Justice Appropriations Subcommittee

Meeting Packet

April 4, 2013
8:00 a.m. – 10:00 a.m.
404 HOB

Will Weatherford
Speaker

Charles McBurney
Chair

The Florida House of Representatives

APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

Will Weatherford
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MEETING AGENDA

404 HOB
April 4, 2013

I. Meeting Called To Order

II. Opening Remarks by Chair

III. Consideration of the following bill(s):

CS/HB 643 - Clerks of Court by Civil Justice Subcommittee and Rep. Pilon

CS/HB 691 - Personal Identification Theft by Criminal Justice Subcommittee and Rep. Ahern

CS/HB 785 - Restitution for Juvenile Offenses by Criminal Justice Subcommittee and Rep. Eagle

CS/HB 915 - Filing False Documents Against Real or Personal Property by Criminal Justice Subcommittee and Rep. Combee

HB 1305 - Punitive Damages by Rep. Tobia

CS/HB 1379 - Service of Process by Civil Justice Subcommittee and Rep. Mayfield

HJR 7081 - Postconviction Capital Case Procedures by Criminal Justice Subcommittee and Rep. Gaetz

HB 7083 - Postconviction Capital Case Proceeding by Criminal Justice Subcommittee and Rep. Gaetz

IV. Closing Remarks

V. Meeting Adjourned

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Justice Appropriations Subcommittee

Representative Pilon offered the following:

Amendment (with title amendment)

Remove lines 296-344

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

Remove lines 18-23 and insert:

circumstances; amending s. 101.151, F.S.;

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Justice Appropriations Subcommittee

Representative Pilon offered the following:

Amendment (with title amendment)

Remove line 498 and insert:

initiates evidence exchange, unless the property record card is available online from the property appraiser ~~clerk shall provide the copy of the~~

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

Remove line 32 and insert:

initiates evidence exchange, unless the property record card is available online from the property appraiser; amending s. 938.30, F.S.;

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Justice Appropriations Subcommittee

Representative Pilon offered the following:

Amendment (with title amendment)

Between lines 527 and 528, insert:

Section 1. Subsection (2) of section 985.045, Florida Statutes, is amended to read:

985.045 Court records.—

(2) The clerk shall keep all official records required by this section separate from other records of the circuit court, except those records pertaining to motor vehicle violations, which shall be forwarded to the Department of Highway Safety and Motor Vehicles. Except as provided in ss. 943.053 and 985.04(6)(b) and (7), official records required by this chapter are not open to inspection by the public, but may be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that a child and the parents, guardians, or legal custodians of the child and their attorneys, law enforcement agencies, the Department of Juvenile

Justice and its designees, the Parole Commission, the Department of Corrections, and the Justice Administrative Commission shall always have the right to inspect and copy any official record pertaining to the child. Public defender offices shall have access to official records of juveniles on whose behalf they are expected to appear in detention or other hearings prior to an appointment of representation. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect, and make abstracts from, official records under whatever conditions upon the use and disposition of such records the court may deem proper and may punish by contempt proceedings any violation of those conditions.

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

Remove line 34 and insert:

to enforce judgment for costs and fines; amending s 985.045, F.S.; providing public defenders access to certain official records; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 643 Clerks of Court
SPONSOR(S): Civil Justice Subcommittee; Pilon and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Cary	Bond
2) Justice Appropriations Subcommittee		Toms	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

Relating to the clerks of the circuit courts, this bill:

- Provides guidelines for electronic filing of documents;
- Requires clerks to seal or expunge certain court documents upon court order;
- Requires a person filing a written request to have his or her personal information disclosed under the public records statutes to specify the document type, name, identification number, and page number of the record that contains the exempt or confidential information;
- Increases the minimum amount the clerks are required to refund without a written request in the event of an overpayment from $5 to $10; and
- Limits the state agency exemption from having to pay court-related fees to the state agency and the party it is representing.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill makes several changes relating to the clerks of courts.

Electronic Filings

The clerk of the circuit court is required to keep all papers with the utmost care and security, arranged in appropriate files.[1] The clerk is also required to ensure that the papers do not leave the office without leave of court.[2] The statute does not address requirements to maintain electronic filings.

This bill amends ss. 28.13 and 28.345, F.S., to address electronic filings. The bill requires the clerk to affix a stamp, which may be electronic, to submissions to the office indicating the date and time when it was filed. The bill also replaces a provision in current law that papers do not leave the office with language that the clerk must ensure that documents must not be removed from the control or custody of the clerk.

Clerk as County Recorder

The clerk of the circuit court generally acts as the county recorder.[3] This bill amends s. 28.222, F.S., to require the clerk, when acting in his or her capacity as a county recorder, to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

Public Records

A clerk of court is a custodian of public records and is thus required to provide access to and copies of public records if the requesting party is entitled by law to view the record.[4]

Certain information held by clerks of court is exempt from public record requirements pursuant to state statute or judicial rule.[5] Any information made confidential under state or federal constitutional or statutory law is confidential if contained in a court record.[6]

Certain personal information of some agency personnel, including law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and specified others, is made exempt[7] from public records requirements by state law.[8] If such exempt information is held by an agency other than the employer of a specified person, the person must submit a written request for maintenance of

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[1] Section 28.13, F.S.
[2] *Id.*
[3] Section 28.222(1), F.S.
[4] *See* art. I, s. 24(a) of the Florida Const., ch. 119, F.S., and s. 28.24, F.S. The Florida Constitution provides a process by which the Legislature may make certain records or portions of records exempt from public disclosure (Art. I, Sec. 24(c), FLA. CONST.).
[5] *See* art. I, s. 24, FLA CONST. and Florida Rule of Judicial Administration 2.420.
[6] Florida Rule of Judicial Administration 2.420(c)(7).
[7] 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), rev. den. 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).
[8] Section 119.071(4)(d), F.S.

the exemption to that agency.[9] There is no uniform, statewide process, but a clerk of court usually requires a person requesting maintenance of the exemption to specify the document type, name, identification number, and page number of the court record or official record that contains the exempt information.[10]

This bill amends s. 119.0714, F.S., to require that a person who submits such written request to maintain the identification and location information exemption in a court record or official record to also specify the document type, name, identification number, and page number of the record that contains the exempt information.

Refunds

If a clerk of court determines that an overpayment was made, the clerk is required to make a refund if the overpayment exceeds $5.[11] If the amount of the overpayment is $5 or less, the clerk need only refund the amount if the person who made the overpayment submits a written request.[12] This bill amends s. 28.244, F.S. to increase the minimum from $5 to $10.

Fee Exemption

Certain individuals and groups, such as judges, state attorneys, and public defenders, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts when acting in their official capacity.[13] State agencies are also exempt from all court-related fees and charges assessed by the clerks.[14] This bill amends ss. 28.24 and 28.345, F.S., limiting the state agency exemption to the agency and the party the agency is representing.

Value Adjustment Board

Each county in Florida has a value adjustment board that hears objections to ad velorem tax assessments.[15] The clerk of the court usually serves as the county clerk and schedules appearances before the value adjustment board.[16] The petitioner may request a copy of the property record card containing relevant information used in computing the current assessment, which the clerk is required to provide.[17] The bill amends s. 194.032, F.S., to require the property appraiser to provide the property record card to the petitioner regardless of whether the petitioner initiates evidence exchange.

Criminal Financial Obligations

A court may require a person that owes money for a criminal case, which may include restitution, court costs, cost of prosecution, and cost of a public defender, to appear before the court to determine the person's financial ability to pay the obligation.[18] The court may impose a judgment which operates as a civil lien against the debtor's property.[19] A governmental entity that attempts to satisfy such a judgment may do so without bond.[20] The bill amends s. 938.30, F.S., to provide that a governmental entity may satisfy the judgment without bond and without the payment of statutory fees associated with judgment enforcement.

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[9] Section 119.071(4)(d)2., F.S.
[10] Telephone call with Florida Association of Court Clerks staff (March 4, 2013).
[11] Section 24.244, F.S.
[12] *Id.*
[13] Section 28.345, F.S.
[14] *Id.*
[15] Section 194.011, F.S.
[16] Section 194.015, F.S.
[17] Section 194.032, F.S.
[18] Section 938.30(2), F.S.
[19] Section 938.30(6), F.S.
[20] *Id.*

B. SECTION DIRECTORY:

Section 1 amends s. 28.13, F.S., relating to papers and electronic filings.

Section 2 amends s. 28.222, F.S., relating to clerk to be county recorder.

Section 3 amends s. 28.24, F.S., relating to service charges.

Section 4 amends s. 28.244, F.S., relating to refunds.

Section 5 amends s. 28.345, F.S., relating to state access to records and exemption from court-related fees and charges.

Section 6 amends s. 57.081, F.S., relating to costs and the right to proceed where prepayment of costs and payment of filing fees are waived.

Section 7 amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 8 amends s. 101.151, F.S., relating to specifications for ballots.

Section 9 amends s. 119.0714, F.S., relating to court files, court records, and official records.

Section 10 amends s. 194.032, F.S., relating to hearing purposes and timetable.

Section 11 amends s. 938.30, F.S., relating to financial obligations in criminal cases and supplementary proceedings.

Section 12 provides an effective date of July 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:

The Florida Association of Court Clerks anticipates an indeterminate, positive impact on the Clerks of Court due to the increased efficiencies in day-to-day office operations this bill provides.

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 March 13, 2013, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The first amendment allows the Clerks of Court to provide a public record in an electronic format if the requester consents to that method of delivery. The second amendment was a technical fix to remove several spaces between the section and the subsection of a statutory reference. The third amendment removes the tax certificate sections of the bill. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to clerks of the court; amending s. 28.13, F.S.; providing requirements for the storage of papers and electronic filings and requiring that they be stamped with the date and time of submission; requiring the clerk to retain control and custody of filed documents; amending s. 28.222, F.S.; authorizing the clerk to remove certain court records from the Official Records; amending s. 28.24, F.S.; deleting provisions exempting specified persons from service fees; amending s. 28.244, F.S.; increasing the threshold amount for automatic repayment of overpayments; amending s. 28.345, F.S.; requiring that the clerk provide access to public records without charge to certain persons, subject to a limitation and an exception; authorizing the clerk to provide public records in an electronic format under certain circumstances; amending s. 57.081, F.S.; clarifying that, with the exception of charges for issuance of a summons, the prepayment of costs is not required upon a certification of indigence; amending s. 57.082, F.S.; providing for the inclusion of certain filing fees in payment plans; amending s. 101.151, F.S.; clarifying when the office title "Clerk of the Circuit Court and Comptroller" may be used; amending s. 119.0714, F.S.; requiring that certain requests for maintenance of a public record exemption specify certain information; amending s. 194.032, F.S.;

requiring that the property appraiser, rather than the clerk, provide the property record card to a petitioner regardless of whether the petitioner initiates evidence exchange; amending s. 938.30, F.S.; providing that the state is not required to pay fees to enforce judgment for costs and fines; providing an effective date.

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

Section 1. Section 28.13, Florida Statutes, is amended to read:

28.13 ~~To keep~~ Papers and electronic filings.—The clerk of the circuit court must maintain ~~shall keep~~ all papers and electronic filings ~~filed~~ in the clerk's office with the utmost care and security, storing them with related case ~~arranged in appropriate~~ files and affixing a stamp, which may be electronic, to each submission indicating ~~(endorsing upon each~~ the date and time that ~~when~~ the submission ~~same~~ was filed. The clerk may~~), and shall~~ not permit any attorney or other person to remove filed documents from the control or custody ~~take papers once filed out of the office~~ of the clerk without leave of the court, except as otherwise ~~is hereinafter~~ provided by law.

Section 2. Present subsections (4) through (6) of section 28.222, Florida Statutes, are renumbered as subsections (5) through (7), respectively, and a new subsection (4) is added to that section to read:

28.222 Clerk to be county recorder.—

(4) The county recorder shall remove recorded court documents from the Official Records pursuant to a sealing or expunction order.

Section 3. Section 28.24, Florida Statutes, is amended to read:

28.24 Service charges ~~by clerk of the circuit court~~.—The clerk of the circuit court shall charge for services rendered manually or electronically by the clerk's office in recording documents and instruments and in performing other specified ~~the~~ duties. These charges may ~~enumerated in amounts~~ not ~~to~~ exceed those specified in this section, except as provided in s. 28.345. ~~Notwithstanding any other provision of this section, the clerk of the circuit court shall provide without charge to the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to the authorized staff acting on behalf of each, access to and a copy of any public record, if the requesting party is entitled by law to view the exempt or confidential record, as maintained by and in the custody of the clerk of the circuit court as provided in general law and the Florida Rules of Judicial Administration. The clerk of the circuit court may provide the requested public record in an electronic format in lieu of a paper format when capable of being accessed by the requesting entity.~~

Charges

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(1) For examining, comparing, correcting, verifying, and certifying transcripts of record in appellate proceedings, prepared by attorney for appellant or someone else other than clerk, per page.....5.00

(2) For preparing, numbering, and indexing an original record of appellate proceedings, per instrument.....3.50

(3) For certifying copies of any instrument in the public records.....2.00

(4) For verifying any instrument presented for certification prepared by someone other than clerk, per page 3.50

(5)(a) For making copies by photographic process of any instrument in the public records consisting of pages of not more than 14 inches by 8 1/2 inches, per page.....1.00

(b) For making copies by photographic process of any instrument in the public records of more than 14 inches by 8 1/2 inches, per page.....5.00

(6) For making microfilm copies of any public records:

(a) 16 mm 100' microfilm roll.....42.00

(b) 35 mm 100' microfilm roll.....60.00

(c) Microfiche, per fiche.....3.50

(7) For copying any instrument in the public records by other than photographic process, per page.....6.00

(8) For writing any paper other than herein specifically mentioned, same as for copying, including signing and sealing 7.00

(9) For indexing each entry not recorded.....1.00

(10) For receiving money into the registry of court:

(a)1. First $500, percent.....3

2. Each subsequent $100, percent.....1.5

(b) Eminent domain actions, per deposit.....170.00

(11) For examining, certifying, and recording plats and for recording condominium exhibits larger than 14 inches by 8 1/2 inches:

(a) First page.....30.00

(b) Each additional page.....15.00

(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:

(a) First page or fraction thereof.....5.00

(b) Each additional page or fraction thereof.....4.00

(c) For indexing instruments recorded in the official records which contain more than four names, per additional name 1.00

(d) An additional service charge must ~~shall~~ be paid to the clerk of the circuit court to be deposited in the Public Records Modernization Trust Fund for each instrument listed in s. 28.222, except judgments received from the courts and notices of lis pendens, recorded in the official records:

1. First page.....1.00

2. Each additional page.....0.50

Said fund must ~~shall~~ be held in trust by the clerk and used exclusively for equipment and maintenance of equipment, personnel training, and technical assistance in modernizing the public records system of the office. In a county where the duty

of maintaining official records exists in an office other than the office of the clerk of the circuit court, the clerk of the circuit court is entitled to 25 percent of the moneys deposited into the trust fund for equipment, maintenance of equipment, training, and technical assistance in modernizing the system for storing records in the office of the clerk of the circuit court. The fund may not be used for the payment of travel expenses, membership dues, bank charges, staff-recruitment costs, salaries or benefits of employees, construction costs, general operating expenses, or other costs not directly related to obtaining and maintaining equipment for public records systems or for the purchase of furniture or office supplies and equipment not related to the storage of records. On or before December 1, 1995, and on or before December 1 of each year immediately preceding each year during which the trust fund is scheduled for legislative review under s. 19(f)(2), Art. III of the State Constitution, each clerk of the circuit court shall file a report on the Public Records Modernization Trust Fund with the President of the Senate and the Speaker of the House of Representatives. The report must itemize each expenditure made from the trust fund since the last report was filed; each obligation payable from the trust fund on that date; and the percentage of funds expended for each of the following: equipment, maintenance of equipment, personnel training, and technical assistance. The report must indicate the nature of the system each clerk uses to store, maintain, and retrieve public records and the degree to which the system has been upgraded since the creation of the trust fund.

(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 Comptrollers, Inc., for the cost of development, implementation, operation, and maintenance of the clerks' Comprehensive Case Information System; $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 court-related technology needs as defined in s. 29.008(1)(f)2. and (h), notwithstanding any other provision of law, the county is not required to provide additional funding beyond that provided herein for the court-related technology needs of the clerk as defined in s. 29.008(1)(f)2. and (h). All court records and official records are the property of the State of Florida, including any records generated as part of the Comprehensive

Case Information System funded pursuant to this paragraph and the clerk of court is designated as the custodian of such records, except in a county where the duty of maintaining official records exists in a county office other than the clerk of court or comptroller, such county office is designated the custodian of all official records, and the clerk of court is designated the custodian of all court records. The clerk of court or any entity acting on behalf of the clerk of court, including an association, may ~~shall~~ not charge a fee to any agency as defined in s. 119.011, the Legislature, or the State Court System for copies of records generated by the Comprehensive Case Information System or held by the clerk of court or any entity acting on behalf of the clerk of court, including an association.

2. If the state becomes legally responsible for the costs of court-related technology needs as defined in s. 29.008(1)(f)2. and (h), whether by operation of general law or by court order, $4 shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.

(13) Oath, administering, attesting, and sealing, not otherwise provided for herein.....3.50

(14) For validating certificates, any authorized bonds, each 3.50

(15) For preparing affidavit of domicile.....5.00

(16) For exemplified certificates, including signing and sealing.....7.00

(17) For authenticated certificates, including signing and sealing.....7.00

(18)(a) For issuing and filing a subpoena for a witness, not otherwise provided for herein (includes writing, preparing, signing, and sealing).....7.00

(b) For signing and sealing only.....2.00

(19) For approving bond.....8.50

(20) For searching of records, for each year's search2.00

(21) For processing an application for a tax deed sale (includes application, sale, issuance, and preparation of tax deed, and disbursement of proceeds of sale), other than excess proceeds.....60.00

(22) For disbursement of excess proceeds of tax deed sale, first $100 or fraction thereof.....10.00

(23) Upon receipt of an application for a marriage license, for preparing and administering of oath; issuing, sealing, and recording of the marriage license; and providing a certified copy.....30.00

(24) For solemnizing matrimony.....30.00

(25) For sealing any court file or expungement of any record.....42.00

(26)(a) For receiving and disbursing all restitution payments, per payment.....3.50

(b) For receiving and disbursing all partial payments, other than restitution payments, for which an administrative processing service charge is not imposed pursuant to s. 28.246, per month.....5.00

(c) For setting up a payment plan, a one-time administrative processing charge in lieu of a per month charge under paragraph (b).....25.00

(27) Postal charges incurred by the clerk of the circuit court in any mailing by certified or registered mail must ~~shall~~ be paid by the party at whose instance the mailing is made.

(28) For furnishing an electronic copy of information contained in a computer database: a fee as provided for in chapter 119.

Section 4. Section 28.244, Florida Statutes, is amended to read:

28.244 Refunds.—A clerk of the circuit court or a filing officer of another office where records are filed who receives payment for services provided and thereafter determines that an overpayment has occurred shall refund to the person who made the payment the amount of any overpayment that exceeds $10 ~~$5~~. If the amount of the overpayment is $10 ~~$5~~ or less, the clerk of the circuit court or a filing officer of another office where records are filed is not required to refund the amount of the overpayment unless the person who made the overpayment makes a written request.

Section 5. Section 28.345, Florida Statutes, is amended to read:

28.345 State access to records; exemption from court-related fees and charges.—

(1) Notwithstanding any other provision of law, the clerk of the circuit court shall, upon request, provide access to public records without charge to the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff

acting on their behalf. The clerk of court may provide the requested public record in an electronic format in lieu of a paper format if the requesting entity is capable of accessing such public record electronically.

(2) Notwithstanding any other ~~provision of this chapter or~~ law to the contrary, judges and those court staff acting on behalf of judges, state attorneys, guardians ad litem, public guardians, attorneys ad litem, court-appointed private counsel, criminal conflict and civil regional counsel, ~~and~~ public defenders, and state agencies, while acting in their official capacity, ~~and state agencies,~~ are exempt from all court-related fees and charges assessed by the clerks of the circuit courts.

(3) The exemptions from fees and charges provided in this section apply only to state agencies and state entities and the party represented by the agency or entity.

Section 6. Subsection (1) of section 57.081, Florida Statutes, is amended to read:

57.081 Costs; right to proceed where prepayment of costs and payment of filing fees waived.—

(1) Any indigent person, except a prisoner as defined in s. 57.085, who is a party or intervenor in any judicial or administrative agency proceeding or who initiates such proceeding shall receive the services of the courts, sheriffs, and clerks, with respect to such proceedings, despite his or her present inability to pay for these services. Such services are limited to filing fees; service of process; certified copies of orders or final judgments; a single photocopy of any court pleading, record, or instrument filed with the clerk; examining

fees; mediation services and fees; private court-appointed counsel fees; subpoena fees and services; service charges for collecting and disbursing funds; and any other cost or service arising out of pending litigation. In any appeal from an administrative agency decision, for which the clerk is responsible for preparing the transcript, the clerk shall record the cost of preparing the transcripts and the cost for copies of any exhibits in the record. Prepayment of costs to any court, clerk, or sheriff is not required and payment of filing fees is not required in any action if the party has obtained in each proceeding a certification of indigence in accordance with s. 27.52 or s. 57.082 ~~A party who has obtained a certification of indigence pursuant to s. 27.52 or s. 57.082 with respect to a proceeding is not required to prepay costs to a court, clerk, or sheriff and is not required to pay filing fees or charges for issuance of a summons~~.

