary, courts should look no further than the named beneficiary in the separate document of the policy, plan, or account. General language in a marital settlement agreement, such as language stating who is to receive ownership, is not specific enough to override the plain language of the beneficiary designation in the separate document. The spouse, who owns the policy, plan, or account following the dissolution of marriage, is otherwise free to name any individual as the beneficiary; however, if the spouse does not change the beneficiary, the beneficiary designation in the separate document controls.³

Ultimately, a divorce or annulment does not remove the former spouse as the designated beneficiary unless the settlement agreement specifically makes such a change.⁴

This bill provides that when an individual dies after dissolution or annulment, a beneficiary designation which designates the spouse as a beneficiary becomes void upon the divorce and the spouse is

¹ See generally *Luszcz v. Lavoie*, 787 So.2d 245, 250 (Fla. 2d DCA 2001) (Blue, J., dissenting) ("[T]he legislature may wish to consider enacting a law similar to sections 732.507 and 737.106 to cover assets passing outside an estate or trust.")

² See *Cooper v. Muccitelli*, 682 So.2d 77 (Fla. 1996) (holding that former spouse as named beneficiary was entitled to term insurance proceeds, notwithstanding general release clause in marital settlement agreement).

³ *Crawford v. Barker*, 64 So.3d 1246, 1248 (Fla. 2011).

⁴ See, e.g., *Id.* (holding that the former spouse as named beneficiary was entitled to the death benefits on the decedent's deferred compensation fund despite language in the settlement agreement which provided that the decedent "shall retain money with" the deferred compensation fund as the agreement did not state who would receive the death benefits or who should be the beneficiary of the fund); see also *Smith v. Smith*, 919 So.2d 525 (Fla. 5th DCA 2005) (holding that the former wife was entitled to the proceeds from certain assets, even though the marital settlement agreement specifically identified the assets at issue and provided that the former wife would have "no further rights or responsibilities regarding these assets," because the decedent failed to change the beneficiary designation on any of the policies or accounts at issue).

deemed to have predeceased the decedent. The bill also provides a list of assets which are subject to the bill, specifically:

- A life insurance policy, qualified annuity, or other similar tax-deferred contract held within an employee benefit plan;
- An employee benefit plan;
- An individual retirement account described in s. 408 or s. 408A of the Internal Revenue Code of 1986;
- A payable-on-death account;
- A security or other account registered in a transfer-on-death form; and
- A life insurance policy, annuity or other similar contract that is not held within an employee benefit plan or tax-qualified retirement account.

The bill provides certain exceptions. For instance, it does not apply:

- To the extent that controlling federal law provides otherwise;
- If the governing instrument⁵ expressly provides that the interest will be payable to the designated former spouse regardless of dissolution or invalidity of the decedent's marriage;
- If a court order or decree required the decedent to maintain the asset for benefit of the former spouse or children of the marriage;
- If the decedent did not have the ability to unilaterally change the beneficiary or pay-on-death designation;
- If the designation of the decedent's former spouse as a beneficiary is irrevocable under applicable law;
- If the contract or agreement is governed by state law other than Florida.
- To an asset held in two or more names as to which the death of one co-owner vests ownership of the asset in the surviving co-owner or co-owners; or
- If the decedent remarries the person whose interest would otherwise have been revoked under this section and the decedent and that person are married to one another at the time of the decedent's death.

The bill sets forth procedures for companies or entities charged with making payment of the decedent's interest in an asset to determine the proper payee of the account. If the governing instrument does not specify the relationship between the designated beneficiary and the decedent, the payor may pay the account to the named beneficiary without further inquiry. If the governing instrument specifies the beneficiary to be the spouse of the decedent, the payor must first look to the death certificate. If the death certificate provides that the decedent was married to the named beneficiary at the time of death, the payor may pay out the benefits to the named beneficiary. If the death certificate provides that the decedent was not married, or was married to another individual other than the person specified on the account as the spouse, the payor may pay the interest out to the secondary beneficiary under the governing instrument.

In instances where the death certificate is silent as to the marital status of the decedent, the bill provides two form affidavits. One affidavit is for execution by someone alleging to be the surviving spouse of the decedent. If the alleged surviving spouse executes the affidavit, certifying that he or she is the surviving spouse of the decedent and that the decedent was married to him or her at the time of the decedent's death, the payor may pay the account to such individual without further inquiry. Similarly, the other affidavit is for execution by a secondary beneficiary, certifying that the primary beneficiary was not married to the decedent at the time of the decedent's death. The payor may also pay out the interest to the secondary beneficiary upon receipt of a properly executed affidavit.

The bill provides that in the case of pay-on-death accounts, securities or other accounts registered in transfer-on-death form, and life insurance policies, annuities or other similar contracts not held within

⁵ Defined in the bill as "any writing or contract governing the disposition of all or any part of an asset upon the death of the decedent."

an employee benefit plan or a tax-qualified retirement account, the payor may pay out those interests without further inquiry.

The bill provides that the bill does not affect the ownership of an interest in an asset as between the former spouse and any other person entitled to such interest, the rights of any purchaser for value of any such interest, the rights of any creditor of the former spouse or any other person entitled to such interest, or the rights and duties of any insurance company, financial institution, trustee, administrator, or other third party.

Health Care Advance Directives

Chapter 765 governs health care advance directives. An "advance directive" is defined as

[A] witnessed written document or oral statement in which instructions are given by a principal or in which the principal's desires are expressed concerning any aspect of the principal's health care, and includes, but is not limited to, the designation of a health care surrogate, a living will, or an anatomical gift [].⁶

The statute was enacted "as a method for a 'competent adult' to provide, in advance, a written declaration directing the withholding of life-prolonging procedures in the event of a terminal condition."⁷ The statute further provides a method whereby certain enumerated persons, together with the attending physician, may act on behalf of an incompetent patient who has not made a declaration in accordance with s. 765.04, F.S.⁸ Where the designated or alternate surrogate is no longer available, willing, or competent to make health care decisions for the incapacitated patient, the statute provides a list of individuals, in order of priority, to act on behalf of the patient.⁹

Current law does not provide for instances where a principal fails to remove his or her former spouse as health care surrogate or surrogate appointed under a living will following the dissolution or annulment of marriage.

The bill terminates the authority of a health care surrogate or surrogate appointed under a living will upon the divorce or annulment of the marriage between the surrogate and the principal unless the document or the final judgment of dissolution provides otherwise.

B. SECTION DIRECTORY:

Section 1 creates s. 732.703, F.S., regarding effect of dissolution on beneficiary designations.

Section 2 creates s. 765.2021, F.S., regarding health care surrogate designations.

Section 3 creates s. 765.3031, F.S., regarding living wills.

Section 4 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

⁶ Section 765.101(1), F.S.

⁷ *Corbett v. D'Alessandro*, 487 So. 2d 368, 370 (Fla. 2d DCA 1986).

⁸ Section 765.202, F.S., (providing the responsibilities of the surrogate).

⁹ Section 765.401(1)(a)-(h), F.S.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Companies administering the non-probate assets at issue may incur some additional administrative costs. However, such costs are unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to effect of dissolution or annulment
 3 of marriage on certain designations; creating s.
 4 732.703, F.S.; providing definitions; providing that a
 5 designation made by or on behalf of a decedent
 6 providing for the payment or transfer at death of an
 7 interest in an asset to or for the benefit of the
 8 decedent's former spouse shall become void if the
 9 decedent's marriage was judicially dissolved or
 10 declared invalid before the decedent's death, if the
 11 designation was made prior to the dissolution or
 12 order; providing for disposition of assets; providing
 13 for treatment of certain retirement plans; specifying
 14 assets subject to provisions; providing exceptions;
 15 providing that payors are not liable for payments or
 16 transfers to beneficiaries contrary to this provision
 17 in certain circumstances; specifying the form of an
 18 affidavit that may be used to relieve a payor of
 19 liability for a transfer if the death certificate is
 20 silent as to the decedent's marital status at the time
 21 of death; providing that the payor is not liable for
 22 making any payment on account of, or transferring any
 23 interest in, certain types of assets to a beneficiary;
 24 providing that certain provisions apply
 25 notwithstanding the payor's knowledge that the person
 26 to whom the asset is transferred is different from the
 27 person who would own the interest due to the
 28 dissolution of the decedent's marriage or declaration

29 of the marriage's validity before the decedent's
 30 death; providing that the provisions do not affect
 31 specified interests and rights; creating ss. 765.2021
 32 and 765.3031, F.S.; providing that a spouse's
 33 authority as a health care surrogate or a surrogate
 34 under a living will, respectively, terminates upon the
 35 dissolution or annulment of the marriage, unless the
 36 document or the final judgment of dissolution provides
 37 otherwise; providing for the administration of the
 38 declaration of health care surrogacy or living will
 39 after the dissolution or annulment; providing
 40 applicability; providing an effective date.

41

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

43

44 Section 1. Section 732.703, Florida Statutes, is created
 45 to read:

46 732.703 Effect of divorce, dissolution, or invalidity of
 47 marriage on disposition of certain assets at death.-

48 (1) As used in this section, unless the context requires
 49 otherwise, the term:

50 (a) "Asset," when not modified by other words or phrases,
 51 means an asset described in subsection (3).

52 (b) "Beneficiary" means any person designated in a
 53 governing instrument to receive an interest in an asset upon the
 54 death of the decedent.

55 (c) "Death certificate" means a certified copy of a death
56 certificate issued by an official or agency for the place where
57 the decedent's death occurred.

58 (d) "Employee benefit plan" means any funded or unfunded
59 plan, program, or fund established by an employer to provide an
60 employee's beneficiaries with benefits that may be payable on
61 the employee's death.

62 (e) "Governing instrument" means any writing or contract
63 governing the disposition of all or any part of an asset upon
64 the death of the decedent.

65 (f) "Payor" means any person obligated to make payment of
66 the decedent's interest in an asset upon the death of the
67 decedent, and any other person who is in control or possession
68 of an asset.

69 (g) "Primary beneficiary" means a beneficiary designated
70 under the governing instrument to receive an interest in an
71 asset upon the death of the decedent who is not a secondary
72 beneficiary. A person who receives an interest in the asset upon
73 the death of the decedent due to the death of another
74 beneficiary prior to the decedent's death is also a primary
75 beneficiary.

76 (h) "Secondary beneficiary" means a beneficiary designated
77 under the governing instrument who will receive an interest in
78 an asset if the designation of the primary beneficiary is
79 revoked or otherwise cannot be given effect.

80 (2) A designation made by or on behalf of the decedent
81 providing for the payment or transfer at death of an interest in
82 an asset to or for the benefit of the decedent's former spouse

83 is void as of the time the decedent's marriage was judicially
 84 dissolved or declared invalid by court order prior to the
 85 decedent's death, if the designation was made prior to the
 86 dissolution or court order. The decedent's interest in the asset
 87 shall pass as if the decedent's former spouse predeceased the
 88 decedent. An individual retirement account described in s. 408
 89 or s. 408A of the Internal Revenue Code of 1986, or an employee
 90 benefit plan, may not be treated as a trust for purposes of this
 91 section.

92 (3) Subsection (2) applies to the following assets in
 93 which a resident of this state has an interest at the time of
 94 the resident's death:

95 (a) A life insurance policy, qualified annuity, or other
 96 similar tax-deferred contract held within an employee benefit
 97 plan.

98 (b) An employee benefit plan.

99 (c) An individual retirement account described in s. 408
 100 or s. 408A of the Internal Revenue Code of 1986, including an
 101 individual retirement annuity described in s. 408(b) of the
 102 Internal Revenue Code of 1986.

103 (d) A payable-on-death account.

104 (e) A security or other account registered in a transfer-
 105 on-death form.

106 (f) A life insurance policy, annuity, or other similar
 107 contract that is not held within an employee benefit plan or a
 108 tax-qualified retirement account.

109 (4) Subsection (2) does not apply:

110 (a) To the extent that controlling federal law provides
 111 otherwise;

112 (b) If the governing instrument is signed by the decedent,
 113 or on behalf of the decedent, after the order of dissolution or
 114 order declaring the marriage invalid and such governing
 115 instrument expressly provides that benefits will be payable to
 116 the decedent's former spouse;

117 (c) To the extent a will or trust governs the disposition
 118 of the assets and s. 732.507(2) or s. 736.1005 applies;

119 (d) If the order of dissolution or order declaring the
 120 marriage invalid requires that the decedent acquire or maintain
 121 the asset for the benefit of a former spouse or children of the
 122 marriage, payable upon the death of the decedent either outright
 123 or in trust, only if other assets of the decedent fulfilling
 124 such a requirement for the benefit of the former spouse or
 125 children of the marriage do not exist upon the death of the
 126 decedent;

127 (e) If, under the terms of the order of dissolution or
 128 order declaring the marriage invalid, the decedent could not
 129 have unilaterally terminated or modified the ownership of the
 130 asset, or its disposition upon the death of the decedent;

131 (f) If the designation of the decedent's former spouse as
 132 a beneficiary is irrevocable under applicable law;

133 (g) If the instrument directing the disposition of the
 134 asset at death is governed by the laws of a state other than
 135 this state;

136 (h) To an asset held in two or more names as to which the
 137 death of one coowner vests ownership of the asset in the
 138 surviving coowner or coowners; or

139 (i) If the decedent remarries the person whose interest
 140 would otherwise have been revoked under this section and the
 141 decedent and that person are married to one another at the time
 142 of the decedent's death.

143 (5) In the case of an asset described in paragraph (3)(a),
 144 paragraph (3)(b), or paragraph (3)(c), unless payment or
 145 transfer would violate a court order directed to, and served as
 146 required by law on, the payor:

147 (a) If the governing instrument does not explicitly
 148 specify the relationship of the beneficiary to the decedent or
 149 if the governing instrument explicitly provides that the
 150 beneficiary is not the decedent's spouse, the payor is not
 151 liable for making any payment on account of, or transferring any
 152 interest in, the asset to the beneficiary.

153 (b). As to any portion of the asset required by the
 154 governing instrument to be paid after the decedent's death to a
 155 primary beneficiary explicitly designated in the governing
 156 instrument as the decedent's spouse:

157 1. If the death certificate states that the decedent was
 158 married at the time of his or her death to that spouse, the
 159 payor is not liable for making a payment on account of, or for
 160 transferring an interest in, that portion of the asset to such
 161 primary beneficiary.

162 2. If the death certificate states that the decedent was
 163 not married at the time of his or her death, or if the death

164 certificate states that the decedent was married to a person
 165 other than the spouse designated as the primary beneficiary at
 166 the time of his or her death, the payor is not liable for making
 167 a payment on account of, or for transferring an interest in,
 168 that portion of the asset to a secondary beneficiary under the
 169 governing instrument.

170 3. If the death certificate is silent as to the decedent's
 171 marital status at the time of his or her death, the payor is not
 172 liable for making a payment on account of, or for transferring
 173 an interest in, that portion of the asset to the primary
 174 beneficiary upon delivery to the payor of an affidavit validly
 175 executed by the primary beneficiary in substantially the
 176 following form:

177
 178 STATE OF _____

179 COUNTY OF _____

180 Before me, the undersigned authority, personally
 181 appeared ... (type or print affiant's name)...

182 ("Affiant"), who swore or affirmed that:

183 1. ... (Type or print name of decedent)...
 184 ("Decedent") died on ... (type or print the date of the
 185 Decedent's death)....

186 2. Affiant is a "primary beneficiary" as that
 187 term is defined in Section 732.703, Florida Statutes.
 188 Affiant and Decedent were married on ... (type or print
 189 the date of marriage)..., and were legally married to
 190 one another on the date of the Decedent's death.

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...(Affiant)...

Sworn to or affirmed before me by the affiant who
is personally known to me or who has produced
...(state type of identification)... as identification
this day of ...(month)..., ...(year)....
...(Signature of Officer)...
...(Print, Type, or Stamp Commissioned name of Notary
Public)...

4. If the death certificate is silent as to the decedent's
marital status at the time of his or her death, the payor is not
liable for making a payment on account of, or for transferring
an interest in, that portion of the asset to the secondary
beneficiary upon delivery to the payor of an affidavit validly
executed by the secondary beneficiary affidavit in substantially
the following form:

STATE OF

COUNTY OF

Before me, the undersigned authority, personally
appeared ...(type or print affiant's name)...
("Affiant"), who swore or affirmed that:
1. ...(Type or print name of decedent)...
("Decedent") died on ...(type or print the date of the
Decedent's death)....

218 2. Affiant is a "secondary beneficiary" as that
 219 term is defined in Section 732.703, Florida Statutes.
 220 On the date of the Decedent's death, the Decedent was
 221 not legally married to the spouse designated as the
 222 "primary beneficiary" as that term is defined in
 223 Section 732.703, Florida Statutes.

224 Sworn to or affirmed before me by the affiant who
 225 is personally known to me or who has produced
 226 ...(state type of identification)... as identification
 227 this day of ...(month)..., ...(year)....
 228 ...(Signature of Officer)...
 229 ...(Print, Type, or Stamp Commissioned name of Notary
 230 Public)...

231
 232 (6) In the case of an asset described in paragraph (3) (d),
 233 paragraph (3) (e), or paragraph (3) (f), the payor is not liable
 234 for making any payment on account of, or transferring any
 235 interest in, the asset to any beneficiary.

236 (7) Subsections (5) and (6) apply notwithstanding the
 237 payor's knowledge that the person to whom the asset is
 238 transferred is different from the person who would own the
 239 interest pursuant to subsection (2).

240 (8) This section does not affect the ownership of an
 241 interest in an asset as between the former spouse and any other
 242 person entitled to such interest by operation of this section,
 243 the rights of any purchaser for value of any such interest, the
 244 rights of any creditor of the former spouse or any other person
 245 entitled to such interest, or the rights and duties of any

246 insurance company, financial institution, trustee,
 247 administrator, or other third party.

248 (9) This section applies to all designations made by or on
 249 behalf of decedents dying on or after July 1, 2012, regardless
 250 of when the designation was made.

251 Section 2. Section 765.2021, Florida Statutes, is created
 252 to read:

253 765.2021 Termination of authority upon dissolution of
 254 marriage.-

255 (1) Upon the dissolution or annulment of a marriage, a
 256 former spouse's authority as a health care surrogate terminates
 257 upon the dissolution or annulment of the marriage, unless the
 258 document or the final judgment of dissolution or annulment
 259 provides otherwise. After the dissolution or annulment, the
 260 document designating a health care surrogate shall be
 261 administered as if the former spouse predeceased the other
 262 spouse and is therefore unable to perform his or her duties. The
 263 remainder of the document shall be unaffected.

264 (2) This section applies to all final judgments of
 265 dissolution or annulment entered on or after July 1, 2012.

266 Section 3. Section 765.3031, Florida Statutes, is created
 267 to read:

268 765.3031 Termination of authority upon dissolution of
 269 marriage.-

270 (1) Upon the dissolution or annulment of a marriage, a
 271 former spouse's authority as a surrogate for the other spouse
 272 under a living will terminates upon the dissolution or annulment
 273 of the marriage, unless the document or the final judgment of

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274 | dissolution or annulment provides otherwise. After the
 275 | dissolution or annulment, the living will shall be administered
 276 | as if the former spouse predeceased the other spouse, and the
 277 | remainder of the document shall be unaffected.

278 | (2) This section applies to all final judgments of
 279 | dissolution or annulment entered on or after July 1, 2012.

280 | Section 4. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 437 Protection of Minors
SPONSOR(S): Criminal Justice Subcommittee; Eisnaugle and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 964

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	15 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee		Cunningham	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Section 810.145, F.S., establishes the crime of video voyeurism. Section 810.145(8)(a), F.S., provides it is a 3rd degree felony for specified persons to commit video voyeurism if the victim is a student or a child less than 16. A violation of s. 810.145(8)(a), F.S., is a 2nd degree felony, ranked in Level 4 of the Offense Severity Ranking Chart, if the person has a prior video voyeurism conviction.

The bill increases the penalty for violations of s. 810.145(8)(a), F.S., from a 3rd degree felony to a 2nd degree felony. A violation of subsection (8)(a) by persons who have a prior video voyeurism conviction remains a 2nd degree felony, but the bill ranks such offense in Level 6 of the Offense Severity Ranking Chart.

The bill amends ss. 943.0435, 944.606, and 944.607, F.S., to add s. 810.145(8), F.S., to the list of offenses that qualify a person as a sexual offender. The bill also amends s. 775.21, F.S., to require a person be designated a sexual predator if the person is convicted of s. 810.145(8)(b), F.S., and has previously been convicted of a qualifying offense. This will have the effect of expanding the number of persons who qualify as sexual offenders and sexual predators.

The bill also amends s. 827.071(5), F.S., which makes it a 3rd degree felony for any person to knowingly possess, control, or intentionally view photographs, images, etc., which, in whole or in part, he or she knows to include any sexual conduct by a child. The bill specifies that if such photographs, images, etc. include sexual conduct by more than one child, then each child in each photograph, image, etc. that is knowingly possessed, controlled, or intentionally viewed is a separate offense. As a result, a person who knowingly possesses one photograph that depicts sexual conduct by four different children could be charged with four separate violations of the statute.

The Criminal Justice Impact Conference met December 14, 2011, and found the prison bed impact of this bill to be indeterminate because of the section of the bill that provides that each child in each photograph, image, etc. that is knowingly possessed, controlled, or intentionally viewed is a separate offense. The number of such offenses cannot be determined. However, this bill will likely have an insignificant impact on the state prison beds because of the low volume of offenses addressed in this bill. Additionally, the Florida Department of Law Enforcement reports that expanding the number of persons who qualify as sexual offenders and sexual predators will require programming changes to the sexual offender/sexual predator database, which will cost \$28,625 in non-recurring dollars; however, FDLE states they can absorb these costs with current resources.

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Video Voyeurism

Section 810.145, F.S., establishes the crime of video voyeurism. A person commits the offense of video voyeurism if that person:

- For his or her own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally uses or installs an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy;¹
- For the amusement, entertainment, sexual arousal, gratification, or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or
- For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.²

Generally, a first-time violation of video voyeurism is a 1st degree misdemeanor,³ and second or subsequent violations are 3rd degree felonies.⁴ However, s. 810.145(8)(a), F.S., specifies that the penalty for video voyeurism is a 3rd degree felony for persons:

- Who are 18 years of age or older and who are responsible for the welfare of a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child, who commit video voyeurism against that child;
- Who are 18 years of age or older and who are employed at a private school,⁵ a school,⁶ or a voluntary prekindergarten education program,⁷ who commit video voyeurism against a student of the private school, school, or voluntary prekindergarten education program; or
- Who are 24 years of age or older who commit video voyeurism against a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child.⁸

Section 810.145(8)(b), F.S., makes it a 2nd degree felony⁹ if a person violates s. 810.145(8)(a), F.S., and that person has previously been convicted or adjudicated delinquent for any violation of s. 810.145,

¹ Section 810.145(1)(c), F.S., defines the phrase "place and time when a person has a reasonable expectation of privacy" as a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth.

² Section 810.145(2), F.S.

³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁵ As defined in s. 1002.01, F.S.

⁶ As defined in s. 1003.01, F.S.

⁷ As described in s. 1002.53(3)(a), (b), or (c), F.S.

⁸ Section 810.145(8)(a), F.S.

⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

F.S. Because this offense is not currently ranked in the Criminal Punishment Code "offense severity ranking chart,"¹⁰ it defaults to a Level 4 ranking, which equates to 22 sentencing points.¹¹

The statute provides exceptions for the above-described criminal penalties to ensure that the statute does not criminalize legitimate law enforcement surveillance, security systems if a notice is posted, and video surveillance devices that are clearly and immediately obvious.¹² There is also an exception for providers of electronic communication services and providers of remote computing services.¹³

Effect of the Bill

The bill amends s. 810.145, F.S., to increase the penalties associated with the video voyeurism offenses specified in subsection (8). The penalty for first-time violations of subsection (8)(a) of the statute is increased from a 3rd degree felony to a 2nd degree felony. Violations of s. 810.145(8)(b), F.S., remain 2nd degree felonies, but the bill ranks this offense in Level 6 of the Criminal Punishment Code "offense severity ranking chart," which equates to 36 sentencing points.

Sexual Offenders and Sexual Predators – Qualifying Offenses

In very general terms, the distinction between a sexual predator and a sexual offender is based on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense was committed.

Section 943.0435, F.S., which contains various registration requirements for sexual offenders, defines the term "sexual offender," in part, as a person who:

Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction and has been released on or after October 1, 1997, from the sanction imposed for any conviction of such offense:

- Section 787.01, F.S. (kidnapping)
- Section 787.02, F.S. (false imprisonment)
- Section 787.025(2)(c), F.S. (luring or enticing a child where the victim is a minor and the defendant is not the victim's parent or guardian)
- Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.¹⁴
- Section 794.05, F.S. (unlawful activity with certain minors)
- Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
- Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
- Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
- Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
- Section 827.071, F.S. (sexual performance by a child)
- Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
- Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.¹⁵

¹⁰ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record; and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. Sections 921.0022 and 921.0024, F.S.

¹¹ Sections 921.0023 and 921.0024, F.S.

¹² Section 810.145(5), F.S.

¹³ *Id.*

¹⁴ Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

- Section 847.0137, F.S. (transmission of pornography by electronic device or equipment)
- Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment)
- Section 847.0145, F.S. (selling or buying of minors)
- Section 985.701(1), F.S. (sexual misconduct with a juvenile offender)

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term "sexual offender" that include the offenses listed above.

Section 775.21, F.S., the "Florida Sexual Predators Act," provides, in part, that a person must be designated a "sexual predator":

- If the person was convicted of a felony on or after October 1, 1993, that is any felony violation, or any attempt thereof, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025(2)(b); s. 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction; and
- The offender has previously been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation of s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; or s. 985.701(1); or a violation of a similar law of another jurisdiction.¹⁶ The offenses are often referred to as "predicate offenses."

Effect of the Bill

The bill amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add s. 810.145(8), F.S., to the list of offenses that, upon conviction, qualify a person as a sexual offender.

The bill amends s. 775.21, F.S., to require a person be designated a sexual predator if the person is convicted of s. 810.145(8)(b), F.S. (video voyeurism where the victim is a student or under the age of 16 and the defendant has a prior video voyeurism conviction), and has previously been convicted of one of the predicate offenses. The bill also includes s. 810.145(8)(b), F.S., as a predicate offense.

Sexual Performance by a Child

Section 827.071(5), F.S., provides it is a 3rd degree felony for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct¹⁷ by a child. The statute specifies that the possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense.

¹⁵ Section 847.0135(6), F.S., provides that it is unlawful for any owner or operator of a computer online service, Internet service, or local bulletin board service knowingly to permit a subscriber to use the service to commit a violation of s. 947.0135, F.S.

¹⁶ Section 775.21(4)(a), F.S.

¹⁷ The term "sexual conduct" is defined as actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, 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. *See* section 827.071(1), F.S.

Recently, Florida's 1st District Court of Appeal reviewed a case where the defendant had been convicted of multiple counts of s. 827.071(5), F.S., based on a single video.¹⁸ The State argued that the convictions were proper because multiple children were depicted in the video.¹⁹ The court disagreed noting that s. 827.071(5), F.S., does not contemplate a separate conviction for each child depicted in a single photograph.²⁰

Effect of the Bill

The bill specifies that if a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes sexual conduct by more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. As a result, a person who knowingly possesses one photograph that depicts sexual conduct by four different children could be charged with four separate violations of the statute.

B. SECTION DIRECTORY:

Section 1. Cites the bill as the "Protect Our Children Act of 2012."

Section 2. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 3. Amends s. 827.071, F.S., relating to sexual performance by a child; penalties.

Section 4. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 5. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 6. Amends s. 944.607, F.S., relating to notification to the Department of Law Enforcement of information on sexual offenders.

Section 7. Amends s. 810.145, F.S., relating to video voyeurism.

Section 8. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 9. Provides an October 1, 2012, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met December 14, 2011, and found the prison bed impact of this bill to be indeterminate because of the section of the bill that provides that each child in each photograph, image, etc. that is knowingly possessed, controlled, or intentionally viewed is a separate offense. The number of such offenses cannot be determined. However, this bill will likely

¹⁸ *Stowe v. State*, 66 So.3d 1015 (Fla. 1st DCA 2011).

¹⁹ *Id.*

²⁰ *Id.*

have an insignificant impact on the state prison beds because of the low volume of offenses addressed in this bill.

Additionally, FDLE reports that expanding the number of persons who qualify as sexual offenders and sexual predators will require programming changes to the sexual offender/sexual predator database, which will cost \$28,625 in non-recurring dollars; however, FDLE states they can absorb these costs with current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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 November 15, 2011, the Criminal Justice Subcommittee approved one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes language that added "residential dwellings" to the definition of "place and time when a person has a reasonable expectation of privacy" for purposes of video voyeurism.
- Amends the definition of the term "sexual offender" in ss. 944.606, and 944.607, F.S., to add s. 810.145(8), F.S., to the list of offenses that, upon conviction, qualify a person as a sexual offender.

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

28 Section 2. Paragraph (a) of subsection (4) of section
 29 775.21, Florida Statutes, is amended to read:

30 775.21 The Florida Sexual Predators Act.—

31 (4) SEXUAL PREDATOR CRITERIA.—

32 (a) For a current offense committed on or after October 1,
 33 1993, upon conviction, an offender shall be designated as a
 34 "sexual predator" under subsection (5), and subject to
 35 registration under subsection (6) and community and public
 36 notification under subsection (7) if:

37 1. The felony is:

38 a. A capital, life, or first-degree felony violation, or
 39 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 40 is a minor and the defendant is not the victim's parent or
 41 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 42 violation of a similar law of another jurisdiction; or

43 b. Any felony violation, or any attempt thereof, of s.
 44 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
 45 minor and the defendant is not the victim's parent or guardian;
 46 s. 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 47 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025(2)(b); s.
 48 827.071; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a
 49 violation of a similar law of another jurisdiction, and the
 50 offender has previously been convicted of or found to have
 51 committed, or has pled nolo contendere or guilty to, regardless
 52 of adjudication, any violation of s. 787.01, s. 787.02, or s.
 53 787.025(2)(c), where the victim is a minor and the defendant is
 54 not the victim's parent or guardian; s. 794.011, excluding s.
 55 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.

56 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0133; s.
 57 847.0135, excluding s. 847.0135(6); s. 847.0145; or s.
 58 985.701(1); or a violation of a similar law of another
 59 jurisdiction;

60 2. The offender has not received a pardon for any felony
 61 or similar law of another jurisdiction that is necessary for the
 62 operation of this paragraph; and

63 3. A conviction of a felony or similar law of another
 64 jurisdiction necessary to the operation of this paragraph has
 65 not been set aside in any postconviction proceeding.

66 Section 3. Paragraph (a) of subsection (5) of section
 67 827.071, Florida Statutes, is amended to read:

68 827.071 Sexual performance by a child; penalties.—

69 (5)(a) It is unlawful for any person to knowingly possess,
 70 control, or intentionally view a photograph, motion picture,
 71 exhibition, show, representation, image, data, computer
 72 depiction, or other presentation which, in whole or in part, he
 73 or she knows to include any sexual conduct by a child. The
 74 possession, control, or intentional viewing of each such
 75 photograph, motion picture, exhibition, show, image, data,
 76 computer depiction, representation, or presentation is a
 77 separate offense. If such photograph, motion picture,
 78 exhibition, show, representation, image, data, computer
 79 depiction, or other presentation includes sexual conduct by more
 80 than one child, then each such child in each such photograph,
 81 motion picture, exhibition, show, representation, image, data,
 82 computer depiction, or other presentation that is knowingly
 83 possessed, controlled, or intentionally viewed is a separate

84 offense. A person who violates this subsection commits a felony
 85 of the third degree, punishable as provided in s. 775.082, s.
 86 775.083, or s. 775.084.

87 Section 4. Paragraph (a) of subsection (1) of section
 88 943.0435, Florida Statutes, is amended to read:

89 943.0435 Sexual offenders required to register with the
 90 department; penalty.—

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

92 (a)1. "Sexual offender" means a person who meets the
 93 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 94 subparagraph c., or sub-subparagraph d., as follows:

95 a.(I) Has been convicted of committing, or attempting,
 96 soliciting, or conspiring to commit, any of the criminal
 97 offenses proscribed in the following statutes in this state or
 98 similar offenses in another jurisdiction: s. 787.01, s. 787.02,
 99 or s. 787.025(2)(c), where the victim is a minor and the
 100 defendant is not the victim's parent or guardian; s. 794.011,
 101 excluding s. 794.011(10); s. 794.05; s. 796.03; s. 796.035; s.
 102 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.
 103 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
 104 847.0145; or s. 985.701(1); or any similar offense committed in
 105 this state which has been redesignated from a former statute
 106 number to one of those listed in this sub-sub-subparagraph; and

107 (II) Has been released on or after October 1, 1997, from
 108 the sanction imposed for any conviction of an offense described
 109 in sub-sub-subparagraph (I). For purposes of sub-sub-
 110 subparagraph (I), a sanction imposed in this state or in any
 111 other jurisdiction includes, but is not limited to, a fine,

112 probation, community control, parole, conditional release,
 113 control release, or incarceration in a state prison, federal
 114 prison, private correctional facility, or local detention
 115 facility;

116 b. Establishes or maintains a residence in this state and
 117 who has not been designated as a sexual predator by a court of
 118 this state but who has been designated as a sexual predator, as
 119 a sexually violent predator, or by another sexual offender
 120 designation in another state or jurisdiction and was, as a
 121 result of such designation, subjected to registration or
 122 community or public notification, or both, or would be if the
 123 person were a resident of that state or jurisdiction, without
 124 regard to whether the person otherwise meets the criteria for
 125 registration as a sexual offender;

126 c. Establishes or maintains a residence in this state who
 127 is in the custody or control of, or under the supervision of,
 128 any other state or jurisdiction as a result of a conviction for
 129 committing, or attempting, soliciting, or conspiring to commit,
 130 any of the criminal offenses proscribed in the following
 131 statutes or similar offense in another jurisdiction: s. 787.01,
 132 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 133 the defendant is not the victim's parent or guardian; s.
 134 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 135 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s.
 136 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
 137 847.0138; s. 847.0145; or s. 985.701(1); or any similar offense
 138 committed in this state which has been redesignated from a
 139 former statute number to one of those listed in this sub-

140 subparagraph; or

141 d. On or after July 1, 2007, has been adjudicated
 142 delinquent for committing, or attempting, soliciting, or
 143 conspiring to commit, any of the criminal offenses proscribed in
 144 the following statutes in this state or similar offenses in
 145 another jurisdiction when the juvenile was 14 years of age or
 146 older at the time of the offense:

147 (I) Section 794.011, excluding s. 794.011(10);

148 (II) Section 800.04(4)(b) where the victim is under 12
 149 years of age or where the court finds sexual activity by the use
 150 of force or coercion;

151 (III) Section 800.04(5)(c)1. where the court finds
 152 molestation involving unclothed genitals; or

153 (IV) Section 800.04(5)(d) where the court finds the use of
 154 force or coercion and unclothed genitals.

155 2. For all qualifying offenses listed in sub-subparagraph
 156 (1)(a)1.d., the court shall make a written finding of the age of
 157 the offender at the time of the offense.

158
 159 For each violation of a qualifying offense listed in this
 160 subsection, the court shall make a written finding of the age of
 161 the victim at the time of the offense. For a violation of s.
 162 800.04(4), the court shall additionally make a written finding
 163 indicating that the offense did or did not involve sexual
 164 activity and indicating that the offense did or did not involve
 165 force or coercion. For a violation of s. 800.04(5), the court
 166 shall additionally make a written finding that the offense did
 167 or did not involve unclothed genitals or genital area and that

168 the offense did or did not involve the use of force or coercion.

169 Section 5. Paragraph (b) of subsection (1) of section
170 944.606, Florida Statutes, is amended to read:

171 944.606 Sexual offenders; notification upon release.—

172 (1) As used in this section:

173 (b) "Sexual offender" means a person who has been
174 convicted of committing, or attempting, soliciting, or
175 conspiring to commit, any of the criminal offenses proscribed in
176 the following statutes in this state or similar offenses in
177 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
178 where the victim is a minor and the defendant is not the
179 victim's parent or guardian; s. 794.011, excluding s.
180 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
181 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
182 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
183 or s. 985.701(1); or any similar offense committed in this state
184 which has been redesignated from a former statute number to one
185 of those listed in this subsection, when the department has
186 received verified information regarding such conviction; an
187 offender's computerized criminal history record is not, in and
188 of itself, verified information.

189 Section 6. Paragraph (a) of subsection (1) of section
190 944.607, Florida Statutes, is amended to read:

191 944.607 Notification to Department of Law Enforcement of
192 information on sexual offenders.—

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

194 (a) "Sexual offender" means a person who is in the custody
195 or control of, or under the supervision of, the department or is

196 in the custody of a private correctional facility:

197 1. On or after October 1, 1997, as a result of a
 198 conviction for committing, or attempting, soliciting, or
 199 conspiring to commit, any of the criminal offenses proscribed in
 200 the following statutes in this state or similar offenses in
 201 another jurisdiction: s. 787.01, s. 787.02, or s. 787.025(2)(c),
 202 where the victim is a minor and the defendant is not the
 203 victim's parent or guardian; s. 794.011, excluding s.
 204 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 205 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 206 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 207 or s. 985.701(1); or any similar offense committed in this state
 208 which has been redesignated from a former statute number to one
 209 of those listed in this paragraph; or

210 2. Who establishes or maintains a residence in this state
 211 and who has not been designated as a sexual predator by a court
 212 of this state but who has been designated as a sexual predator,
 213 as a sexually violent predator, or by another sexual offender
 214 designation in another state or jurisdiction and was, as a
 215 result of such designation, subjected to registration or
 216 community or public notification, or both, or would be if the
 217 person were a resident of that state or jurisdiction, without
 218 regard as to whether the person otherwise meets the criteria for
 219 registration as a sexual offender.

220 Section 7. Subsection (8) of section 810.145, Florida
 221 Statutes, are amended to read:

222 810.145 Video voyeurism.—

223 (8)(a) A person who is:

224 1. Eighteen years of age or older who is responsible for
 225 the welfare of a child younger than 16 years of age, regardless
 226 of whether the person knows or has reason to know the age of the
 227 child, and who commits an offense under this section against
 228 that child;

229 2. Eighteen years of age or older who is employed at a
 230 private school as defined in s. 1002.01; a school as defined in
 231 s. 1003.01; or a voluntary prekindergarten education program as
 232 described in s. 1002.53(3)(a), (b), or (c) and who commits an
 233 offense under this section against a student of the private
 234 school, school, or voluntary prekindergarten education program;
 235 or

236 3. Twenty-four years of age or older who commits an
 237 offense under this section against a child younger than 16 years
 238 of age, regardless of whether the person knows or has reason to
 239 know the age of the child

240
 241 commits a felony of the second ~~third~~ degree, punishable as
 242 provided in s. 775.082, s. 775.083, or s. 775.084.

243 (b) A person who violates this subsection and who has
 244 previously been convicted of or adjudicated delinquent for any
 245 violation of this section commits a felony of the second degree,
 246 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

247 Section 8. Paragraph (f) of subsection (3) of section
 248 921.0022, Florida Statutes, is amended to read:

249 921.0022 Criminal Punishment Code; offense severity
 250 ranking chart.—

251 (3) OFFENSE SEVERITY RANKING CHART

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252 (f) LEVEL 6

253

Florida	Felony	
Statute	Degree	Description

254

316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
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255

499.0051(3)	2nd	Knowing forgery of pedigree papers.
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256

499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
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257

499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
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258

775.0875(1)	3rd	Taking firearm from law enforcement officer.
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259

784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
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260

784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
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261

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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262	784.041	3rd	Felony battery; domestic battery by strangulation.
263	784.048(3)	3rd	Aggravated stalking; credible threat.
264	784.048(5)	3rd	Aggravated stalking of person under 16.
265	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
266	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
267	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
268	784.081(2)	2nd	Aggravated assault on specified official or employee.
269	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
	784.083(2)	2nd	Aggravated assault on code

270			inspector.
271	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
272	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
273	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
274	790.164 (1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
275	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
276	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.

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277	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
278	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
279	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
280	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
281	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
282	<u>810.145 (8) (b)</u>	<u>2nd</u>	<u>Video voyeurism; certain minor victims; 2nd or subsequent offense.</u>
283	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.

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284	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
285	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
286	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
287	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
288	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
289	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
290	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
291	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.

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292	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
293	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
294	827.03(1)	3rd	Abuse of a child.
295	827.03(3)(c)	3rd	Neglect of a child.
296	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
297	836.05	2nd	Threats; extortion.
298	836.10	2nd	Written threats to kill or do bodily injury.
299	843.12	3rd	Aids or assists person to escape.
	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene

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300			materials depicting minors.
300	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
301	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
302	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
303	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
304	944.40	2nd	Escapes.
305	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
306	944.47(1)(a)5.	2nd	Introduction of contraband

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(firearm, weapon, or explosive)
into correctional facility.

307

951.22(1)

3rd

Intoxicating drug, firearm, or
weapon introduced into county
facility.

308

309

Section 9. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 631 Terms of Courts
SPONSOR(S): Weinstein
TIED BILLS: None **IDEN./SIM. BILLS:** SB 462

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Bond	Bond
2) Judiciary Committee		Bond NB	Havlicak RH

SUMMARY ANALYSIS

Terms of court were enacted to ensure that the circuit judges traveled to each of the counties on a regular basis. While terms of court were a necessity in the days of difficult travel and slow communications, the concept is long outdated and unnecessary.

This bill repeals statutory requirements for terms of court and makes conforming changes.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

At one time, circuit court judges literally "rode the circuit," travelling from one county seat to the next for the purpose of conducting court. In a day of difficult travel and slow communications, it was important that the circuit judge show up on a date certain to conduct the court's business.¹ Terms of court were developed to fill that need, and were required by the state constitution² until Article V was substantially rewritten in 1957. Current law creates two or more terms of court in each of the counties. See ss. 26.22-.365, F.S.

In the past, on the first day of the term of court the circuit judge would conduct a ceremonial opening of the term of court, the clerk would summon a new grand jury, the sheriff would bring in the prisoners for a docket sounding, and the work of the circuit court would commence. The circuit judge was generally expected to stay in town until the judicial work was complete, but also was required to leave in time to make it to the next county for the start of that county's term of court. After the circuit judge left town, the court was considered "in vacation." A circuit judge is fined \$50 a day for every day he or she is late starting a term of court.³

In the early days of the state, work as a supreme court justice was a part-time occupation. The justices similarly held terms of court in order that they have a fixed time to travel to Tallahassee to conduct appellate sessions. The concept for terms of court was adopted in statute when the intermediate district courts of appeal were created in 1957. Section 35.11, F.S., requires each of the district courts of appeal to meet at least once in every regular term in each judicial circuit within the district.

Today, terms of court are an archaic concept. It does not appear that any of the courts formally open a term of court with the traditional ceremony. Circuit judges come and go from each of the counties as needed and far more often than once every six months. Two of the five district courts of appeal are known to regularly travel the district for the purpose of conducting oral argument. It is unknown when the last time a circuit judge was fined for nonappearance at the first day of a term.

Reference to terms of court is still relevant today for two purposes: designating the terms of local grand juries and limiting withdrawal of an appellate mandate.

Historically, although not explicitly required by statute, the terms of a grand jury coincide with the term of the court.

In the appellate courts, the terms of court limit an appellate court's ability to withdraw a mandate, a rare procedure. The Florida Supreme Court in 1932 explained the scope and limits of the power to withdraw:

But, be that as it may, a majority of the court have reached the conclusion that the correct rule, which should be recognized and applied in such situation, is that the jurisdiction of this court, like the jurisdiction of courts generally, persists to the end of the term, and then terminates, but that, during the term at which a judgment of this court is

¹ See <http://www.leoncountyfl.gov/2ndcircuit/index.php?Page=FirstHundred.php>, which describes the history of the Second Judicial Circuit, including how the terms of court provided for the circuit judge to travel down the Apalachicola River, and were changed to accommodate the arrival of steamboat service along the river (last accessed January 30, 2012).

² Article V, s. 8 of the Constitution of 1885 included this sentence: "Such Judge shall hold at least two terms of his court in each county within his Circuit every year, at such times and places as shall be prescribed by law, and may hold special terms."

³ Section 26.39, F.S.

rendered, this court has jurisdiction and power which it may exercise, as the circumstances and justice of the case may require, to reconsider, revise, reform, or modify its own judgments for the purpose of making the same accord with law and justice, and that it has power to recall its own mandate for the purpose of enabling it to exercise such jurisdiction and power in a proper case.⁴

Under current law, a mandate may only be withdrawn during the current term of the appellate court, which leads to the odd result of some appellate court opinions being subject to withdrawal for nearly six months while others may only be subject to withdrawal for a few days.

Effect of Bill

The bill repeals statutory terms of court applicable to the circuit courts, district courts of appeal, and the Supreme Court. It also makes the following conforming changes:

- Repeals the fine for nonattendance by a circuit judge.
- Repeals a requirement that a circuit judge call the docket at the end of the term.
- Repeals a requirement that district courts of appeal hear oral arguments in each of the judicial circuits in every term of court.
- Repeals a requirement that criminal cases be heard in the term before civil cases.
- Repeals a requirement that a criminal case be heard in the same term of court that the indictment was handed down unless the court holds the case to the next term for good cause.
- Removes references to terms of court in statutes regarding county sheriffs.
- Removes references to terms of court in the definitions of three crimes.
- Removes references to terms of court in the statute on contempt of court.
- Removes the requirement that a criminal defendant show up on the first day of a term of court if the appearance bond is unclear.
- Requires the chief judge of the circuit to set the terms of a grand jury.
- Removes reference to terms of court in statute requiring a witness in a criminal case to appear in court.

The bill creates two new conforming statutes. These new sections:

- Allow the Supreme Court to establish terms of court for the Supreme Court and for the lower courts, if the court wishes.
- Provide in statute that an appellate court may withdraw a mandate for up to 120 days after it is filed with the lower court. The conditions upon which withdrawal is allowed are taken from the case law quoted above.

B. SECTION DIRECTORY:

Section 1 repeals ss. 25.051, 26.21, 26.22, 26.23, 26.24, 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33, 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365, 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05 and 907.055, F.S.

Section 2 amends s. 26.46, F.S., regarding jurisdiction of a resident judge.

Section 3 amends s. 27.04, F.S., regarding witnesses in a criminal case.