Section 7. Subsection (6) of section 57.082, Florida Statutes, is amended to read:

57.082 Determination of civil indigent status.—

(6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the clerk or the court determines is indigent for civil proceedings under this section shall be enrolled in a payment plan under s. 28.246 and shall be charged a one-time administrative processing charge under s. 28.24(26)(c). A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if it does not exceed 2 percent of the person's annual net income, as defined in subsection (1), divided by 12. The person may seek

review of the clerk's decisions regarding a payment plan established under s. 28.246 in the court having jurisdiction over the matter. A case may not be impeded in any way, delayed in filing, or delayed in its progress, including the final hearing and order, due to nonpayment of any fees or costs by an indigent person. ~~Filing fees waived from payment under s. 57.081 may not be included in the calculation related to a payment plan established under this section.~~

Section 8. Paragraph (a) of subsection (2) of section 101.151, Florida Statutes, is amended to read:

101.151 Specifications for ballots.—

(2)(a) The ballot must include ~~shall have~~ the following office titles above ~~under which shall appear~~ the names of the candidates for the respective offices in the following order:

1. The office titles of President and Vice President above ~~and thereunder~~ the names of the candidates for President and Vice President of the United States nominated by the political party that received the highest vote for Governor in the last general election of the Governor in this state, followed by~~.~~ ~~Then shall appear~~ the names of other candidates for President and Vice President of the United States who have been properly nominated.

2. The office titles of United States Senator and Representative in Congress.

3. The office titles of Governor and Lieutenant Governor; Attorney General; Chief Financial Officer; Commissioner of Agriculture; State Attorney, with the applicable judicial circuit; and Public Defender, with the applicable judicial

circuit.

4. The office titles of State Senator and State Representative, with the applicable district for the office printed beneath.

5. The office titles of Clerk of the Circuit Court~~,~~ or, when the Clerk of the Circuit Court also serves as the County Comptroller, Clerk of the Circuit Court and Comptroller, ~~(whichever is applicable and~~ when authorized by law~~;)~~, Clerk of the County Court, ~~(~~when authorized by law~~;)~~, Sheriff~~;~~ Property Appraiser~~;~~ Tax Collector~~;~~ District Superintendent of Schools~~;~~ and Supervisor of Elections.

6. The office titles of Board of County Commissioners, with the applicable district printed beneath each office, and such other county and district offices as are involved in the election, in the order fixed by the Department of State, followed, in the year of their election, by "Party Offices," and thereunder the offices of state and county party executive committee members.

Section 9. Paragraph (f) is added to subsection (2) of section 119.0714, Florida Statutes, and section (3) is amended, to read:

119.0714 Court files; court records; official records.—

(2) COURT RECORDS.—

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the court record that contains the exempt information.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(3) OFFICIAL RECORDS.—

~~(a)~~ A ~~Any~~ person who prepares or files a record for recording in the official records as provided in chapter 28 may not include in that record a social security number or a bank account, debit, charge, or credit card number unless otherwise expressly required by law.

(a)~~(b)1.~~ If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.

1.~~2.~~ If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in paragraph (d)~~(h)~~, to keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.

2.~~3.~~ Section 119.071(5)(a)7. and 8. does not apply to the county recorder with respect to official records.

(b)~~(c)~~ The holder of a social security number or a bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, may request that a county recorder redact from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically

available to the public, his or her social security number or bank account, debit, charge, or credit card number contained in that official record.

1.~~(d)~~ A request for redaction must be a signed, legibly written request and must be delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the record that contains the number to be redacted.

2.~~(e)~~ The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

3.~~(f)~~ A fee may not be charged for redacting a social security number or a bank account, debit, charge, or credit card number.

(c)~~(g)~~ A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing, and shall immediately and conspicuously post on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:

1. On or after October 1, 2002, any person preparing or filing a record for recordation in the official records may not include a social security number or a bank account, debit, charge, or credit card number in such document unless required by law.

2. Any person has a right to request a county recorder to remove from an image or copy of an official record placed on a

county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the general public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A fee may not be charged for the redaction of a social security number pursuant to such a request.

(d) ~~(h)~~ If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an automated program for redaction is ~~shall be~~ deemed to be the best effort in performing the redaction and is ~~shall be~~ deemed in compliance with the requirements of this subsection.

(e) ~~(i)~~ The county recorder is not liable for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, filed with the county recorder.

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must specify the document type, name, identification number, and page number of the official record that contains the exempt information.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Section 10. Paragraph (a) of subsection (2) of section 194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.—

(2)(a) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance at least 25 calendar days before the day of the scheduled appearance. The notice must ~~shall~~ indicate whether the petition has been scheduled to be heard at a particular time or during a block of time. If the petition has been scheduled to be heard within a block of time, the beginning and ending of that block of time must ~~shall~~ be indicated on the notice; however, as provided in paragraph (b), a petitioner may not be required to wait for more than a reasonable time, not to exceed 2 hours, after the beginning of the block of time. If the petitioner checked the appropriate box on the petition form to request a copy of the property record card containing relevant information used in computing the current assessment, the property appraiser must provide the copy to the petitioner upon receipt of the petition from the clerk regardless of whether the petitioner initiates evidence exchange ~~clerk shall provide the copy of the card along with the notice~~. Upon receipt of the notice, the petitioner may reschedule the hearing a single time by submitting to the clerk a written request to reschedule, at least 5 calendar days before the day of the originally scheduled hearing.

Section 11. Subsections (2) and (6) of section 938.30,

Florida Statutes, are amended to read:

938.30 Financial obligations in criminal cases; supplementary proceedings.—

(2) The court may require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation. The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service, subject to the provisions of s. 318.18(8), after examining a person under oath and determining the ~~a~~ person's inability to pay. Any person who fails ~~failing~~ to attend a hearing may be arrested on warrant or capias ~~which may be~~ issued by the clerk upon order of the court.

(6) If judgment has not been previously entered on any court-imposed financial obligation, the court may enter judgment thereon and issue any writ necessary to enforce the judgment in the manner allowed in civil cases. Any judgment issued under this section constitutes a civil lien against the judgment debtor's presently owned or after-acquired property, when recorded pursuant to s. 55.10. Supplementary proceedings undertaken by any governmental entity to satisfy a judgment imposed pursuant to this section may proceed without bond and without the payment of statutory fees associated with judgment enforcement.

Section 12. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 691 Personal Identification Theft
SPONSOR(S): Criminal Justice Subcommittee; Ahern and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 840

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

SUMMARY ANALYSIS

Florida law currently makes it a crime to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent.

The bill creates a similar statute, but one that does not require a person to possess personal identification information with fraudulent intent. Specifically, the bill creates s. 817.5685, F.S., to make it unlawful to intentionally or knowingly possess, without authorization, the personal identification information of another person in any form, including but not limited to mail, physical documents, identification cards or information stored in the digital form. A violation of the statue is punishable as:

- A first degree misdemeanor if the person possesses the personal identification information of 4 or fewer individuals; and
- A third degree felony if the person possesses the personal identification information of more than 5 individuals.

The bill defines "personal identification information" as a person's social security number, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records.

The bill provides exemptions for:

- A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child;
- A person who is the guardian of another person under ch. 744, F.S., and who is authorized to possess the personal identification information of that other person and make decisions regarding access to that personal identification information;
- An employee of a governmental agency who possesses the personal identification information of another person in the ordinary course of business;
- A person who is engaged in a lawful business and possesses the personal identification information of another person in the ordinary course of business; and
- A person who finds a card or document issued by a governmental agency which contains the personal identification information of another person and who takes reasonably prompt action to return that card or document to its owner, to the governmental agency that issued the card or document, or to a law enforcement agency.

The Criminal Justice Impact Conference met on February 27, 2013 and determined that this bill may have an insignificant negative impact on state prison beds. The bill may also have an insignificant negative impact on local jail beds.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 817.568, F.S., relates to the criminal of use of personal identification information. The statute makes it a third degree felony for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. A person who fraudulently uses personal identification information as proscribed above:

- Commits a second degree felony,[1] punishable by a three-year minimum mandatory sentence,[2] if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $5,000 or more or if the person fraudulently uses the personal identification information of 10 or more individuals, but fewer than 20 individuals, without their consent;
- Commits a first degree felony,[3] punishable by a five-year minimum mandatory sentence,[4] if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $50,000 or more, or if the person fraudulently used the personal identification information of 20 or more but fewer than 30 individuals; or
- Commits a first degree felony, punishable by a 10-year minimum mandatory sentence,[5] if the pecuniary benefit, the value of the services received, the payment sought to be avoided, or the amount of the injury or fraud perpetrated is $100,000 or more, or if the person fraudulently used the personal identification information of 30 or more individuals.[6]

"Personal identification information" is defined as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.[7]

Effect of the Bill

The bill creates s. 817.5685, F.S., which makes it unlawful to intentionally or knowingly possess, without authorization, the personal identification information of another person in any form, including but not limited to mail, physical documents, identification cards or information stored in the digital form. This statute is similar to s. 817.568, F.S., but does not require a person to possess personal identification information *with fraudulent intent*. The bill also provides a more limited definition of "personal identification information" than s. 817.568, F.S., by defining the term as a person's social

[1] 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.
[2] Section 817.568(3), F.S., provides that nothing prevents the court from imposing a greater sentence as authorized by law.
[3] 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.
[4] Section 817.568(3), F.S., provides that nothing prevents the court from imposing a greater sentence as authorized by law.
[5] *Id.*
[6] Section 817.568(2), F.S.
[7] Section 817.568(1)(f), F.S.

security number, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records.

A violation is a first degree misdemeanor[8] if the person possesses the personal identification information of four or fewer individuals, and is a third degree felony[9] if the person possesses the personal identification information more than five individuals.

The bill provides exemptions for:

- A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child;
- A person who is the guardian of another person under ch. 744, F.S., and who is authorized to possess the personal identification information of that other person and make decisions regarding access to that personal identification information;
- An employee of a governmental agency who possesses the personal identification information of another person in the ordinary course of business;
- A person who is engaged in a lawful business and possesses the personal identification information of another person in the ordinary course of business; and
- A person who finds a card or document issued by a governmental agency which contains the personal identification information of another person and who takes reasonably prompt action to return that card or document to its owner, to the governmental agency that issued the card or document, or to a law enforcement agency.

The bill specifies that the newly created statute, s. 817.5685, F.S., does not preclude prosecution for the unlawful possession of personal identification information pursuant to s. 817.568, F.S., or any other law.

B. SECTION DIRECTORY:

Section 1. Creates s. 817.5685, F.S., relating to unlawful possession of the personal identification information of another person.

Section 2. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does appear to have any impact on state revenues.

2. Expenditures:

   The Criminal Justice Impact Conference met on February 27, 2013 and determined that this bill may have an insignificant negative impact on state prison. The bill creates a new offense, which is punishable as third degree felony, but it is likely a low volume offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[8] 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.
[9] 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.

1. Revenues:

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

2. Expenditures:

   The bill may have a negative jail bed impact on local governments because it creates a new first degree misdemeanor offense.

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 March 27, 2013, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed because it creates s. 817.5685, F.S., which makes it unlawful to intentionally or knowingly possess, without authorization, the personal identification information of another person in any form, including but not limited to mail, physical documents, identification cards or information stored in the digital form.

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

A bill to be entitled

An act relating to personal identification theft; creating s. 817.5685, F.S.; defining the term "personal identification information"; providing that it is unlawful for a person to intentionally or knowingly possess, without authorization, any personal identification information of another person; creating criminal penalties; providing exemptions; providing that the section does not preclude the prosecution for the unlawful possession of personal identification information of another person under any other law; providing an effective date.

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

Section 1. Section 817.5685, Florida Statutes, is created to read:

817.5685 Unlawful possession of the personal identification information of another person.—

(1) As used in this section, the term "personal identification information" means a person's social security number, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records.

(2) It is unlawful for a person to intentionally or knowingly possess, without authorization, the personal

CODING: Words stricken are deletions; words underlined are additions.

identification information of another person in any form, including, but not limited to, mail, physical documents, identification cards, or information stored in digital form.

(3)(a) A person who violates subsection (2) and in doing so possesses the personal identification information of four or fewer persons commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who violates subsection (2) and in doing so possesses the personal identification information of five or more persons commits a felony of third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

(a) A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child.

(b) A person who is the guardian of another person under chapter 744 and who is authorized to possess the personal identification information of that other person and make decisions regarding access to that personal identification information.

(c) An employee of a governmental agency who possesses the personal identification information of another person in the ordinary course of business.

(d) A person who is engaged in a lawful business and possesses the personal identification information of another person in the ordinary course of business.

(e) A person who finds a card or document issued by a governmental agency that contains the personal identification

information of another person and who takes reasonably prompt action to return that card or document to its owner, to the governmental agency that issued the card or document, or to a law enforcement agency.

(5) This section does not preclude prosecution for the unlawful possession of personal identification information pursuant to s. 817.568 or any other law.

Section 2. This act shall take effect October 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Justice Appropriations Subcommittee

Representative Eagle offered the following:

Amendment (with title amendment)

Remove lines 17-37 and insert:

Section 1. Subsections (2), (4), and (5) of section 985.437, Florida Statutes, are amended to read:

985.437 Restitution.—

(2) The court shall ~~may~~ order the child and the child's parent or guardian to make restitution in money, through a promissory note cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court. When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make. If the child and the child's parent or guardian are unable to pay the restitution in one lump-sum payment, the court may set up a

payment plan that reflects their ability to pay the restitution amount.

(4) The parent or guardian may be absolved of liability for restitution under this section, if:

(a) After a hearing, the court finds that it is the child's first referral to the delinquency system and ~~A finding by the court, after a hearing,~~ that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; or

(b) The victim entitled to restitution as a result of damage or loss caused by the child's offense is that child's parent or guardian ~~absolves the parent or guardian of liability for restitution under this section~~.

(5) For purposes of this section, the Department of Children and Families shall not be considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent, as defined in s. 39.01(15).

(6) ~~(5)~~ The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise, as provided in s. 985.0301.

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

Remove lines 7-9 and insert:

circumstances; absolving the parent or guardian of liability for restitution in certain circumstances; providing that Department

of Children and Families shall not be considered a guardian for purposes of restitution; amending s. 985.513, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 785 Restitution for Juvenile Offenses
SPONSOR(S): Criminal Justice Subcommittee; Eagle and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1438

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee		Toms	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 985.437, F.S., authorizes a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for any damage or loss caused by the child's offense in a reasonable amount or manner. Restitution may be satisfied by performing community service, or by monetary payments, with a promissory note cosigned by the child's parent or guardian. A parent or guardian may be absolved of liability for restitution in their child's criminal case if the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."

Section 985.513, F.S., authorizes a court to order the parent or legal guardian to make restitution payments, in money or in kind, for any damage or loss caused by the child's offense; and to be responsible for any restitution ordered against the child, as provided under s. 985.437, F.S.

The bill amends s. 985.437, F.S., to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution. The bill further amends s. 985.437, F.S., to:

- Authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment; and
- Remove the provision absolving a parent or guardian of any liability for restitution in their child's criminal case when the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."

The bill amends s. 985.513, F.S., to remove duplicative language relating to authority the court has to order a parent or guardian to be responsible for the child's restitution.

To the extent that the bill increases the number and/or length of restitution hearings, which must be conducted by the court prior to entering an order of restitution, it could create an insignificant increased workload on the courts.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Restitution in Juvenile Criminal Cases

Section 985.437, F.S., authorizes, but does not require, a court with jurisdiction over a child that has been adjudicated delinquent to order the child to pay restitution to the victim for any damage or loss caused by the child's offense[1] in a reasonable amount or manner.[2] The court determines the amount or manner of restitution that is reasonable.[3]

To enter an order of restitution, a trial court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution the victim is entitled to,[4] unless the child previously entered into an agreement to pay[5] or has waived their right to attend a restitution hearing.[6] When restitution is ordered by the court, the amount of restitution may not exceed an amount the child or the parent or guardian could reasonably be expected to pay or make.[7]

Restitution may be satisfied by performing community service, or by monetary payments, with a promissory note cosigned by the child's parent or guardian.[8] However, a parent or guardian may be absolved of any liability for restitution in their child's criminal case if, through a hearing, the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."[9]

The clerk of the circuit court receives and dispenses restitution payments. The clerk must notify the court if restitution is not made. The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise.[10]

Court's Powers over Juvenile Offender's Parent or Guardian

Section 985.513, F.S., authorizes, but does not require, a court that has jurisdiction over a child that has been adjudicated delinquent to order the parents or guardians of such child to perform community service and participate in family counseling. The statute also authorizes the court to:

- Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense; and
- Require the child's parent or legal guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437, F.S.

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[1] The damage or loss or damage must be directly or indirectly related to the child's offense or criminal episode. *L.R.L. v. State*, 9 So.3d 714 (Fla. 2nd DCA 2009).

[2] If restitution is ordered, it becomes a condition of probation, or if the child is committed to a residential commitment program, part of community-based sanctions upon release from the program. Section 985.437(1), F.S.

[3] Section 985.437(2), F.S.

[4] *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.

[5] *T.P.H. v. State*, 739 So.2d 1180 (Fla. 4th DCA 1999).

[6] *T.L. v. State*, 967 So.2d 421 (Fla. 1st DCA 2007).

[7] Section 985.437(2), F.S.

[8] Section 985.437(2), F.S. Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution arising from offenses committed by their minor child, without the court providing the parent with meaningful notice and an opportunity to be heard, or without making a determination of the parents' ability to do so. *See, S.B.L. v. State*, 737 So.2d 1131 (Fla. 1st DCA 1999); *A.T. v. State*, 706 So.2d 109 (Fla. 2nd DCA 1998); and *M.H. v. State*, 698 So.2d 395 (Fla. 4th DCA 1997).

[9] Section 985.437(4), F.S.

[10] Section 985.437(5), F.S.

Failing to Pay Restitution Order

Sections 985.0301(h), F.S., states that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089, F.S. Section 775.089, F.S., provides that a restitution order may be enforced in the same manner as a judgment in a civil lien. Thus, if a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the parent or child's real property.[11] The court may transfer a restitution order to a collection court or a private collection agency to collect unpaid restitution.[12]

Effect of the Bill

The bill amends s. 985.437, F.S., to *require*, rather than authorize, the court to order a child *and* the child's parent or legal guardian to pay restitution. The bill further amends s. 985.437, F.S., to authorize the court to set up a payment plan if the child and the child's parents or legal guardians are unable to pay the restitution in one lump-sum payment. The payment plan must reflect the child and child's parent or legal guardian's ability to pay the restitution amount.

The bill removes the provision in s. 985.437(4), F.S., absolving a parent or guardian of any liability for restitution in their child's criminal case when the court makes a finding that the parent or guardian has made "diligent and good faith efforts to prevent the child from engaging in delinquent acts."

The bill amends s. 985.513, F.S., to remove duplicative language relating to the authority the court has to order a parent or guardian to be responsible for the child's restitution, ensuring the requirement that a parent and child both be responsible for restitution is addressed solely in s. 985.437, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.437, F.S., relating to restitution.

Section 2. Amends s. 985.513, F.S., relating to powers of the court over parent or guardian at disposition.

Section 3. Provides an effective date of July 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 amends ss. 985.437 and 985.513, F.S., to *require* the court to order a child and the child's parent or legal guardian to pay restitution. To enter an order of restitution, the court must conduct a restitution hearing. To the extent that bill increases the number and/or length of restitution hearings, the bill may result in an insignificant workload increase on the court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

[11] Section 775.089(5), F.S.

[12] Section 985.045, F.S., also states that this is allowed in a case where the circuit court has retained jurisdiction over the child and the child's parent or legal guardian.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Parents and legal guardians of children that have been adjudicated delinquent will be liable for restitution in money or in kind for damages caused by the child's offense. Additionally, victims of a child's offense may be more likely to receive restitution.

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:

To be in compliance with the due process clause requirements of the Fourteenth Amendment,[13] of the U.S. Constitution, the court must conduct a restitution hearing to determine if restitution is necessary, how much shall be ordered, and the ability of the juvenile and parent to make payments.[14] Both the juvenile and the parent must be notified and have the opportunity to present evidence to the court about what, if any, restitution amount should be owed and their ability to pay.

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 requires the court to enter a restitution order against both the child and parent for a victim's losses resulting from the child's criminal episode. This could result in a court being required to enter an order of restitution against a parent when the parent was the victim of the child's criminal offense.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Criminal Justice Subcommittee adopted one amendment and reported it favorably as a committee substitute. The amendment removes duplicative language in s. 985.513, F.S., relating to the court's authority to order a parent or guardian to be responsible for restitution for any damage or loss caused by the child's offense.

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

[13] Art. XIV, Sec. 1, U.S. CONST.
[14] *J.G. v. State*, 978 So.2d 270 (Fla. 4th DCA 2008).

A bill to be entitled

An act relating to restitution for juvenile offenses; amending s. 985.437, F.S.; requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; providing for payment plans in certain circumstances; deleting provisions for absolving the parent or guardian of liability for restitution in certain circumstances; amending s. 985.513, F.S.; removing duplicative language authorizing the court to require a parent or guardian to be responsible for any restitution ordered against the child; providing an effective date.

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

Section 1. Subsection (5) of section 985.437, Florida Statutes, is renumbered as subsection (4), and subsections (2) and (4) of that section are amended to read:

985.437 Restitution.—

(2) The court shall ~~may~~ order the child and the child's parent or guardian to make restitution in money, through a promissory note cosigned by the child's parent or guardian, or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court. When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make. If the

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

child and the child's parent or guardian are unable to pay the restitution in one lump-sum payment, the court may set up a payment plan that reflects their ability to pay the restitution amount.

~~(4) A finding by the court, after a hearing, that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts absolves the parent or guardian of liability for restitution under this section.~~

Section 2. Subsection (1) of section 985.513, Florida Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at disposition.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing,~~:~~

~~(a)~~ order the child's parent or guardian, together with the child, to render community service in a public service program or to participate in a community work project. In addition to the sanctions imposed on the child, the court may order the child's parent or guardian to perform community service if the court finds that the parent or guardian did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts.

~~(b) Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense. The court may also require the child's parent or legal~~

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

~~guardian to be responsible for any restitution ordered against the child, as provided under s. 985.437. The court shall determine a reasonable amount or manner of restitution, and payment shall be made to the clerk of the circuit court as provided in s. 985.437. The court may retain jurisdiction, as provided under s. 985.0301, over the child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or the court orders otherwise.~~

Section 3. This act shall take effect July 1, 2013.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Justice Appropriations Subcommittee

Representative Combee offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 817.535, Florida Statutes, is created to read:

817.535 Unlawful filing of false documents or records against real or personal property.—

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

(a) "File" means to present an instrument for recording in an official record or to cause an instrument to be presented for recording in an official record.

(b) "Filer" means the person who presents an instrument for recording in an official record, or causes an instrument to be presented for recording in an official record.

(c) "Instrument" means any judgment, mortgage, assignment, pledge, lien, financing statement, encumbrance, deed, lease,

bill of sale, agreement, mortgage, notice of claim of lien, notice of levy, promissory note, mortgage note, release, partial release or satisfaction of any of the foregoing, or any other document that relates to or attempts to restrict the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property.

(d) "Official record" means the series of instruments, regardless of how they are maintained, which a clerk of the circuit court, or any person or entity designated by general law, special law, or county charter, is required or authorized by law to record. The term also includes a series of instruments pertaining to the Uniform Commercial Code filed with the Secretary of State or with any entity under contract with the Secretary of State to maintain Uniform Commercial Code records and a database of judgment liens maintained by the Secretary of State.

(e) "Public officer or employee" means, but is not limited to:

1. A person elected or appointed to a local, state, or federal office, including any person serving on an advisory body, board, commission, committee, council, or authority.

2. An employee of a state, county, municipal, political subdivision, school district, educational institution, or special district agency or entity, including judges, attorneys, law enforcement officers, deputy clerks of court, and marshals.

3. A state or federal executive, legislative, or judicial officer, employee, or volunteer authorized to perform actions or

services for any state or federal executive, legislative, or judicial office, or agency.

4. A person who acts as a general or special magistrate, auditor, arbitrator, umpire, referee, hearing officer, or consultant to any state or local governmental entity.

5. A person who is a candidate for public office or judicial position.

(2)(a) A person who files or directs a filer to file, with the intent to defraud or harass another, any instrument containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner's interest in the property described in the instrument commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates paragraph (a) a second or subsequent time commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) If a person is convicted of violating subsection (2) and the owner of the property subject to the false instrument is a public officer or employee, the offense shall be reclassified as follows:

(a) In the case of a felony of the third degree, to a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) In the case of a felony of the second degree, to a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4)(a) If a person is convicted of violating subsection (2) and the person committed the offense while incarcerated in a jail or correctional institution or while participating in a pretrial diversion program under any form of pretrial release or bond, on probation or parole, or under any postrelease supervision, the offense shall be reclassified as follows:

1. In the case of a felony of the third degree, to a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. In the case of a felony of the second degree, to a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If a person's offense has been reclassified pursuant to this subsection, the sentencing court shall issue a written finding that the offense occurred while incarcerated in a jail or correctional institution and direct that a copy of the written finding and judgment of conviction be forwarded to the appropriate state institution or county facility for consideration of disciplinary action and forfeiture of all gain-time or any early release credits accumulated up to the date of the violation.

(5) If the person is convicted of violating subsection (2) and the owner of the property covered by the false instrument incurs financial loss as a result of the instrument being recorded in the official record, including costs and attorney fees incurred in correcting, sealing, or removing the false instrument from the official record as described herein, the offense shall be reclassified as follows:

(a) In the case of a felony of the third degree, to a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) In the case of a felony of the second degree, to a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) A person who fraudulently records a claim of lien in the official records pursuant to part I of chapter 713 is subject to the fraud provisions of s. 713.31 and not this section.

(7) If a person is convicted of violating this section, the sentencing court shall issue an order declaring the instrument forming the basis of the conviction null and void and may enjoin the person from filing any instrument in an official record absent prior review and approval for filing by a circuit or county court judge. The sentencing court may also order the instrument forming the basis of the conviction sealed from the official record and removed from any applicable electronic database used for recording instruments in the official record.

(8)(a) Any person adversely affected by an instrument filed in the official record which contains a materially false, fictitious, or fraudulent statement or representation has a civil cause of action under this section without regard to whether criminal charges are pursued under subsection (2). A notice of lis pendens in accord with s. 48.23 shall be filed which specifically describes the instrument under challenge and the real or personal property affected by the instrument.

(b) Upon a finding that the instrument contains a materially false, fictitious, or fraudulent statement or representation such that the instrument does not establish a legitimate property or lien interest in favor of another person:

1. The court shall determine whether the entire instrument or certain parts thereof are null and void ab initio. If the court finds the instrument void in its entirety, it may order the instrument sealed from the official record and removed from any electronic database used for indexing or locating instruments in the official record. The court may also, permanently or for a period of time, enjoin the defendant who filed the instrument or who directed the filer to file the instrument from filing or directing a person to file an instrument in the official records without prior review and approval for filing by a circuit or county court judge, provided that as to third parties who may have given value for an interest described or granted by any instrument filed in violation of the injunction, the instrument shall be deemed validly filed and provides constructive notice, notwithstanding any failure to comply with the terms of the injunction.

2. Upon a finding of intent to defraud or harass, the court or jury shall award actual damages and punitive damages, subject to the criteria in s. 768.72, to the person adversely affected by the instrument. The court may also levy a civil penalty of $2,500 for each instrument determined to be in violation of subsection (2).

3. The court may grant such other relief or remedy that the court determines is just and proper within its sound judicial discretion.

(c) The prevailing party in such a suit is entitled to recover costs and reasonable attorney fees.

(d) The custodian of any official record shall, upon payment of appropriate fees, provide a certified copy of the sealed instrument to the party seeking relief under this section for use in subsequent court proceedings; in addressing or correcting adverse effects upon the person's credit or property rights, or reporting the matter for investigation and prosecution; or in response to a subpoena seeking the instrument for criminal investigative or prosecution purposes.

(e) Upon request, the custodian of any official record shall, upon payment of appropriate fees, provide a certified copy of the sealed instrument to any federal, state, or local law enforcement agency.

(f) If feasible, the custodian of the official record where the instrument is recorded shall record any court order finding that the instrument is null and void in its entirety or in certain parts thereof.

(g) An instrument removed from an electronic database used for recording instruments in the public record pursuant to this section shall be maintained in a manner in which the instrument can be reduced to paper form.

(9) A government agency may provide legal representation to a public officer or employee if the instrument at issue appears to have been filed to defraud or harass the public

officer or employee in his or her official capacity. If the public officer or employee is the prevailing party, the award of reasonable attorney fees shall be paid to the government agency that provided the legal representation.

(10) This section does not apply to the procedures for sealing or expunging criminal history records as provided in chapter 943.

Section 2. Section 843.0855, Florida Statutes, is amended to read:

843.0855 Criminal actions under color of law or through use of simulated legal process.—

(1) As used in this section:

(a) The term "legal process" means a document or order issued by a court or filed or recorded with an official court of this state or the United States or with any official governmental entity of this state or the United States for the purpose of exercising jurisdiction or representing a claim against a person or property, or for the purpose of directing a person to appear before a court or tribunal, or to perform or refrain from performing a specified act. "Legal process" includes, but is not limited to, a summons, lien, complaint, warrant, injunction, writ, notice, pleading, subpoena, or order.

(b) The term "person" means an individual, public or private group incorporated or otherwise, legitimate or illegitimate legal tribunal or entity, informal organization, official or unofficial agency or body, or any assemblage of individuals.

(c) The term "public officer or employee" has the same meaning as provided in s. 817.535 ~~means a public officer as defined by s. 112.061~~.

~~(d) The term "public employee" means a public employee as defined by s. 112.061.~~

(2) A ~~Any~~ person who deliberately impersonates or falsely acts as a public officer or employee ~~tribunal, public employee or utility employee, including, but not limited to, marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any law enforcement authority~~ in connection with or relating to any legal process affecting persons and property, or otherwise takes any action under color of law against persons or property, commits a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084. It is the intent of the Legislature that this section applies if a person acts as an officer or employee purporting to supersede or override any legislation or statute of this state, or to supersede or override any action of any court of this state.

(3) A ~~Any~~ person who simulates legal process, including, but not limited to, actions affecting title to real estate or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings, knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent, commits a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(4) A ~~Any~~ person who falsely under color of law attempts in any way to influence, intimidate, harass, retaliate against,

or hinder a public officer or employee involving ~~law enforcement officer in~~ the discharge of his or her official duties by means of, but not limited to, threats of or actual physical abuse or harassment, or through the use of simulated legal process, commits a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(5)(a) ~~Nothing in~~ This section does not ~~shall~~ make unlawful any act of any law enforcement officer or legal tribunal which is performed under lawful authority.

(b) ~~Nothing in~~ This section does not ~~shall~~ prohibit individuals from assembling freely to express opinions or designate group affiliation or association.

(c) ~~Nothing in~~ This section does not ~~shall~~ prohibit or in any way limit a person's lawful and legitimate access to the courts or prevent a person from instituting or responding to legitimate and lawful legal process.

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

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.

316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.

270	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
271	458.327(1)	3rd	Practicing medicine without a license.
272	459.013(1)	3rd	Practicing osteopathic medicine without a license.
273	460.411(1)	3rd	Practicing chiropractic medicine without a license.
274	461.012(1)	3rd	Practicing podiatric medicine without a license.
275	462.17	3rd	Practicing naturopathy without a license.
276	463.015(1)	3rd	Practicing optometry without a license.
277	464.016(1)	3rd	Practicing nursing without a license.
278	465.015(2)	3rd	Practicing pharmacy without a license.
279	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
	467.201	3rd	Practicing midwifery without a license.

468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a money services business.
560.125(5)(a)	3rd	Money services business by unauthorized

			person, currency or payment instruments exceeding $300 but less than $20,000.
288			
	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
289			
	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
290			
	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
291			
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
292			
	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
293			
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
294			
	782.071	2nd	Killing of a human being or viable

		fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent

		predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.
787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.

790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.03	2nd	Procuring any person under 16 years for prostitution.

800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.

812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating

		in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
<u>817.535(2)(a)</u>	<u>3rd</u>	<u>Filing false lien or other unauthorized document.</u>
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.

827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of a public officer or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of a public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a),

			(2)(b), or (2)(c)4. drugs).
358			
	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
359			
	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
360			
	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
361			
	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
362			
	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
363			
	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
364			
	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
365			
	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
366			
	893.135	1st	Trafficking in 1,4-Butanediol, 1

(1)(j)1.a.		kilogram or more, less than 5 kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with

		reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false

		information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.
316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
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.
393			
	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.
394			
	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding $20,000, but less than $100,000 by financial institutions.
395			
	777.03(2)(a)	1st	Accessory after the fact, capital felony.
396			
	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.
397			
	782.051(2)	1st	Attempted felony murder while

		perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity.
787.06(3)(c)	1st	Human trafficking using coercion for labor and services of an unauthorized alien.
787.06(3)(f)	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.

794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
800.04(4)	2nd	Lewd or lascivious battery.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.

812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
817.535(2)(b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
817.535(3)(a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
817.535(4)(a)1.	2nd	Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
817.568(6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an

		elderly person or disabled adult.
825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $100,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.
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).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.

893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
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 manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.

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.

(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; $50,000 or more.
499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding $100,000 by money transmitter.

560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding $100,000.
655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
775.0844	1st	Aggravated white collar crime.
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.

787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
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.
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized alien.
787.06(3)(g)	1st,PBL	Human trafficking for commercial sexual activity of a child under the age of 18.
787.06(4)	1st	Selling or buying of minors into human trafficking.

790.161	1st	Attempted capital destructive device offense.
790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
796.035	1st	Selling or buying of minors into prostitution.

800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.
817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee.
817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.

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.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
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.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.

893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135 (1)(e)1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions

totaling or exceeding $100,000.

Section 4. If any section, subsection, sentence, clause, phrase, or word of this act is for any reason held or declared to be unconstitutional, illegal, invalid, inoperative, ineffective, inapplicable, or void, such invalidity or unconstitutionality shall not affect the portions of this act not so held to be unconstitutional, illegal, invalid, inoperative, ineffective, inapplicable, or void, or affect the application of this act to other circumstances not so held to be invalid, it being the express legislative intent that any such unconstitutional, illegal, invalid, inoperative, ineffective, inapplicable, or void portion or portions of this act did not induce its passage, and that without the inclusion of any such unconstitutional, illegal, invalid, inoperative, ineffective, inapplicable, or void portions of this act, the Legislature would have enacted the valid and constitutional portions thereof.

Section 5. This act shall take effect October 1, 2013.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to filing false documents against real or personal property; creating s. 817.535, F.S.; defining terms; prohibiting a person from filing or causing to be filed, with intent to defraud or harass

another, a document relating to the ownership, transfer, or encumbrance of, or claim against, real or personal property, or any interest in real or personal property; providing criminal penalties; establishing reclassified penalties for persons who commit the specified offenses a second or subsequent time when the person is a convicted offender who commits the specified offenses while incarcerated in a jail or participating in a community correctional program and when the victim of the offense is a public officer or employee or incurs financial losses under certain circumstances; authorizing the court to issue an injunction; authorizing a court to seal specified public or private records under certain circumstances; providing that the subject of the false statements has a civil cause of action against the perpetrator; providing for actual and punitive damages; providing that the prevailing party is entitled to costs and reasonable attorney fees; providing duties of the custodian of the official record; providing applicability; requiring that attorney fees be paid to the government agency that provides legal representation under certain circumstances; amending s. 843.0855, F.S.; revising definitions; defining the term "public officer or employee"; revising criminal penalties for criminal actions under color of law or through use of simulated legal process; providing legislative intent; amending s. 921.0022, F.S.;

revising provisions of the offense severity ranking chart of the Criminal Punishment Code to conform to changes made by the act; providing severability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 915 Filing False Documents Against Real or Personal Property
SPONSOR(S): Criminal Justice Subcommittee; Combee
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB112

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

SUMMARY ANALYSIS

Florida law contains a variety of statutes designed to protect the interests of property owners and that criminalize the actions of those who fraudulently attack such interests.

The bill creates s. 817.535, F.S., which makes it a third degree felony for a person to file, or direct another to file, with the intent to defraud or harass another, any instrument containing materially false or fraudulent statements or representations which affect an owner's property interest. The bill ranks the offense in Level 7 of the offense severity ranking chart. The bill requires the offense to be reclassified to the next higher degree of felony in specified instances, and ranks the offenses in the offense severity ranking chart.

The bill gives authority to the sentencing court to:

- Declare the instrument null and void and have it sealed; and
- Enjoin the defendant from filing any future instruments affecting property interests in an official record without prior court approval.

The bill also creates a civil cause of action for any person adversely affected by a false or fraudulent instrument filed in the official record. In a civil action, the court may:

- Hold part or the entire instrument null and void;
- Award actual and punitive damages, in accordance with s. 768.72, F.S.; and
- Grant such other relief it deems necessary.

The bill also broadens the application of s. 843.0855, F.S., which establishes a variety of crimes relating to impersonating public officers and fraudulently simulating legal process, by expanding the definition of "public officer or public employee." The bill also ranks the offenses in s. 843.0855, F.S., in Level 7 of the offense severity ranking chart.

The Criminal Justice Impact Conference met on March 21, 2013 and determined that the bill will have an indeterminate prison bed impact on the Department of Corrections. Additionally, the bill may have and insignificant fiscal impact to the court system. See fiscal section.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Criminal Actions Under Color of Law or through Simulated Legal Process

The following subsections of s. 843.0855, F.S., makes it a third degree felony[1] for a person[2] to:

(2) Deliberately impersonate or falsely act as a public officer or tribunal, public employee or utility employee (including, but not limited to, marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any law enforcement authority) in connection with or relating to any legal process[3] affecting persons and property, or otherwise take any action under color of law against persons or property;

(3) Simulate legal process, including, but not limited to, actions affecting title to real estate or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings, knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent; or

(4) Falsely under color of law attempt in any way to influence, intimidate, or hinder a public officer or law enforcement officer in the discharge of his or her official duties by means of, but not limited to, threats of or actual physical abuse or harassment, or through the use of simulated legal process.[4]

Section 843.0855(1), F.S., provides the following definitions:

- "Public officer" is defined in accordance with s. 112.061, F.S., as an individual who, in the performance of his or her official duties, is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.
- "Public employee" is defined in accordance with s. 112.061, F.S., as an individual, whether commissioned or not, other than an officer or authorized person as defined in s. 112.061, F.S., who is filling a regular or full-time authorized position and is responsible to an agency head.

The offenses listed above are currently unranked third degree felonies for purposes of the Criminal Punishment Code offense severity ranking chart.[5] Unranked third degree felonies default to a Level 1 (4 points) offense.[6]

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[1] 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.

[2] Section 843.0855(1), F.S., defines the term "person" as an individual, public or private group incorporated or otherwise, legitimate or illegitimate legal tribunal or entity, informal organization, official or unofficial agency or body, or any assemblage of individuals.

[3] Section 843.0855(1), F.S., defines the term "legal process" as a document or order, issued by a court, or filed or recorded for the purpose of exercising jurisdiction, or representing a claim against a person or property, or for the purpose of directing a person to appear before a court or tribunal, or to perform or refrain from performing a specified act. The term includes, but is not limited to, a summons, lien, complaint, warrant, injunction, writ, notice, pleading, subpoena, or order.

[4] Section 843.0855(5), F.S., states that nothing in s. 843.0855, F.S., shall: make unlawful any act of any law enforcement officer or legal tribunal which is performed under lawful authority; prohibit individuals from assembling freely to express opinions or designate group affiliation or association; or prohibit or in any way limit a person's lawful and legitimate access to the courts or prevent a person from instituting or responding to legitimate and lawful legal process.

[5] 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, in part, on points assigned for the offense severity ranking. The points are added in order to determine the "lowest permissible sentence" for the offense. Section 921.0022, F.S.

[6] Section 921.0023, F.S.

Effect of the Bill

The bill amends s. 843.0855, F.S., to define the term "public officer or public employee" to mean any:

- Person elected or appointed to a state or federal office, including a person serving on an advisory body, board, commission, committee, council, or authority;
- Employee of a state county, municipal, political subdivision, school district, educational institution, or special district agency or entity, including all judges, attorneys, law enforcement officers, deputy clerks of court, or marshals;
- State or federal executive, legislative, or judicial officer, employee, or volunteer authorized to perform actions or services for any executive, legislative, or judicial office, or agency;
- Person who acts as a general or special magistrate, auditor, arbitrator, umpire, referee, hearing officer, or consultant to any state or local governmental entity; and
- Person who is a candidate for public office or judicial position.

As a result, the application of the statute is broader because the new definition of "public officer or public employee" encompasses more people.

The bill amends s. 843.0855(4), F.S., to include attempting to harass or retaliate against a public officer or employee, under color of law, as a violation of subsection (4).

The bill also amends s. 843.0855(2), F.S., to add the following legislative intent statement:

> It is the intent of the Legislature that this subsection apply when such a person acts as any public officer, public employee, or tribunal purporting to supersede or override any legislation or statute of this state, or to supersede or override any action of any court of this state.

The bill ranks s. 843.0855(2), (3), and (4), F.S., in Level 7 (56 points) of the offense severity ranking chart.

Florida Law Relating to Property Interests, False Liens, etc.

In addition to the above-described statute relating to criminal actions under color of law or through simulated legal process, Florida law contains a variety of statutes designed to protect the interests of property owners and that criminalize the actions of those who fraudulently attack such interests. A description of these statutes follows.

Florida's Recording Act

Section 695.01, F.S., requires that any conveyance, transfer, mortgage, or other interest in real property be recorded in the public records of the county where the property is located. Every state in the United States has an analogous statutory recording system making information about interests in property available to the public.[7] The purpose of a public recording system for land titles is to allow access to any person, such as a creditor, tax collector, or prospective purchaser, to ascertain who owns the property and what encumbrances might exist to the title.[8] Because these records are open for the public to rely on and have the potential to call into question the owner's clear title to the property, having accurate property records is vital.[9]

Section 28.222(1), F.S., requires the clerk of the circuit court to record all of the instruments, such as deeds, liens, mortgages, etc., in the county where he or she is clerk. The clerk must record instruments presented to him or her for recording upon payment of the service charges prescribed by law.[10] Florida law does not require the clerk to investigate the accuracy of any such instruments he or she records.

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[7] Jesse Dukeminier and James E. Krier, PROPERTY, 662 (5th ed. 2002).
[8] *Id.*
[9] *Id.*
[10] Section 28.222(3), F.S.