Section 4 amends s. 30.12, F.S., regarding the power to appoint a sheriff.

Section 5 amends s. 30.15, F.S., regarding powers, duties and obligations of the sheriff.

⁴ *Chapman v. St. Stephens Protestant Episcopal Church, Inc.*, 138 So. 630 (Fla. 1932). The *Chapman* case specifically provides that the power to withdraw a mandate may be limited by statute.

Section 6 amends s. 34.13, F.S., regarding methods of prosecution.

Section 7 amends s. 35.05, F.S., regarding the headquarters of a district court of appeal.

Section 8 amends s. 38.23, F.S., regarding contempt of court.

Section 9 creates s. 43.43, F.S., regarding terms of court.

Section 10 creates s. 43.44, F.S., regarding mandates of appellate courts.

Section 11 amends s. 112.19, F.S., regarding law enforcement officers.

Section 12 amends s. 206.15, F.S., regarding court costs.

Section 13 amends s. 450.121, F.S., regarding child labor law.

Section 14 amends s. 831.10, F.S., regarding forged bills.

Section 15 amends s. 831.17, F.S., regarding offenses.

Section 16 amends s. 877.08, F.S., regarding coin-operated machines.

Section 17 amends s. 902.19, F.S., regarding when prosecutor liable for costs.

Section 18 amends s. 903.32, F.S., regarding defects in a criminal bond.

Section 19 amends s. 905.01, F.S., regarding grand jury terms.

Section 20 amends s. 905.09, F.S., regarding discharge and recall of a grand jury.

Section 21 amends s. 905.095, F.S., regarding extension of a grand jury term.

Section 22 amends s. 914.03, F.S., regarding attendance of witnesses.

Section 23 amends s. 924.065, F.S., regarding appearance bonds.

Section 24 amends s. 932.47, F.S., regarding information filed by a prosecuting attorney.

Section 25 provides an effective date of January 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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1 A bill to be entitled
 2 An act relating to terms of courts; repealing s.
 3 25.051, F.S., relating to regular terms of the Supreme
 4 Court; repealing s. 26.21, F.S., relating to terms of
 5 the circuit courts; repealing s. 26.22, F.S., relating
 6 to terms of the First Judicial Circuit; repealing s.
 7 26.23, F.S., relating to terms of the Second Judicial
 8 Circuit; repealing s. 26.24, F.S., relating to terms
 9 of the Third Judicial Circuit; repealing s. 26.25,
 10 F.S., relating to terms of the Fourth Judicial
 11 Circuit; repealing s. 26.26, F.S., relating to terms
 12 of the Fifth Judicial Circuit; repealing s. 26.27,
 13 F.S., relating to terms of the Sixth Judicial Circuit;
 14 repealing s. 26.28, F.S., relating to terms of the
 15 Seventh Judicial Circuit; repealing s. 26.29, F.S.,
 16 relating to terms of the Eighth Judicial Circuit;
 17 repealing s. 26.30, F.S., relating to terms of the
 18 Ninth Judicial Circuit; repealing s. 26.31, F.S.,
 19 relating to terms of the Tenth Judicial Circuit;
 20 repealing s. 26.32, F.S., relating to terms of the
 21 Eleventh Judicial Circuit; repealing s. 26.33, F.S.,
 22 relating to terms of the Twelfth Judicial Circuit;
 23 repealing s. 26.34, F.S., relating to terms of the
 24 Thirteenth Judicial Circuit; repealing s. 26.35, F.S.,
 25 relating to terms of the Fourteenth Judicial Circuit;
 26 repealing s. 26.36, F.S., relating to terms of the
 27 Fifteenth Judicial Circuit; repealing s. 26.361, F.S.,
 28 relating to terms of the Sixteenth Judicial Circuit;

29 | repealing s. 26.362, F.S., relating to terms of the
30 | Seventeenth Judicial Circuit; repealing s. 26.363,
31 | F.S., relating to terms of the Eighteenth Judicial
32 | Circuit; repealing s. 26.364, F.S., relating to terms
33 | of the Nineteenth Judicial Circuit; repealing s.
34 | 26.365, F.S., relating to terms of the Twentieth
35 | Judicial Circuit; repealing s. 26.37, F.S., relating
36 | to requiring a judge to attend the first day of each
37 | term of the circuit court; repealing s. 26.38, F.S.,
38 | relating to a requirement for a judge to state a
39 | reason for nonattendance; repealing s. 26.39, F.S.,
40 | relating to the penalty for nonattendance of the
41 | judge; repealing s. 26.40, F.S., relating to
42 | adjournment of the circuit court upon nonattendance of
43 | the judge; repealing s. 26.42, F.S., relating to
44 | calling all cases on the docket at the end of each
45 | term; repealing s. 35.10, F.S., relating to regular
46 | terms of the district courts of appeal; repealing s.
47 | 35.11, F.S., relating to special terms of the district
48 | courts of appeal; repealing s. 907.05, F.S., relating
49 | to a requirement that criminal trials be heard in the
50 | term of court prior to civil cases; repealing s.
51 | 907.055, F.S., relating to a requirement that persons
52 | in custody be arraigned and tried in the term of court
53 | unless good cause is shown; amending ss. 26.46, 27.04,
54 | 30.12, 30.15, 34.13, 35.05, and 38.23, F.S.;
55 | conforming provisions to changes made by the act;
56 | creating s. 43.43, F.S.; allowing the Supreme Court to

57 set terms of court for the Supreme Court, district
 58 courts of appeal, and circuit courts; creating s.
 59 43.44, F.S.; providing that appellate courts may
 60 withdraw a mandate within 120 days after its issuance;
 61 amending ss. 112.19, 206.215, 450.121, 831.10, 831.17,
 62 877.08, 902.19, 903.32, 905.01, 905.09, 905.095,
 63 914.03, 924.065, and 932.47, F.S.; conforming
 64 provisions to changes made by the act; providing an
 65 effective date.

66
 67 Be It Enacted by the Legislature of the State of Florida:

68
 69 Section 1. Sections 25.051, 26.21, 26.22, 26.23, 26.24,
 70 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33,
 71 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365,
 72 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05, and
 73 907.055, Florida Statutes, are repealed.

74 Section 2. Section 26.46, Florida Statutes, is amended to
 75 read:

76 26.46 Jurisdiction of resident judge after assignment.—
 77 When a circuit judge is assigned to another circuit, none of the
 78 circuit judges in such other circuit shall, because of such
 79 assignment, be deprived of or affected in his or her
 80 jurisdiction other than to the extent essential so as not to
 81 conflict with the authority of the temporarily assigned circuit
 82 judge as to the particular case or cases or class of cases, ~~or~~
 83 ~~in presiding at the particular term or part of term named or~~
 84 ~~specified in the assignment.~~

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85 Section 3. Section 27.04, Florida Statutes, is amended to
 86 read:

87 27.04 Summoning and examining witnesses for state.—The
 88 state attorney shall have summoned all witnesses required on
 89 behalf of the state; and he or she is allowed the process of his
 90 or her court to summon witnesses from throughout the state to
 91 appear before the state attorney ~~in or out of term time~~ at such
 92 convenient places in the state attorney's judicial circuit and
 93 at such convenient times as may be designated in the summons, to
 94 testify before him or her as to any violation of the law upon
 95 which they may be interrogated, and he or she is empowered to
 96 administer oaths to all witnesses summoned to testify by the
 97 process of his or her court or who may voluntarily appear before
 98 the state attorney to testify as to any violation or violations
 99 of the law.

100 Section 4. Section 30.12, Florida Statutes, is amended to
 101 read:

102 30.12 Power to appoint sheriff.—Whenever any sheriff in
 103 the state shall fail to attend, in person or by deputy, ~~any term~~
 104 ~~of~~ the circuit court or county court of the county, from
 105 sickness, death, or other cause, the judge attending said court
 106 may appoint an interim a sheriff, who shall assume all the
 107 responsibilities, perform all the duties, and receive the same
 108 compensation as if he or she had been duly appointed sheriff,
 109 for only the said term of nonattendance ~~court~~ and no longer.

110 Section 5. Paragraph (c) of subsection (1) of section
 111 30.15, Florida Statutes, is amended to read:

112 30.15 Powers, duties, and obligations.—

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113 (1) Sheriffs, in their respective counties, in person or
 114 by deputy, shall:

115 (c) Attend all sessions ~~terms~~ of the circuit court and
 116 county court held in their counties.

117 Section 6. Subsection (2) of section 34.13, Florida
 118 Statutes, is amended to read:

119 34.13 Method of prosecution.—

120 (2) Upon the finding of indictments by the grand jury for
 121 crimes cognizable by the county court, the clerk of the court,
 122 without any order therefor, shall docket the same on the trial
 123 docket of the county court ~~on or before the first day of its~~
 124 ~~next succeeding term.~~

125 Section 7. Subsection (2) of section 35.05, Florida
 126 Statutes, is amended to read:

127 35.05 Headquarters.—

128 (2) A district court of appeal may designate other
 129 locations within its district as branch headquarters for the
 130 conduct of the business of the court ~~in special or regular term~~
 131 and as the official headquarters of its officers or employees
 132 pursuant to s. 112.061.

133 Section 8. Section 38.23, Florida Statutes, is amended to
 134 read:

135 38.23 Contempt ~~Contempts~~ defined.—A refusal to obey any
 136 legal order, mandate or decree, made or given by any judge
 137 ~~either in term time or in vacation~~ relative to any of the
 138 business of the said court, after due notice thereof, is shall
 139 ~~be considered~~ a contempt, punishable ~~and punished~~ accordingly.
 140 ~~But nothing said or written, or published, in vacation, to or of~~

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141 | ~~any judge, or of any decision made by a judge, shall in any case~~
 142 | ~~be construed to be a contempt.~~

143 | Section 9. Section 43.43, Florida Statutes, is created to
 144 | read:

145 | 43.43 Terms of courts.—The Supreme Court may establish
 146 | terms of court for the Supreme Court, the district courts of
 147 | appeal, and the circuit courts; may authorize district courts of
 148 | appeal and circuit courts to establish their own terms of court;
 149 | or may dispense with terms of court.

150 | Section 10. Section 43.44, Florida Statutes, is created to
 151 | read:

152 | 43.44 Mandate of an appeals court.—An appellate court has
 153 | the jurisdiction and power, as the circumstances and justice of
 154 | the case may require, to reconsider, revise, reform, or modify
 155 | its own judgments for the purpose of making the same accord with
 156 | law and justice. Accordingly, an appellate court has the power
 157 | to recall its own mandate for the purpose of allowing it to
 158 | exercise such jurisdiction and power in a proper case. A mandate
 159 | may not be recalled more than 120 days after it is filed with
 160 | the lower tribunal.

161 | Section 11. Paragraph (b) of subsection (1) of section
 162 | 112.19, Florida Statutes, is amended to read:

163 | 112.19 Law enforcement, correctional, and correctional
 164 | probation officers; death benefits.—

165 | (1) Whenever used in this section, the term:

166 | (b) "Law enforcement, correctional, or correctional
 167 | probation officer" means any officer as defined in s. 943.10(14)
 168 | or employee of the state or any political subdivision of the

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169 state, including any law enforcement officer, correctional
 170 officer, correctional probation officer, state attorney
 171 investigator, or public defender investigator, whose duties
 172 require such officer or employee to investigate, pursue,
 173 apprehend, arrest, transport, or maintain custody of persons who
 174 are charged with, suspected of committing, or convicted of a
 175 crime; and the term includes any member of a bomb disposal unit
 176 whose primary responsibility is the location, handling, and
 177 disposal of explosive devices. The term also includes any full-
 178 time officer or employee of the state or any political
 179 subdivision of the state, certified pursuant to chapter 943,
 180 whose duties require such officer to serve process or to attend
 181 a session ~~terms~~ of a circuit or county court as bailiff.

182 Section 12. Subsection (2) of section 206.215, Florida
 183 Statutes, is amended to read:

184 206.215 Costs and expenses of proceedings.—

185 (2) The clerks of the courts performing duties under the
 186 provisions aforesaid shall receive the same fees as prescribed
 187 by the general law for the performance of similar duties, and
 188 witnesses attending any investigation pursuant to subpoena shall
 189 receive the same mileage and per diem as if attending as a
 190 witness before the circuit court ~~in term time~~.

191 Section 13. Subsection (4) of section 450.121, Florida
 192 Statutes, is amended to read:

193 450.121 Enforcement of Child Labor Law.—

194 (4) Grand juries ~~shall~~ have inquisitorial powers to
 195 investigate violations of this chapter; also, trial court judges
 196 shall specially charge the grand jury, ~~at the beginning of each~~

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197 ~~term of the court,~~ to investigate violations of this chapter.

198 Section 14. Section 831.10, Florida Statutes, is amended
199 to read:

200 831.10 Second conviction of uttering forged bills.—A
201 person previously ~~Whoever, having been convicted of violating~~
202 ~~the offense mentioned in~~ s. 831.09 who is again convicted of
203 that the like offense is committed after the former conviction,
204 ~~and whoever is at the same term of the court convicted upon~~
205 ~~three distinct charges of such offense, shall be deemed a common~~
206 ~~utterer of counterfeit bills, and shall be punished as provided~~
207 ~~in s. 775.084.~~

208 Section 15. Section 831.17, Florida Statutes, is amended
209 to read:

210 831.17 Violation of s. 831.16; second or subsequent
211 conviction.—A person previously ~~Whoever having been convicted of~~
212 violating either of the offenses mentioned in s. 831.16 who, is
213 again convicted of violating that statute ~~either of the same~~
214 ~~offenses, committed after the former conviction, and whoever is~~
215 ~~at the same term of the court convicted upon three distinct~~
216 ~~charges of said offenses, commits a felony of the second degree,~~
217 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

218 Section 16. Subsection (4) of section 877.08, Florida
219 Statutes, is amended to read:

220 877.08 Coin-operated vending machines and parking meters;
221 defined; prohibited acts, penalties.—

222 (4) ~~Whoever violates the provisions of subsection (3) a~~
223 second or subsequent time commits, ~~and is convicted of such~~
224 ~~second separate offense, either at the same term or a subsequent~~

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225 ~~term of court, shall be guilty of~~ a felony of the third degree,
 226 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

227 Section 17. Subsection (1) of section 902.19, Florida
 228 Statutes, is amended to read:

229 902.19 When prosecutor liable for costs.—

230 (1) If ~~When~~ a person makes a complaint before a county
 231 court judge that a crime has been committed and is recognized by
 232 the county court judge to appear before ~~at the next term of the~~
 233 court having jurisdiction to give evidence of the crime and
 234 fails to appear, the person is ~~shall be~~ liable for all costs
 235 occasioned by his or her complaint, and the county court judge
 236 may enter ~~obtain~~ a judgment and execution for the costs as in
 237 other cases.

238 Section 18. Subsection (2) of section 903.32, Florida
 239 Statutes, is amended to read:

240 903.32 Defects in bond.—

241 (2) If no day, or an impossible day, is stated in a bond
 242 for the defendant's appearance before a trial court judge for a
 243 hearing or trial, the defendant shall be bound to appear 10 days
 244 after receipt of notice to appear by the defendant, the
 245 defendant's counsel, or any surety on the undertaking. ~~If no~~
 246 ~~day, or an impossible day, is stated in a bond for the~~
 247 ~~defendant's appearance for trial, the defendant shall be bound~~
 248 ~~to appear on the first day of the next term of court that will~~
 249 ~~commence more than 3 days after the undertaking is given.~~

250 Section 19. Section 905.01, Florida Statutes, is amended
 251 to read:

252 905.01 Number and procurement of grand jury; replacement

253 of member; term of grand jury.—

254 (1) The grand jury shall consist of not fewer than 15 nor
 255 more than 21 persons. The provisions of law governing the
 256 qualifications, disqualifications, excusals, drawing, summoning,
 257 supplying deficiencies, compensation, and procurement of petit
 258 jurors apply to grand jurors. In addition, an elected public
 259 official is not eligible for service on a grand jury.

260 (2) The chief judge of any circuit court may provide for
 261 the replacement of any grand juror who, for good cause, is
 262 unable to complete the term of the grand jury. Such replacement
 263 shall be made by appropriate order of the chief judge from the
 264 list of prospective jurors from which the grand juror to be
 265 replaced was selected.

266 (3) The chief judge of each ~~any~~ circuit court shall
 267 regularly order ~~may dispense with~~ the convening of the grand
 268 jury for a ~~at any~~ term of 6 months ~~court by filing a written~~
 269 ~~order with the clerk of court directing that a grand jury not be~~
 270 ~~summoned.~~

271 Section 20. Section 905.09, Florida Statutes, is amended
 272 to read:

273 905.09 Discharge and recall of grand jury.—A grand jury
 274 that has been dismissed may be recalled at any time during the
 275 ~~same~~ term of the grand jury ~~court.~~

276 Section 21. Section 905.095, Florida Statutes, is amended
 277 to read:

278 905.095 Extension of grand jury term.—Upon petition of the
 279 state attorney or the foreperson of the grand jury acting on
 280 behalf of a majority of the grand jurors, the circuit court may

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281 extend the term of a grand jury impaneled under this chapter
 282 beyond the term ~~of court~~ in which it was originally impaneled. A
 283 grand jury whose term has been extended as provided herein shall
 284 have the same composition and the same powers and duties it had
 285 during its original term. If ~~In the event~~ the term of the grand
 286 jury is extended under this section, it shall be extended for a
 287 time certain, not to exceed a total of 90 days, and only for the
 288 purpose of concluding one or more specified investigative
 289 matters initiated during its original term.

290 Section 22. Section 914.03, Florida Statutes, is amended
 291 to read:

292 914.03 Attendance of witnesses.—A witness summoned by a
 293 grand jury ~~or in a criminal case~~ shall remain in attendance
 294 until excused by the grand jury. A witness summoned in a
 295 criminal case shall remain in attendance until excused by the
 296 court. A witness who departs without permission of the court
 297 shall be in criminal contempt of court. ~~A witness shall attend~~
 298 ~~each succeeding term of court until the case is terminated.~~

299 Section 23. Subsection (2) of section 924.065, Florida
 300 Statutes, is amended to read:

301 924.065 Denial of motion for new trial or arrest of
 302 judgment; appeal bond; supersedeas.—

303 (2) An appeal may ~~shall~~ not be a supersedeas to the
 304 execution of the judgment, sentence, or order until the
 305 appellant has entered into a bond with at least two sureties to
 306 secure the payment of the judgment, fine, and any future costs
 307 that may be adjudged by the appellate court. The bond shall be
 308 conditioned on the appellant's personally answering and abiding

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309 | by the final order, sentence, or judgment of the appellate court
 310 | and, if the action is remanded, on the appellant's appearing
 311 | before ~~at the next term of~~ the court in which the case was
 312 | originally determined and not departing without leave of court.

313 | Section 24. Section 932.47, Florida Statutes, is amended
 314 | to read:

315 | 932.47 Informations filed by prosecuting attorneys.—
 316 | Informations may be filed by the prosecuting attorney of the
 317 | circuit court with the clerk of the circuit court ~~in vacation or~~
 318 | ~~in term~~ without leave of the court first being obtained.

319 | Section 25. This act shall take effect January 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 667 Murder

SPONSOR(S): Criminal Justice Subcommittee; Corcoran and others

TIED BILLS: None IDEN./SIM. BILLS: CS/SB 872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cunningham	Cunningham
2) Judiciary Committee		Cunningham	Havlicak RH

SUMMARY ANALYSIS

Section 316.1935(4)(b), F.S., provided below, establishes the crime of "aggravated fleeing or eluding with serious bodily injury or death."

- (4) Any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash in violation of s. 316.027, F.S. (crash involving death or personal injury), or s. 316.061, F.S. (crashes involving damage to vehicle or personal property), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer and, as a result of such fleeing or eluding:
 - (b) Causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a first degree felony.

Currently, a person who commits aggravated fleeing or eluding with serious bodily injury or death can be charged with third degree murder. Because "aggravated fleeing or eluding with serious bodily injury or death" is not included in the list of offenses contained in the first and second degree murder statutes, a person who commits such offense could not be charged with first or second degree murder.

The bill names the act the "Deputy John C. Mecklenburg Act," and amends s. 782.04, F.S., to add "aggravated fleeing or eluding with serious bodily injury or death" to the lists of offenses contained in the first, second, and third degree murder statutes. As a result, when a death occurs as a result of aggravated fleeing or eluding with serious bodily injury or death, a person could be charged with either first or second degree murder but would no longer be able to be charged with third degree murder. The bill also makes conforming changes to the offense severity ranking chart.

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the prison bed impact of the bill, as amended by the Criminal Justice Subcommittee. However, it is likely that this bill, as amended, will have an insignificant prison bed impact on the Department of Corrections

The bill is effective October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Aggravated Fleeing and Eluding

Section 316.1935, F.S., relates to fleeing or eluding law enforcement officers. Fleeing or eluding is generally a third degree felony,¹ and occurs when the operator of any vehicle, having knowledge that he or she has been ordered to stop such vehicle by a duly authorized law enforcement officer, willfully refuses or fails to stop the vehicle in compliance with such order or, having stopped in knowing compliance with such order, willfully flees in an attempt to elude the officer.

The penalty for fleeing or eluding is enhanced in certain instances. For example, it is a second degree felony² for a person to flee or elude a law enforcement officer who is in an authorized law enforcement patrol vehicle, with agency insignia and other jurisdictional markings prominently displayed on the vehicle, with siren and lights activated, if during the course of the fleeing or eluding the person drives at high speed, or in any manner which demonstrates a wanton disregard for the safety of persons or property.³ This act becomes a first degree felony⁴, with a three-year minimum mandatory sentence if the person causes serious bodily injury or death to another person.⁵

Subsection (4) of the statute, provided below, establishes the crimes of "aggravated fleeing or eluding" and "aggravated fleeing or eluding with serious bodily injury or death."

- (4) Any person who, in the course of unlawfully leaving or attempting to leave the scene of a crash in violation of s. 316.027, F.S. (crash involving death or personal injury), or s. 316.061, F.S. (crashes involving damage to vehicle or personal property), having knowledge of an order to stop by a duly authorized law enforcement officer, willfully refuses or fails to stop in compliance with such an order, or having stopped in knowing compliance with such order, willfully flees in an attempt to elude such officer and, as a result of such fleeing or eluding:
- (a) Causes injury to another person or causes damage to any property belonging to another person, commits aggravated fleeing or eluding, a second degree felony.⁶
 - (b) Causes serious bodily injury or death to another person, including any law enforcement officer involved in pursuing or otherwise attempting to effect a stop of the person's vehicle, commits aggravated fleeing or eluding with serious bodily injury or death, a first degree felony.⁷ The court is required to sentence any person convicted of committing aggravated fleeing or eluding with serious bodily injury or death to a mandatory minimum sentence of 3 years imprisonment.⁸

First Degree Murder

Section 782.04(1)(a)2., F.S., defines first degree murder as the unlawful killing of a human being when committed by a person engaged in the perpetration of, or in the attempt to perpetrate:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,

¹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

³ Section 316.1935(3)(a), F.S.

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

⁵ Section 316.1935(3)(b), F.S.

⁶ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁷ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁸ The court is authorized to impose a greater sentence as authorized by law. Section 316.1935(4)(b), F.S.

- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

First degree murder is a capital felony punishable by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141, F.S.,⁹ results in findings by the court that such person shall be punished by death. If such proceeding results in findings by the court that the person shall not be punished by death, such person must be punished by life imprisonment and is ineligible for parole. Currently, a person who commits aggravated fleeing or eluding with serious bodily injury or death could not be charged with first degree murder since the offense is not contained in the above list.

Second Degree Murder

Section 782.04(3), F.S., provides that when a person is killed in the perpetration of, or in the attempt to perpetrate, any of the following offenses by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony is guilty of second degree murder:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Second degree murder is a first degree felony punishable by imprisonment for a term of years not exceeding life or by up to 30 years imprisonment and a \$10,000 fine. Currently, a person who commits

⁹ Section 921.141, F.S., requires a court, upon conviction or adjudication of guilt of a defendant of a capital felony, to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. After hearing all the evidence, the jury must deliberate and render an advisory sentence to the court, based upon specified aggravating and mitigating circumstances. Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, must enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it must set forth in writing its findings upon which the sentence of death is based.

aggravated fleeing or eluding with serious bodily injury or death could not be charged with second degree murder since the offense is not contained in the above list.

Third Degree Murder

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

- Trafficking offense prohibited by s. 893.135(1), F.S.,
- Arson,
- Sexual battery,
- Robbery,
- Burglary,
- Kidnapping,
- Escape,
- Aggravated child abuse,
- Aggravated abuse of an elderly person or disabled adult,
- Aircraft piracy,
- Unlawful throwing, placing, or discharging of a destructive device or bomb,
- Unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,
- Carjacking,
- Home-invasion robbery,
- Aggravated stalking,
- Murder of another human being,
- Resisting an officer with violence to his or her person, or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Third degree murder is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine. Currently, a person who commits aggravated fleeing or eluding with serious bodily injury or death could be charged with third degree murder since the offense is not contained in the above list.

Effect of the Bill

The bill names the act the "Deputy John C. Mecklenburg Act," and adds "aggravated fleeing or eluding with serious bodily injury or death" to the lists of offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S. As a result, when a death occurs as a result of aggravated fleeing or eluding with serious bodily injury or death, a person could be charged with either first or second degree murder but would no longer be able to be charged with third degree murder. The bill also makes conforming changes to s. 921.0022, F.S., the Criminal Punishment Code offense severity ranking chart and reenacts the following statutes to incorporate changes made to s. 782.04, F.S.:

- Section 775.0823, F.S. (violent offenses committed against law enforcement and correctional officers, state attorneys, assistant state attorneys, justices, or judges);
- Section 782.051, F.S. (attempted felony murder);
- Section 782.065, F.S. (murder; law enforcement officer); and
- Section 947.146, F.S. (Control Release Authority).

B. SECTION DIRECTORY:

Section 1. Cites the act the "Deputy John C. Mecklenburg Act."

Section 2. Amends s. 782.04, F.S., relating to murder.

Section 3. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4. Reenacts s. 775.0823, F.S., relating to violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.

Section 5. Reenacts s. 782.051, F.S., relating to attempted felony murder.

Section 6. Reenacts s. 782.065, F.S., relating to murder; law enforcement officer.

Section 7. Reenacts s. 947.146, F.S., relating to Control Release Authority.

Section 8. Provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the prison bed impact of the bill, as amended by the Criminal Justice Subcommittee. However, based on CJIC's December 14, 2011, determination that the bill, as originally filed, would have an insignificant prison bed impact, it is likely that the bill, as amended, will have an insignificant prison bed impact on the Department of Corrections

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment names the act the "Deputy John C. Mecklenburg Act," and adds "aggravated fleeing or eluding with serious bodily injury or death" to the lists of offenses contained in s. 782.04(1)(a)2., (3), and (4), F.S.

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 murder; providing a short title;
 3 amending s. 782.04, F.S.; providing that the unlawful
 4 killing of a human being when committed by a person
 5 engaged in the perpetration of, or in the attempt to
 6 perpetrate, the offense of aggravated fleeing or
 7 eluding with serious bodily injury or death, is murder
 8 of a specified degree, dependent upon certain
 9 circumstances; amending s. 921.0022, F.S.; revising
 10 provisions of the offense severity ranking chart of
 11 the Criminal Punishment Code to conform to changes
 12 made by the act; reenacting ss. 775.0823, 782.051,
 13 782.065, and 947.146(3), F.S., relating to violent
 14 offenses committed against law enforcement officers
 15 and others, attempted felony murder, murder of a law
 16 enforcement officer, and the Control Release
 17 Authority, respectively, to incorporate the amendment
 18 made to s. 782.04, F.S., in references thereto;
 19 providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. This act may be cited as the "Deputy John C.
 24 Mecklenburg Act."

25 Section 2. Section 782.04, Florida Statutes, is amended to
 26 read:

27 782.04 Murder.—

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

- 29 1. When perpetrated from a premeditated design to effect
 30 the death of the person killed or any human being;
 31 2. When committed by a person engaged in the perpetration
 32 of, or in the attempt to perpetrate, any:
 33 a. Trafficking offense prohibited by s. 893.135(1),
 34 b. Arson,
 35 c. Sexual battery,
 36 d. Robbery,
 37 e. Burglary,
 38 f. Kidnapping,
 39 g. Escape,
 40 h. Aggravated child abuse,
 41 i. Aggravated abuse of an elderly person or disabled
 42 adult,
 43 j. Aircraft piracy,
 44 k. Unlawful throwing, placing, or discharging of a
 45 destructive device or bomb,
 46 l. Carjacking,
 47 m. Home-invasion robbery,
 48 n. Aggravated stalking,
 49 o. Murder of another human being,
 50 p. Resisting an officer with violence to his or her
 51 person,
 52 q. Aggravated fleeing or eluding with serious bodily
 53 injury or death,
 54 ~~r. Felony~~ Felony that is an act of terrorism or is in
 55 furtherance of an act of terrorism; or
 56 3. Which resulted from the unlawful distribution of any

57 substance controlled under s. 893.03(1), cocaine as described in
 58 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
 59 compound, derivative, or preparation of opium, or methadone by a
 60 person 18 years of age or older, when such drug is proven to be
 61 the proximate cause of the death of the user,

62
 63 is murder in the first degree and constitutes a capital felony,
 64 punishable as provided in s. 775.082.

65 (b) In all cases under this section, the procedure set
 66 forth in s. 921.141 shall be followed in order to determine
 67 sentence of death or life imprisonment.

68 (2) The unlawful killing of a human being, when
 69 perpetrated by any act imminently dangerous to another and
 70 evincing a depraved mind regardless of human life, although
 71 without any premeditated design to effect the death of any
 72 particular individual, is murder in the second degree and
 73 constitutes a felony of the first degree, punishable by
 74 imprisonment for a term of years not exceeding life or as
 75 provided in s. 775.082, s. 775.083, or s. 775.084.

76 (3) When a human being ~~person~~ is killed during ~~in~~ the
 77 perpetration of, or during ~~in~~ the attempt to perpetrate, any:

- 78 (a) Trafficking offense prohibited by s. 893.135(1),
- 79 (b) Arson,
- 80 (c) Sexual battery,
- 81 (d) Robbery,
- 82 (e) Burglary,
- 83 (f) Kidnapping,
- 84 (g) Escape,

85 (h) Aggravated child abuse,
 86 (i) Aggravated abuse of an elderly person or disabled
 87 adult,
 88 (j) Aircraft piracy,
 89 (k) Unlawful throwing, placing, or discharging of a
 90 destructive device or bomb,
 91 (l) Carjacking,
 92 (m) Home-invasion robbery,
 93 (n) Aggravated stalking,
 94 (o) Murder of another human being,
 95 (p) Aggravated fleeing or eluding with serious bodily
 96 injury or death,
 97 (q)~~(p)~~ Resisting an officer with violence to his or her
 98 person, or
 99 (r)~~(q)~~ Felony that is an act of terrorism or is in
 100 furtherance of an act of terrorism,
 101
 102 by a person other than the person engaged in the perpetration of
 103 or in the attempt to perpetrate such felony, the person
 104 perpetrating or attempting to perpetrate such felony commits ~~is~~
 105 ~~guilty of~~ murder in the second degree, which constitutes a
 106 felony of the first degree, punishable by imprisonment for a
 107 term of years not exceeding life or as provided in s. 775.082,
 108 s. 775.083, or s. 775.084.
 109 (4) The unlawful killing of a human being, when
 110 perpetrated without any design to effect death, by a person
 111 engaged in the perpetration of, or in the attempt to perpetrate,
 112 any felony other than any:

- 113 (a) Trafficking offense prohibited by s. 893.135(1),
- 114 (b) Arson,
- 115 (c) Sexual battery,
- 116 (d) Robbery,
- 117 (e) Burglary,
- 118 (f) Kidnapping,
- 119 (g) Escape,
- 120 (h) Aggravated child abuse,
- 121 (i) Aggravated abuse of an elderly person or disabled
- 122 adult,
- 123 (j) Aircraft piracy,
- 124 (k) Unlawful throwing, placing, or discharging of a
- 125 destructive device or bomb,
- 126 (l) Unlawful distribution of any substance controlled
- 127 under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4.,
- 128 or opium or any synthetic or natural salt, compound, derivative,
- 129 or preparation of opium by a person 18 years of age or older,
- 130 when such drug is proven to be the proximate cause of the death
- 131 of the user,
- 132 (m) Carjacking,
- 133 (n) Home-invasion robbery,
- 134 (o) Aggravated stalking,
- 135 (p) Murder of another human being,
- 136 (q) Aggravated fleeing or eluding with serious bodily
- 137 injury or death,
- 138 (r)~~(q)~~ Resisting an officer with violence to his or her
- 139 person, or
- 140 (s)~~(r)~~ Felony that is an act of terrorism or is in

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141 furtherance of an act of terrorism,

142

143 is murder in the third degree and constitutes a felony of the
 144 second degree, punishable as provided in s. 775.082, s. 775.083,
 145 or s. 775.084.

146 (5) As used in this section, the term "terrorism" means an
 147 activity that:

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

151 2. Involves a violation of s. 815.06; and

152 (b) Is intended to:

153 1. Intimidate, injure, or coerce a civilian population;

154 2. Influence the policy of a government by intimidation or
 155 coercion; or

156 3. Affect the conduct of government through destruction of
 157 property, assassination, murder, kidnapping, or aircraft piracy.

158 Section 3. Paragraphs (h) and (i) of subsection (3) of
 159 section 921.0022, Florida Statutes, are amended to read:

160 921.0022 Criminal Punishment Code; offense severity
 161 ranking chart.—

162 (3) OFFENSE SEVERITY RANKING CHART

163 (h) LEVEL 8

164

Florida	Felony	
Statute	Degree	Description

165

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166	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
167	316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
168	327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
169	499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
170	499.0051 (8)	1st	Knowing forgery of prescription labels or prescription drug labels.
171	560.123 (8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
172	560.125 (5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding

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\$20,000, but less than \$100,000 by financial institutions.

173

777.03(2)(a) 1st Accessory after the fact, capital felony.

174

782.04(4) 2nd Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.

175

782.051(2) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).

176

782.071(1)(b) 1st Committing vehicular homicide and failing to render aid or give information.

177

782.072(2) 1st Committing vessel homicide and failing to render aid or give information.

178

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179	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
180	794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
181	794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
182	800.04(4)	2nd	Lewd or lascivious battery.
183	806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
184	810.02(2)(a)	1st, PBL	Burglary with assault or battery.
185	810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
186	810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.

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187	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
188	812.13(2)(b)	1st	Robbery with a weapon.
189	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
190	817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
191	825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
192	825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
193	825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
194	837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.

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195	837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
196	860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
197	860.16	1st	Aircraft piracy.
198	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
199	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
200	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
201	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
202	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.

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203	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
204	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
205	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
206	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
207	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
208	893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
209	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
210	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
	893.1351(3)	1st	Possession of a place used to

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211			manufacture controlled substance when minor is present or resides there.
212	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
213	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
214	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
215	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
216	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.
217	(i)	LEVEL 9	
218			

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	Florida Statute	Felony Degree	Description
219	316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
220	327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
221	409.920 (2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
222	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
223	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
224	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
225	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding

			\$100,000 by financial institution.
226			
	775.0844	1st	Aggravated white collar crime.
227			
	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
228			
	782.04(3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, <u>aggravated fleeing or eluding with serious bodily injury or death,</u> and other specified felonies.
229			
	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
230			
	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
231			
	787.01(1)(a)1.	1st, PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
232			
	787.01(1)(a)2.	1st, PBL	Kidnapping with intent to commit or facilitate commission of any felony.
233			

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234	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
235	787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
236	790.161	1st	Attempted capital destructive device offense.
237	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
238	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
239	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
240	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.

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241	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
242	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
243	800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
244	812.13(2)(a)	1st, PBL	Robbery with firearm or other deadly weapon.
245	812.133(2)(a)	1st, PBL	Carjacking; firearm or other deadly weapon.
246	812.135(2)(b)	1st	Home-invasion robbery with weapon.
247	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
248	827.03(2)	1st	Aggravated child abuse.

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249	847.0145 (1)	1st	Selling, or otherwise transferring custody or control, of a minor.
250	847.0145 (2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
251	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
252	893.135	1st	Attempted capital trafficking offense.
253	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than 10,000 lbs.
254	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
255	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
256	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
	893.135	1st	Trafficking in methaqualone, more than

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257 (1) (e) 1.c. 25 kilograms.

893.135 1st Trafficking in amphetamine, more than
 (1) (f) 1.c. 200 grams.

258 893.135 1st Trafficking in gamma-hydroxybutyric
 (1) (h) 1.c. acid (GHB), 10 kilograms or more.

259 893.135 1st Trafficking in 1,4-Butanediol, 10
 (1) (j) 1.c. kilograms or more.

260 893.135 1st Trafficking in Phenethylamines, 400
 (1) (k) 2.c. grams or more.

261 896.101 (5) (c) 1st Money laundering, financial
 instruments totaling or exceeding
 \$100,000.

262 896.104 (4) (a) 3. 1st Structuring transactions to evade
 reporting or registration
 requirements, financial transactions
 totaling or exceeding \$100,000.

263

264 Section 4. For the purpose of incorporating the amendment
 265 made by this act to section 782.04, Florida Statutes, in
 266 references thereto, section 775.0823, Florida Statutes, is
 267 reenacted to read:

268 775.0823 Violent offenses committed against law

269 enforcement officers, correctional officers, state attorneys,
 270 assistant state attorneys, justices, or judges.—The Legislature
 271 does hereby provide for an increase and certainty of penalty for
 272 any person convicted of a violent offense against any law
 273 enforcement or correctional officer, as defined in s. 943.10(1),
 274 (2), (3), (6), (7), (8), or (9); against any state attorney
 275 elected pursuant to s. 27.01 or assistant state attorney
 276 appointed under s. 27.181; or against any justice or judge of a
 277 court described in Art. V of the State Constitution, which
 278 offense arises out of or in the scope of the officer's duty as a
 279 law enforcement or correctional officer, the state attorney's or
 280 assistant state attorney's duty as a prosecutor or investigator,
 281 or the justice's or judge's duty as a judicial officer, as
 282 follows:

283 (1) For murder in the first degree as described in s.
 284 782.04(1), if the death sentence is not imposed, a sentence of
 285 imprisonment for life without eligibility for release.

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

289 (3) For attempted felony murder as described in s.
 290 782.051, a sentence pursuant to s. 775.082, s. 775.083, or s.
 291 775.084.

292 (4) For murder in the second degree as described in s.
 293 782.04(2) and (3), a sentence pursuant to s. 775.082, s.
 294 775.083, or s. 775.084.

295 (5) For attempted murder in the second degree as described
 296 in s. 782.04(2) and (3), a sentence pursuant to s. 775.082, s.

297 775.083, or s. 775.084.

298 (6) For murder in the third degree as described in s.
 299 782.04(4), a sentence pursuant to s. 775.082, s. 775.083, or s.
 300 775.084.

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

304 (8) For manslaughter as described in s. 782.07 during the
 305 commission of a crime, a sentence pursuant to s. 775.082, s.
 306 775.083, or s. 775.084.

307 (9) For kidnapping as described in s. 787.01, a sentence
 308 pursuant to s. 775.082, s. 775.083, or s. 775.084.

309 (10) For aggravated battery as described in s. 784.045, a
 310 sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

311 (11) For aggravated assault as described in s. 784.021, a
 312 sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

313

314 Notwithstanding the provisions of s. 948.01, with respect to any
 315 person who is found to have violated this section, adjudication
 316 of guilt or imposition of sentence shall not be suspended,
 317 deferred, or withheld.

318 Section 5. For the purpose of incorporating the amendment
 319 made by this act to section 782.04, Florida Statutes, in
 320 references thereto, section 782.051, Florida Statutes, is
 321 reenacted to read:

322 782.051 Attempted felony murder.—

323 (1) Any person who perpetrates or attempts to perpetrate
 324 any felony enumerated in s. 782.04(3) and who commits, aids, or

325 abets an intentional act that is not an essential element of the
326 felony and that could, but does not, cause the death of another
327 commits a felony of the first degree, punishable by imprisonment
328 for a term of years not exceeding life, or as provided in s.
329 775.082, s. 775.083, or s. 775.084, which is an offense ranked
330 in level 9 of the Criminal Punishment Code. Victim injury points
331 shall be scored under this subsection.

332 (2) Any person who perpetrates or attempts to perpetrate
333 any felony other than a felony enumerated in s. 782.04(3) and
334 who commits, aids, or abets an intentional act that is not an
335 essential element of the felony and that could, but does not,
336 cause the death of another commits a felony of the first degree,
337 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
338 which is an offense ranked in level 8 of the Criminal Punishment
339 Code. Victim injury points shall be scored under this
340 subsection.

341 (3) When a person is injured during the perpetration of or
342 the attempt to perpetrate any felony enumerated in s. 782.04(3)
343 by a person other than the person engaged in the perpetration of
344 or the attempt to perpetrate such felony, the person
345 perpetrating or attempting to perpetrate such felony commits a
346 felony of the second degree, punishable as provided in s.
347 775.082, s. 775.083, or s. 775.084, which is an offense ranked
348 in level 7 of the Criminal Punishment Code. Victim injury points
349 shall be scored under this subsection.

350 Section 6. For the purpose of incorporating the amendment
351 made by this act to section 782.04, Florida Statutes, in
352 references thereto, section 782.065, Florida Statutes, is

353 reenacted to read:

354 782.065 Murder; law enforcement officer.—Notwithstanding
 355 ss. 775.082, 775.0823, 782.04, 782.051, and chapter 921, a
 356 defendant shall be sentenced to life imprisonment without
 357 eligibility for release upon findings by the trier of fact that,
 358 beyond a reasonable doubt:

359 (1) The defendant committed murder in the first degree in
 360 violation of s. 782.04(1) and a death sentence was not imposed;
 361 murder in the second or third degree in violation of s.
 362 782.04(2), (3), or (4); attempted murder in the first or second
 363 degree in violation of s. 782.04(1)(a)1. or (2); or attempted
 364 felony murder in violation of s. 782.051; and

365 (2) The victim of any offense described in subsection (1)
 366 was a law enforcement officer, part-time law enforcement
 367 officer, or auxiliary law enforcement officer, as those terms
 368 are defined in s. 943.10, engaged in the lawful performance of a
 369 legal duty.

370 Section 7. For the purpose of incorporating the amendment
 371 made by this act to section 782.04, Florida Statutes, in a
 372 reference thereto, subsection (3) of section 947.146, Florida
 373 Statutes, is reenacted to read:

374 947.146 Control Release Authority.—

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

381 | been determined by the authority to be eligible for
382 | discretionary early release pursuant to this section. In
383 | establishing control release dates, it is the intent of the
384 | Legislature that the authority prioritize consideration of
385 | eligible inmates closest to their tentative release date. The
386 | authority shall rely upon commitment data on the offender
387 | information system maintained by the department to initially
388 | identify inmates who are to be reviewed for control release
389 | consideration. The authority may use a method of objective risk
390 | assessment in determining if an eligible inmate should be
391 | released. Such assessment shall be a part of the department's
392 | management information system. However, the authority shall have
393 | sole responsibility for determining control release eligibility,
394 | establishing a control release date, and effectuating the
395 | release of a sufficient number of inmates to maintain the inmate
396 | population between 99 percent and 100 percent of total capacity.
397 | Inmates who are ineligible for control release are inmates who
398 | are parole eligible or inmates who:

399 | (a) Are serving a sentence that includes a mandatory
400 | minimum provision for a capital offense or drug trafficking
401 | offense and have not served the number of days equal to the
402 | mandatory minimum term less any jail-time credit awarded by the
403 | court;

404 | (b) Are serving the mandatory minimum portion of a
405 | sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

406 | (c) Are convicted, or have been previously convicted, of
407 | committing or attempting to commit sexual battery, incest, or
408 | any of the following lewd or indecent assaults or acts:

409 | masturbating in public; exposing the sexual organs in a
 410 | perverted manner; or nonconsensual handling or fondling of the
 411 | sexual organs of another person;

412 | (d) Are convicted, or have been previously convicted, of
 413 | committing or attempting to commit assault, aggravated assault,
 414 | battery, or aggravated battery, and a sex act was attempted or
 415 | completed during commission of such offense;

416 | (e) Are convicted, or have been previously convicted, of
 417 | committing or attempting to commit kidnapping, burglary, or
 418 | murder, and the offense was committed with the intent to commit
 419 | sexual battery or a sex act was attempted or completed during
 420 | commission of the offense;

421 | (f) Are convicted, or have been previously convicted, of
 422 | committing or attempting to commit false imprisonment upon a
 423 | child under the age of 13 and, in the course of committing the
 424 | offense, the inmate committed aggravated child abuse, sexual
 425 | battery against the child, or a lewd or lascivious offense
 426 | committed upon or in the presence of a person less than 16 years
 427 | of age;

428 | (g) Are sentenced, have previously been sentenced, or have
 429 | been sentenced at any time under s. 775.084, or have been
 430 | sentenced at any time in another jurisdiction as a habitual
 431 | offender;

432 | (h) Are convicted, or have been previously convicted, of
 433 | committing or attempting to commit assault, aggravated assault,
 434 | battery, aggravated battery, kidnapping, manslaughter, or murder
 435 | against an officer as defined in s. 943.10(1), (2), (3), (6),
 436 | (7), (8), or (9); against a state attorney or assistant state

437 attorney; or against a justice or judge of a court described in
 438 Art. V of the State Constitution; or against an officer, judge,
 439 or state attorney employed in a comparable position by any other
 440 jurisdiction; or

441 (i) Are convicted, or have been previously convicted, of
 442 committing or attempting to commit murder in the first, second,
 443 or third degree under s. 782.04(1), (2), (3), or (4), or have
 444 ever been convicted of any degree of murder or attempted murder
 445 in another jurisdiction;

446 (j) Are convicted, or have been previously convicted, of
 447 DUI manslaughter under s. 316.193(3)(c)3., and are sentenced, or
 448 have been sentenced at any time, as a habitual offender for such
 449 offense, or have been sentenced at any time in another
 450 jurisdiction as a habitual offender for such offense;

451 (k)1. Are serving a sentence for an offense committed on
 452 or after January 1, 1994, for a violation of the Law Enforcement
 453 Protection Act under s. 775.0823(2), (3), (4), (5), or (6), and
 454 the subtotal of the offender's sentence points is multiplied
 455 pursuant to former s. 921.0014 or s. 921.0024;

456 2. Are serving a sentence for an offense committed on or
 457 after October 1, 1995, for a violation of the Law Enforcement
 458 Protection Act under s. 775.0823(2), (3), (4), (5), (6), (7),
 459 (8), or (9), and the subtotal of the offender's sentence points
 460 is multiplied pursuant to former s. 921.0014 or s. 921.0024;

461 (l) Are serving a sentence for an offense committed on or
 462 after January 1, 1994, for possession of a firearm,
 463 semiautomatic firearm, or machine gun in which additional points
 464 are added to the subtotal of the offender's sentence points

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465 pursuant to former s. 921.0014 or s. 921.0024; or

466 (m) Are convicted, or have been previously convicted, of
 467 committing or attempting to commit manslaughter, kidnapping,
 468 robbery, carjacking, home-invasion robbery, or a burglary under
 469 s. 810.02(2).