Fraud - Generally

Chapter 817, F.S., deals with a variety of fraudulent practices. Section 817.54, F.S., for example, states that a person commits a third degree felony[11] if he or she obtains a mortgage, mortgage note, or promissory note by false representation with the intent to defraud. Additionally, s. 817.155, F.S., makes it a third degree felony to knowingly falsify any matter within the jurisdiction within the Department of State. The conduct subject to penalties appears to include filing fraudulent liens. Other provisions of law contain similar penalties specific to liens. For example, s. 713.31(3), F.S., makes it a third degree felony to fraudulently file a construction lien. A construction lien is considered fraudulent if the person who filed the lien purposefully exaggerates the amount of the lien, includes work not performed, or compiles his or her claim with willful and gross negligence.[12]

Fraudulent Recording of Deeds

Florida law offers redress for a property owner where a fraudulent deed is recorded with respect to his or her property. A property owner who has a fraudulent deed recorded on his or her property may pursue a suit to quiet title, which is "an equitable action that involves clearing a title of an invalid charge against the title."[13] The court may award costs as it considers equitable in a quiet title action, but such costs do not include attorney's fees.[14] A property owner may also choose to sue for slander of title, a tort action for which damages may be recovered.[15] A tort claim is not actionable as slander of title if the defendant acted without malice and with the belief that he or she had a valid claim against the property and was entitled to record that claim.[16]

Recent Caselaw

In a 2011 federal case in Florida, the defendant filed false financial statements and liens against a number of federal officers who were involved in a separate criminal prosecution against him.[17] Although the liens in this case were "fantastic, delusional and incredible,"[18] with each claiming the amount owed was "$48,489,000.00 plus interest, penalties, and fees,"[19] the court found that the sham documents could still be damaging to the credit of the federal officers because they were recorded in official state and local registries.[20] The court found that the liens were fraudulent and void, and enjoined the defendant from filing future liens against federal employees absent a commercial relationship and a contract authorizing the filing.[21] The United States sought injunctive relief under several federal laws, including 26 U.S.C. s. 7402(a),[22] and 18 U.S.C. s. 1345(a)(1).[23] The United States prosecuted the defendant in accordance with 18 U.S.C. s. 1341,[24] which prohibits actions that

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[11] 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.

[12] Section 713.31(2)(a), F.S.

[13] 65 AM. JUR. 2d, *Quieting Title and Determination of Adverse Claims* s. 2 (2011).

[14] Section 86.081, F.S.; see also *Wiggins v. Wiggins*, 446 So. 2d 1078, 1079 (Fla. 1984) (citing *State ex rel. Royal Ins. Co. v. Barrs*, 99 So. 668 (Fla. 1924).

[15] *Id.*

[16] *McAllister v. Breakers Seville Ass'n Inc.*, 981 So. 2d 566, 575 (Fla. 4th DCA 2008).

[17] *United States v. Leitner*, 2011 WL 2532745, No. 3:10cv454/RS/CJK. (N.D. Fla. June 6, 2011).

[18] *Id.* at 7.

[19] *Id.* at 5.

[20] *Id.* at 7.

[21] *Id.* at 9. The defendant was subsequently sentenced to 30 months in prison for the fraudulent filings. *Man Sentenced for False Liens in Florida*, The Epoch Times, Oct. 3, 2011, http://www.theepochtimes.com/n2/united-states/man-sentenced-for-false-liens-in-florida-62333.html (last visited March 13, 2013).

[22] 26 U.S.C. s. 7402(a), permits a court to enjoin a defendant if necessary and appropriate for the enforcement of the internal revenue laws. *Leitner*, at 8. Courts have interpreted 26 U.S.C. s. 7402(a), to be used to enjoin interference with tax enforcement "even when such interference does not violate any particular tax statute." *United States v. Kaplowitz*, 201 Fed. Appx. 659; *See also United States v. McGugan*, 600 F.Supp.2d 608 (D.N.J. 2009)(Court held that 26 U.S.C. s. 7402(a), has been used on numerous occasions to grant the exact relief sought here, *i.e.*, to enjoin taxpayers from filing frivolous and unsupported documents against IRS [and other federal] employees acting in accordance with their official duties, and declare such documents null, void, and with no legal effect.")

[23] 18 U.S.C. s. 1345(a)(1), which permits the Government to commence a civil action in federal court to enjoin the current or future commission of fraud against the United States or any agency thereof.

[24] 18 U.S.C. s. 1341, which states that any person who, having devised or intending to devise any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, ... places any item in any post office or authorized depository

constitute mail fraud. Currently, there are no comparable statutes in Florida which would provide for injunctive relief or criminal prosecution.

Effect of the Bill

The bill creates s. 817.535, F.S., which creates new criminal offenses as well as a civil cause of action relating to the unlawful filing of false claims against real or personal property. The bill provides the following definitions that apply to the section:

- "File" means to present an instrument for recording in an official record or to cause an instrument to be presented for recording in the official record;
- "Filer" means the person who presents an instrument for recording in an official record, or causes an instrument to be presented for recording in an official record;
- "Instrument" means any judgment, mortgage, assignment, pledge, lien, financing statement, encumbrance, deed, lease, bill of sale, agreement, mortgage, notice of claim of lien, notice of levy, promissory note, mortgage note, release, partial release or satisfaction of any of the foregoing, or any other document that relates to or attempts to restrict the ownership, transfer, encumbrance of, or claim against real or personal property, or any interest in real or personal property;
- "Official record" means the series of instruments, regardless of how they are maintained, which a clerk of the circuit court, or any person or entity designated by general law, special law, or county charter, is required or authorized by law to record. The term also includes a series of instruments pertaining to the Uniform Commercial Code filed with the Secretary of State or with any entity under contract with the Secretary of State to maintain Uniform Commercial Code records and a database of judgment liens maintained by the Secretary of State; and
- "Public officer or employee" is defined in accordance with s. 843.0855, F.S. (see above).

Criminal Offenses

Subsection (2) of s. 817.535, F.S., makes it a third degree felony for a person to file or direct another to file, with the intent to defraud or harass another, any instrument containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner's property interest. The offense is reclassified to a second degree felony[25] for a second or subsequent offense. The offense is also reclassified to the next higher degree of felony if the:

- Person affected by the materially false or fraudulent filing is a "public officer or employee;"
- Defendant committed the offense while incarcerated in a jail or correctional institution, a participant in a pretrial diversion program, under any form of pretrial release or bond, on probation or parole, or under any post-release supervision;[26] or
- Person affected by the materially false or fraudulent filing has incurred financial loss as a result of the instrument being filed in the official record, including costs and attorney fees incurred in correcting, sealing, or removing the false instrument from the official record.

The bill ranks offenses reclassified from a third degree felony to a second degree felony in Level 8 (74 sentencing points) of the offense severity ranking chart. Offenses reclassified from a second degree felony to a first degree felony[27] are ranked in Level 9 (92 sentencing points) of the offense severity ranking chart.

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for mail matter to be sent or delivered by any private or commercial interstate carrier....or knowingly cause to be delivered by mail or such carrier according to the direction thereon shall be fined or imprisoned not more than 20 years, or both.

[25] 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.

[26] The bill specifies that if a person's offense has been reclassified in accordance with s. 817.535(4), F.S., as a result of the defendant committing the offense while incarcerated, the sentencing court is required to issue a written finding that the offense occurred while incarcerated in jail or correctional institution and direct that a copy of the written finding and judgment be forwarded to the appropriate facility for consideration of disciplinary action and forfeiture of all gain-time or any early release credits accumulated up to the date of the offense.

[27] 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.

Additionally, if a person is convicted of a violation of s. 817.395(1), F.S., the sentencing court must issue an order declaring the instrument null and void and may:

- Enjoin the person from filing in any instrument absent prior review and approval for filing by a circuit or county court judge; and
- Order the instrument forming the basis of the conviction sealed form the official record and removed from any applicable electronic database used for recording instruments in the official record.

The bill states that a person who fraudulently records a construction lien in the official records pursuant to Part 1, of ch. 713, F.S., remains subject to the fraud provisions of s. 731.31, F.S., not the newly created s. 817.535, F.S.

Civil Actions

Subsection (8) of s. 817.535, F.S., authorizes a civil cause of action for any person adversely affected by a materially false or fraudulent instrument filed in the official record, without regard to whether criminal charges are pursued under subsection (2).

The bill requires that a notice of lis pendens in accord with s. 48.23, F.S., be filed which specifically describes the instrument at issue in the suit and the real or personal property affected by the instrument.[28]

Upon a finding that the instrument contains a materially false, fictitious or fraudulent statement or representation, such that the instrument does not establish a legitimate property or lien interest in favor of another person:

- The court must determine whether the entire instrument or certain parts are null and void ab initio,[29] and if the court finds the instrument void in its entirety, it may order the instrument sealed from the official record and removed from any electronic database used for indexing official records; and
- The court or jury must, upon a finding of intent to defraud or harass, award actual and punitive damages, subject to the criteria in s. 768.72, F.S., to the person adversely affected by the filing;

The court *may* also:

- Permanently or temporarily, enjoin the person who filed or directed the filer to file the instrument, from filing or directing a person to file an instrument in the official records, without prior approval for filing by a circuit or county court judge;
- Levy a civil penalty of $2,500 for each instrument filed in violation of subsection (2); and
- Grant such other relief or remedy it determines is just and proper within its sounds discretion.

The prevailing party in the civil suit is entitled to recover costs and reasonable attorney fees.

The records custodian of any official record must, upon payment of appropriate fees:

- Provide a certified copy of the sealed instrument to the party seeking relief under s. 817.535(8) for use in subsequent court proceedings, in correcting adverse effects upon the persons credit or property rights, or reporting the matter for investigation and prosecution; or in response to a subpoena for investigative or prosecution purposes; and

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[28] Generally, the purpose of a notice of lis pendens is to alert creditors, prospective purchasers, and others to the fact that the title to a particular piece of real property is involved in litigation, thereby warning all persons that the title to the property is in litigation and that they are in danger of being bound by an adverse judgment and notifying prospective purchasers and encumbrancers that any interest acquired by them in the property in litigation is subject to the decree of a court. 35 Fla. Jur 2d, Lis Pendens s. 2 (2nd edition). *See also S & T Builders v. Globe Properties, Inc.*, 944 So. 2d 302 (Fla. 2006); *Intermediary Fin. Corp. v. McKay*, 111 So. 531 (Fla. 1927).

[29] Ab initio means "from the beginning; from the first act; from the inception." Black's Law Dictionary, 6 (5th ed. 1979).

- Provide a certified copy of the sealed instrument to any federal, state, or local law enforcement agency.

Additionally, if feasible, the custodian of any official records, where an instrument is recorded, must also record any court order finding that the instrument is null and void in its entirety or in certain parts.

An instrument removed pursuant to s. 817.535, F.S., from an electronic database used for recording instruments in the public record, must be maintained in a manner allowing the instrument to be reduced to paper form.

If the instrument at issue appears to have been filed to defraud or harass a public officer or employee in their official capacity, the bill provides authority for a government agency to provide legal representation to that public officer or employee. If the public officer or employee is the prevailing party, the award of attorney fees shall be paid to the agency.

The bill states that s. 817.535, F.S., does not apply to the procedures for sealing or expunging of criminal history records as provided in ch. 943, F.S. The bill also provides a severability clause in s. 817.535, F.S., to protect any constitutional provisions in the event that some provisions are held unconstitutional.

B. SECTION DIRECTORY:

Section 1. Creates s. 817.535, F.S., relating to unlawful filing of false documents or records against real or personal property.

Section 2. Amends s. 843.0855, F.S., relating to criminal actions under color of law or through use of simulated legal process.

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

Section 4. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill provides the courts may levy a civil penalty of $2,500 for each instrument filed with intent to defraud. This penalty is levied at the courts discretion, so the positive fiscal impact to the courts cannot be determined.

2. Expenditures:

The Criminal Justice Impact Conference met on March 21, 2013 and determined that the bill will have an indeterminate prison bed impact on the Department of Corrections.

Additionally, the Office of the State Courts Administrator (OSCA) completed a Judicial Impact Statement for CS/CS/SB 112,[30] which is similar to this bill. OSCA stated in their report that there may be a modest increase in additional criminal cases because this bill criminalizes a broader range of fraudulent filings that may not otherwise be specifically addressed in Florida Statutes. It

[30] Office of the State Courts Administrator, 2013 Judicial Impact Statement for CS/SB 112 (on file with Criminal Justice Subcommittee.)

cannot be determined if the discretionary $2,500 civil penalty would support the insignificant additional workload or provide surplus funding.

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:

Persons who are affected by the fraudulent filings of liens, etc. will have recourse to obtain reasonable attorney's fees and costs associated with removing or sealing the false liens, etc. from public record or public database. Persons who file valid liens, etc. could be sued by someone who maliciously moves to have the filing sealed or removed.

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 March 19, 2013, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Creates s. 817.535, F.S., which prohibits a person from filing or directing another to file a false or fraudulent instrument into the official record which affects an owner's interest in real or personal property;
- Provides definitions;
- Provides the offense is reclassified one degree higher under certain circumstances;
- Gives authority to the sentencing court to make findings, void and seal the false instrument, and enjoin the defendant from filing any instruments without prior court approval for filing;
- Creates a civil cause of action and authorizes the court to hold part or the entire instrument null and void, award actual and punitive damages; levy a civil penalty of $2,500 for each instrument filed; and grant such other relief it deems necessary;

- Modifies definitions in s. 843.0855, F.S.;
- Ranks all new criminal offenses created by s. 817.535, F.S., and the criminal offenses included in s. 843.0855, F.S., in the offense severity ranking chart.

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

A bill to be entitled

An act relating to filing false documents against real or personal property; creating s. 817.535, F.S.; defining terms; prohibiting a person from filing or causing to be filed, with intent to defraud or harass another, a document relating to the ownership, transfer, or encumbrance of, or claim against, real or personal property, or any interest in real or personal property; providing criminal penalties; establishing reclassified penalties for persons who commit the specified offenses a second or subsequent time when the person is a convicted offender who commits the specified offenses while incarcerated in a jail or participating in a community correctional program and when the victim of the offense is a public officer or employee or incurs financial losses under certain circumstances; authorizing the court to issue an injunction; authorizing a court to seal specified public or private records under certain circumstances; providing that the subject of the false statements has a civil cause of action against the perpetrator; providing for actual and punitive damages; providing that the prevailing party is entitled to costs and reasonable attorney fees; providing duties of the custodian of the official record; providing applicability; requiring that attorney fees be paid to the government agency that provides legal representation under certain circumstances; amending

s. 843.0855, F.S.; revising definitions; defining the term "public officer or employee"; revising criminal penalties for criminal actions under color of law or through use of simulated legal process; providing legislative intent; amending s. 921.0022, F.S.; revising provisions of the offense severity ranking chart of the Criminal Punishment Code to conform to changes made by the act; providing severability; providing an effective date.

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

Section 1. Section 817.535, Florida Statutes, is created to read:

817.535 Unlawful filing of false documents or records against real or personal property.—

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

(a) "File" means to present an instrument for recording in an official record or to cause an instrument to be presented for recording in an official record.

(b) "Filer" means the person who presents an instrument for recording in an official record, or causes an instrument to be presented for recording in an official record.

(c) "Instrument" means any judgment, mortgage, assignment, pledge, lien, financing statement, encumbrance, deed, lease, bill of sale, agreement, mortgage, notice of claim of lien, notice of levy, promissory note, mortgage note, release, partial release or satisfaction of any of the foregoing, or any other

document that relates to or attempts to restrict the ownership, transfer, encumbrance of, or claim against real or personal property, or any interest in real or personal property.

(d) "Official record" means the series of instruments, regardless of how they are maintained, which a clerk of the circuit court, or any person or entity designated by general law, special law, or county charter, is required or authorized by law to record. The term also includes a series of instruments pertaining to the Uniform Commercial Code filed with the Secretary of State or with any entity under contract with the Secretary of State to maintain Uniform Commercial Code records and a database of judgment liens maintained by the Secretary of State.

(e) "Public officer or employee" means, but is not limited to:

1. A person elected or appointed to a state or federal office, including any person serving on an advisory body, board, commission, committee, council, or authority.

2. An employee of a state, county, municipal, political subdivision, school district, educational institution, or special district agency or entity, including judges, attorneys, law enforcement officers, deputy clerks of court, and marshals.

3. A state or federal executive, legislative, or judicial officer, employee, or volunteer authorized to perform actions or services for any state or federal executive, legislative, or judicial office, or agency.

4. A person who acts as a general or special magistrate, auditor, arbitrator, umpire, referee, hearing officer, or

consultant to any state or local governmental entity.

5. A person who is a candidate for public office or judicial position.

(2)(a) A person who files or directs a filer to file, with the intent to defraud or harass another, any instrument containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner's interest in the property described in the instrument commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who violates paragraph (a) a second or subsequent time commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) If a person is convicted of violating subsection (2) and the owner of the property subject to the false instrument is a public officer or employee, the offense shall be reclassified as follows:

(a) In the case of a felony of the third degree, to a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) In the case of a felony of the second degree, to a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4)(a) If a person is convicted of violating subsection (2) and the person committed the offense while incarcerated in a jail or correctional institution or while participating in a pretrial diversion program under any form of pretrial release or bond, on probation or parole, or under any postrelease

supervision, the offense shall be reclassified as follows:

1. In the case of a felony of the third degree, to a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. In the case of a felony of the second degree, to a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If a person's offense has been reclassified pursuant to this subsection, the sentencing court shall issue a written finding that the offense occurred while incarcerated in a jail or correctional institution and direct that a copy of the written finding and judgment of conviction be forwarded to the appropriate state institution or county facility for consideration of disciplinary action and forfeiture of all gain-time or any early release credits accumulated up to the date of the violation.

(5) If the person is convicted of violating subsection (2) and the owner of property covered by the false instrument incurs financial loss as a result of the instrument being recorded in the official record, including costs and attorney fees incurred in correcting, sealing, or removing the false instrument from the official record as described herein, the offense shall be reclassified as follows:

(a) In the case of a felony of the third degree, to a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) In the case of a felony of the second degree, to a felony of the first degree, punishable as provided in s.

775.082, s. 775.083, or s. 775.084.

(6) A person who fraudulently records a claim of lien in the official records pursuant to part I of chapter 713 is subject to the fraud provisions of s. 713.31 and not this section.

(7) If a person is convicted of violating this section, the sentencing court shall issue an order declaring the instrument forming the basis of the conviction null and void and may enjoin the person from filing any instrument in an official record absent prior review and approval for filing by a circuit or county court judge. The sentencing court may also order the instrument forming the basis of the conviction sealed from the official record and removed from any applicable electronic database used for recording instruments in the official record.

(8)(a) Any person adversely affected by an instrument filed in the official record which contains a materially false, fictitious, or fraudulent statement or representation has a civil cause of action under this section without regard to whether criminal charges are pursued under subsection (2). A notice of lis pendens in accord with s. 48.23 shall be filed which specifically describes the instrument under challenge and the real or personal property affected by the instrument.

(b) Upon a finding that the instrument contains a materially false, fictitious, or fraudulent statement or representation such that the instrument does not establish a legitimate property or lien interest in favor of another person:

1. The court shall determine whether the entire instrument or certain parts thereof are null and void ab initio. If the

court finds the instrument void in its entirety, it may order the instrument sealed from the official record and removed from any electronic database used for indexing or locating instruments in the official record. The court may also, permanently or for a period of time, enjoin the defendant who filed the instrument or who directed the filer to file the instrument from filing or directing a person to file an instrument in the official records without prior review and approval for filing by a circuit or county court judge, provided that as to third parties who may have given value for an interest described or granted by any instrument filed in violation of the injunction, the instrument shall be deemed validly filed and provides constructive notice, notwithstanding any failure to comply with the terms of the injunction.

2. Upon a finding of intent to defraud or harass, the court or jury shall award actual damages and punitive damages, subject to the criteria in s. 768.72, to the person adversely affected by the instrument. The court may also levy a civil penalty of $2,500 for each instrument determined to be in violation of subsection (2).

3. The court may grant such other relief or remedy that the court determines is just and proper within its sound judicial discretion.

(c) The prevailing party in such a suit is entitled to recover costs and reasonable attorney fees.

(d) The custodian of any official record shall, upon payment of appropriate fees, provide a certified copy of the sealed instrument to the party seeking relief under this section

for use in subsequent court proceedings; in addressing or correcting adverse effects upon the person's credit or property rights, or reporting the matter for investigation and prosecution; or in response to a subpoena seeking the instrument for criminal investigative or prosecution purposes.

(e) Upon request, the custodian of any official record shall, upon payment of appropriate fees, provide a certified copy of the sealed instrument to any federal, state, or local law enforcement agency.

(f) If feasible, the custodian of the official record where the instrument is recorded shall record any court order finding that the instrument is null and void in its entirety or in certain parts thereof.

(g) An instrument removed from an electronic database used for recording instruments in the public record pursuant to this section shall be maintained in a manner in which the instrument can be reduced to paper form.

(9) A government agency may provide legal representation to a public officer or employee if the instrument at issue appears to have been filed to defraud or harass the public officer or employee in their official capacity. If the public officer or employee is the prevailing party, the award of reasonable attorney fees shall be paid to the government agency that provided the legal representation.

(10) This section does not apply to the procedures for sealing or expunging criminal history records as provided in chapter 943.

Section 2. Section 843.0855, Florida Statutes, is amended

to read:

843.0855 Criminal actions under color of law or through use of simulated legal process.—

(1) As used in this section:

(a) The term "legal process" means a document or order issued by a court or filed or recorded with an official court of this state or the United States or with any official governmental entity of this state or the United States for the purpose of exercising jurisdiction or representing a claim against a person or property, or for the purpose of directing a person to appear before a court or tribunal, or to perform or refrain from performing a specified act. "Legal process" includes, but is not limited to, a summons, lien, complaint, warrant, injunction, writ, notice, pleading, subpoena, or order.

(b) The term "person" means an individual, public or private group incorporated or otherwise, legitimate or illegitimate legal tribunal or entity, informal organization, official or unofficial agency or body, or any assemblage of individuals.

(c) The term "public officer or employee" has the same meaning as provided in s. 817.535 ~~means a public officer as defined by s. 112.061~~.

~~(d) The term "public employee" means a public employee as defined by s. 112.061.~~

(2) A ~~Any~~ person who deliberately impersonates or falsely acts as a public officer or employee ~~tribunal, public employee or utility employee, including, but not limited to, marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any~~

~~law enforcement authority~~ in connection with or relating to any legal process affecting persons and property, or otherwise takes any action under color of law against persons or property, commits a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084. It is the intent of the Legislature that this section applies if a person acts as an officer or employee purporting to supersede or override any legislation or statute of this state, or to supersede or override any action of any court of this state.

(3) A ~~Any~~ person who simulates legal process, including, but not limited to, actions affecting title to real estate or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings, knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent, commits a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(4) A ~~Any~~ person who falsely under color of law attempts in any way to influence, intimidate, harass, retaliate against, or hinder a public officer or employee involving ~~law enforcement officer in~~ the discharge of his or her official duties by means of, but not limited to, threats of or actual physical abuse or harassment, or through the use of simulated legal process, commits a felony of the third degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(5)(a) ~~Nothing in~~ This section does not ~~shall~~ make unlawful any act of any law enforcement officer or legal tribunal which is performed under lawful authority.

(b) ~~Nothing in~~ This section does not ~~shall~~ prohibit individuals from assembling freely to express opinions or designate group affiliation or association.

(c) ~~Nothing in~~ This section does not ~~shall~~ prohibit or in any way limit a person's lawful and legitimate access to the courts or prevent a person from instituting or responding to legitimate and lawful legal process.

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

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to

		elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; $10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than $10,000, but less than $50,000.
456.065(2)	3rd	Practicing a health care profession without a license.
456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.

458.327(1)	3rd	Practicing medicine without a license.
459.013(1)	3rd	Practicing osteopathic medicine without a license.
460.411(1)	3rd	Practicing chiropractic medicine without a license.
461.012(1)	3rd	Practicing podiatric medicine without a license.
462.17	3rd	Practicing naturopathy without a license.
463.015(1)	3rd	Practicing optometry without a license.
464.016(1)	3rd	Practicing nursing without a license.
465.015(2)	3rd	Practicing pharmacy without a license.
466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
467.201	3rd	Practicing midwifery without a

		license.
468.366	3rd	Delivering respiratory care services without a license.
483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
483.901(9)	3rd	Practicing medical physics without a license.
484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
484.053	3rd	Dispensing hearing aids without a license.
494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded $50,000 and there were five or more victims.
560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding $300 but less than $20,000 by a

		money services business.
560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding $300 but less than $20,000.
655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding $300 but less than $20,000 by financial institution.
775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
782.051(3)	2nd	Attempted felony murder of a

		person by a person other than the perpetrator or the perpetrator of an attempted felony.
782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.

784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
784.048(7)	3rd	Aggravated stalking; violation of court order.
784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
784.081(1)	1st	Aggravated battery on specified official or employee.
784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
784.083(1)	1st	Aggravated battery on code inspector.

787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
790.16(1)	1st	Discharge of a machine gun under specified circumstances.
790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
790.166(3)	2nd	Possessing, selling, using, or

		attempting to use a hoax weapon of mass destruction.
790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
790.23	1st,PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
796.03	2nd	Procuring any person under 16 years for prostitution.
800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.

800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
806.01(2)	2nd	Maliciously damage structure by fire or explosive.
810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
812.014(2)(a)1.	1st	Property stolen, valued at $100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree

		grand theft.
812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than $50,000, grand theft in 2nd degree.
812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
812.0145(2)(a)	1st	Theft from person 65 years of age or older; $50,000 or more.
812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
812.131(2)(a)	2nd	Robbery by sudden snatching.
812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
817.234(8)(a)	2nd	Solicitation of motor vehicle

		accident victims with intent to defraud.
817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
817.234(11)(c)	1st	Insurance fraud; property value $100,000 or more.
817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
<u>817.535(2)(a)</u>	<u>3rd</u>	<u>Filing false lien or other unauthorized document.</u>
825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
825.103(2)(b)	2nd	Exploiting an elderly person or

		disabled adult and property is valued at $20,000 or more, but less than $100,000.
827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
838.015	2nd	Bribery.
838.016	2nd	Unlawful compensation or reward for official behavior.
838.021(3)(a)	2nd	Unlawful harm to a public servant.
838.22	2nd	Bid tampering.
843.0855(2)	3rd	Impersonation of public officer

		or employee.
843.0855(3)	3rd	Unlawful simulation of legal process.
843.0855(4)	3rd	Intimidation of public officer or employee.
847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
872.06	2nd	Abuse of a dead human body.
874.10	1st,PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.)

		within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.

893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5

		kilograms.
893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
896.101(5)(a)	3rd	Money laundering, financial transactions exceeding $300 but less than $20,000.
896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding $300 but less than $20,000.
943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply

		with reporting requirements.
943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

Florida Statute	Felony Degree	Description
944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

(h) LEVEL 8

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.a.	2nd	DUI manslaughter.

316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
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.
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 $20,000, but less

		than $100,000 by financial institutions.
777.03(2)(a)	1st	Accessory after the fact, capital felony.
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.
782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.

787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity.
787.06(3)(c)	1st	Human trafficking using coercion for labor and services of an unauthorized alien.
787.06(3)(f)	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state.
790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
794.011(5)	2nd	Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.
794.08(3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this

		state.
800.04(4)	2nd	Lewd or lascivious battery.
806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st,PBL	Burglary with assault or battery.
810.02(2)(b)	1st,PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or $1,000 or more property damage.
812.014(2)(a)2.	1st	Property stolen; cargo valued at $50,000 or more, grand theft in 1st degree.
812.13(2)(b)	1st	Robbery with a weapon.
812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.

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

		18.
825.102(2)	1st	Aggravated abuse of an elderly person or disabled adult.
825.1025(2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
825.103(2)(a)	1st	Exploiting an elderly person or disabled adult and property is valued at $100,000 or more.
837.02(2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
837.021(2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
860.121(2)(c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
860.16	1st	Aircraft piracy.

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).
893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than

		400 grams.
893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
893.135 (1)(h)1.b.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
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

		manufacture controlled substance when minor is present or resides there.
895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding $20,000, but less than $100,000.
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.

(i) LEVEL 9

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

655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding $100,000 by financial institution.
775.0844	1st	Aggravated white collar crime.
782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
782.04(3)	1st,PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.

787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
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.
787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized alien.
787.06(3)(g)	1st,PBL	Human trafficking for commercial sexual activity of a

			child under the age of 18.
499			
	787.06(4)	1st	Selling or buying of minors into human trafficking.
500			
	790.161	1st	Attempted capital destructive device offense.
501			
	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
502			
	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
503			
	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
504			
	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
505			
	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial

		or custodial authority.
794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
796.035	1st	Selling or buying of minors into prostitution.
800.04(5)(b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
812.13(2)(a)	1st,PBL	Robbery with firearm or other deadly weapon.
812.133(2)(a)	1st,PBL	Carjacking; firearm or other deadly weapon.
812.135(2)(b)	1st	Home-invasion robbery with weapon.
817.535(3)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; property owner is public officer or employee.

817.535(4)(a)2.	1st	Filing false lien or other unauthorized document; second or subsequent offense; defendant is incarcerated or under supervision.
817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of property incurs financial loss as a result of the false instrument.
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.
827.03(2)(a)	1st	Aggravated child abuse.
847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control,

		of a minor.
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.
893.135	1st	Attempted capital trafficking offense.
893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
893.135 (1)(d)1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
893.135	1st	Trafficking in methaqualone,

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

	(1)(e)1.c.		more than 25 kilograms.
526			
	893.135 (1)(f)1.c.	1st	Trafficking in amphetamine, more than 200 grams.
527			
	893.135 (1)(h)1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
528			
	893.135 (1)(j)1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
529			
	893.135 (1)(k)2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.
530			
	896.101(5)(c)	1st	Money laundering, financial instruments totaling or exceeding $100,000.
531			
	896.104(4)(a)3.	1st	Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding $100,000.
532			

533 Section 4. If any section, subsection, sentence, clause,
534 phrase, or word of this act is for any reason held or declared
535 to be unconstitutional, illegal, invalid, inoperative,

ineffective, inapplicable, or void, such invalidity or unconstitutionality shall not affect the portions of this act not so held to be unconstitutional, illegal, invalid, inoperative, ineffective, inapplicable, or void, or affect the application of this act to other circumstances not so held to be invalid, it being the express legislative intent that any such unconstitutional, illegal, invalid, inoperative, ineffective, inapplicable, or void portion or portions of this act did not induce its passage, and that without the inclusion of any such unconstitutional, illegal, invalid, inoperative, ineffective, inapplicable, or void portions of this act, the Legislature would have enacted the valid and constitutional portions thereof.

Section 5. This act shall take effect October 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Justice Appropriations Subcommittee

Representative Tobia offered the following:

Amendment (with directory and title amendments)

Between lines 42 and 43, insert:

(6) In any civil action related to a cause of action occurring on or after July 1, 2013, an award of punitive damages shall be payable as follows:

(a) Ten percent of the award shall be payable to the claimant's attorney, or to the claimant where there is no attorney;

(b) Forty-five percent of the award shall be payable to the State School Trust Fund created in s. 1010.71; and

(c) Forty-five percent of the award shall be payable to the Medical Care Trust Fund created in s. 20.425(4).

In the event that the full amount of punitive damages awarded cannot be collected, the claimant and the trust funds shall each be entitled to a proportionate share of the punitive damages

collected. The Chief Financial Officer may intervene in any action in order to collect the monies owed to the trust funds.

D I R E C T O R Y A M E N D M E N T

Remove lines 10-11 and insert:

Section 1. Subsection (1) of section 768.73, Florida Statutes, is amended, and subsection (6) is added to said section, to read:

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

Remove lines 4-5 and insert:

punitive damages do not create a presumption as to the appropriate level of damages; providing for payment of punitive damages to an attorney, a claimant, and to specified trust funds; providing for proportionate payments; providing that the Chief Financial Officer may intervene in an action to collect; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1305 Punitive Damages
SPONSOR(S): Tobia
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 2 N	Arguelles	Bond
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

Punitive damages are awarded to punish reprehensible conduct by a person and to deter future similar behavior by others.

Current law contains a statutory cap on punitive damages applicable to most cases that is based on a formula of either three or four times the compensatory damages, based on the facts of the case. The bill provides that the statutory limits on punitive damages do not create a presumption that an award under the cap is appropriate.

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

The bill provides an effective date of on becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current law (s. 768.72, F.S.) provides for recovery of punitive damages by a claimant in a civil action. Punitive damages "are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence."[1] In general, punitive damages are limited to three times the amount of compensatory damages or $500,000, whichever is greater.[2] If the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, the cap on punitive damages is increased to four times the amount of compensatory damages or $2 million, whichever is greater.[3] If the jury finds that the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is no cap on punitive damages.[4]

In 2013, in a case brought against a tobacco company, an appellate court presumed that an award of punitive damages was not excessive because the punitive damages were less than the statutory limits.[5] The court ruled that the punitive damages were not excessive because the two-to one ratio between compensatory and punitive damages fell within limits of reasonableness based on this presumption.[6]

The bill provides that that there is no implied presumption about the appropriate level of punitive damages based on the limits in s. 768.73, F.S. The effect of this bill is that a trial court may have greater discretion to lower an award of punitive damages that the court finds excessive but below the statutory cap.

B. SECTION DIRECTORY:

Section 1 amends s. 768.73, F.S., to specify there is no implied presumption in the statute.

Section 2 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[1] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).
[2] Section 768.73(1)(a), F.S.
[3] Section 768.73(1)(b), F.S.
[4] Section 768.73(1)(c), F.S.
[5] In *Philip Morris USA, Inc v. Kayton*, 104 So. 3d 1145, 1152 (2013), the plaintiff brought an action against a tobacco company alleging strict liability, negligence and conspiracy to commit fraudulent concealment. The Plaintiff was awarded $8 million in compensatory damages and $16 million in punitive damages.
[6] *Id.*

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 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 and 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.

A bill to be entitled

An act relating to punitive damages; amending s. 768.73, F.S.; specifying that statutory limits on putative damages do not create a presumption as to the appropriate level of damages; providing an effective date.

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

Section 1. Subsection (1) of section 768.73, Florida Statutes, is amended to read:

768.73 Punitive damages; limitation.—

(1)(a) Except as provided in paragraphs (b) and (c), an award of punitive damages may not exceed the greater of:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of $500,000.

(b) Where the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of $2 million.

(c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.

(d) This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s. 768.74 in determining the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages. In making such determination, there is no implied presumption about the appropriate level of punitive damages based on the limits in this subsection.

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

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Justice Appropriations Subcommittee

Representative Mayfield offered the following:

Amendment (with title amendment)

Remove lines 117-325

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

Remove lines 21-49 and insert:

certain circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1379 Service of Process
SPONSOR(S): Civil Justice Subcommittee; Mayfield
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	9 Y, 3 N, As CS	Ward	Bond
2) Justice Appropriations Subcommittee		Toms	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

The duties of a sheriff include service of process and execution of money judgments. Service of process is the means by which official notice of an action is delivered to a defendant or respondent. A "return of service" proving by affidavit that the process was delivered to the proper party is then filed with the court. The bill:

- Provides that a fee of $40 will be charged by the sheriff for each summons served;
- Provides that execution must be accompanied with an affidavit containing a statement directing distribution of proceeds of public sale;
- Provides immunity to the sheriff for wrongful levy or distribution of the proceeds of sale;
- Requires that the party requesting service of process or the process server file the return of service;
- Provides for changes to service of process on certain businesses; and
- Adds a criminal penalty for an employer who refuses to accommodate service on an employee.

A mentally ill, or substance addicted person may be involuntarily taken into custody by law enforcement and delivered to the nearest treating facility by order of court. The bill:

- Makes an electronically transmitted order sufficient for the receiving facility to accept the person;
- Provides that the order may be served and executed any time of the day or night; and
- Provides that a law enforcement officer may use reasonable force to gain entry to any premises to take custody of the subject person of involuntary evaluation.

An injunction is issued to prevent domestic violence, repeat violence, stalking, or cyberstalking. The bill makes the statutes providing for these injunctions more parallel. The bill adds a criminal penalty for violation of a cyberstalking injunction, and for violation of a stalking or cyberstalking injunction by possession of a firearm.

The criminal penalty added in both of the bill's provisions - failing to accommodate service of process on an employee, and stalking by possession of a firearm - is a first degree misdemeanor, punishable by up to one year in county jail or a fine of up to $1,000 or both.

Certain arrests may be made by an officer without a warrant. The bill adds to warrantless arrests:

- A violation of an injunction pending a child abuse investigation;
- A violation of an injunction for stalking or cyberstalking;
- An act of stalking or cyberstalking; and
- An act of child abuse.

The bill does not appear to have a fiscal impact on the state governments. The bill may have a negative jail bed impact on local governments because it creates new misdemeanors.

The bill takes effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Service of Process

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., provides that service of process may be served by the sheriff in the county where the defendant is located.[1] The sheriff may appoint special process servers who meet specified statutory minimum requirements.[2] The chief judge of the circuit court may establish an approved list of certified process servers.[3] Additionally, each trial judge has the authority to appoint a special process server in any particular case.

Authorized process servers serve the complaint or petition on a defendant or a respondent in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.[4] Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant or respondent.[5]

The law specifies the manner and methods that service of process must be executed by process servers. Service of original process and most witness subpoenas is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of the contents.[6] Each process server must document all service of process by placing the date and time of service and the process server's identification number and initials on the copy served.[7]

The sheriffs of all counties of the state in civil cases must charge fixed, nonrefundable fees for docketing and service of process. The sheriffs must charge $40 for docketing and indexing each writ of execution, regardless of the number of persons involved. It is the responsibility of the party requesting service of process to furnish to the sheriff the original or a certified copy of process and sufficient copies to be served on the parties receiving the service of process.[8]

Service on Employees and Businesses

Section 48.031, F.S., currently provides that employers "shall permit" service of process on employees in a private area designated by the employer. The bill creates a first degree misdemeanor for employers and their agents who fail to comply with this provision. A first degree misdemeanor is punishable by up to one year in county jail or a fine of up to $1,000 or both.[9]

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[1] Section 48.021, F.S.
[2] Section 48.021, F.S.
[3] Section 48.27, F.S.
[4] *Vidal v. SunTrust Bank*, 41 So.3d 401, 402-03 (Fla. 4th DCA 2010).
[5] Section 48.031, F.S.; *Vidal,* 41 So.3d at 402-04 (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).
[6] Sections 48.031(1), (3), F.S.
[7] Sections 48.29 and 48.031(5), F.S.
[8] *See* s. 30.321, F.S.
[9] Sections 775.082 and 775.083, F.S.

Currently, substitute service may only be made on a person in charge of a business when the owner is absent after two or more attempts at service. The bill provides that a sole proprietorship may be served by serving the person on the first attempt even if the owner is temporarily absent from the office.

Currently, the person making service of process files a return with the court to show service has been made. The bill adds that the person requesting service may also file the return.

Currently, service of process against a limited liability company is made as upon a partnership. Service on a partnership is effective when served on any partner and is as valid as if served on each individual partner.[10] The bill amends s. 608.463, F.S to provide that service must be made as if the limited liability company were a corporation. Service on a corporation is made on the registered agent, president, vice president, or other head of the corporation, and in their absence, upon any officer, and in their absence, a director.[11]

Sheriff's Fees for Service

The bill amends s. 30.231, F.S., which currently provides that if a sheriff is serving more than one process regarding the same action at one location, the sheriff is only entitled to one fee. The bill removes this limiting provision, allowing the sheriff to charge $40 per process served at the same time in the same cause of action. The effect is that the sheriff may be paid multiple times to serve one person who has multiple capacities in one lawsuit.[12]

Sheriff Sales in Execution of Judgments

Currently, sheriffs may levy upon assets in satisfaction of a judgment, and sell those assets for payment of the judgment when they are provided a writ of execution by the court.[13] There is no statutory requirement that the parties in interest direct how proceeds of sale are to be paid. The bill provides that a writ of execution must be accompanied by a statement directing the sheriff how to pay out the proceeds of sale, and provides that the sheriff is not liable for damages in the event of a wrongful levy and/or payout.

Involuntary Examinations

Currently, a court may enter an ex parte order to take a person into custody for evaluation[14] who appears to be a in need of treatment for mental illness and poses a threat to himself or herself, or others.[15] A person may also be taken into custody for involuntary evaluation based upon substance abuse.[16]

In both instances, when the court enters its order for evaluation a law enforcement officer takes the person into custody based upon this order and delivers him or her to a receiving facility for involuntary evaluation.[17] The current statutes are silent as to whether an original signed order is required for a receiving facility to accept the person.

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[10] Section 48.061, F.S.
[11] Section 48.081, F.S.
[12] For example, a corporate debt might be personally guaranteed by an officer of the corporation. Suit may be brought against the the same person in two capacities. Therefore, that person would be served twice with the complaint.
[13] *See* s. 30.30, F.S.
[14] Section 394.463, F.S. calls this an "involuntary examination," while ss. 397.6815, and 397.6818, F.S. calls this an "involuntary assessment." The term "evaluation" is used here for both.
[15] Section 394.463, F.S. The elements are that a person has a mental illness, and has refused examination and is a threat to himself or herself, or others which threat cannot be avoided through other means in the community.
[16] Section 397.675, F.S. There are 3 elements: a loss of self-control regarding the substance, threatened or real infliction of harm; and impairment of judgment in respect to a need for substance abuse services
[17] *See* s. 394.463, F.S., and s. 397.6818, F.S.

The bill makes an electronically transmitted order sufficient for the receiving facility to accept the person who is subject to the order for involuntary evaluation under either statute. Further, the bill makes the law consistent between both statutes regarding involuntary evaluations by providing that the order is valid for 7 days from the date of execution by the judge, unless otherwise specified.

The bill also makes the two statutes consistent by providing that the involuntary evaluation order may be served and executed any time of the day or night, and the law enforcement officer acting on the order may, under both statutes, use reasonable force to gain entry to any premises to take custody of the subject person.[18]

Injunctions

Injunctions against violence are entered under a number of statutes:

- A victim of domestic violence[19] may seek protective injunctive relief;[20]
- A victim of any repeat violence may seek injunctive relief;[21]
- A victim of stalking may seek injunctive relief.[22]

Under each of these statutes, an ex parte injunction is effective up to 15 days.[23] The bill provides that if a final injunction is issued in the same case, that limit is extended until the final injunction is served.