470
 471 In making control release eligibility determinations under this
 472 subsection, the authority may rely on any document leading to or
 473 generated during the course of the criminal proceedings,
 474 including, but not limited to, any presentence or postsentence
 475 investigation or any information contained in arrest reports
 476 relating to circumstances of the offense.

477 Section 8. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 715 Self-service Storage Facilities

SPONSOR(S): Civil Justice Subcommittee; Caldwell

TIED BILLS: None IDEN./SIM. BILLS: CS/SB 646

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Cary	Bond
2) Judiciary Committee		Cary <i>JMC</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

The Self-storage Facility Act allows a facility owner to sell personal property in a storage facility if the tenant fails to pay rent. The facility owner is required to give notice of the intent to sell the property to the tenant before selling the property and is required to give notice to the tenant if the sale of the property results in more money than is necessary to pay the rent due. Notice must be delivered to the tenant or mailed by certified mail. The bill removes the requirement to use certified mail and allows notices to be provided to the tenant by first-class mail with a certificate of mailing, and by e-mail in certain circumstances.

This bill also requires the rental agreement or application to contain a provision disclosing whether the applicant is a member of the military.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background - Notice

Sections 83.801-83.809, F.S., comprise Florida's "Self-storage Facility Act" (the "Act"). The Act provides remedies for the owner of a self-storage facility¹ or a self-contained storage unit² in the event that a tenant does not pay rent. The Act gives the facility owner the ability to deny a tenant's access to his or her property if the tenant is more than five days delinquent in paying rent.³

The Act provides that the owner of a self-storage facility or self-contained storage unit has a lien upon all personal property located at a self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges in relation to the personal property and for expenses necessary to preserve or dispose of the property.⁴ The facility owner's lien is enforced as follows:

- The tenant is notified by written notice⁵ delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit. If mailed, the notice given is presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid.
- After the expiration of the time given in the notice, an advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.⁶

In the event of a sale, the facility owner may satisfy the lien from the proceeds of the sale. The balance, if any, is held by the facility owner for delivery on demand to the tenant. A notice of any balance must be delivered by the facility owner to the tenant in person or by certified mail. The balance is considered abandoned if the tenant does not claim it within two years.⁷

Current law also requires the facility owner to hold the sale proceeds for holders of liens against the property whose liens have priority over the owner's lien. The facility owner must provide notice of the amount of sale proceeds to such lienholders by either personal delivery or certified mail.⁸

The notices required by s. 83.806, F.S., must be sent by certified mail to the tenant's last known address.⁹ The last known address means the address provided by the tenant in the latest rental agreement or an address provided by the tenant by hand delivery or certified mail in a subsequent

¹ "Self-service storage facility" is defined by s. 83.803(1), F.S, as any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property.

² "Self-contained storage unit" is defined by s. 83.803(2), F.S, as any unit not less than 200 cubic feet in size, including, but not limited to, a trailer, box, or other shipping container, which is leased by a tenant primarily for use as storage space whether the unit is located at a facility owned or operated by the owner or at another location designated by the tenant.

³ Section 83.8055, F.S.

⁴ Section 83.805, F.S.

⁵ The notice must contain a statement showing the amount due, the date it became due, a description of the property, a demand for payment within 14 days, and a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

⁶ Section 83.806, F.S.

⁷ Section 83.806(8), F.S.

⁸ *Id.*

⁹ Section 83.806(1), F.S.

written notice of a change of address.¹⁰ Certified mail provides verification of proof of delivery by requiring the recipient's signature for delivery.¹¹ Currently, the USPS charges \$2.85 for certified mail service in addition to applicable postage for the piece.¹²

Effect of the Bill - Notice

The bill amends 83.803(6), F.S., to change the definition of "last known address" to specifically include a post office box address and to include a change of address if provided by the tenant. The new definition also allows the tenant to provide the address by first class mail or e-mail notice, in addition to hand delivery.

This bill amends s. 83.806, F.S., to provide that most notices required by s. 83.806, F.S., may either be delivered to the tenant or lienholder, e-mailed, or mailed by first-class mail, rather than certified mail. However, e-mail notice may not be utilized to notify the tenant of any balance resulting from a sale of the contents of the storage unit or to notify the tenant or secured lienholders as to the amount of the sale.

A certificate of mailing must be included with the notification if notification is made by mail. In order for e-mail notice to be valid, the facility owner must receive a response, a return receipt, or delivery confirmation from the same e-mail address. If the facility owner does not receive any of these, the facility owner must send notice of the sale to the tenant by first-class mail, along with a certificate of the mailing, before proceeding with the sale.

This bill also amends s. 83.803(6), F.S., to provide that tenants may provide notice of change of address by first class mail or e-mail. It removes the requirement that tenants mail notice by certified mail.

Background - Rental Agreements

The Servicemembers Civil Relief Act (50 U.S.C. ss. 501-596) requires a court order to enforce a lien against some members of the military. Persons are subject to federal criminal penalties for failing to comply with the Servicemembers Civil Relief Act. Current law does not contain a requirement that applicants for a self-storage lease disclose whether they are in the military. Under current law, the owner of a self-storage facility might not know a renter is in the military and could violate federal law by not obtaining a court order before conducting a sale of the property belonging to a member of the military.

Effect of the Bill - Additional Provisions in Rental Agreements

This bill amends s. 83.808, F.S., to require a rental agreement to contain a provision disclosing whether the applicant is a member of the uniformed services as defined in 10 U.S.C. s. 101(a)(5).¹³ This provision discloses the renter's military status to the owner of the facility. This bill does not change the requirement that the owner of a self-service storage facility comply with the Servicemembers Civil Relief Act.

B. SECTION DIRECTORY:

Section 1 amends s. 83.803, F.S., relating to the definition of "last known address."

Section 2 amends s. 83.806, F.S., relating to enforcement of liens.

¹⁰ Section 83.803(6), F.S.

¹¹ See <https://www.usps.com/send/insurance-and-extra-services.htm> (last visited December 12, 2011).

¹² *Id.*

¹³ 10 U.S.C. s. 101(a)(5) provides the definition of "uniformed services" for purposes of the Servicemembers Civil Relief Act. It defines uniformed services as the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

Section 3 amends s. 83.808, F.S., relating to contracts.

Section 4 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows the owner of a self-service storage facility to send notice for certain actions via e-mail or first-class mail and a certificate of mailing instead of certified mail. The cost of a first-class stamp is \$.45 and a certificate of mailing is an additional \$1.15, while certified mail costs the price of a first-class stamp and an additional \$2.85.

This bill also requires the owner of a self-service storage facility to modify rental agreements or applications to contain a new provision disclosing whether the applicant is a member of the uniformed services, which may initially cost owners money to prepare if their agreements or applications do not already contain such a provision.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrects a minor drafting concern that the bill could have been read to require a certificate of mailing for personal and e-mail delivery of notice. 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 self-service storage facilities;
 3 amending s. 83.803, F.S.; revising the definition of
 4 the term "last known address"; amending s. 83.806,
 5 F.S.; revising notice requirements relating to
 6 enforcing an owner's lien; authorizing notice by e-
 7 mail or first-class mail with a certificate of
 8 mailing; providing requirements for e-mail notice;
 9 revising provisions relating to when notice given is
 10 presumed delivered; amending s. 83.808, F.S.;
 11 requiring rental agreements and applications for
 12 rental agreements to contain a provision for the
 13 disclosure of the applicant's membership in the
 14 uniformed services; providing an effective date.

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

17
 18 Section 1. Subsection (6) of section 83.803, Florida
 19 Statutes, is amended to read:

20 83.803 Definitions.—As used in ss. 83.801-83.809:

21 (6) "Last known address" means the street that address or
 22 post office box address provided by the tenant in the latest
 23 rental agreement or in a subsequent written change-of-address
 24 notice provided ~~the address provided by the tenant by hand~~
 25 delivery, first-class mail, or e-mail ~~certified mail in a~~
 26 ~~subsequent written notice of a change of address.~~

27 Section 2. Subsections (1), (3), and (8) of section
 28 83.806, Florida Statutes, are amended to read:

29 83.806 Enforcement of lien.—An owner's lien as provided in
 30 s. 83.805 may be satisfied as follows:

31 (1) The tenant shall be notified by written notice
 32 delivered in person, by e-mail, or by first-class ~~certified~~ mail
 33 with a certificate of mailing to the tenant's last known address
 34 and conspicuously posted at the self-service storage facility or
 35 on the self-contained storage unit. If the owner sends notice of
 36 a pending sale of property to the tenant's last known e-mail
 37 address and does not receive a response, return receipt, or
 38 delivery confirmation from the same e-mail address, the owner
 39 must send notice of the sale to the tenant by first-class mail
 40 with a certificate of mailing to the tenant's last known address
 41 before proceeding with the sale.

42 (3) Any notice given pursuant to this section shall be
 43 presumed delivered when it is deposited with the United States
 44 Postal Service, ~~registered~~, and properly addressed with postage
 45 prepaid.

46 (8) In the event of a sale under this section, the owner
 47 may satisfy his or her lien from the proceeds of the sale,
 48 provided the owner's lien has priority over all other liens in
 49 the personal property. The lien rights of secured lienholders
 50 are automatically transferred to the remaining proceeds of the
 51 sale. The balance, if any, shall be held by the owner for
 52 delivery on demand to the tenant. A notice of any balance shall
 53 be delivered by the owner to the tenant in person or by first-
 54 class ~~certified~~ mail with a certificate of mailing to the last
 55 known address of the tenant. If the tenant does not claim the
 56 balance of the proceeds within 2 years after ~~of~~ the date of

57 sale, the proceeds shall be deemed abandoned, and the owner
 58 shall have no further obligation with regard to the payment of
 59 the balance. In the event that the owner's lien does not have
 60 priority over all other liens, the sale proceeds shall be held
 61 for the benefit of the holders of those liens having priority. A
 62 notice of the amount of the sale proceeds shall be delivered by
 63 the owner to the tenant or secured lienholders in person or by
 64 first-class ~~certified~~ mail with a certificate of mailing to
 65 their last known addresses. If the tenant or the secured
 66 lienholders do not claim the sale proceeds within 2 years after
 67 ~~of~~ the date of sale, the proceeds shall be deemed abandoned, and
 68 the owner shall have no further obligation with regard to the
 69 payment of the proceeds.

70 Section 3. Section 83.808, Florida Statutes, is amended to
 71 read:

72 83.808 Contracts ~~Contractual liens~~.—

73 (1) Nothing in ss. 83.801-83.809 shall be construed as in
 74 any manner impairing or affecting the right of parties to create
 75 liens by special contract or agreement nor shall it in any
 76 manner impair or affect any other lien arising at common law, in
 77 equity, or by any statute of this state or any other lien not
 78 provided for in s. 83.805.

79 (2) A rental agreement or an application for a rental
 80 agreement must contain a provision disclosing whether the
 81 applicant is a member of the uniformed services as that term is
 82 defined in 10 U.S.C. s. 101(a)(5).

83 Section 4. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1193 Pub. Rec./Victims of Violence
SPONSOR(S): Criminal Justice Subcommittee; Jones and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Williams	Cunningham
2) Government Operations Subcommittee	14 Y, 0 N	Thompson	Williamson
3) Judiciary Committee		Williams <i>AW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Current law requires the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence. This process requires the petitioner to provide the Association and possibly law enforcement agencies with personal contact information. In many instances, the petitioner is a victim of a crime, thus, the information he or she provides to the Association and law enforcement agencies may be exempt from public records requirements. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

The bill requires the Association to apprise the petitioner of his or her right to request in writing that specified information held by the Association and law enforcement agencies be exempt from public records requirements. Such appraisal must be made during the time that the petitioner is making the request to be notified that the injunction was served. The bill provides that such information is exempt from public records requirements, upon the written request by the petitioner, for five years after receipt of the written request.

The bill grants access by any state or federal agency that is authorized by law to have access to such documents in furtherance of the agencies' statutory duties, and provides for repeal of the public record exemptions effective October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a statement of public necessity as required by the State Constitution. It provides an effective date of October 1, 2012.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State 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, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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.
- Protects trade or business secrets.

Public Record Exemptions for Victims of Violent and Sexual Crimes

The law currently provides several protections from public records requirements for victims of various violent and sexual crimes.

The following information is confidential and exempt³ from public records requirements:

- Any information, including the photograph, name, address, or other fact, that reveals the identity of the victim of child abuse;
- Any information that may reveal the identity of a victim of sexual offense; and
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense.⁴

Current law also provides an exemption from public records requirements for any information not otherwise held confidential or exempt from public records requirements, that reveals the home or employment telephone number or address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence, upon an officially verified written request by the victim. Such information ceases to

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

⁴ Section 119.071(2)(h)1., F.S.

be exempt 5 years after receipt of the written request. Any state or federal agency authorized to have access to such documents must be granted access in the furtherance of its duties.⁵

Current law also exempts information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense.⁶

Injunctions for Victims of Violence

Sections 741.30 and 784.046, F.S., currently provide guidelines for the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence. During the 2011 Legislative Session, these statutes were amended to require the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.⁷ This process requires the petitioner to provide the Association and possibly law enforcement agencies with personal contact information. In many instances, the petitioner is a victim of a crime, thus, the information he or she provides to the Association and law enforcement agencies may be exempt from public records requirements. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

Effect of the Bill

The bill amends ss. 741.30 and 784.046, F.S., to allow a petitioner who requests notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence to request that certain information be held exempt from public records requirements for 5 years after receipt of the request. The exemption applies to information that reveals the home or employment telephone number or address, cellular telephone number, electronic mail address, or other electronic means of identification of the petitioner.

The Association must apprise the petitioner of his or her right to make the public record exemption request at the same time that the petitioner is making the request to be notified that the injunction was served.

The bill provides that information held by the Association and law enforcement agencies in conjunction with the automated injunction notification process which reveals the above-described information is exempt from public records requirements, upon written request of the petitioner. Such information ceases to be exempt 5 years after the Association's receipt of the petitioner's written request. Notwithstanding this exemption, the bill grants access to the exempt information to any state or federal agency that is authorized by law to have access to such documents in the furtherance of the agencies' statutory duties.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁸

B. SECTION DIRECTORY:

Section 1. Amends s. 741.30, F.S., relating to domestic violence injunctions.

Section 2. Amends s. 784.046, F.S., relating to repeat violence, sexual violence, or dating violence injunctions.

Section 3. Provides a public necessity statement.

⁵ Section 119.071(2)(j)1., F.S.

⁶ Section 119.0714(1)(h), F.S.

⁷ Chapter 2011-187, L.O.F.

⁸ Section 24(c), Art. I of the State Constitution.

Section 4. Provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

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

Public Necessity Statement

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

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.⁹ The bill does not contain a provision requiring retroactive application. As such, the public record exemption would apply prospectively.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute.

- Amendment 1. Conforms the public necessity statement to the bill by providing that a petitioner's personal identifying and location information held by the Association and law enforcement agencies in conjunction with the automated notification process be held exempt from public records requirements (rather than confidential and exempt).
- Amendment 2. Requires the Association to apprise a petitioner of his or her right to make the public records exemption request at the same time that the petitioner is making the request to be notified that the injunction was served, (rather than when the notification of service is sent). The amendment also provides that information held by both the Association and *law enforcement agencies* in conjunction with the automated notification process be held exempt from public records requirements.

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

⁹ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

1 A bill to be entitled
 2 An act relating to public records; amending ss. 741.30
 3 and 784.046, F.S.; providing exemptions from public
 4 records requirements for personal identifying and
 5 location information of victims of domestic violence,
 6 repeat violence, sexual violence, and dating violence
 7 held by the Florida Association of Court Clerks and
 8 Comptrollers and law enforcement agencies in
 9 conjunction with the automated process developed by
 10 the association by which a petitioner may request
 11 notification of service of an injunction for
 12 protection against domestic violence, repeat violence,
 13 sexual violence, or dating violence and other court
 14 actions related to the injunction for protection;
 15 providing that the exemption is conditional upon the
 16 petitioner's request; providing specified duration of
 17 the exemption; providing for access by state or
 18 federal agencies in furtherance of the agencies'
 19 statutory duties; providing that the Florida
 20 Association of Court Clerks and Comptrollers must
 21 inform the petitioner of the right to request that the
 22 identifying and location information be held exempt
 23 from public records requirements; providing for future
 24 legislative review and repeal of the exemptions;
 25 providing a statement of public necessity; providing
 26 an effective date.

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

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Section 1. Paragraph (c) of subsection (8) of section 741.30, Florida Statutes, is amended to read:

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

(8)

(c)1. Within 24 hours after the court issues an injunction for protection against domestic violence or changes, continues, extends, or vacates an injunction for protection against domestic violence, the clerk of the court must forward a certified copy of the injunction for service to the sheriff with jurisdiction over the residence of the petitioner. The injunction must be served in accordance with this subsection.

2. Within 24 hours after service of process of an injunction for protection against domestic violence upon a respondent, the law enforcement officer must forward the written proof of service of process to the sheriff with jurisdiction over the residence of the petitioner.

3. Within 24 hours after the sheriff receives a certified copy of the injunction for protection against domestic violence, the sheriff must make information relating to the injunction available to other law enforcement agencies by electronically transmitting such information to the department.

4. Within 24 hours after the sheriff or other law enforcement officer has made service upon the respondent and the sheriff has been so notified, the sheriff must make information

57 relating to the service available to other law enforcement
 58 agencies by electronically transmitting such information to the
 59 department.

60 5.a. Subject to available funding, the Florida Association
 61 of Court Clerks and Comptrollers shall develop an automated
 62 process by which a petitioner may request notification of
 63 service of the injunction for protection against domestic
 64 violence and other court actions related to the injunction for
 65 protection. The automated notice shall be made within 12 hours
 66 after the sheriff or other law enforcement officer serves the
 67 injunction upon the respondent. The notification must include,
 68 at a minimum, the date, time, and location where the injunction
 69 for protection against domestic violence was served. When a
 70 petitioner makes a request for notification, the Florida
 71 Association of Court Clerks and Comptrollers must apprise the
 72 petitioner of her or his right to request in writing that the
 73 information specified in sub-subparagraph b. be held exempt from
 74 public records requirements for 5 years. The Florida Association
 75 of Court Clerks and Comptrollers may apply for any available
 76 grants to fund the development of the automated process.

77 b. Information held by the Florida Association of Court
 78 Clerks and Comptrollers and law enforcement agencies in
 79 conjunction with the automated process developed under sub-
 80 subparagraph a. which reveals the home or employment telephone
 81 number, cellular telephone number, home or employment address,
 82 electronic mail address, or other electronic means of
 83 identification of a petitioner requesting notification of
 84 service of an injunction for protection against domestic

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85 violence and other court actions related to the injunction for
86 protection is exempt from s. 119.07(1) and s. 24(a), Art. I of
87 the State Constitution, upon written request by the petitioner.
88 Such information shall cease to be exempt 5 years after the
89 receipt of the written request. Any state or federal agency that
90 is authorized to have access to such documents by any provision
91 of law shall be granted such access in the furtherance of such
92 agency's statutory duties, notwithstanding this sub-
93 subparagraph. This sub-subparagraph is subject to the Open
94 Government Sunset Review Act in accordance with s. 119.15 and
95 shall stand repealed on October 2, 2017, unless reviewed and
96 saved from repeal through reenactment by the Legislature.

97 6. Within 24 hours after an injunction for protection
98 against domestic violence is vacated, terminated, or otherwise
99 rendered no longer effective by ruling of the court, the clerk
100 of the court must notify the sheriff receiving original
101 notification of the injunction as provided in subparagraph 2.
102 That agency shall, within 24 hours after receiving such
103 notification from the clerk of the court, notify the department
104 of such action of the court.

105 Section 2. Paragraph (c) of subsection (8) of section
106 784.046, Florida Statutes, is amended to read:

107 784.046 Action by victim of repeat violence, sexual
108 violence, or dating violence for protective injunction; dating
109 violence investigations, notice to victims, and reporting;
110 pretrial release violations; public records exemption.-

111 (8)

112 (c)1. Within 24 hours after the court issues an injunction

113 for protection against repeat violence, sexual violence, or
 114 dating violence or changes or vacates an injunction for
 115 protection against repeat violence, sexual violence, or dating
 116 violence, the clerk of the court must forward a copy of the
 117 injunction to the sheriff with jurisdiction over the residence
 118 of the petitioner.

119 2. Within 24 hours after service of process of an
 120 injunction for protection against repeat violence, sexual
 121 violence, or dating violence upon a respondent, the law
 122 enforcement officer must forward the written proof of service of
 123 process to the sheriff with jurisdiction over the residence of
 124 the petitioner.

125 3. Within 24 hours after the sheriff receives a certified
 126 copy of the injunction for protection against repeat violence,
 127 sexual violence, or dating violence, the sheriff must make
 128 information relating to the injunction available to other law
 129 enforcement agencies by electronically transmitting such
 130 information to the department.

131 4. Within 24 hours after the sheriff or other law
 132 enforcement officer has made service upon the respondent and the
 133 sheriff has been so notified, the sheriff must make information
 134 relating to the service available to other law enforcement
 135 agencies by electronically transmitting such information to the
 136 department.

137 5.a. Subject to available funding, the Florida Association
 138 of Court Clerks and Comptrollers shall develop an automated
 139 process by which a petitioner may request notification of
 140 service of the injunction for protection against repeat

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141 violence, sexual violence, or dating violence and other court
142 actions related to the injunction for protection. The automated
143 notice shall be made within 12 hours after the sheriff or other
144 law enforcement officer serves the injunction upon the
145 respondent. The notification must include, at a minimum, the
146 date, time, and location where the injunction for protection
147 against repeat violence, sexual violence, or dating violence was
148 served. When a petitioner makes a request for notification, the
149 Florida Association of Court Clerks and Comptrollers must
150 apprise the petitioner of her or his right to request in writing
151 that the information specified in sub-subparagraph b. be held
152 exempt from public records requirements for 5 years. The Florida
153 Association of Court Clerks and Comptrollers may apply for any
154 available grants to fund the development of the automated
155 process.

156 b. Information held by the Florida Association of Court
157 Clerks and Comptrollers and law enforcement agencies in
158 conjunction with the automated process developed under sub-
159 subparagraph a. which reveals the home or employment telephone
160 number, cellular telephone number, home or employment address,
161 electronic mail address, or other electronic means of
162 identification of a petitioner requesting notification of
163 service of an injunction for protection against repeat violence,
164 sexual violence, or dating violence and other court actions
165 related to the injunction for protection is exempt from s.
166 119.07(1) and s. 24(a), Art. I of the State Constitution, upon
167 written request by the petitioner. Such information shall cease
168 to be exempt 5 years after the receipt of the written request.