The bill provides that a person who violates a final injunction for protection against stalking or cyberstalking by having in his or her care, custody possession, or control any firearm of ammunition commits a violation of s. 790.233, F.S., a first degree misdemeanor. A first degree misdemeanor is punishable by up to one year in county jail or a fine of up to $1,000 or both.[24] This makes the cyberstalking provision parallel with the domestic violence injunction provision.

Arrest Without Warrant

Currently, s. 901.15 F.S provides for certain arrests that may be made by an officer without a warrant. Included among these is probable cause to believe that the person has violated an injunction for protection against domestic or repeat violence under s. 741.30, F.S. or 784.046, F.S. The bill adds to the list of warrantless arrests:

- A violation of an injunction pending investigation of child abuse;[25]
- A violation of an injunction for stalking,[26] or cyberstalking;[27]
- A violation of an injunction for stalking;[28]
- An act of repeat or sexual violence;
- An act of stalking or cyberstalking; and
- An act of child abuse.[29]

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[18] The bill adds s. 396.6818 (3)(b), F.S., which conforms with the existing provision found in s. 394.463(2)(a)3.(d), F.S.
[19] Section 741.28(2), F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member."
[20] Section 741.30(1), F.S.
[21] Section 784.046, F.S.
[22] Section 784.048, F.S.
[23] Section 741.31, F.S., adds that an ex parte injunction is also effective for 15 days after the respondent is released from incarceration.
[24] Sections 775.082 and 775.083, F.S.
[25] Section 39.504, F.S.
[26] Section 784.0485, F.S.
[27] Section 784.0487, F.S.
[28] Section 784.0485, F.S.
[29] Section 39.01, F.S.

The bill also adds these statutory offenses to the list of good faith arrests an officer may make without civil liability.

The bill takes effect July 1, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 30.231, F.S., regarding sheriff's fees for service of summons, subpoenas, etc.

Section 2 amends s. 48.031, F.S., regarding service of process generally.

Section 3 amends s. 48.081, F.S., regarding service on corporation.

Section 4 amends 56.27, F.S., regarding executions and payment of money collected.

Section 5 amends s. 394.463, F.S., regarding involuntary examinations.

Section 6 amends s. 397.6818, F.S., regarding court determinations.

Section 7 amends s. 608.463, F.S., regarding service of process.

Section 8 amends s. 741.30, F.S., regarding domestic violence injunctions.

Section 9 amends s. 741.31, F.S., regarding violation of an injunction for protection against domestic violence.

Section 10 amends s. 784.046, F.S., regarding actions by victims of repeat violence.

Section 11 amends s. 784.0485, F.S., regarding stalking.

Section 12 amends s. 784.0487, F.S., regarding violation of an injunction for protection against stalking or cyberstalking.

Section 13 amends. s. 901.15, F.S., regarding when arrest by officer without warrant is unlawful.

Section 14 provides that the bill takes effect July 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:

This bill may have a negative jail bed impact on local governments because it creates new misdemeanors.

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:

The Office of State Courts Administrator indicated the "Obstruction of Process Servers" section of this bill would likely not impact judicial workload within the State Courts System. However, the extension of time for temporary injunctions may lead to more prosecutions for criminal violations of injunctions, but would likely be an insignificant impact.

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:

Art. III, s. 6 of the Florida Constitution provides, "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

> "The single subject clause contains three requirements: 1) a law shall embrace only one subject; 2) the law may include any matter properly connected with the subject; and 3) the subject must be briefly expressed in the title. *Franklin v. State,* 887 So.2d 1063, 1072 (Fla. 2004). There is a proper connection between a provision and the subject "(1) if the connection is natural or logical, or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject." *Id.* at 1078. "[I]n determining whether a reasonable explanation exists for the connection between a specific provision and the single subject, the court may consider the citation name, the full title, the preamble, and the provisions in the body of the act." *Id.*

Ellis v. Hunter, 3 So.3d 373, 380 - 381 (Fla. 5th DCA 2009).

Combining criminal penalties with civil actions has proven to be particularly troublesome in the single subject context. *State v. Thompson*, 750 So.2d 643 (Fla. 1999); *Franklin v. State*, 887 So.2d 1063 (Fla. 2004).

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 March 18, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes the word "provided" from s. 48.081, F.S., with the effect that a process server is no longer limited to service at the address provided. The amendment also corrected a scrivener's error and made a conforming title amendment. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to service of process; amending s. 30.231, F.S.; requiring sheriffs to charge a uniform fee for service of process; amending s. 48.031, F.S.; requiring an employer, employee, or representative or agent of an employer to permit an authorized individual to make service on an employee in a private area designated by the employer; providing criminal penalties for persons failing to comply with the process; authorizing substitute service during the first attempt of service at a business that is a sole proprietorship under certain circumstances; requiring the person requesting service or the person authorized to serve the process to file the return-of-service form; amending s. 48.081, F.S.; revising provisions relating to service on a corporation; amending s. 56.27, F.S.; requiring the levying creditor to deliver to the sheriff an affidavit setting forth how to pay out moneys received under an execution sale; providing that the sheriff is not liable for damages under certain circumstances; amending s. 394.463, F.S.; requiring a mental health receiving facility to accept an electronic order for involuntary examination served by a law enforcement agency; amending s. 397.6818, F.S.; requiring a substance abuse licensed service provider to accept an electronic order for involuntary assessment and stabilization which is served by a law enforcement agency on the service provider;

establishing procedures to serve process; amending s. 608.463, F.S.; providing that service of process on a limited liability company occurs as if it were a corporation; amending s. 741.30, F.S.; setting forth the effectiveness of a temporary injunction in a domestic violence proceeding; amending ss. 741.31, 784.046, and 784.0485, F.S.; requiring that if a final order of injunction for protection against domestic violence, dating violence, or stalking is issued but not served, the terms of the temporary injunction, if served, remain in full force and effect until service of the final order is effected upon the respondent; amending s. 784.0487, F.S.; providing that it is unlawful for a person to violate a final injunction for protection against stalking or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition; amending s. 901.15, F.S.; conforming provisions; expanding situations in which an arrest without a warrant is lawful to include probable cause of stalking, cyberstalking, and child abuse; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 30.231, Florida Statutes, is amended to read:

30.231 Sheriffs' fees for service of summons, subpoenas, and executions.—

(1) The sheriffs of all counties of the state in civil cases shall charge fixed, nonrefundable fees for ~~docketing and~~ service of process, according to the following schedule:

(a) All summons or writs except executions: $40 for each summons or writ to be served~~, except when more than one summons or writ is issued at the same time out of the same cause of action to be served upon one person or defendant at the same time, in which case the sheriff shall be entitled to one fee~~.

Section 2. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and subsection (5) of section 48.031, Florida Statutes, are amended to read:

48.031 Service of process generally; service of witness subpoenas.—

(1)

(b) An employer ~~Employers~~, employee, or a representative or agent of the employer, when contacted by an individual authorized to make service of process, must ~~shall~~ permit the authorized individual to make service on employees in a private area designated by the employer. If the employer, employee, or a representative or agent of the employer fails to comply with this paragraph, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2)

(b) Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business during the first attempt of service even if the owner is temporarily absent from his or her office

~~at the time of service if two or more attempts to serve the owner have been made at the place of business~~.

(5) A person serving process shall place, on the first page of at least one of the processes served, the date and time of service and his or her identification number and initials for all service of process. The person serving process shall list on the return-of-service form all initial pleadings delivered and served along with the process. The person requesting service or the person authorized to serve ~~issuing~~ the process shall file the return-of-service form with the court.

Section 3. Paragraph (b) of subsection (3) of section 48.081, Florida Statutes, is amended to read:

48.081 Service on corporation.—

(3)

(b) If the address ~~provided~~ for the registered agent, officer, director, or principal place of business is a residence or private mailbox, service on the corporation may be made by serving the registered agent, officer, or director in accordance with s. 48.031.

Section 4. Paragraph (d) is added to subsection (4) of section 56.27, Florida Statutes, to read:

56.27 Executions; payment of money collected.—

(4) Before the date of the first publication or posting of the notice of sale provided for under s. 56.21, at the time of the levy request to the sheriff, the levying creditor shall deliver to the sheriff an affidavit setting forth all of the following as to the judgment debtor:

(d) A statement directing the sheriff how to pay out all

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

moneys received under an execution sale pursuant to subsections (1) and (2). The sheriff paying pursuant to the affidavit is not liable to anyone for damages arising from a wrongful levy and pay out.

Section 5. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination. If the order was received electronically by the law enforcement agency, the receiving facility shall accept the electronic copy as the executable copy. The order of the court shall be made a part of the patient's clinical record. A fee may not ~~No fee shall~~ be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order shall ~~must~~ send a copy of the order to the Agency for Health Care Administration on the next working day. The order is ~~shall be~~ valid only until executed or, if not

executed, for the period specified in the order itself. If no time limit is specified in the order, the order is ~~shall be~~ valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report shall ~~must~~ send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any receiving facility accepting the patient

based on this certificate shall ~~must~~ send a copy of the certificate to the Agency for Health Care Administration on the next working day.

Section 6. Subsection (3) of section 397.6818, Florida Statutes, is amended to read:

397.6818 Court determination.—At the hearing initiated in accordance with s. 397.6811(1), the court shall hear all relevant testimony. The respondent must be present unless the court has reason to believe that his or her presence is likely to be injurious to him or her, in which event the court shall appoint a guardian advocate to represent the respondent. The respondent has the right to examination by a court-appointed qualified professional. After hearing all the evidence, the court shall determine whether there is a reasonable basis to believe the respondent meets the involuntary admission criteria of s. 397.675.

(3) If the court finds it necessary, it may order the sheriff to take the respondent into custody and deliver him or her to the licensed service provider specified in the court order or, if none is specified, to the nearest appropriate licensed service provider for involuntary assessment. If the order was received electronically by a law enforcement agency, the receiving licensed service provider shall accept the electronic copy as the executable copy. The order is valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order is valid for 7 days after the date that the order was signed.

(a) A law enforcement officer acting in accordance with an involuntary assessment and stabilization order issued pursuant to this section may serve and execute such order on any day of the week, at any time of the day or night.

(b) A law enforcement officer acting in accordance with an involuntary assessment and stabilization order issued pursuant to this section may use such reasonable physical force as is necessary to gain entry to the premises and any dwellings, buildings, or other structures located on the premises to take custody of the person who is the subject of the involuntary assessment and stabilization order.

Section 7. Subsection (1) of section 608.463, Florida Statutes, is amended to read:

608.463 Service of process.—

(1) Process against a limited liability company may be served:

(a) In accordance with chapter 48 or chapter 49, as if the limited liability company were a corporation ~~partnership~~.

(b) Upon the registered agent at the agent's street address.

Section 8. Paragraph (c) of subsection (5) 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.—

(5)

(c) Any such ex parte temporary injunction is ~~shall be~~

effective for a fixed period not to exceed 15 days unless a final injunction is issued on the same case, which extends the effectiveness of the temporary injunction until such time as the final injunction is served. A full hearing, as provided by this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the hearing before or during a hearing for good cause shown by any party, which must ~~shall~~ include a continuance to obtain service of process. An ~~Any~~ injunction shall be extended, if necessary, so that it remains ~~to remain~~ in full force and effect during any period of continuance.

Section 9. Paragraph (c) is added to subsection (4) of section 741.31, Florida Statutes, to read:

741.31 Violation of an injunction for protection against domestic violence.—

(4)

(c) If a final injunction is issued but has not been served, the terms of the temporary injunction, if served, remain in full force and effect until service of the final injunction is effected upon the respondent.

Section 10. Paragraph (c) of subsection (6) of section 784.046, Florida Statutes, is amended to read:

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

(6)

(c) Any such ex parte temporary injunction is ~~shall be~~

effective for a fixed period not to exceed 15 days unless a final injunction is issued on the same case, which extends the effectiveness of the temporary injunction until such time as the final injunction is served. However, an ex parte temporary injunction granted under subparagraph (2)(c)2. is effective for 15 days following the date the respondent is released from incarceration unless a final injunction is issued on the same case, which extends the effectiveness of the temporary injunction until such time as the final injunction is served. A full hearing, as provided by this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant a continuance of the ex parte injunction and the full hearing before or during a hearing, for good cause shown by any party.

Section 11. Paragraph (c) of subsection (5) of section 784.0485, Florida Statutes, is amended to read:

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

(5)

(c) Any such ex parte temporary injunction is effective for a fixed period not to exceed 15 days unless a final injunction is issued on the same case, which shall extend the effectiveness of the temporary injunction until such time as the final injunction is served. A full hearing, as provided in this section, shall be set for a date no later than the date when the temporary injunction ceases to be effective. The court may grant

a continuance of the hearing before or during a hearing for good cause shown by any party, which shall include a continuance to obtain service of process. An injunction shall be extended if necessary, so that it remains ~~to remain~~ in full force and effect during any period of continuance.

Section 12. Present subsection (5) of section 784.0487, Florida Statutes, is redesignated as subsection (6), and a new subsection (5) is added to that section, to read:

784.0487 Violation of an injunction for protection against stalking or cyberstalking.—

(5) A person who violates a final injunction for protection against stalking or cyberstalking by having in his or her care, custody, possession, or control any firearm or ammunition commits a violation of s. 790.233, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 13. Subsections (6) and (7) of section 901.15, Florida Statutes, are amended to read:

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

(6) There is probable cause to believe that the person has committed a criminal act according to s. 790.233 or according to s. 39.504, s. 741.31, ~~or~~ s. 784.047, or s. 785.0487 which violates an injunction for protection entered pursuant to s. 39.504, s. 741.30, ~~or~~ s. 784.046, or s. 784.0485 or a foreign protection order accorded full faith and credit pursuant to s. 741.315, over the objection of the petitioner, if necessary.

(7) There is probable cause to believe that the person has committed an act of domestic violence, as defined in s. 741.28, ~~or~~ dating violence, repeat violence or sexual violence, as provided in s. 784.046, stalking or cyberstalking as provided in s. 784.048, or an act of child abuse as provided in s. 39.01. The decision to arrest does ~~shall~~ not require consent of the victim or consideration of the relationship of the parties. It is the public policy of this state to strongly discourage arrest and charges of both parties for domestic violence or dating violence on each other and to encourage training of law enforcement and prosecutors in these areas. A law enforcement officer who acts in good faith and exercises due care in making an arrest under this subsection, under s. 39.504, s. 741.31(4), ~~or~~ s. 784.047, or s. 784.0487 or pursuant to a foreign order of protection accorded full faith and credit pursuant to s. 741.315, is immune from civil liability that otherwise might result by reason of his or her action.

Section 14. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 7081 PCB CRJS 13-04 Postconviction Capital Case Procedures
SPONSOR(S): Criminal Justice Subcommittee, Gaetz
TIED BILLS: HB 7083 **IDEN./SIM. BILLS:** SJR 1740

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	8 Y, 5 N	Cunningham	Cunningham
1) Justice Appropriations Subcommittee		Toms	Jones Darity
2) Judiciary Committee			

SUMMARY ANALYSIS

This joint resolution proposes to amend Article V, Section 2 of the Florida Constitution, relating to the Florida Supreme Court's authority to adopt rules of practice and procedure. The joint resolution amends the Florida Constitution to require the procedures for postconviction or collateral review of capital cases resulting in a sentence of death to be governed exclusively by, and to the extent provided by, general law.

The resolution does not alter the Florida Supreme Court's authority to adopt rules of practice and procedure in other areas of the law.

The resolution also adds a new section to Article XII of the Florida Constitution specifying that the amendment to Section 2 of Article V (described above) will take effect July 1, 2015, and only applies to capital cases in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

This joint resolution requires publication prior to the election. The Florida Department of State estimates that required publication of a proposed constitutional amendment costs $106.14 per word. At 773 words, the estimated cost to publish the amendment is $82,047. This must be paid regardless of whether the amendment passes, and would be payable in FY 2014-2015 from General Revenue.

If the joint resolution is passed by a 3/5 vote of both houses of the legislature, it will be submitted to the voters in the general election in November of 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Constitution - Rulemaking Authority

Article V, Section 2 of the Florida Constitution, authorizes the Florida Supreme Court to "adopt rules of practice and procedure in all courts . . ." The Florida Supreme Court has adopted rules of practice and procedure governing various subjects. For example, there are rules of civil procedure, rules of judicial administration, rules of criminal procedure, probate rules, and rules of juvenile procedure. The same section of the constitution authorizes the Legislature to repeal court rules of procedure with a 2/3 vote of the membership of both houses.

Separation of Powers

Unlike the federal constitution, the Florida Constitution includes a specific provision pertaining to the separation of powers among the three branches of government. Article II, Section 3 of the Florida Constitution provides, "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The Florida Supreme Court has held that it has exclusive authority to enact rules of practice and procedure in all courts. The Legislature's authority to enact substantive law is also exclusive.[1]

The Florida Supreme Court can protect itself against legislative encroachment on its procedural rulemaking authority by declaring legislative rulemaking enactments an unconstitutional violation of the separation of powers provision. The Legislature's means of shielding the substantive law it passes from alteration by court rule of procedure is by repealing the rule of procedure.[2] The constitution does not preclude the Florida Supreme Court from reenacting a rule that is similar or identical to one that the Legislature has repealed.[3]

Distinguishing Substance from Procedure

Generally speaking, "substantive law" involves matters of public policy affecting the authority of government and rights of citizens relating to life, liberty and property. Court "rules of practice and procedure" govern the administration of courts, and the behavior of litigants within a court proceeding.[4]

Comparison with the Federal System

Federal courts have acknowledged for some time that Congress has the authority to regulate matters of practice and procedure in the federal courts.[5] Congress delegated some of its rulemaking power to the Supreme Court of the United States in 1934 by passing the Rules Enabling Act,[6] which gave the Supreme Court the authority to promulgate rules of practice and procedure for federal courts.

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[1] *See* Art. III, Sec. 1, FLA. CONST.; *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000); *Johnson v. State*, 336 So.2d 93 (Fla. 1976).

[2] *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000).

[3] *Id.*

[4] In *Allen v. Butterworth*, the Florida Supreme Court referred to a discussion explaining the distinction between substance and procedure from Justice Adkins' concurring opinion in *In Re Rules of Criminal Procedure*, 272 So.2d 65, 66 (Fla. 1972):

> Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure" may be described as the machinery of the judicial process as opposed to the product thereof. Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.

[5] *See, e.g., Sibbach v. Wilson & Co.*, 312 U.S. 1 (1941); *Wayman v. Southard*, 23 U.S. 1 (1825).

[6] Pub. L. No. 73-415, (June 19, 1934). The current version of the Rules Enabling Act, as subsequently amended, is codified as 28 U.S.C. ss. 2071-2077.

Notwithstanding this delegation of authority, however, Congress plays a critical role in implementing any rule proposals offered by the Court. All rule proposals are subject to review by Congress and take effect only after the Supreme Court has presented them to Congress, and after Congress has had seven months to review proposed rules or changes.[7] Congress uses the review period to "make sure that the action under the delegation squares with the Congressional purpose."[8] In fact, the federal statute currently provides that "[s]uch rules shall not abridge, enlarge or modify any substantive right."[9]

Rules are proposed by the Judicial Conference of the United States and reviewed by the Supreme Court who, if they approve, forward them to Congress by May 1st.[10] If Congress does not reject, modify, or defer the rules, they take effect as a matter of law on December 1st of the year proposed.[11]

Comparison to Larger States

The rulemaking provisions of the two states with populations larger than Florida—California and Texas—were examined to compare Florida's system with theirs. In both states, their legislatures play an active role in, and have the final word on, the shape of court rules.

In California, the state constitution specifically requires that "[t]he rules adopted shall not be inconsistent with statute."[12] As a result, rules of procedure that are inconsistent with statute are null and void.[13] They also have a committee responsible for promulgating rules called the "Judicial Council." However, the Judicial Council itself promulgates rules, and the state supreme court does not approve such rules.