169 Any state or federal agency that is authorized to have access to
 170 such documents by any provision of law shall be granted such
 171 access in the furtherance of such agency's statutory duties,
 172 notwithstanding this sub-subparagraph. This sub-subparagraph is
 173 subject to the Open Government Sunset Review Act in accordance
 174 with s. 119.15 and shall stand repealed on October 2, 2017,
 175 unless reviewed and saved from repeal through reenactment by the
 176 Legislature.

177 6. Within 24 hours after an injunction for protection
 178 against repeat violence, sexual violence, or dating violence is
 179 lifted, terminated, or otherwise rendered no longer effective by
 180 ruling of the court, the clerk of the court must notify the
 181 sheriff or local law enforcement agency receiving original
 182 notification of the injunction as provided in subparagraph 2.
 183 That agency shall, within 24 hours after receiving such
 184 notification from the clerk of the court, notify the department
 185 of such action of the court.

186 Section 3. It is the finding of the Legislature that it is
 187 a public necessity that personal identifying and location
 188 information of victims of domestic violence, repeat violence,
 189 sexual violence, and dating violence held by the Florida
 190 Association of Court Clerks and Comptrollers and law enforcement
 191 agencies in conjunction with the automated process developed by
 192 the association under ss. 741.30 and 784.046, Florida Statutes,
 193 by which a petitioner may request notification of service of an
 194 injunction for protection against domestic violence, repeat
 195 violence, sexual violence, or dating violence and other court
 196 actions related to the injunction for protection be held exempt

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197 from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the
 198 State Constitution upon written request by the petitioner. Such
 199 information, if publicly available, could expose the victims of
 200 domestic violence, repeat violence, sexual violence, and dating
 201 violence to public humiliation and shame and could inhibit the
 202 victim from availing herself or himself of relief provided under
 203 state law. Additionally, if such information were publicly
 204 available, it could be used by the partner or former partner of
 205 the victim of domestic violence, repeat violence, sexual
 206 violence, or dating violence to determine the location of the
 207 victim, thus placing the victim in jeopardy.



208 Section 4. This act shall take effect October 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4067 Marshals of District Courts of Appeal

SPONSOR(S): Weinstein

TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Caridad	Bond
2) Judiciary Committee		Caridad 	Havlicak 

SUMMARY ANALYSIS

Florida has five district courts of appeal. Each court appoints a marshal. This bill repeals the statutory requirement that requires the salary of the marshal to be set by general law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Marshals for the District Courts of Appeal

There are currently five district courts of appeal.¹ Each district court of appeal is required to appoint a marshal.² Subsections 35.26(2), (3) and (4), F.S., provide that:

- The marshal has the power to execute the process of the court throughout the state, and in any county may deputize the sheriff or a deputy sheriff for such purpose.
- The marshal of each district court of appeal is the custodian of such court's building and grounds.
- The marshal is responsible for security of the court.

Art. V s. 4(c) of the state constitution requires that each district court of appeal appoint a marshal and provides that the salary of the marshal "be fixed by general law."

Section 35.27, F.S., requires that the compensation of the marshal be provided by law.

Effect of the Bill

The bill repeals the statutory requirement that the compensation of the marshal be provided by law. This bill does not affect the constitutional requirement.

B. SECTION DIRECTORY:

Section 1 repeals s. 35.27, F.S., regarding salary of the marshal of a district court of appeal.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

¹ Section 35.01, F.S.

² Section 35.26(1), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Repeal of the statute conforms the law to current practice whereby the salary of a marshal is set by the chief judge of the district court.³

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

³ Correspondence from State Courts Administrator regarding HB 4135, dated February 22, 2011.

HB 4067

2012

1 A bill to be entitled
2 An act relating to marshals of district courts of
3 appeal; repealing s. 35.27, F.S., relating to
4 compensation of marshals; providing an effective date.
5

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

8 Section 1. Section 35.27, Florida Statutes, is repealed.
9 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4069 County Courts
SPONSOR(S): Weinstein
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Cary	Bond
2) Judiciary Committee		Cary <i>JMC</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

This bill repeals an obsolete statute requiring all county courts in the state to be considered open for the reception of voluntary pleas of guilt at all times, Sundays excepted.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 34.131, F.S., provides that county courts shall remain open, except on Sundays, to receive voluntary pleas of guilty in all criminal cases. The statute requires county court judges to receive guilty pleas and convict and sentence the defendant as a result of such pleas. This statute derives from the days when circuit court judges literally "rode the circuit," typically appearing in rural counties only twice a year.¹ In those days, a felony defendant in certain counties may have had to wait for up to six months in order to plead guilty if not for the statute allowing for defendants to plead guilty before a county judge.

The state Supreme Court has broad power to adopt rules for the practice and procedure in all state courts.² Procedures for entry of guilty pleas are governed by the Rules of Criminal Procedure.³ Furthermore, the Supreme Court has granted Chief Judge of a circuit court broad administrative authority to designate judges to be assigned to various courts.⁴ In practice, Chief Judges may assign county court judges as temporary judges in circuit courts for any purpose, including the taking of voluntary pleas.⁵

This bill repeals an obsolete statute, s. 34.131, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 34.131, F.S., relating to availability of county courts for the reception of voluntary guilty pleas.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

¹ See s. 26.21, F.S., which requires at least two regular terms of the circuit court to be held in each county in each year, and the subsequent sections that specify the times for holding the terms of the circuit courts in each circuit.

² ART. V, SEC. 2, FLA. CONST.

³ Fla. R. Crim. Pro., Rule 3.170.

⁴ Fla. R. Jud. Admin., Rule 2.215(b)(3).

⁵ See, e.g., Admin. Order of the 14th Jud. Cir. #2011-00-03.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HB 4069

2012

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A bill to be entitled
An act relating to county courts; repealing s. 34.131,
F.S., relating to a requirement that county courts be
open for voluntary pleas of guilty at all times,
Sundays excepted; providing an effective date.
Be It Enacted by the Legislature of the State of Florida:
Section 1. Section 34.131, Florida Statutes, is repealed.
Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4081 District Courts Of Appeal
SPONSOR(S): Weinstein
TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Cary	Bond
2) Judiciary Committee		Cary JMC	Havlicak RH

SUMMARY ANALYSIS

When the Legislature created the chapter of the Florida Statutes respecting the District Courts of Appeal and substantially amended the chapter respecting the Supreme Court in 1957, it included a section in each providing that the salary of the judges of the district courts of appeal shall be as provided by law. The Supreme Court provision was repealed as obsolete in 1972, but the District Courts of Appeal provision remains.

This bill repeals the statutory provision providing that the salary of the judges of the District Courts of Appeal shall be provided by law.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 35.19, F.S., simply states, "The salary of the judges of the district courts of appeal shall be as provided by law." This section was created in 1957 as part of the original bill creating Chapter 35 of the Florida Statutes, respecting the District Courts of Appeal (DCA).¹ That same year, the Legislature passed a similar provision respecting the salary of the justices of the Supreme Court², but that section was repealed as obsolete in 1972.³ It is unclear why s. 35.19, F.S. was not repealed in the same bill.

The salaries of DCA judges are annually published in Section 8 of the General Appropriations Act.⁴

This bill repeals s. 35.19, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 35.19, F.S., relating to compensation of district court of appeal judges.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹ L.O.F. 57-248.

² L.O.F. 57-274.

³ L.O.F. 72-440.

⁴ See e.g., s. 8, L.O.F. 2011-69.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

None.

HB 4081

2012

1 A bill to be entitled
2 An act relating to district courts of appeal;
3 repealing s. 35.19, F.S., which states that the salary
4 of judges of district courts of appeal shall be as
5 provided by law; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Section 35.19, Florida Statutes, is repealed.

10 Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JDC 12-02 Clerks of Court
SPONSOR(S): Judiciary Committee
TIED BILLS: IDEN./SIM. BILLS: SB 1166

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Judiciary Committee, De La Paz, Havlicak

SUMMARY ANALYSIS

This bill makes several changes to current law relating to certain responsibilities of the clerks of the court to enhance the collection of court fees and fines and to improve the efficiency of their operations. The bill also requires broader use of the Comprehensive Case Information System (CCIS) among state agencies to reduce operational costs and duties of the clerks of the court. The most significant changes made by the bill are:

- Requires the Department of the Lottery to use the CCIS, rather than rely solely on notification from the judiciary and other state agencies, to enforce the current prohibition on paying a prize of \$600 or more before collecting outstanding fines and support obligations from persons still owing such amounts.
• Makes the clerk's mandatory review of property and motor vehicle records of persons seeking an indigency determination for purposes of obtaining a public defender discretionary.
• Requires all clerks of the circuit court to participate in the CCIS.
• Clarifies that filing fees are due when a party files a pleading to initiate a proceeding.
• Provides that reopen fees are due upon filing a pleading to reopen a case that has been closed for at least 90 days.
• Requires clerks to collect a \$10 service charge for issuing a certified copy or an electronic certified copy of a summons rather than only for an original summons.
• Provides a \$70 fee for rescheduling a judicial sale.
• Allows an action for the collection of court costs and fines to be brought at any time.
• Requires the state attorney to notify the clerk of the court when a defendant is a public officer charged with a specified offense before the clerk must send notice of the proceedings to the Commission on Ethics.
• Ranks claims for the collection of unpaid fees, court costs and fines at level three within the eight level ranking order for payment of claims against a decedent's estate by a personal representative.
• Removes the requirement for clerks of the court to send certified copies of felony drug convictions to agencies issuing convicted defendants a business or professional license, and replaces it with a requirement for the license issuing agency to obtain such information from the CCIS.
• Provides that with respect to criminal financial obligations, a previously imposed criminal or civil judgment constitutes a civil lien against the judgment debtor's real or personal property when recorded as required by s. 55.10, F.S. Exempts such liens from the current 10 year rerecording requirement of the statute.
• Adds the payment of fines, fees and other court related costs as a condition of parole in addition to the current condition of paying restitution. Preserves restitution as the first priority for payment.

The bill appears to have an indeterminate fiscal impact.
This bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Lottery Prize Collections

Section 24.115(4), F.S., requires the judicial branch and state agencies to identify to the Department of the Lottery persons owing an outstanding debt to any state agency or owing child support, spousal support or alimony collected through a court if the child support obligation is being enforced by the Department of Revenue. Before any prize of \$600 or more is awarded to a person owing such a debt, the Department of the Lottery must first transmit the amount of the debt owed to the agency claiming the debt and may then authorize payment of the balance, if any, to the winner after deduction of the prize. If a winner owes multiple debts, obligations of child support take priority over all other debts owed, with any remaining amounts to be distributed among the other agencies based upon the ratio of the individual debt to the remaining debt owed to the state.

This bill requires the Department of the Lottery to use the Comprehensive Case Information System of the Florida Association of Court Clerks and Comptroller, Inc., (CCIS) to determine whether a prize winner owes outstanding fines, fees, or court costs to the state as an additional means of complying with the requirement to check outstanding debts prior to paying wards of \$600 or more.¹

Determinations of Indigency

Section 27.52, F.S., requires the clerk of the court to determine whether an applicant seeking appointment of a public defender is indigent pursuant to the following criteria: The applicant

- is at or below 200% of the federal poverty guidelines;
- is receiving Temporary Assistance for Needy Families-Cash Assistance;
- is receiving poverty-related veteran's benefits; or
- is receiving Supplemental Security Income (SSI)

There is, however, a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value under \$5,000.

Current law mandates the clerk to conduct a review of property records for the county in which an applicant resides and motor vehicle title records of the state to identify any property interests of the applicant.² The clerk must evaluate and consider the results of its review in making a determination of indigency. The clerk is also required to maintain the results of the review in a file with the application and provide the file to the court if the applicant seeks a court review of a clerk's determination that the applicant is not indigent.

This bill removes the requirement that the clerk review and evaluate property and motor vehicle records by providing that the clerk "may" conduct a review and evaluation of such records. If, however, the clerk conducts a review, a file of the review will be maintained for a court's review of a denial of an application for indigency.

¹ The Florida Association of Court Clerks and FACC Services Group describes the Comprehensive Case Information System (CCIS), as "a secured internet portal providing a single point of search for statewide court case information. CCIS users are comprised of the judicial community, state and local law enforcement, state agencies, and the Florida Legislature."

² Section 27.52(2)(a)2.b., F.S.

Participation in the Comprehensive Case Information System (CCIS)

This bill deletes a provision in s. 28.24, FS, which is a provision concerning service charges for clerks of the circuit court, that requires all circuit court clerks to participate in the CCIS by January 1, 2006, and creates s. 28.2405, F.S., which requires their participation in the system and further requires them to submit their electronic cases to the system according to types designated by the Supreme Court.

Filing Fees

Chapter 28 of Florida Statutes pertains to clerks of the circuit court while chapter 34 relates to county courts. Current law requires a party "instituting any civil action" to pay the statutorily prescribed filing fee to the clerk of the court. This bill amends ss. 28.241, F.S., and 34.041, F.S., to clarify that filing fees are to be paid at the time a party files a case with the clerk.

Under current law a party reopening a civil action or proceeding in circuit court must pay a filing fee not exceeding \$50.³ In county court, reopening fees are up to \$25 for all claims not more than \$500, and up to \$50 for claims over \$500.⁴ A case is "reopened" when it has previously been reported as disposed of and is resubmitted to the court. Under the bill, a case is reopened after all appeals have been exhausted, or the time to file an appeal from a final order or final judgment has expired.

The bill provides that reopening fees are to be assessed by the clerk when pleadings to reopen a case have been filed at least 90 days from the filing of a final order or final judgment with the clerk. For pleadings to reopen cases closed at least 90 days, the reopening fee is due upon filing of the pleading with the clerk. The bill specifies that reservation of jurisdiction by a court does not cause a case to remain open for purposes of assessing a reopening fee.

Section 28.241(1)(b), F.S., and s. 34.041, F.S., lists several exceptions to the payment of a reopening fee. This bill adds "motions to enforce stipulations" and "motions for contempt" to the list of exceptions from this fee.

The bill requires the clerk to pursue collection of fees under s. 28.246, F.S., if a party fails to pay a required fee.

Service Charges for Issuance of a Summons

Current law requires the clerks of the court to collect a \$10 service charge for issuing a summons from a party seeking to have a summons issued. This bill amends s. 28.241(1)(d), F.S., and s. 34.041, F.S., to require the collection of the fee for the issuance of an original, certified copy or an electronic certified copy of a summons.

Service Charges for Services Related to Judicial Sales

Currently, s. 45.035, F.S., mandates clerks of the court to receive service charges related to the judicial sales procedure set forth in ss. 45.031-.034 for real and personal property. The statute imposes a \$70 service charge for clerk's services of making, recording, and certifying the sale and title from such proceedings. Also, if there is any surplus resulting from a sale, the clerk may receive the following service charges, which must be deducted from the surplus:

- \$28 which may only be used for purposes of educating the public as to the rights of homeowners regarding foreclosure proceedings.
- A \$15 service charge for notifying a surplus trustee of his or her appointment.
- A \$15 service charge for each disbursement of surplus proceeds.
- A \$15 service charge for appointing a surplus trustee, furnishing the surplus trustee with a copy of the final judgment and the certificate of disbursements, and disbursing to the surplus trustee

³ Section 28.241(1)(b), F.S.

⁴ Section 34.041(2), F.S.

the trustee's cost advance.

For sales conducted by electronic means, under s. 45.031(10), the clerk receives an additional service charge of up to \$70 for services in conducting or contracting for the electronic sale.

This bill adds an additional \$70 charge against the plaintiff for each rescheduling of a judicial sale. The rescheduling fee must be paid prior to the rescheduled sale.

Statute of Limitations

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. Section 95.11, F.S., is the statute of limitations provision governing actions other than for the recovery of real property. Under this section, an action on a judgment or decree of court must be commenced within twenty years. This bill provides that, with respect to court costs and fines owed to the state, a collection action may be commenced at any time.

Notice of Breach of Public Trust Offense by Public Official

Section 112.3173, F.S., requires the clerk of the court to provide notice to the Commission on Ethics when a proceeding against a public official for a "specified offense" is being conducted in its court.⁵ This bill requires the clerk to submit the required notice after the state attorney advises the clerk that a defendant is a public officer or employee and that the defendant is alleged to have committed a specified offense.

Community Service in Lieu of Civil Penalty

Section 318.18, F.S., sets forth the civil penalties for traffic violations. Currently, if a person has been ordered to pay a civil penalty for a noncriminal traffic infraction and is unable to do so due to a financial hardship, the court must allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid. Such persons either receive credit for community service hours against the civil penalty at a specified hourly rate based on the wage rate specified under the federal Fair Labor Standards Act of 1938 or, if the person has a trade or profession, at the average prevailing wage rate for that trade or profession.⁶ The supervision of the performance of community service hours is conducted by "a community service agency" that agrees to accept community service from persons unable to pay their civil penalties.⁷

⁵ Under s. 112.3173(4)(a), F.S., a copy of an information, indictment, or other document containing the charges is sufficient for notice. Section 112.3173(2)(e), F.S., defines a "specified offense" as:

1. The committing, aiding, or abetting of an embezzlement of public funds;
2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
3. Bribery in connection with the employment of a public officer or employee;
4. Any felony specified in chapter 838, except ss. 838.15 and 838.16;
5. The committing of an impeachable offense;
6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or
7. The committing on or after October 1, 2008, of any felony defined in s. 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

⁶ Section 318.18(8), F.S.

⁷ Section 318.18(8)(b), F.S., defines "Community service agency" as a "not-for-profit corporation, community organization, charitable organization, public officer, the state or any political subdivision of the state, or any other body the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions."

Currently, the community service agency must record the number of community service hours completed along with the date of completion to clerk of the court on letterhead of the community service agency and signed by the designated representative of the community service agency. This bill requires the signature of the representative of the community service agency to be notarized on the record submitted to the clerk.

Uniform Electronic Transaction Act

Section 668.50, F.S., is known as the Uniform Electronic Transaction Act. The act applies to electronic records and electronic signatures relating to a transaction.⁸ The act does not apply to the transactions to the extent they are governed by:

1. A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;
2. The Uniform Commercial Code other than s. 671.107 and chapters 672 and 680;
3. The Uniform Computer Information Transactions Act; or
4. Rules relating to judicial procedure.

This bill removes the complete exclusion of rules relating to judicial procedure from the provisions of the act and makes subsections (2), (9) and (11) of the act applicable to documents filed with the court. Subsection (2) is the definitions section of the act. Subsection (9) is the provision of the act relating to attributing an electronic signature to the person making the electronic signature in a manner showing the "efficacy of any security procedure." Subsection (11) relates to electronic notarization of signatures.

Priority of Payment of Expenses and Obligations

Section 733.707, F.S., sets forth the order in which the personal representative of a decedent's estate must pay the expenses of the estate's administration and obligations against creditors. It provides the following order of payment:

- Class 1.—Costs, expenses of administration, and compensation of personal representatives and their attorneys fees and attorneys fees awarded under s. 733.106(3).
- Class 2.—Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian, the personal representative, or any other person, not to exceed the aggregate of \$6,000.
- Class 3.—Debts and taxes with preference under federal law, and claims pursuant to ss. 409.9101 and 414.28.
- Class 4.—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending the decedent.
- Class 5.—Family allowance.
- Class 6.—Arrearage from court-ordered child support.
- Class 7.—Debts acquired after death by the continuation of the decedent's business, in accordance with s. 733.612(22), but only to the extent of the assets of that business.
- Class 8.—All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime, and any excess over the sums allowed in paragraphs (b) and (d).

This bill inserts claims in favor of the state for unpaid court costs, fees or fines at the class three level of this section.

⁸ Section 668.50(2), F.S., defines an "Electronic record" as "a record created, generated, sent, communicated, received, or stored by electronic means." An "Electronic signature" is defined as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." A "Transaction" is defined as "an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, insurance, or governmental affairs."

Suspension of License to Practice Upon Conviction of Certain Felonies

Currently, under s. 893.11, F.S., the clerk of the court must send a certified copy of a judgment of conviction of any person holding a license, permit, or certificate issued by a state agency, to the head of the agency when such conviction is for a felony offense of selling, trafficking, or conspiracy to sell or traffic in a controlled substance. The certified copy of the judgment must show the person's license number, permit number, or certificate number on the face of the document. The agency head must suspend or revoke the license, permit, or certificate of the convicted defendant to practice his or her profession or to carry on his or her business.

This bill removes the above requirements as they relate to the clerks of the court, and replaces them with a requirement that state agencies use the CCIS to obtain the information relating to such convictions of license, permit or certificate holders. The bill requires the clerks to provide certified copies of such convictions when requested by an agency. The bill substitutes the reference to "permit or certificate" holders with persons issued a "business or professional" license.

Costs of Prosecution and Investigation

Section 938.27(2)(a), F.S., requires a court to impose costs of prosecution and investigation notwithstanding a defendant's present inability to pay. Currently, these costs are to be paid within a "specified period or in specified installments." This bill requires such payments to be made in accordance the payment plan provided in s. 28.246, F.S., which requires the clerk to enter into a payment plan for individuals found by a court to be indigent for costs. Section 28.246, F.S., provides for a monthly payment plan. The monthly payment amount, which is calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income divided by 12. The court may review the reasonableness of the payment plan.

Financial Obligations in Criminal Cases

A judgment lien generally refers to a lien against property that is based on an underlying money judgment. A judgment lien on real property is created and perfected upon the recording of a certified copy of a judgment in the official county records. Under s. 55.10, F.S., the judgment shall be a lien for an initial period of 10 years from the date of the recording. A lien may be extended for an additional 10 years by rerecording a certified copy of the judgment prior to the expiration of the lien and by simultaneously recording an affidavit with the current address of the person who has a lien as a result of the judgment. Section 55.081, F.S., provides that a judgment lien on real property can be effective for up to 20 years from the date the judgment was entered.

This bill amends s. 938.30, F.S., relating to financial obligations in criminal cases to provide that in cases where a criminal or civil judgment has been previously entered on a court-imposed financial obligation, the judgment constitutes a lien against the judgment debtor's presently owned or after-acquired real or personal property when recorded pursuant to s. 55.10, F.S. The bill exempts such liens from the 10 year rerecording requirement of s. 55.10, F.S. The judgment must secure all unpaid court-imposed financial obligations that are due and accrue subsequent to the recording of the judgment, including interest and reasonable costs for the issuing a satisfaction and recording the satisfaction in the records. The bill further authorizes the clerks to enforce, satisfy, settle, release or dispose of any debts or liens imposed and collected.

Parole and Fines, Costs and Restitution

Currently, s. 947.181, F.S., provides that the Parole Commission (commission) shall require restitution to the victim as a condition of parole unless the commission states reasons on the record for not ordering it. The amount of restitution is determined by the commission unless restitution has previously been ordered by the court under s. 775.089, F.S. Court ordered restitution must be made a condition of parole. If a parolee fails to make restitution as ordered it is considered a violation of parole and may be cause for revocation of parole.

This bill adds the payment of fines, fees and other related court costs to be included as a required condition of parole. Under the bill, the commission must order these amounts along with restitution unless the commission states reasons on the record for not ordering them. In the payment of these amounts, restitution to the victim is given first priority over the payment of fines, fees and other related court costs. The failure to pay any of these amounts is considered a violation of parole and may cause a revocation of parole.

B. SECTION DIRECTORY:

Section 1. Amends s. 24.115, F.S., relating to payment of prizes.

Section 2. Amends s. 27.52, F.S., relating to determination of indigent status.

Section 3. Amends s. 28.24, F.S., relating to service charges by the clerk of the circuit court.

Section 4. Creating s. 28.2405, F.S., relating to Comprehensive Case Information System.

Section 5. Amends s. 28.241, F.S., relating to filing fees for trial and appellate proceedings.

Section 6. Amends s. 34.041, F.S., relating to filing fees.

Section 7. Amends s. 45.035, F.S., relating to clerk's fees.

Section 8. Amends s. 57.081, F.S., costs; right to proceed where prepayment of costs and payment of filing fees waived.

Section 9. Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 10. Amends s. 112.3173, F.S., felonies involving breach of public trust and other specified by public officers.

Section 11. Amends s. 318.18, F.S., amount of penalties.

Section 12. Amends s. 668.50, F.S., Uniform Electronic Transaction Act.

Section 13. Amends s. 733.707, F.S., order of payment of expenses and obligations.

Section 14. Amends s. 893.11, F.S., suspension, revocation, and reinstatement business and professional license.

Section 15. Amends s. 938.27, F.S., judgment for costs conviction.

Section 16. Amends s. 938.30, F.S., financial obligations in criminal cases; supplementary proceedings.

Section 17. Amends s. 947.181, F.S., Victim restitution as condition of parole.

Section 18. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The fiscal impact of this bill is indeterminate due to the unquantifiable nature of the savings and potential costs associated with the bill. Some aspects of the bill can be expected to generate costs savings and increased collections. For example, the provision of the bill adding an additional \$70 charge for rescheduling of judicial sales will increase fees for the clerks. Similarly, the removal of the obligation from the clerks to send certified copies of felony convictions to the agency head of licensing agencies in order to suspend the business or professional license of persons convicted of selling or trafficking in controlled substances, and replacing it with an obligation on state agencies to obtain the information directly from the CCIS, will likely result in an overall savings. On the other hand, there are components of the bill which remove some responsibilities of clerks of the court which will reduce some of their workload, however, it is unclear whether the change will result in a fiscal positive or negative to the state overall. For example, the removal of mandatory review of property and motor vehicle records to identify property interests of persons claiming indigency to secure the services of the public defender may result in more persons receiving their services who would have otherwise been found not to be indigent. While the clerks still have discretion to conduct these reviews under the bill, it is not clear how often these reviews will take place or how a determination to conduct a review will be made.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

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1 A bill to be entitled

2 An act relating to clerks of court; amending s.

3 24.115, F.S.; requiring the Department of the Lottery

4 to use the Comprehensive Case Information System of

5 the Florida Association of Court Clerks and

6 Comptroller, Inc., to determine whether a prize winner

7 owes outstanding fines, fees, or court costs to the

8 state; amending s. 27.52, F.S.; authorizing the clerk

9 of court to review the property records and motor

10 vehicle records to determine whether an applicant for

11 the appointment of a public defender is indigent;

12 deleting a requirement that the clerk conduct the

13 review; amending s. 28.24, F.S.; deleting a

14 requirement for the clerks of the circuit courts to

15 participate in the Comprehensive Case Information

16 System; creating s. 28.2405, F.S.; requiring clerks of

17 the circuit courts to use the Comprehensive Case

18 Information System and to submit data to the system

19 based on case types designated by the Supreme Court of

20 Florida; amending s. 28.241, F.S.; providing that

21 filing fees and fees to reopen a proceeding are due at

22 the time a party files a pleading to initiate a

23 proceeding; requiring the clerk of court to pursue the

24 collection of fees that are not timely paid; revising

25 the circumstances under which a fee to reopen a case

26 applies; exempting a person from paying a reopen fee

27 for filing a motion to enforce a stipulation or a

28 motion for contempt; authorizing the clerk of court to

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29 | charge a fee to issue an electronic certified copy of
30 | a summons; amending s. 34.041, F.S.; requiring the
31 | party filing a case in county court to pay all filing
32 | and reopen fees at the time of filing; requiring the
33 | clerk to pursue collection of the fees if the fees are
34 | not paid at the time of filing; authorizing the clerk
35 | of court to charge a fee for issuing an electronic
36 | certified copy of a summons; revising the
37 | circumstances under which a fee to reopen a case
38 | applies; exempting a party from paying a reopen fee
39 | for filing motions to enforce stipulations and motions
40 | for contempt; amending s. 45.035, F.S.; requiring a
41 | plaintiff to pay a rescheduling fee to the clerk on
42 | each occasion a sale of real or personal property
43 | under an order or judgment is rescheduled; requiring
44 | the rescheduling fee to be assessed as costs;
45 | requiring the plaintiff to pay the rescheduling fee to
46 | the court before the sale; amending s. 57.081, F.S.;
47 | providing that a person who receives a certification
48 | of indigence with respect to a proceeding is not
49 | required to pay charges to issue a summons; amending
50 | s. 95.11, F.S.; providing that an action to collect
51 | any court costs or fines owed to the state may be
52 | commenced at any time; amending s. 112.3173, F.S.;
53 | providing for the duty of a clerk of court to notify
54 | the Commission on Ethics of certain proceedings
55 | involving public officers or employees to arise after
56 | the clerk is advised by the state attorney that the

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57 | defendant is a public officer or employee who is
 58 | alleged to have committed a qualifying offense;
 59 | amending s. 318.18, F.S.; requiring that the signature
 60 | of the person designated to represent a community
 61 | service agency be notarized on letterhead that
 62 | indicates the number of hours of community service
 63 | completed and the date the community service hours
 64 | were completed by a person who is ordered to perform
 65 | community service as a penalty for a noncriminal
 66 | disposition pursuant to s. 318.14, F.S., or a criminal
 67 | offense listed in s. 318.17, F.S.; amending s. 668.50,
 68 | F.S.; limiting the exemption from the Uniform
 69 | Electronic Transaction Act for transactions governed
 70 | by rules relating to judicial procedure; amending s.
 71 | 733.707, F.S.; specifying the priority of payment of
 72 | unpaid court costs, fees, or fines by a decedent's
 73 | estate; amending s. 893.11, F.S.; deleting a
 74 | requirement that a clerk of court send criminal
 75 | conviction information to the state agency that has
 76 | issued a business or professional license to a person
 77 | who is convicted of certain types of criminal
 78 | offenses; requiring state agencies that issue business
 79 | or professional licenses to use the Comprehensive Case
 80 | Information System to obtain information relating to
 81 | criminal convictions of licensees; requiring the clerk
 82 | of court to provide certified copies of judgments to
 83 | licensing agencies upon request; defining the term
 84 | "business or professional license"; amending s.

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85 | 938.27, F.S.; authorizing a court to require a
 86 | defendant to pay the costs of prosecution and
 87 | investigation pursuant to a payment plan under s.
 88 | 28.246, F.S., relating to payment of court-related
 89 | fees, charges, and costs; amending s. 938.30, F.S.;
 90 | providing that criminal or civil judgment and related
 91 | costs are a civil lien against the judgment debtor's
 92 | presently owned or after-acquired real or personal
 93 | property if the judgment is recorded; providing an
 94 | exception to rerecording requirements; requiring that
 95 | the clerk of court enforce, satisfy, compromise,
 96 | settle, subordinate, release, or otherwise dispose of
 97 | any debts or lien imposed and collected in the same
 98 | manner as for an indigent defendant-recipient;
 99 | amending s. 947.181, F.S.; providing that the Parole
 100 | Commission require as a condition of parole the
 101 | payment of fines, fees, or other court-ordered costs
 102 | under certain circumstances; providing that
 103 | restitution ordered as a condition of parole has first
 104 | priority over the payment of other costs ordered as a
 105 | condition of parole; requiring that the commission
 106 | state on record the reasons for not requiring the full
 107 | payment of the fines, fees, or other court-ordered
 108 | costs; providing an effective date.

109 |
 110 | Be It Enacted by the Legislature of the State of Florida:

111 |
 112 | Section 1. Subsection (4) of section 24.115, Florida

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113 Statutes, is amended to read:

114 24.115 Payment of prizes.—

115 (4) (a) It is the responsibility of the appropriate state
 116 agency and of the judicial branch to identify to the department,
 117 in the form and format prescribed by the department, persons
 118 owing an outstanding debt to any state agency or owing child
 119 support collected through a court, including spousal support or
 120 alimony for the spouse or former spouse of the obligor if the
 121 child support obligation is being enforced by the Department of
 122 Revenue.

123 (b) Notwithstanding paragraph (a), the department must use
 124 the Comprehensive Case Information System of the Florida
 125 Association of Court Clerks and Comptroller, Inc., to determine
 126 whether a prize winner owes outstanding fines, fees, or court
 127 costs to the state, before it may pay a prize of \$600 or more.

128 (c) Before ~~Prior~~ to the payment of a prize of \$600 or more
 129 to any claimant having such an outstanding obligation, the
 130 department shall transmit the amount of the debt to the agency
 131 claiming the debt or owed the debt as shown on the Comprehensive
 132 Case Information System and shall authorize payment of the
 133 balance to the prize winner after deduction of the debt. If a
 134 prize winner owes multiple debts subject to offset under this
 135 subsection and the prize is insufficient to cover all such
 136 debts, the amount of the prize shall be transmitted first to the
 137 agency claiming that past due child support is owed. If a
 138 balance of lottery prize remains after payment of past due child
 139 support, the remaining lottery prize amount shall be transmitted
 140 to other agencies owed ~~claiming~~ debts ~~owed to the state, pro~~

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141 rata, based upon the ratio of the individual debt to the
 142 remaining debt owed to the state.

143 Section 2. Paragraph (a) of subsection (2) of section
 144 27.52, Florida Statutes, is amended to read:

145 27.52 Determination of indigent status.—

146 (2) DETERMINATION BY THE CLERK.—The clerk of the court
 147 shall determine whether an applicant seeking appointment of a
 148 public defender is indigent based upon the information provided
 149 in the application and the criteria prescribed in this
 150 subsection.

151 (a)1. An applicant, including an applicant who is a minor
 152 or an adult tax-dependent person, is indigent if the applicant's
 153 income is equal to or below 200 percent of the then-current
 154 federal poverty guidelines prescribed for the size of the
 155 household of the applicant by the United States Department of
 156 Health and Human Services or if the person is receiving
 157 Temporary Assistance for Needy Families-Cash Assistance,
 158 poverty-related veterans' benefits, or Supplemental Security
 159 Income (SSI).

160 2.a. There is a presumption that the applicant is not
 161 indigent if the applicant owns, or has equity in, any intangible
 162 or tangible personal property or real property or the expectancy
 163 of an interest in any such property having a net equity value of
 164 \$2,500 or more, excluding the value of the person's homestead
 165 and one vehicle having a net value not exceeding \$5,000.

166 b. Notwithstanding the information that the applicant
 167 provides, the clerk may ~~shall~~ conduct a review of the property
 168 records for the county in which the applicant resides and the

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169 motor vehicle title records of the state to identify any
 170 property interests of the applicant under this subparagraph. The
 171 clerk may ~~shall~~ evaluate and consider the results of the review
 172 in making a determination under this subsection. If the review
 173 is completed by the clerk, the clerk shall maintain the results
 174 of the review in a file with the application and provide the
 175 file to the court if the applicant seeks review under subsection
 176 (4) of the clerk's determination of indigent status.

177 Section 3. Paragraph (e) of subsection (12) of section
 178 28.24, Florida Statutes, is amended to read:

179 28.24 Service charges by clerk of the circuit court.—The
 180 clerk of the circuit court shall charge for services rendered by
 181 the clerk's office in recording documents and instruments and in
 182 performing the duties enumerated in amounts not to exceed those
 183 specified in this section. Notwithstanding any other provision
 184 of this section, the clerk of the circuit court shall provide
 185 without charge to the state attorney, public defender, guardian
 186 ad litem, public guardian, attorney ad litem, criminal conflict
 187 and civil regional counsel, and private court-appointed counsel
 188 paid by the state, and to the authorized staff acting on behalf
 189 of each, access to and a copy of any public record, if the
 190 requesting party is entitled by law to view the exempt or
 191 confidential record, as maintained by and in the custody of the
 192 clerk of the circuit court as provided in general law and the
 193 Florida Rules of Judicial Administration. The clerk of the
 194 circuit court may provide the requested public record in an
 195 electronic format in lieu of a paper format when capable of
 196 being accessed by the requesting entity.

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Charges

(12) For recording, indexing, and filing any instrument not more than 14 inches by 8 1/2 inches, including required notice to property appraiser where applicable:

(e) An additional service charge of \$4 per page shall be paid to the clerk of the circuit court for each instrument listed in s. 28.222, except judgments received from the courts and notices of lis pendens, recorded in the official records. From the additional \$4 service charge collected:

1. If the counties maintain legal responsibility for the costs of the court-related technology needs as defined in s. 29.008(1)(f)2. and (h), 10 cents shall be distributed to the Florida Association of Court Clerks and Comptroller, Inc., for the cost of development, implementation, operation, and maintenance of the clerks' Comprehensive Case Information System, ~~in which system all clerks shall participate on or before January 1, 2006;~~ \$1.90 shall be retained by the clerk to be deposited in the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk as defined in s. 29.008(1)(f)2. and (h); and \$2 shall be distributed to the board of county commissioners to be used exclusively to fund court-related technology, and court technology needs as defined in s. 29.008(1)(f)2. and (h) for the state trial courts, state attorney, public defender, and criminal conflict and civil regional counsel in that county. If the counties maintain legal responsibility for the costs of the

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225 court-related technology needs as defined in s. 29.008(1)(f)2.
 226 and (h), notwithstanding any other provision of law, the county
 227 is not required to provide additional funding beyond that
 228 provided herein for the court-related technology needs of the
 229 clerk as defined in s. 29.008(1)(f)2. and (h). All court records
 230 and official records are the property of the State of Florida,
 231 including any records generated as part of the Comprehensive
 232 Case Information System funded pursuant to this paragraph and
 233 the clerk of court is designated as the custodian of such
 234 records, except in a county where the duty of maintaining
 235 official records exists in a county office other than the clerk
 236 of court or comptroller, such county office is designated the
 237 custodian of all official records, and the clerk of court is
 238 designated the custodian of all court records. The clerk of
 239 court or any entity acting on behalf of the clerk of court,
 240 including an association, shall not charge a fee to any agency
 241 as defined in s. 119.011, the Legislature, or the State Court
 242 System for copies of records generated by the Comprehensive Case
 243 Information System or held by the clerk of court or any entity
 244 acting on behalf of the clerk of court, including an
 245 association.

246 2. If the state becomes legally responsible for the costs
 247 of court-related technology needs as defined in s.
 248 29.008(1)(f)2. and (h), whether by operation of general law or
 249 by court order, \$4 shall be remitted to the Department of
 250 Revenue for deposit into the General Revenue Fund.

251 Section 4. Section 28.2405, Florida Statutes, is created
 252 to read:

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253 28.2405 Comprehensive Case Information System.—All clerks
 254 of the circuit court shall participate in the Comprehensive Case
 255 Information System of the Florida Association of Clerks and
 256 Comptroller, Inc., and shall submit electronic case data to the
 257 system based on the case types designated by the Supreme Court.

258 Section 5. Subsection (1) of section 28.241, Florida
 259 Statutes, is amended to read:

260 28.241 Filing fees for trial and appellate proceedings.—

261 (1) Filing fees are due at the time a party files a
 262 pleading to initiate a proceeding or files a pleading for
 263 relief. Reopen fees are due at the time a party files a
 264 pleading to reopen a proceeding if at least 90 days has elapsed
 265 since the filing of a final order or final judgment with the
 266 clerk. If a fee is not paid upon the filing of the pleading as
 267 required under this section, the clerk shall pursue collection
 268 of the fee pursuant to s. 28.246.

269 (a)1.a. Except as provided in sub-subparagraph b. and
 270 subparagraph 2., the party instituting any civil action, suit,
 271 or proceeding in the circuit court shall pay to the clerk of
 272 that court a filing fee of up to \$395 in all cases in which
 273 there are not more than five defendants and an additional filing
 274 fee of up to \$2.50 for each defendant in excess of five. Of the
 275 first \$280 in filing fees, \$80 must be remitted by the clerk to
 276 the Department of Revenue for deposit into the General Revenue
 277 Fund, \$195 must be remitted to the Department of Revenue for
 278 deposit into the State Courts Revenue Trust Fund, \$3.50 must be
 279 remitted to the Department of Revenue for deposit into the
 280 Clerks of the Court Trust Fund within the Justice Administrative

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281 Commission and used to fund the Florida Clerks of Court
 282 Operations Corporation created in s. 28.35, and \$1.50 shall be
 283 remitted to the Department of Revenue for deposit into the
 284 Administrative Trust Fund within the Department of Financial
 285 Services to fund clerk budget reviews conducted by the
 286 Department of Financial Services. One third of any filing fees
 287 collected by the clerk of the circuit court in excess of \$100
 288 shall be remitted to the Department of Revenue for deposit into
 289 the Clerks of the Court Trust Fund within the Justice
 290 Administrative Commission.

291 b. The party instituting any civil action, suit, or
 292 proceeding in the circuit court under chapter 39, chapter 61,
 293 chapter 741, chapter 742, chapter 747, chapter 752, or chapter
 294 753 shall pay to the clerk of that court a filing fee of up to
 295 \$295 in all cases in which there are not more than five
 296 defendants and an additional filing fee of up to \$2.50 for each
 297 defendant in excess of five. Of the first \$180 in filing fees,
 298 \$80 must be remitted by the clerk to the Department of Revenue
 299 for deposit into the General Revenue Fund, \$95 must be remitted
 300 to the Department of Revenue for deposit into the State Courts
 301 Revenue Trust Fund, \$3.50 must be remitted to the Department of
 302 Revenue for deposit into the Clerks of the Court Trust Fund
 303 within the Justice Administrative Commission and used to fund
 304 the Florida Clerks of Court Operations Corporation created in s.
 305 28.35, and \$1.50 shall be remitted to the Department of Revenue
 306 for deposit into the Administrative Trust Fund within the
 307 Department of Financial Services to fund clerk budget reviews
 308 conducted by the Department of Financial Services.

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309 c. An additional filing fee of \$4 shall be paid to the
 310 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 311 for deposit into the Court Education Trust Fund and shall remit
 312 50 cents to the Department of Revenue for deposit into the
 313 Clerks of the Court Trust Fund within the Justice Administrative
 314 Commission to fund clerk education. An additional filing fee of
 315 up to \$18 shall be paid by the party seeking each severance that
 316 is granted. The clerk may impose an additional filing fee of up
 317 to \$85 for all proceedings of garnishment, attachment, replevin,
 318 and distress. Postal charges incurred by the clerk of the
 319 circuit court in making service by certified or registered mail
 320 on defendants or other parties shall be paid by the party at
 321 whose instance service is made. ~~No~~ Additional fees, charges, or
 322 costs may not ~~shall~~ be added to the filing fees imposed under
 323 this section, except as authorized in this section or by general
 324 law.

325 2.a. Notwithstanding the fees prescribed in subparagraph
 326 1., a party instituting a civil action in circuit court relating
 327 to real property or mortgage foreclosure shall pay a graduated
 328 filing fee based on the value of the claim.

329 b. A party shall estimate in writing the amount in
 330 controversy of the claim upon filing the action. For purposes of
 331 this subparagraph, the value of a mortgage foreclosure action is
 332 based upon the principal due on the note secured by the
 333 mortgage, plus interest owed on the note and any moneys advanced
 334 by the lender for property taxes, insurance, and other advances
 335 secured by the mortgage, at the time of filing the foreclosure.
 336 The value shall also include the value of any tax certificates

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337 | related to the property. In stating the value of a mortgage
 338 | foreclosure claim, a party shall declare in writing the total
 339 | value of the claim, as well as the individual elements of the
 340 | value as prescribed in this sub-subparagraph.

341 | c. In its order providing for the final disposition of the
 342 | matter, the court shall identify the actual value of the claim.
 343 | The clerk shall adjust the filing fee if there is a difference
 344 | between the estimated amount in controversy and the actual value
 345 | of the claim and collect any additional filing fee owed or
 346 | provide a refund of excess filing fee paid.

347 | d. The party shall pay a filing fee of:

348 | (I) Three hundred and ninety-five dollars in all cases in
 349 | which the value of the claim is \$50,000 or less and in which
 350 | there are not more than five defendants. The party shall pay an
 351 | additional filing fee of up to \$2.50 for each defendant in
 352 | excess of five. Of the first \$280 in filing fees, \$80 must be
 353 | remitted by the clerk to the Department of Revenue for deposit
 354 | into the General Revenue Fund, \$195 must be remitted to the
 355 | Department of Revenue for deposit into the State Courts Revenue
 356 | Trust Fund, \$3.50 must be remitted to the Department of Revenue
 357 | for deposit into the Clerks of the Court Trust Fund within the
 358 | Justice Administrative Commission and used to fund the Florida
 359 | Clerks of Court Operations Corporation created in s. 28.35, and
 360 | \$1.50 shall be remitted to the Department of Revenue for deposit
 361 | into the Administrative Trust Fund within the Department of
 362 | Financial Services to fund clerk budget reviews conducted by the
 363 | Department of Financial Services;

364 | (II) Nine hundred dollars in all cases in which the value

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365 of the claim is more than \$50,000 but less than \$250,000 and in
 366 which there are not more than five defendants. The party shall
 367 pay an additional filing fee of up to \$2.50 for each defendant
 368 in excess of five. Of the first \$785 in filing fees, \$80 must be
 369 remitted by the clerk to the Department of Revenue for deposit
 370 into the General Revenue Fund, \$700 must be remitted to the
 371 Department of Revenue for deposit into the State Courts Revenue
 372 Trust Fund, \$3.50 must be remitted to the Department of Revenue
 373 for deposit into the Clerks of the Court Trust Fund within the
 374 Justice Administrative Commission and used to fund the Florida
 375 Clerks of Court Operations Corporation described in s. 28.35,
 376 and \$1.50 shall be remitted to the Department of Revenue for
 377 deposit into the Administrative Trust Fund within the Department
 378 of Financial Services to fund clerk budget reviews conducted by
 379 the Department of Financial Services; or

380 (III) One thousand nine hundred dollars in all cases in
 381 which the value of the claim is \$250,000 or more and in which
 382 there are not more than five defendants. The party shall pay an
 383 additional filing fee of up to \$2.50 for each defendant in
 384 excess of five. Of the first \$1,785 in filing fees, \$80 must be
 385 remitted by the clerk to the Department of Revenue for deposit
 386 into the General Revenue Fund, \$1,700 must be remitted to the
 387 Department of Revenue for deposit into the State Courts Revenue
 388 Trust Fund, \$3.50 must be remitted to the Department of Revenue
 389 for deposit into the Clerks of the Court Trust Fund within the
 390 Justice Administrative Commission to fund the Florida Clerks of
 391 Court Operations Corporation created in s. 28.35, and \$1.50
 392 shall be remitted to the Department of Revenue for deposit into

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393 the Administrative Trust Fund within the Department of Financial
 394 Services to fund clerk budget reviews conducted by the
 395 Department of Financial Services.