In Texas, the state Supreme Court is responsible under the constitution to promulgate rules of civil procedure and rules for judicial administration that are not inconsistent with state law.[14] Although the Supreme Court has authority to promulgate such rules, they are subject to legislative control if the legislature chooses to exercise it.[15] Criminal rules of procedure are provided by statute.[16]

Effects of the Court's Rulemaking Authority on the Legislature

The exclusive authority of the Florida Supreme Court over court practice and procedure has impacted the ability of the Legislature to address the time delays in the administration of the death penalty.[17] The Legislature currently has no authority to limit how many postconviction motions can be filed in a capital case and cannot limit the amount of time that a defendant has to file a motion.[18] In a special session held in 2000, the Legislature passed the Death Penalty Reform Act of 2000 (DPRA), which imposed a statute of limitations on postconviction death penalty appeals and provided that the postconviction process would begin while the case was on direct appeal – thereby moving up the start of that part of

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[7] *See* 28 U.S.C. s. 2074.
[8] *Sibbach*, 312 U.S. at 15.
[9] *See* 28 U.S.C. s. 2072(b).
[10] *See* 28 U.S.C. ss. 2073, 2074 and 2075. The Judicial Conference is chaired by the Chief Justice of the United States Supreme Court and consists of the chief judges of the 13 appellate circuits, the chief judge of the Court of International Trade, and other selected federal judges.
[11] *See* 28 U.S.C. s. 2074.
[12] Article VI, Sec. 6(d), CAL. CONST.
[13] California courts have stated that rules of procedure promulgated by their state Judicial Council are subordinate to statutes enacted by the Legislature; if the two conflict, either in letter or merely intent, the court rule is invalid. *See Cooper v. Westbrook Torrey Hills, LP*, 97 Cal.Rptr.2d 742 (Cal. App. 4 Dist. 2000); *In re Jermaine B.*, 26 Cal.Rptr.2d 612 (Cal. App. 3 Dist. 1994). This applies not only to statutes in effect when a rule was adopted, but also to statutes enacted subsequently. *See Trans-Action Commercial Investors, Ltd. v. Jelinek*, 70 Cal.Rptr.2d 449 (Cal. App. 1 Dist. 1997). Therefore, corrective legislation would effectively repeal an inconsistent court rule, and require the promulgation of a new rule of procedure consistent with the new statute.
[14] *See* Art. V, Sec. 31, TEX. CONST.
[15] *See Armadillo Bail Bonds v. State*, 802 S.W.2d 237 (Tex. Cr. App. 1990).
[16] *See* Art. V, Sec. 31, TEX. CONST.
[17] "Postconviction" motions are brought after the conviction and sentence have been affirmed on direct appeal or the time for filing an appeal has expired.
[18] *See Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000).

the appeals process.[19] The statute of limitations in the DPRA provided that appeals filed after the deadline would be time-barred.[20] Shortly thereafter, the Florida Supreme Court found the DPRA unconstitutional.[21] The Court held: ". . . we find that the DPRA is an unconstitutional encroachment on this Court's exclusive power to adopt rules for the practice and procedure in all courts."[22] The Court rejected the state's argument that if Congress has the authority to set a statute of limitations in death penalty postconviction motions, the Florida Legislature should also have the same authority.[23] The court noted that:

> In Florida, Article V, Section 2(a) of the Florida Constitution grants this Court the exclusive authority to adopt rules of procedure. Consequently, the separation of powers argument raised in the present case would never be an issue in the federal system. Unlike the Florida Constitution, the federal constitution does not expressly grant the United States Supreme Court the power to adopt rules of procedure.[24]

Joint Resolution

This joint resolution proposes amending Article V, Section 2 of the Florida Constitution relating to the Supreme Court's rulemaking authority. The joint resolution amends the Florida Constitution to require the procedures for postconviction or collateral review of capital cases resulting in a sentence of death to be governed exclusively by, and to the extent provided by, general law.

The joint resolution does not alter the Supreme Court's authority to adopt rules of practice and procedure in other areas of the law.

The joint resolution also adds a new section to Article XII of the Florida Constitution specifying that the amendment to Section 2 of Article V (described above) will take effect July 1, 2015, and only applies to capital cases in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

If the joint resolution is passed by a 3/5 vote of both houses of the legislature, it will be submitted to the voters in the general election in November of 2014.

B. SECTION DIRECTORY:

This is a joint resolution, which is not divided by sections.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The joint resolution does not appear to have an impact on state government revenues.

2. Expenditures:

   This amendment requires publication prior to the election. The Florida Department of State estimates that required publication of a proposed constitutional amendment costs $106.14 per

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[19] Chapter 2000-3, L.O.F. One of the clauses in the bill's preamble reads: "WHEREAS, in order for capital punishment to be fair, just, and humane for both the family of victims and for offenders, there must be a prompt and efficient administration of justice following any sentence of death ordered by the courts of this state, . . ."

[20] *Id.*

[21] *See Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000).

[22] *Id.* at 53.

[23] *See Id.* at 63. The federal statute discussed was the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132.

[24] *Id.* at 63.

word. At 773 words, the estimated cost to publish the amendment is $82,047. This must be paid regardless of whether the amendment passes, and would be payable in FY 2014-2015 from General Revenue.

The Office of the State Courts Administrator anticipates this resolution to have an insignificant decrease in workload for the State Court System.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The joint resolution does not appear to have an impact on local government revenue.

2. Expenditures:

The joint resolution does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The joint resolution does not appear to have an economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this resolution does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution. The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by a majority of the electors voting on the question, the proposed amendment will take effect July 1, 2015.

B. RULE-MAKING AUTHORITY:

The resolution does to appear to create an need to rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Joint Resolution

A joint resolution proposing an amendment to Section 2 of Article V and the creation of a new section in Article XII of the State Constitution to require the procedures for postconviction or collateral review of capital cases resulting in a sentence of death to be governed exclusively by, and to the extent provided by, general law, and to provide an effective date.

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

That the following amendment to Section 2 of Article V and the creation of a new section in Article XII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 2. Administration; practice and procedure.—

(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. The supreme court shall adopt rules to allow the court and the district courts of

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

appeal to submit questions relating to military law to the federal Court of Appeals for the Armed Forces for an advisory opinion. Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

(b) Notwithstanding subsection (a), the procedures for postconviction or collateral review of capital cases resulting in a sentence of death shall be governed exclusively by, and to the extent provided by, general law.

(c) ~~(b)~~ The chief justice of the supreme court shall be chosen by a majority of the members of the court; shall be the chief administrative officer of the judicial system; and shall have the power to assign justices or judges, including consenting retired justices or judges, to temporary duty in any court for which the judge is qualified and to delegate to a chief judge of a judicial circuit the power to assign judges for duty in that circuit.

(d) ~~(c)~~ A chief judge for each district court of appeal shall be chosen by a majority of the judges thereof or, if there is no majority, by the chief justice. The chief judge shall be responsible for the administrative supervision of the court.

(e) ~~(d)~~ A chief judge in each circuit shall be chosen from among the circuit judges as provided by supreme court rule. The chief judge shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit.

ARTICLE XII

SCHEDULE

Procedures for postconviction or collateral review of capital cases resulting in a sentence of death.—The amendment to Section 2 of Article V requiring the procedures for postconviction or collateral review of capital cases resulting in a sentence of death to be governed exclusively by, and to the extent provided by, general law shall take effect July 1, 2015, and shall only apply to capital cases in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 2

ARTICLE XII

POSTCONVICTION DEATH PENALTY PROCEEDINGS.—Proposing an amendment to the State Constitution to require postconviction or collateral review of capital cases resulting in a death sentence to be governed exclusively by, and to the extent provided by, general law.

The constitution currently allows only the Supreme Court to adopt rules relating to the practice and procedure in courts, including rules relating to postconviction or collateral review of capital cases resulting in a death sentence, so the procedures in such cases are currently governed by Florida Supreme Court rules.

This amendment provides that the procedures for postconviction or collateral review of capital cases resulting in a death sentence be governed exclusively by, and to the

extent provided by, general law. A general law in Florida is enacted if passed by a majority of members voting in each chamber of the Legislature and then either signed by the Governor or, if vetoed by the Governor, then passed by a two-thirds vote of the members voting in each legislative chamber.

The proposed amendment takes effect July 1, 2015, and applies to capital cases in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Justice Appropriations Subcommittee

Representative Gaetz offered the following:

Amendment (with title amendment)

Between lines 1822 and 1823, insert:

Section 33. Effective July 1, 2013, the sum of $82,047 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of State for purposes of publishing, as required under s. 5(d), Article XI of the State Constitution, the proposed constitutional amendment contained in House Joint Resolution 7081, or a similar joint resolution having substantially the same specific intent and purpose.

Section 34. Effective July 1, 2013, four full-time equivalent positions, with associated salary and rate of 220,000, are authorized and $417,338 in recurring funds from the General Revenue Fund and $14,832 in nonrecurring general revenue is appropriated to the Justice Administration Commission for the creation of the northern region office of the capital collateral regional council as provided in this bill.

Amendment No. 1

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

Remove line 100 and insert:

severability; providing an appropriation to the Department of State; providing an appropriation to the Justice Administration Commission; providing effective dates and a

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7083 PCB CRJS 13-05 Postconviction Capital Case Proceedings
SPONSOR(S): Criminal Justice Subcommittee, Gaetz
TIED BILLS: HJR 7081 **IDEN./SIM. BILLS:** SB 1750

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	9 Y, 4 N	Cunningham	Cunningham
1) Justice Appropriations Subcommittee		Toms	Jones Darity
2) Judiciary Committee			

SUMMARY ANALYSIS

Currently, Rules 3.811, 3.812, 3.850, 3.851, and 3.852 of the Florida Rules of Criminal Procedure, and Rule 9.142 of the Florida Rules of Appellate Procedure govern all state postconviction proceedings in capital cases.

The bill codifies the majority of the provisions of the rules identified above in their entirety. However, in an effort to make the capital postconviction process more efficient, the bill modifies provisions of the rules, adds new provisions to the rules, and creates new statutes addressing areas not currently contemplated by the rules. The bill:

- Sets standards for conflict of interest determinations;
- Bars courts from considering postconviction motions that are not fully pled or filed within statutorily established timeframes;
- Prohibits courts from granting extensions of time at various stages of the postconviction process;
- Shortens timeframes relating to case management conferences and postconviction motion amendments;
- Establishes timeframes in which the Florida Supreme Court must hear oral arguments;
- Requires the Florida Supreme Court to rule on an appeal of an initial or successive postconviction motion within 180 days after oral arguments have concluded; and
- Creates reporting requirements that hold courts accountable for delays in the postconviction process.

The bill also removes the court's authorization to appoint a public defender, private attorney, or a registry attorney to represent a death-sentenced person in clemency proceedings in instances where the application for clemency is filed on or after July 1, 2013.

The bill eliminates the registry attorney "pilot program" and reestablishes the capital collateral regional counsel (CCRC) in the northern region of the state. This will have a $423,338 impact to general revenue.

Due to the nuances of capital cases and the multitude of agencies and personnel involved, it is difficult to precisely quantify the costs associated with Florida's capital postconviction process. Research shows that the time it takes to litigate a capital case on appeal in both state and federal court is a major factor in determining how long it takes for an inmate to progress through the judicial system. How much that litigation costs can vary widely from case to case, depending on the legal matters involved. However, to the extent that the bill's provisions shorten the postconviction process, they will likely result in a cost savings to the state. Reestablishing the CCRC in the northern region will likely have a negative fiscal impact. See fiscal section.

This bill is tied to and is contingent upon the voter's approval of HJR 7081, which amends Article V, Section 2 of the Florida Constitution to require the procedures for postconviction or collateral review of capital cases resulting in a sentence of death be governed by, and to the extent provided by, general law.

The "procedural" portions of the bill take effect July 1, 2015, contingent on voter approval of HJR 7081 in the general election of 2014. Other portions of the bill are effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Death Row Statistics

Florida is currently one of 33 states that impose the death penalty.[1] As of March 3, 2013, there were 404 people on death row in Florida – more than any other state aside from California.[2] On average, Florida death row inmates spend 13.22 years on death row prior to execution.[3] Of the 404 inmates on death row, 155 have been in custody for more than 20 years, and ten have been on death row for more than 35 years.[4] Between 1976-2012, Florida executed 74 inmates.[5] During the same period, Texas executed 492 inmates, Virginia executed 109 inmates, and Oklahoma executed 102 inmates.[6] Florida executed 2 death row inmates in 2011, and 3 in 2012.[7]

Capital Cases – Direct Appeal

A defendant who is convicted of a crime and sentenced to death automatically receives a direct appeal of his or her conviction and sentence to the Florida Supreme Court.[8] During the direct appeal, the defendant is represented by the public defender's office, if the defendant is indigent, or by a private attorney. Matters which are raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial, and other matters objected to during the course of the trial such as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court.

The Florida Supreme Court must render a judgment within two years of the filing of the notice of appeal.[9] If the Florida Supreme Court affirms the appellant's conviction and sentence, the appellant has 90 days after the decision is entered to file a petition for a writ of certiorari with the United States Supreme Court seeking discretionary review of the Florida Supreme Court's decision.[10] If the United States Supreme Court denies the case, the direct appeal has concluded, and the defendant may begin state postconviction proceedings.

State Postconviction Proceedings

Rules 3.811, 3.812, 3.850, 3.851, and 3.852 of the Florida Rules of Criminal Procedure, and Rule 9.142 of the Florida Rules of Appellate Procedure govern all state postconviction proceedings initiated by death row inmates challenging a conviction and/or death sentence. Unlike a direct appeal, which challenges the legal errors apparent from the trial transcripts or record on appeal, state postconviction proceedings are designed to address claims which are "collateral" to what transpired in the trial court (e.g., claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence, or claims that the prosecution failed to disclose exculpatory evidence). Since the consideration of these claims often require new fact finding, postconviction motions are filed in the trial court which sentenced

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[1] The other states are California, Texas, Pennsylvania, Alabama, North Carolina, Ohio, Arizona, Georgia, Louisiana, Tennessee, Nevada, Oklahoma, South Carolina, Mississippi, Missouri, Arkansas, Oregon, Kentucky, Delaware, Idaho, Indiana, Virginia, Nebraska, Kansas, Utah, Washington, Maryland, South Dakota, Colorado, Montana, New Hampshire, and Wyoming. *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center, www.deathpenaltyinfo.org/FactSheet.pdf (last visited on March 3, 2013).

[2] California has 724 inmates on death row. *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center, www.deathpenaltyinfo.org/FactSheet.pdf (last visited on March 3, 2013). *Also see,* http://www.dc.state.fl.us/activeinmates/deathrowroster.asp (last visited on March 3, 2013).

[3] http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics (last visited on March 3, 2013).

[4] http://www.dc.state.fl.us/activeinmates/deathrowroster.asp (last visited on March 3, 2013).

[5] http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics (last visited on March 3, 2013).

[6] *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center, www.deathpenaltyinfo.org/FactSheet.pdf (last visited on March 3, 2013).

[7] *Id.*

[8] Section 921.141(4), F.S.; Art. 5, Sec. 3, FLA. CONST.; Fla. R. App. Proc. 9.030(a)(1)(A)(i).

[9] Section 921.141(4), F.S.

[10] 28 U.S.C. s. 1257; Sup. Ct. R. 13.

the defendant to death. Appeals from the grant or denial of postconviction relief are to the Florida Supreme Court. A detailed review of how state postconviction proceedings are currently conducted.

Appointment of Counsel, Judge, and other Preliminary Matters

When the Florida Supreme Court affirms a judgment and sentence of death on direct appeal, the court must simultaneously appoint the appropriate office of the Capital Collateral Regional Counsel (CCRC)[11] to represent the inmate during postconviction proceedings.[12] If the regional counsel has a conflict of interest and the postconviction judge accepts their motion to withdraw, or the inmate was convicted and sentenced to death in the Northern Region of Florida (which no longer has a CCRC office), the chief judge of the circuit court must appoint an attorney from the statewide registry[13] to represent the inmate in postconviction proceedings.[14]

Within 45 days of appointment of postconviction counsel, the inmate's trial counsel must provide postconviction counsel with all information pertaining to the inmate's capital case and postconviction counsel must maintain the confidentiality of all confidential information received.[15]

Within 30 days of the judgment of conviction and sentence of death being affirmed on direct appeal, the chief judge must assign the case to a judge qualified to conduct capital proceedings.[16] Within 90 days of the assignment, the judge must hold a status hearing and thereafter hold status conferences at least every 90 days until:

- An evidentiary hearing, if ordered, has been completed; or
- The motion has been ruled on without a hearing.[17]

At the status hearing and conferences, the judge will entertain pending motions, disputes involving public records, or any other matters ordered by the court.[18]

Public Records

Rule 3.852 of the Florida Rules of Criminal Procedure establishes the timeframes and procedures that apply to the production of capital postconviction public records. The rule requires the Attorney General (AG), within 15 days after receiving notification of the Florida Supreme Court's mandate affirming the sentence of death, to file a written notice of the mandate with the trial court and serve a copy of it on:

- The state attorney who prosecuted the case;
- The Department of Corrections (DOC); and
- The defendant's trial counsel.[19,20]

The notice to the state attorney and to DOC must direct them to submit public records to the records repository within 90 days after receipt of the notice.[21] The notice to the state attorney must also direct

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[11] The CCRC represents persons convicted and sentenced to death for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. Each regional office is administered by a regional counsel. Section 27.701(1), F.S.

[12] Fla. R. Crim. Proc. 3.851(b)(1).

[13] Section 27.701(2), F.S., requires the responsibilities of the northern region CCRC office to be met through a pilot program using only attorneys from the registry of attorneys maintained pursuant to s. 27.710, F.S.

[14] Fla. R. Crim. Proc. 3.851(b)(1); sections. 27.701(2), 27.703(1), and 27.710(5), F.S.

[15] Fla. R. Crim. Proc. 3.851(c)(4).

[16] Fla. R. Crim. Proc. 3.851(c)(1).

[17] Fla. R. Crim. Proc. 3.851(c)(2).

[18] *Id.*

[19] Fla. R. Crim. Proc. 3.852(d)(1).

[20] The original of all notices, requests, or objections filed under Rule 3.852 must be filed with the clerk of the trial court. Copies must be served on the trial court, the AG, the state attorney, postconviction counsel, and any affected person or agency, unless otherwise required by this section. Service must be made pursuant to Florida Rule of Criminal Procedure 3.030. In all instances requiring written notification or request, the party who has the obligation of providing a notification or request shall provide proof of receipt. Fla. R. Crim. Proc. 3.852(c).

the state attorney to notify each law enforcement agency involved in the investigation of the capital case to submit public records to the records repository[22] within 90 days of receiving the notice.[23]

Within 90 days of receiving the AG's notice of the mandate, the state attorney and the defendant's trial counsel must provide the AG with the name and address of any person or agency that has public records or information pertinent to the case which has not previously been provided to defendant's postconviction counsel.[24] Within 15 days of receiving this information, the AG must notify the additional persons or agencies that they are required to copy, index, and deliver to the records repository all public records pertaining to the case that are in their possession.[25] The additional entities have 90 days from the receipt of the AG's notice to produce the records.[26,27]

Records delivered to the repository that are confidential or exempt pursuant to s. 119.07(1), F.S., or Art. I, Sec. 24(a) of the Florida Constitution must be separately contained, without being redacted, and sealed.[28] The outside of the container must clearly identify:

- That the public record is confidential or exempt;
- That the seal may not be broken without an order from the trial court; and
- The nature of the public records and the legal basis for the exemption.[29]

Upon court order, sealed containers must be shipped to the clerk of the court and may only be opened by the trial court in camera.[30]

Within 240 days after postconviction counsel is appointed, retained, or appear pro bono, counsel must send a written demand for additional public records to each entity described above.[31] Within 90 days of an entity receiving such demand, the entity must deliver to the records repository any additional public records in the entity's possession that pertain to the case, and certify that all such records have been provided (or that records previously provided were complete).[32] The entity may object to the demand for additional public records within 60 days of receiving the demand.[33] In such instances, the trial court must hold a hearing and rule within 30 days of the filing of the objection.[34] The court must order an entity to produce additional public records if the court determines each of the following exists:

- Postconviction counsel has made a timely and diligent search;
- Postconviction counsel's written demand identifies, with specificity, those additional public records that are not at the records repository;
- The additional public records sought are relevant to the subject matter of a postconviction proceeding under Rule 3.851, or appear reasonably calculated to lead to the discovery of admissible evidence; and

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[21] Fla. R. Crim. Proc. 3.852(d)(2) and (3), and (e)(2) and (3).
[22] Section 27.7081, F.S., requires the Secretary of State to establish and maintain a records repository for the purpose of archiving capital postconviction public records.
[23] Fla. R. Crim. Proc. 3.852(e)(1) and (4).
[24] Fla. R. Crim. Proc. 3.852(d)(2) and (3).
[25] Fla. R. Crim. Proc. 3.852(d)(4).
[26] Fla. R. Crim. Proc. 3.852(e)(5).
[27] Persons and agencies required to produce records pursuant to Rule 3.852 must bear the costs of doing so, must provide written notification of compliance to the AG, and certify that to the best of their knowledge, all public records in their possession have been copied, indexed, and delivered to the records repository. Fla. R. Crim. Proc. 3.852(e).
[28] Fla. R. Crim. Proc. 3.852(f)(1).
[29] *Id.*
[30] The moving party bears the costs associated with the transportation and inspection of the records by the trial court. Fla. R. Crim. Proc. 3.852(f)(2).
[31] If counsel was appointed before October 1, 2001, counsel must submit the demand within 90 days of appointment, etc. Fla. R. Crim. Proc. 3.852(g)(1).
[32] Fla. R. Crim. Proc. 3.852(g)(2).
[33] Fla. R. Crim. Proc. 3.852(g)(3).
[34] *Id.*

- The additional public records request is not overly broad or unduly burdensome.[35]

Postconviction counsel that seeks to obtain public records in addition to those described above must file an affidavit in the trial court which:

- Attests that postconviction counsel has made a timely and diligent search of the records repository;
- Identifies with specificity those public records not at the records repository;
- Establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and
- Must be served on the AG, state attorney, and any affected person or agency.[36]

Within 30 days of the filing of the affidavit, the trial court must order a person or agency to produce additional public records, but only if the court finds:

- Postconviction counsel has made a timely and diligent search of the records repository;
- Postconviction counsel's affidavit identifies with specificity those additional public records that are not at the records repository;
- The additional public records sought are either relevant to the subject matter of a capital postconviction proceeding or appear reasonably calculated to lead to the discovery of admissible evidence; and
- The additional records request is not overly broad or unduly burdensome.[37]

In any capital postconviction public records proceeding, the trial court may:

- Compel or deny disclosure of records;
- Conduct an in-camera inspection;
- Extend established timeframes upon a showing of good cause;
- Impose sanctions upon any party, person, or agency affected by this section including initiating contempt proceedings, taxing expenses, extending time, ordering facts to be established, and granting other relief; and
- Resolve any dispute unless jurisdiction is in an appellate court.[38]

Any objections or motions to compel production of public records must be filed within 30 days after the end of the production time period provided.[39] Counsel for the party objecting or moving to compel must file a copy of the objection or motion directly with the trial court, which must hold a hearing on the objection or motion on an expedited basis.[40] The trial court may order mediation for any controversy as to public records production in accordance with Florida Rules of Civil Procedure 1.700, 1.710, 1.720, 1.730, or the trial court may refer any such controversy to a magistrate in accordance with Florida Rule of Civil Procedure 1.490.[41]

Time Limits for Filing an Initial Postconviction Motion

Any person sentenced to death whose judgment of conviction and sentence have been affirmed on direct appeal may file an initial Rule 3.851 motion, under oath, seeking postconviction relief.[42] This motion must be filed within one year after the inmate's judgment and sentence become final. A judgment and sentence become final:

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[35] *Id.*
[36] Fla. R. Crim. Proc. 3.852(i)(1).
[37] Fla. R. Crim. Proc. 3.852(i)(2).
[38] Fla. R. Crim. Proc. 3.852(k).
[39] Fla. R. Crim. Proc. 3.852(l)(2).
[40] *Id.*
[41] Fla. R. Crim. Proc. 3.852(l)(3).
[42] Fla. R. Crim. Proc. 3.851.