396 e. An additional filing fee of \$4 shall be paid to the
 397 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 398 for deposit into the Court Education Trust Fund and shall remit
 399 50 cents to the Department of Revenue for deposit into the
 400 Clerks of the Court Trust Fund within the Justice Administrative
 401 Commission to fund clerk education. An additional filing fee of
 402 up to \$18 shall be paid by the party seeking each severance that
 403 is granted. The clerk may impose an additional filing fee of up
 404 to \$85 for all proceedings of garnishment, attachment, replevin,
 405 and distress. Postal charges incurred by the clerk of the
 406 circuit court in making service by certified or registered mail
 407 on defendants or other parties shall be paid by the party at
 408 whose instance service is made. ~~No~~ Additional fees, charges, or
 409 costs may not shall be added to the filing fees imposed under
 410 this section, except as authorized in this section or by general
 411 law.

412 (b) A party reopening any civil action, suit, or
 413 proceeding in the circuit court shall pay to the clerk of court
 414 a filing fee set by the clerk in an amount not to exceed \$50.
 415 For purposes of this section, a case is reopened after all
 416 appeals have been exhausted, or time to file an appeal from a
 417 final order or final judgment has expired. A reopen fee may be
 418 assessed by the clerk for any motion filed by any party at least
 419 90 days after a final order or final judgment has been filed
 420 with the clerk in the initial case. A reservation of

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421 | jurisdiction by a court does not cause a case to remain open for
 422 | purposes of this section or exempt a party from paying a reopen
 423 | fee ~~when a case previously reported as disposed of is~~
 424 | ~~resubmitted to a court and includes petitions for modification~~
 425 | ~~of a final judgment of dissolution.~~ A party is exempt from
 426 | paying the fee for any of the following:

- 427 | 1. A writ of garnishment;
- 428 | 2. A writ of replevin;
- 429 | 3. A distress writ;
- 430 | 4. A writ of attachment;
- 431 | 5. A motion for rehearing filed within 10 days;
- 432 | 6. A motion for attorney's fees filed within 30 days after
 433 | entry of a judgment or final order;
- 434 | 7. A motion for dismissal filed after a mediation
 435 | agreement has been filed;
- 436 | 8. A disposition of personal property without
 437 | administration;
- 438 | 9. Any probate case prior to the discharge of a personal
 439 | representative;
- 440 | 10. Any guardianship pleading prior to discharge;
- 441 | 11. Any mental health pleading;
- 442 | 12. Motions to withdraw by attorneys;
- 443 | 13. Motions exclusively for the enforcement of child
 444 | support orders;
- 445 | 14. A petition for credit of child support;
- 446 | 15. A Notice of Intent to Relocate and any order issuing
 447 | as a result of an uncontested relocation;
- 448 | 16. Stipulations and motions to enforce stipulations;

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- 449 17. Responsive pleadings; ~~or~~
- 450 18. Cases in which there is no initial filing fee; or
- 451 19. Motions for contempt.

452 (c)1. A party in addition to a party described in sub-
 453 subparagraph (a)1.a. who files a pleading in an original civil
 454 action in circuit court for affirmative relief by cross-claim,
 455 counterclaim, counterpetition, or third-party complaint shall
 456 pay the clerk of court a fee of \$395. A party in addition to a
 457 party described in sub-subparagraph (a)1.b. who files a pleading
 458 in an original civil action in circuit court for affirmative
 459 relief by cross-claim, counterclaim, counterpetition, or third-
 460 party complaint shall pay the clerk of court a fee of \$295. The
 461 clerk shall remit the fee to the Department of Revenue for
 462 deposit into the General Revenue Fund.

463 2. A party in addition to a party described in
 464 subparagraph (a)2. who files a pleading in an original civil
 465 action in circuit court for affirmative relief by cross-claim,
 466 counterclaim, counterpetition, or third-party complaint shall
 467 pay the clerk of court a graduated fee of:

- 468 a. Three hundred and ninety-five dollars in all cases in
 469 which the value of the pleading is \$50,000 or less;
- 470 b. Nine hundred dollars in all cases in which the value of
 471 the pleading is more than \$50,000 but less than \$250,000; or
- 472 c. One thousand nine hundred dollars in all cases in which
 473 the value of the pleading is \$250,000 or more.

474

475 The clerk shall remit the fees collected under this subparagraph
 476 to the Department of Revenue for deposit into the General

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477 Revenue Fund, except that the clerk shall remit \$100 of the fee
478 collected under sub-subparagraph a., \$605 of the fee collected
479 under sub-subparagraph b., and \$1,605 of the fee collected under
480 sub-subparagraph c. to the Department of Revenue for deposit
481 into the State Courts Revenue Trust Fund.

482 (d) The clerk of court shall collect a service charge of
483 \$10 for issuing an original, a certified copy, or an electronic
484 certified copy of a summons. The clerk shall assess the fee
485 against the party seeking to have the summons issued.

486 Section 6. Paragraphs (a) and (d) of subsection (1) and
487 subsection (2) of section 34.041, Florida Statutes, are amended
488 to read:

489 34.041 Filing fees.-

490 (1)(a) Filing fees are due at the time a party files a
491 pleading to initiate a proceeding or files a pleading for
492 relief. Reopen fees are due at the time a party files a
493 pleading to reopen a proceeding if at least 90 days has elapsed
494 since the filing of a final order or final judgment with the
495 clerk. If a fee is not paid upon the filing of the pleading as
496 required under this section, the clerk shall pursue collection
497 of the fee pursuant to s. 28.246.

498 Upon the institution of any civil action, suit, or proceeding in
499 county court, the party shall pay the following filing fee, not
500 to exceed:

- 501 1. For all claims less than \$100 \$50.
- 502 2. For all claims of \$100 or more but not more
- 503 than \$500 \$75.
- 504 3. For all claims of more than \$500 but not more than

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- 505 | \$2,500 \$170.
- 506 | 4. For all claims of more than \$2,500 \$295.
- 507 | 5. In addition, for all proceedings of garnishment,
- 508 | attachment, replevin, and distress \$85.
- 509 | 6. Notwithstanding subparagraphs 3. and 5., for all claims
- 510 | of not more than \$1,000 filed simultaneously with an action for
- 511 | replevin of property that is the subject of the claim . \$125.
- 512 | 7. For removal of tenant action \$180.

513 |
 514 | The filing fee in subparagraph 6. is the total fee due under
 515 | this paragraph for that type of filing, and no other filing fee
 516 | under this paragraph may be assessed against such a filing.

517 | (d) The clerk of court shall collect a service charge of
 518 | \$10 for issuing a summons or an electronic certified copy of a
 519 | summons. The clerk shall assess the fee against the party
 520 | seeking to have the summons issued.

521 | (2) A party reopening any civil action, suit, or
 522 | proceeding in the county court shall pay to the clerk of court a
 523 | filing fee set by the clerk in an amount not to exceed \$25 for
 524 | all claims of not more than \$500 and an amount not to exceed \$50
 525 | for all claims of more than \$500. For purposes of this section,
 526 | a case is reopened after all appeals have been exhausted, or
 527 | time to file an appeal from a final order or final judgment has
 528 | expired. A reopen fee may be assessed by the clerk for any
 529 | motion filed by any party at least 90 days after a final order
 530 | or final judgment has been filed with the clerk in the initial
 531 | case. A reservation of jurisdiction by a court does not cause a
 532 | case to remain open for purposes of this section or exempt a

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533 | party from paying a reopen fee ~~when a case previously reported~~
 534 | ~~as disposed of is resubmitted to a court.~~ A party is exempt from
 535 | paying the fee for any of the following:

- 536 | (a) A writ of garnishment;
- 537 | (b) A writ of replevin;
- 538 | (c) A distress writ;
- 539 | (d) A writ of attachment;
- 540 | (e) A motion for rehearing filed within 10 days;
- 541 | (f) A motion for attorney's fees filed within 30 days of
- 542 | the entry of the judgment or final order;
- 543 | (g) A motion for dismissal filed after a mediation
- 544 | agreement has been filed;
- 545 | (h) A motion to withdraw by attorneys;
- 546 | (i) Stipulations and motions to enforce stipulations; ~~or~~
- 547 | (j) Responsive pleadings; or
- 548 | (k) Motions for contempt.

549 | Section 7. Subsection (4) is added to section 45.035,
 550 | Florida Statutes, to read:

551 | 45.035 Clerk's fees.—In addition to other fees or service
 552 | charges authorized by law, the clerk shall receive service
 553 | charges related to the judicial sales procedure set forth in ss.
 554 | 45.031-45.034 and this section:

555 | (4) If the sale is rescheduled for any reason, the
 556 | plaintiff shall pay a rescheduling fee of \$70 to the clerk on
 557 | each occasion the sale is rescheduled. The rescheduling fee must
 558 | be assessed as costs, and the plaintiff shall pay the fee to the
 559 | clerk before the sale.

560 | Section 8. Subsection (1) of section 57.081, Florida

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561 Statutes, is amended to read:

562 57.081 Costs; right to proceed where prepayment of costs
563 and payment of filing fees waived.—

564 (1) Any indigent person, except a prisoner as defined in
565 s. 57.085, who is a party or intervenor in any judicial or
566 administrative agency proceeding or who initiates such
567 proceeding shall receive the services of the courts, sheriffs,
568 and clerks, with respect to such proceedings, despite his or her
569 present inability to pay for these services. Such services are
570 limited to filing fees; service of process; certified copies of
571 orders or final judgments; a single photocopy of any court
572 pleading, record, or instrument filed with the clerk; examining
573 fees; mediation services and fees; private court-appointed
574 counsel fees; subpoena fees and services; service charges for
575 collecting and disbursing funds; and any other cost or service
576 arising out of pending litigation. In any appeal from an
577 administrative agency decision, for which the clerk is
578 responsible for preparing the transcript, the clerk shall record
579 the cost of preparing the transcripts and the cost for copies of
580 any exhibits in the record. A party who has obtained a
581 certification of indigence pursuant to s. 27.52 or s. 57.082
582 with respect to a proceeding is not required to prepay costs to
583 a court, clerk, or sheriff and is not required to pay filing
584 fees or charges for issuance of a summons. ~~Prepayment of costs~~
585 ~~to any court, clerk, or sheriff is not required and payment of~~
586 ~~filing fees is not required in any action if the party has~~
587 ~~obtained in each proceeding a certification of indigence in~~
588 ~~accordance with s. 27.52 or s. 57.082.~~

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589 Section 9. Subsection (11) is added to section 95.11,
590 Florida Statutes, to read:

591 95.11 Limitations other than for the recovery of real
592 property.—Actions other than for recovery of real property shall
593 be commenced as follows:

594 (11) COURT COSTS AND FINES.—Notwithstanding subsection
595 (1), an action to collect court costs, fees or fines owed to the
596 state may be commenced at any time.

597 Section 10. Paragraph (a) of subsection (4) of section
598 112.3173, Florida Statutes, is amended to read:

599 112.3173 Felonies involving breach of public trust and
600 other specified offenses by public officers and employees;
601 forfeiture of retirement benefits.—

602 (4) NOTICE.—

603 (a) The clerk of a court in which a proceeding involving a
604 specified offense is being conducted against a public officer or
605 employee shall furnish notice of the proceeding to the
606 Commission on Ethics after the state attorney advises the clerk
607 that the defendant is a public officer or employee and that the
608 defendant is alleged to have committed a specified offense. Such
609 notice is sufficient if it is in the form of a copy of the
610 indictment, information, or other document containing the
611 charges. In addition, if a verdict of guilty is returned by a
612 jury or by the court trying the case without a jury, or a plea
613 of guilty or of nolo contendere is entered in the court by the
614 public officer or employee, the clerk shall furnish a copy
615 thereof to the Commission on Ethics.

616 Section 11. Paragraph (b) of subsection (8) of section

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617 318.18, Florida Statutes, is amended to read:

618 318.18 Amount of penalties.—The penalties required for a
 619 noncriminal disposition pursuant to s. 318.14 or a criminal
 620 offense listed in s. 318.17 are as follows:

621 (8)

622 (b)1.a. If a person has been ordered to pay a civil
 623 penalty for a noncriminal traffic infraction and the person is
 624 unable to comply with the court's order due to demonstrable
 625 financial hardship, the court shall allow the person to satisfy
 626 the civil penalty by participating in community service until
 627 the civil penalty is paid.

628 b. If a court orders a person to perform community
 629 service, the person shall receive credit for the civil penalty
 630 at the specified hourly credit rate per hour of community
 631 service performed, and each hour of community service performed
 632 shall reduce the civil penalty by that amount.

633 2.a. As used in this paragraph, the term "specified hourly
 634 credit rate" means the wage rate that is specified in 29 U.S.C.
 635 s. 206(a)(1) under the federal Fair Labor Standards Act of 1938,
 636 that is then in effect, and that an employer subject to such
 637 provision must pay per hour to each employee subject to such
 638 provision.

639 b. However, if a person ordered to perform community
 640 service has a trade or profession for which there is a community
 641 service need, the specified hourly credit rate for each hour of
 642 community service performed by that person shall be the average
 643 prevailing wage rate for the trade or profession that the
 644 community service agency needs.

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645 3.a. The community service agency supervising the person
 646 shall record the number of hours of community service completed
 647 and the date the community service hours were completed. The
 648 community service agency shall submit the data to the clerk of
 649 court on the letterhead of the community service agency, which
 650 must also bear the notarized signature of the person designated
 651 to represent the community service agency.

652 b. When the number of community service hours completed by
 653 the person equals the amount of the civil penalty, the clerk of
 654 court shall certify this fact to the court. Thereafter, the
 655 clerk of court shall record in the case file that the civil
 656 penalty has been paid in full.

657 4. As used in this paragraph, the term:

658 a. "Community service" means uncompensated labor for a
 659 community service agency.

660 b. "Community service agency" means a not-for-profit
 661 corporation, community organization, charitable organization,
 662 public officer, the state or any political subdivision of the
 663 state, or any other body the purpose of which is to improve the
 664 quality of life or social welfare of the community and which
 665 agrees to accept community service from persons unable to pay
 666 civil penalties for noncriminal traffic infractions.

667 Section 12. Subsection (3) of section 668.50, Florida
 668 Statutes, is amended to read:

669 668.50 Uniform Electronic Transaction Act.—

670 (3) SCOPE.—

671 (a) Except as otherwise provided in paragraph (b), this
 672 section applies to electronic records and electronic signatures

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673 relating to a transaction.

674 (b) This section does not apply to a transaction to the
675 extent the transaction is governed by:

676 1. A provision of law governing the creation and execution
677 of wills, codicils, or testamentary trusts;

678 2. The Uniform Commercial Code other than s. 671.107 and
679 chapters 672 and 680; or

680 3. The Uniform Computer Information Transactions Act, ~~or~~

681 ~~4. Rules relating to judicial procedure.~~

682 (c) Except with respect to subsections (2), (9) and (11),
683 this section does not apply to a transaction to the extent the
684 transaction is governed by rules relating to judicial procedure.

685 ~~(e)~~ (d) This section applies to an electronic record or
686 electronic signature otherwise excluded under paragraph (b) to
687 the extent such record or signature is governed by a provision
688 of law other than those specified in paragraph (b).

689 ~~(d)~~ (e) A transaction subject to this section is also
690 subject to other applicable provisions of substantive law.

691 Section 13. Paragraph (c) of subsection (1) of section
692 733.707, Florida Statutes, is amended to read:

693 733.707 Order of payment of expenses and obligations.—

694 (1) The personal representative shall pay the expenses of
695 the administration and obligations of the decedent's estate in
696 the following order:

697 (c) Class 3.—Debts and taxes with preference under federal
698 law, and claims pursuant to ss. 409.9101 and 414.28, and claims
699 in favor of the state for unpaid court costs, fees, or fines.

700 Section 14. Section 893.11, Florida Statutes, is amended

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701 | to read:
 702 | 893.11 Suspension, revocation, and reinstatement of
 703 | business and professional licenses.—A state agency must revoke
 704 | or suspend the business or professional license of a person
 705 | licensed by the agency if that person is convicted of a felony
 706 | ~~Upon the conviction in any court of competent jurisdiction of~~
 707 | ~~any person holding a license, permit, or certificate issued by a~~
 708 | ~~state agency,~~ for the sale of, or trafficking in, a controlled
 709 | substance or for conspiracy to sell, or traffic in, a controlled
 710 | substance. A state agency that issues a business or professional
 711 | license must use the Comprehensive Case Information System of
 712 | the Florida Association of Court Clerks and Comptroller, Inc.,
 713 | to obtain information relating to the conviction. The clerk of
 714 | the court shall provide certified copies of the judgment upon
 715 | request to the agency., ~~if such offense is a felony, the clerk~~
 716 | ~~of said court shall send a certified copy of the judgment of~~
 717 | ~~conviction with the person's license number, permit number, or~~
 718 | ~~certificate number on the face of such certified copy to the~~
 719 | ~~agency head by whom the convicted defendant has received a~~
 720 | ~~license, permit, or certificate to practice his or her~~
 721 | ~~profession or to carry on his or her business. Such agency head~~
 722 | ~~shall suspend or revoke the license, permit, or certificate of~~
 723 | ~~the convicted defendant to practice his or her profession or to~~
 724 | ~~carry on his or her business.~~ Upon a showing by any such
 725 | convicted defendant whose business or professional license,
 726 | ~~permit, or certificate~~ has been suspended or revoked pursuant to
 727 | this section that his or her civil rights have been restored or
 728 | upon a showing that the convicted defendant meets the following

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729 | criteria, the agency head may reinstate or reactivate such
 730 | license, ~~permit, or certificate~~ when:

731 | (1) The person has complied with the conditions of
 732 | paragraphs (a) and (b) which shall be monitored by the
 733 | Department of Corrections while the person is under any
 734 | supervisory sanction. If the person fails to comply with
 735 | provisions of these paragraphs by either failing to maintain
 736 | treatment or by testing positive for drug use, the department
 737 | shall notify the licensing, ~~permitting, or certifying~~ agency,
 738 | which shall revoke the license, ~~permit, or certification~~. The
 739 | person under supervision may:

740 | (a) Seek evaluation and enrollment in, and once enrolled
 741 | maintain enrollment in until completion, a drug treatment and
 742 | rehabilitation program which is approved or regulated by the
 743 | Department of Children and Family Services. The treatment and
 744 | rehabilitation program shall be specified by:

745 | 1. The court, in the case of court-ordered supervisory
 746 | sanctions;

747 | 2. The Parole Commission, in the case of parole, control
 748 | release, or conditional release; or

749 | 3. The Department of Corrections, in the case of
 750 | imprisonment or any other supervision required by law.

751 | (b) Submit to periodic urine drug testing pursuant to
 752 | procedures prescribed by the Department of Corrections. If the
 753 | person is indigent, the costs shall be paid by the Department of
 754 | Corrections; or

755 | (2) The person has successfully completed an appropriate
 756 | program under the Correctional Education Program.

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757 (3) As used in this section, the term "business or
 758 professional license" includes any license, permit, or
 759 certificate that authorizes a person to practice his or her
 760 profession or to carry on his or her business. However, the term
 761 ~~This section~~ does not include ~~apply to~~ any of the taxes, fees,
 762 or permits regulated, controlled, or administered by the
 763 Department of Revenue in accordance with s. 213.05.

764 Section 15. Paragraphs (a) and (b) of subsection (2) of
 765 section 938.27, Florida Statutes, are amended to read:

766 938.27 Judgment for costs on conviction.—

767 (2) (a) The court shall impose the costs of prosecution and
 768 investigation notwithstanding the defendant's present ability to
 769 pay. The court shall require the defendant to pay the costs
 770 within a specified period or pursuant to a payment plan under s.
 771 28.246(4) in specified installments.

772 (b) The end of such period or the last such installment
 773 must shall not be later than:

- 774 1. The end of the period of probation or community
- 775 control, if probation or community control is ordered;
- 776 2. Five years after the end of the term of imprisonment
- 777 imposed, if the court does not order probation or community
- 778 control; or
- 779 3. Five years after the date of sentencing in any other
- 780 case.

781
 782 However, ~~in no event shall~~ the obligation to pay any unpaid
 783 amounts does not expire if not paid in full within the period
 784 specified in this paragraph.

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785 Section 16. Present subsections (8), (9), (10), (11), and
 786 (12) of section 938.30, Florida Statutes, are renumbered as
 787 subsections (10), (11), (12), (13), and (14), respectively, and
 788 new subsections (8), and (9) are added to that section, to read:

789 938.30 Financial obligations in criminal cases;
 790 supplementary proceedings.-

791 (8) If a criminal or civil judgment has previously been
 792 entered on a court-imposed financial obligation, the judgment
 793 constitutes a civil lien against the judgment debtor's presently
 794 owned or after-acquired real or personal property when recorded
 795 pursuant to s. 55.10, except that a judgment on a court-imposed
 796 financial obligation is not subject to the 10-year rerecording
 797 requirement of s. 55.10. The judgment must secure all unpaid
 798 court-imposed financial obligations that are due and may accrue
 799 subsequent to the recording of the judgment, as well as interest
 800 and reasonable costs for issuing a satisfaction and recording
 801 the satisfaction in the official records.

802 (9) The clerk of the court shall enforce, satisfy,
 803 compromise, settle, subordinate, release, or otherwise dispose
 804 of any debts or liens imposed and collected under this section
 805 in the same manner as prescribed in s. 938.29(3).

806 Section 17. Section 947.181, Florida Statutes, is amended
 807 to read:

808 947.181 Fines, fees, restitution, or other costs ordered
 809 to be paid ~~Victim restitution~~ as conditions ~~condition~~ of
 810 parole.-

811 ~~(1)(a)~~ The Parole Commission shall require the payment of
 812 finances, fees, restitution, or other court-ordered costs as a

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813 | condition of parole ~~reparation or restitution to the aggrieved~~
 814 | ~~party for the damage or loss caused by the offense for which the~~
 815 | ~~parolee was imprisoned~~ unless the commission finds reasons to
 816 | the contrary. Restitution to the aggrieved party for injury,
 817 | damage or loss caused by the offense for which the parolee was
 818 | imprisoned shall have first priority in the payment of amounts
 819 | owed under this section. If the commission does not require the
 820 | payment of fines, fees, restitution, or other court-ordered
 821 | costs ~~order restitution or requires orders~~ only partial payment
 822 | of the fines, fees, restitution, or other court-ordered costs
 823 | ~~restitution~~, the commission shall state on the record the
 824 | reasons for its decision ~~therefor.~~ ~~The amount of such reparation~~
 825 | ~~or restitution shall be determined by the Parole Commission.~~

826 | (2) ~~(b)~~ If the parolee fails to make the payments
 827 | ~~reparation or restitution to the aggrieved party as required~~
 828 | ~~authorized in subsection (1) paragraph (a),~~ it shall be
 829 | considered by the commission as a violation of parole as
 830 | specified in s. 947.21 and may be cause for revocation of ~~her or~~
 831 | ~~his~~ parole.

832 | (3) ~~(2)~~ If a defendant is paroled, any restitution ordered
 833 | under s. 775.089 shall be a condition of such parole. The Parole
 834 | Commission may revoke parole if the defendant fails to comply
 835 | with such order.

836 | (4) In determining whether to revoke parole, the Parole
 837 | Commission shall consider the defendant's employment status,
 838 | earning ability, and financial resources; the willfulness of the
 839 | defendant's failure to pay; and any other special circumstances
 840 | that may have a bearing on the defendant's ability to pay.

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Section 18. This act shall take effect July 1, 2012.