- On the expiration of the time permitted to file in the United States Supreme Court a petition for writ of certiorari seeking review of the Florida Supreme Court's decision affirming the inmate's judgment and sentence of death (90 days after the opinion becomes final); or
- On the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.[43]

The Florida Supreme Court may grant an extension of time for the filing of a postconviction motion if the inmate's counsel can demonstrate good cause as to why counsel could not file the motion within the one-year time limit.[44]

A motion filed after the one-year time limit will not be entertained unless the movant alleges that:
- The facts on which the claim is predicated were not known to the movant or his/her attorney and could not have been ascertained within the one-year time limit by the exercise of due diligence;[45]
- The fundamental constitutional right asserted was not established within the one-year time limit and has been held to apply retroactively; or
- His/her postconviction counsel, through neglect, failed to file the motion.[46]

In addition to the aforementioned exceptions, Florida law allows a litigant to overcome a valid procedural bar by claiming that the alleged error constitutes "fundamental error." In order for an error to be fundamental and justify consideration—despite being otherwise barred—"the error must reach down into the validity of the trial itself to the extent that a verdict of guilty [or sentence of death] could not have been obtained without the assistance of the alleged error."[47] For instance, improper comments made in the closing arguments of the penalty phase only constitute fundamental error when they are so prejudicial as to taint the jury's sentencing recommendation.[48] Fundamental error can be raised at any time,[49] including to collaterally attack a conviction or sentence in postconviction proceedings.[50]

Timely filed motions may be amended or supplemented outside of the one-year time limit.[51] To accomplish this, the movant must file a motion to amend no later than 30 days before the evidentiary hearing, including in the motion the reasons additional claims were not raised upon the initial filing and attaching to the motion the claims sought to be added.[52] If the motion is allowed, the state has 20 days after the amended motion is filed to file an amended answer.[53]

Contents of an Initial Postconviction Motion

An initial postconviction motion must include:
- A statement specifying the judgment and sentence under attack and the name of the court that rendered the judgment and sentence;
- A statement of each issue raised on appeal and the disposition of each issue;
- The nature of the relief sought;
- A detailed allegation of the factual basis for any claim for which an evidentiary hearing is sought; and

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[43] *Id.*
[44] Fla. R. Crim. Proc. 3.851(d)(5).
[45] In order for evidence to be "newly discovered," the movant must demonstrate that: (1) the asserted facts "must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that movant or his/her] counsel could not have known them by the use of diligence; and (2) "the newly discovered evidence must be of such nature that it would *probably* produce an acquittal on retrial." *See Scott v. Dugger*, 604 So.2d 465, 468 (Fla. 1992); *see also Miller v. State*, 926 So.2d 1243, 1258 (Fla. 2006).
[46] Fla. R. Crim. Proc. 3.851(d)(2).
[47] *Miller*, 926 So.2d at 1261.
[48] *Id.* Fundamental error can never be found harmless. *Johnson v. State*, 460 So.2d 954, 958 (Fla. 5th DCA 1984).
[49] *Moore v. State*, 924 So.2d 840, 841 (Fla. 4th DCA 2006).
[50] *Johnson*, 460 So.2d at 958.
[51] Fla. R. Crim. Proc. 3.851(d)(4) and (f)(4).
[52] Fla. R. Crim. Proc. 3.851(f)(4).
[53] *Id.*

- A detailed allegation as to the basis for any purely legal or constitutional claims for which an evidentiary hearing is not required and the reason that these claims could not have been or were not raised on direct appeal.[54]

The movant must also attach to the motion a memorandum of law setting forth the relevant case law supporting relief on each asserted claim.[55] The memorandum of law must also state why claims that should have or could have been raised on direct appeal are being raised for the first time in the postconviction motion.[56]

The court may strike an initial motion that fails to comply with the above requirements, but it is an abuse of discretion to do so without also allowing the movant to amend the motion within a reasonable time (normally between 10 and 30 days).[57] The state has 60 days from the filing of the initial postconviction motion to file its answer.[58]

Discovery and the Evidentiary Hearing

Within 90 days of the state filing its answer to an initial postconviction motion, the court must hold a case management conference where both parties must "disclose all documentary exhibits that they intend to offer at the evidentiary hearing, provide an exhibit list of all such exhibits, and exchange a witness list with the names and addresses of any potential witnesses."[59] At this conference, the court must also:

- Schedule an evidentiary hearing, to be held within 90 days, on claims asserted by the movant which require a factual determination;
- Hear argument on purely legal claims not based on disputed facts; and
- Resolve any discovery disputes.[60]

The court, upon a showing of good cause by either party, may extend the time for holding an evidentiary hearing on the initial postconviction motion for up to 90 days.[61]

The court may dispose of an initial postconviction motion without holding an evidentiary hearing where:

- The motion, files, and records in the case conclusively show that the movant is not entitled to any relief; or
- The motion or a particular claim is legally insufficient.[62]

The movant must support the motion with specific factual allegations;[63] conclusory allegations will not justify an evidentiary hearing.[64]

When an evidentiary hearing is held, the court must immediately request a transcript of the hearing at its conclusion.[65] Within 30 days after receiving the transcript, the court must render its order, including:

- A ruling on each claim considered at the evidentiary hearing and all other claims asserted in the motion;
- Detailed findings of fact and conclusions of law with respect to each claim; and

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[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Bryant v. State*, 901 So.2d 810, 819 (Fla. 2005).
[58] Fla. R. Crim. Proc. 3.851(f)(3)(A).
[59] The list of potential witnesses must include expert witnesses and the parties must attach reports of any potential expert witnesses to the list. Fla. R. Crim. Proc. 3.851(f)(5)(A).
[60] *Id.*
[61] Fla. R. Crim. Proc. 3.851(f)(5)(C).
[62] *Johnson v. State*, 904 So.2d 400, 403 (Fla. 2005).
[63] *Id.* at 404 (citing *Thompson v. State*, 759 So.2d 650, 659 (Fla. 2000)).
[64] *Id.* (citing *Kennedy v. State*, 547 So.2d 912, 913 (Fla. 1989)).
[65] Fla. R. Crim. Proc. 3.851(f)(5)(D).

- Attached or referenced portions of the record as are necessary for meaningful appellate review.[66]

Either party may move for a rehearing within 15 days of the rendition of the court's order on the postconviction motion.[67] Responses to such motions must be made within 10 days, and the court must render an order disposing of the motion for rehearing within 15 days.[68]

The movant may appeal the court's decision to the Florida Supreme Court within 30 days from the date the court rendered its order on the postconviction motion.[69] If the Florida Supreme Court affirms the lower court's decision, the movant may file a petition for a writ of certiorari with the United States Supreme Court.[70] If the United States Supreme Court declines review or affirms the lower's court decision, the postconviction appeal is complete.

Successive Motions

When the state court has previously ruled on a postconviction motion, a motion filed thereafter challenging the same judgment and sentence is considered a "successive motion."[71] In addition to the contents required for an initial motion, a successive motion must include:

- The disposition of all previous claims raised in postconviction proceedings and the reason(s) the claims in the present motion were not raised in the former motion(s); and
- The following, if the claims are based on newly discovered evidence:
  - The names, addresses, and telephone numbers of all witnesses supporting the claim;
  - A statement that the witness will be available to testify under oath to the facts alleged in the motion, should an evidentiary hearing be held on that issue;
  - If evidentiary support is in the form of documents, copies of relevant documents and affidavits must be attached to the motion; and
  - As to any witness or document in the motion or attachment to the motion, an explanation as to why the witness or document was not previously available.[72]

The state has 20 days from the filing of a successive motion to file its answer.[73]

Within 30 days after the state files its answer to a successive postconviction motion, the court must hold a case management conference, at which the court must determine whether an evidentiary hearing should be held and hear arguments on any purely legal claims not based on disputed facts.[74] As with initial postconviction motions, the court may dispose of any successive motion without holding an evidentiary hearing where the motion, files, and records in the case conclusively show that the movant is not entitled to any relief.[75] Additionally, the court may dismiss successive motions without an evidentiary hearing where:

- The movant does not provide a reason for failing to raise the successive claims in his/her previous Rule 3.851 motion; or[76]
- The motion raises claims that have already been asserted and adjudicated on the merits in a previous Rule 3.851 proceeding.[77]

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[66] *Id.*
[67] Fla. R. Crim. Proc. 3.851(f)(7).
[68] *Id.*
[69] Fla. R. App. Proc. 9.110(b), Fla. R. App. Proc. 9.140(b)(1)(D) and (b)(3).
[70] 28 U.S.C. s. 1257.
[71] Fla. R. Crim. Proc. 3.851(e)(2).
[72] *Id.*
[73] Fla. R. Crim. Proc. 3.851(f)(3)(B).
[74] Fla. R. Crim. Proc. 3.851(f)(5)(B).
[75] *Id.*
[76] *See, e.g., Hill v. State*, 921 So.2d 579, 584 (Fla. 2006)(holding that the movant's successive claim alleging that he was mentally retarded and, therefore, could not be executed pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), was procedurally barred because the movant gave no reason why the claim could not have been raised in his 2003 Rule 3.851 motion, which was filed after the issuance of the *Atkins* decision).

If, however, the court determines that an evidentiary hearing should be held, the hearing should be scheduled and held within 60 days.[78] The court, upon a showing of good cause by either party, may extend the time for holding an evidentiary hearing on a successive motion for up to 90 days.[79]

The deadlines for requesting transcripts and rendering orders after an evidentiary hearing on a successive postconviction motion are the same as those applicable to initial postconviction motions.[80] The rules relating to motions for rehearing and appealing an initial postconviction motion also apply to successive motions.[81]

Appeal to the Florida Supreme Court

Postconviction Motions

Any party to a Rule 3.851 motion may appeal a trial court's final order to the Florida Supreme Court (Court) by filing a notice of appeal with the trial clerk within 30 days of the rendition of the order.[82] When the notice of appeal is filed, the Court's chief justice directs the appropriate chief judge of the circuit court to monitor the preparation of the complete record[83] for timely filing in the Court.[84]

After the record is filed, the clerk establishes a briefing schedule that gives the defendant 30 days to serve an initial brief.[85] The answer brief must be served within 20 days after service of the initial brief, and the reply brief, if any, must be served within 20 days after service of the answer brief. The cross reply brief, if any, must be served within 20 days thereafter.[86] If any brief is delinquent, an order to show cause may be issued,[87] and sanctions may be imposed.[88] Oral argument is scheduled after the filing of the defendant's reply brief.[89] The rules do not prescribe when the Court must rule on the appeal.

Petitions for Extraordinary Relief

Petitions for extraordinary relief are generally treated as original proceedings.[90] Such petitions must be in the form prescribed by Rule 9.100 of the Rules of Appellate Procedure, may include supporting documents, and must include in the statement of facts:

- The date and nature of the lower tribunal's order sought to be reviewed;
- The name of the lower tribunal rendering the order;
- The nature, disposition, and dates of all previous court proceedings;
- If a previous petition was filed, the reason the claim in the present petition was not raised previously; and
- The nature of the relief sought.[91]

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[77] *See, e.g., Johnson v. State*, 904 So.2d 400, 412 (Fla. 2005)(rejecting the movant's successive claim that lethal injection constitutes cruel and unusual punishment because it was raised and rejected in the movant's previous postconviction proceeding).

[78] Fla. R. Crim. Proc. 3.851(f)(5)(B).

[79] Fla. R. Crim. Proc. 3.851(f)(5)(C).

[80] Fla. R. Crim. Proc. 3.851(f)(5)(D).

[81] Fla. R. Crim. Proc. 3.851(f)(7) and (8).

[82] Fla. R. Crim. Proc. 3.851(f)(8).

[83] The complete record in a death penalty appeal includes all items required by Rule 9.200 of the Florida Rules of Appellate Procedure and by any order issued by the Court. In any appeal following the initial direct appeal, the record that is electronically transmitted must begin with the most recent mandate issued by the Court, or the most recent filing not already electronically transmitted in a prior record in the event the preceding appeal was disposed of without a mandate, and excludes any materials already transmitted to the Court as the record in any prior appeal. Fla. R. App. Proc. 9.142(a)(1)(B).

[84] Fla. R. App. Proc. 9.142(a)(1).

[85] Fla. R. App. Proc. 9.142(a)(2).

[86] *Id.*

[87] Pursuant to Fla. R. Crim. Proc. 3.840.

[88] Fla. R. App. Proc. 1.942(a)(3).

[89] Fla. R. App. Proc. 1.942(a)(4).

[90] Fla. R. App. Proc. 1.942(b)(1).

[91] Fla. R. App. Proc. 1.942(b)(2).

Petitions seeking a belated appeal must include a detailed allegation of the specific acts, sworn to by the petitioner or petitioner's counsel, that constitute the basis for entitlement to belated appeal, including:

- Whether petitioner requested counsel to proceed with the appeal and the date of any such request;
- Whether counsel misadvised the petitioner as to the availability of appellate review or the filing of the notice of appeal; or
- Whether there were circumstances unrelated to counsel's action or inaction, including names of individuals involved and dates of the occurrences, that were beyond the petitioner's control and otherwise interfered with the petitioner's ability to file a timely appeal.[92]

A petition for belated appeal may not be filed more than one year after the expiration of time for filing the notice of appeal from a final order denying Rule 3.851 relief, unless it alleges under oath with a specific factual basis that the petitioner:

- Was unaware an appeal had not been timely filed, was not advised of the right to an appeal, was misadvised as to the rights to an appeal, or was prevented from timely filing a notice of appeal due to circumstances beyond the petitioner's control; and
- Could not have ascertained such facts by the exercise of due diligence.[93]

A petition for belated appeal may never be filed more than two years after the expiration of time for filing the notice of appeal.[94]

A petition alleging ineffective assistance of direct appeal counsel must include detailed allegations of the specific acts that constitute the alleged ineffective assistance of counsel and must be filed simultaneously with the initial brief in the appeal from the lower tribunal's order on the defendant's application for postconviction relief.[95]

Petitions Seeking Review of Nonfinal Orders in Death Penalty Postconviction Proceedings
Petitions seeking review of nonfinal orders in postconviction proceedings are generally treated as original proceedings, and must be filed within 30 days of rendition of the nonfinal order to be reviewed.[96] Either party to the proceeding may file a petition, but must serve it on the opposing party and the judge who issued the nonfinal order being reviewed.[97]

The petition must be in the form prescribed by Rule 9.100 of the Florida Rules of Appellate Procedure and must contain:

- The basis for invoking the jurisdiction of the court;
- The date and nature of the order sought to be reviewed;
- The name of the lower tribunal rendering the order;
- The name, disposition, and dates of all previous trial, appellate, and postconviction proceedings relating to the conviction and death sentence that are the subject of the proceedings in which the order sought to be reviewed was entered;
- The facts on which the petitioner relies, with references to the appropriate pages of the supporting appendix;
- Argument in support of the petition, including an explanation of why the order departs from the essential requirements of law and how the order may cause material injury for which there is no adequate remedy on appeal, and appropriate citations of authority; and

[92] Fla. R. App. Proc. 1.942(b)(3)(A).
[93] Fla. R. App. Proc. 1.942(b)(3)(B).
[94] *Id.*
[95] Fla. R. App. Proc. 1.942(b)(4).
[96] Fla. R. App. Proc. 1.942(c)(2) and (c)(3)(A).
[97] Fla. R. App. Proc. 1.942(c)(3).

- The nature of the relief sought.[98]

The petition must be accompanied by an appendix[99] containing the portions of the record necessary for a determination of the issues presented.[100]

If the petition demonstrates a preliminary basis for relief or a departure from the essential requirements of law that may cause material injury for which there is no adequate remedy by appeal, the Court may issue an order directing the respondent to show cause, within the time set by the Court, why relief should not be granted.[101] No response is permitted unless ordered by the Court.[102] Within 20 days after service of the response or such other time set by the Court, the petitioner may serve a reply, which may not exceed 15 pages in length, and supplemental appendix.[103]

A stay of proceedings is not automatic - the party seeking a stay must petition the Court for a stay.[104] During the pendency of a review of a nonfinal order, unless a stay is granted by the Court, the lower tribunal may proceed with all matters, except that the lower tribunal may not render a final order disposing of the cause pending review of the nonfinal order.[105]

Inmate's Motion to Dismiss Postconviction Proceedings and to Discharge Postconviction Counsel
An inmate may file a motion to dismiss pending postconviction proceedings and to discharge postconviction counsel pro se.[106] In such instances, the clerk must serve copies of the motion on counsel of record for both the inmate and the state, and counsel of record may file responses within 10 days.[107]

The trial judge must review the motion and the responses and schedule a hearing, at which the inmate, collateral counsel, and the state must be present.[108] At the hearing, the judge must examine the inmate and hear the arguments of the inmate, postconviction counsel, and the state. If the judge concludes that there are reasonable grounds to believe the inmate is not mentally competent, no fewer than two or more than three qualified experts shall be appointed to examine the inmate.[109] The experts must file reports with the trial court setting forth their findings. The trial court must then conduct an evidentiary hearing and enter an order setting forth findings of competency or incompetency.[110]

If the inmate is found to be incompetent, the trial court must deny the motion without prejudice.[111] If the inmate is found to be competent, the trial court must conduct a complete inquiry to determine whether the inmate knowingly, freely and voluntarily wants to dismiss pending postconviction proceedings and discharge postconviction counsel.[112]

If the trial court determines that the inmate has made the decision to dismiss pending postconviction proceedings and discharge collateral counsel knowingly, freely, and voluntarily, the court must enter an order dismissing all pending postconviction proceedings and discharging collateral counsel.[113] If the

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[98] Fla. R. App. Proc. 1.942(c)(4).
[99] As prescribed by Fla. R. App. Proc. 9.220.
[100] Fla. R. App. Proc. 1.942(c)(5).
[101] Fla. R. App. Proc. 1.942(c)(6).
[102] Fla. R. App. Proc. 1.942(c)(7).
[103] Fla. R. App. Proc. 1.942(c)(8).
[104] Fla. R. App. Proc. 1.942(c)(9).
[105] *Id.*
[106] Fla. R. Crim. Proc. 3.851(i)(2).
[107] *Id.*
[108] Fla. R. Crim. Proc. 3.851(i)(3).
[109] Fla. R. Crim. Proc. 3.851(i)(4).
[110] *Id.*
[111] Fla. R. Crim. Proc. 3.851(i)(5).
[112] Fla. R. Crim. Proc. 3.851(i)(6).
[113] Fla. R. Crim. Proc. 3.851(i)(7).

trial court determines that the opposite is true, it must enter an order denying the motion without prejudice.[114]

If the trial court grants the motion:

- A copy of the motion, the order, and the transcript of the hearing or hearings conducted on the motion shall be electronically forwarded to the clerk of the Florida Supreme Court within 30 days; and
- Discharged counsel shall, within 10 days after issuance of the order, file with the clerk of the circuit court two copies of a notice seeking review in the Florida Supreme Court, and must, within 20 days after the filing of the transcript, serve an initial brief.[115]

If the trial court denies the motion, the inmate may seek review as prescribed by Florida Rule of Appellate Procedure 9.142(b).[116]

Special Procedures for Postconviction Motions Filed After a Death Warrant is Signed

In cases in which the Governor signs a death warrant prior to the one-year filing deadline, the Florida Supreme Court is required, on the movant's request, to grant a stay of execution to allow postconviction motions to proceed in a timely and orderly manner.[117] In practice, however, this requirement is unnecessary because the Governor has agreed that, absent the circumstance where a competent death-sentenced individual voluntarily requests that a death warrant be signed, no death warrants will be issued during the initial round of federal and state review, provided that counsel for the death penalty movant is proceeding in a timely and diligent manner.[118]

Once the one-year filing deadline has passed and after the initial round of state and federal collateral review is over, the Governor may sign a death warrant. At this point, any subsequently-filed postconviction motions, initial or successive, are subject to the following expedited procedures:

- The chief judge of the circuit court is required to assign the case to a judge as soon as the judge receives notification of the death warrant.
- Proceedings after a death warrant has been issued are required to take precedence over all other cases.
- The normal time limitations in Rule 3.851 do not apply after a death warrant has been signed; instead, all motions must be heard expeditiously considering the time limitations set by the execution date and the time required for appellate review.
- The assigned judge must schedule a case management conference as soon as reasonably possible after receiving notification that a death warrant has been signed.
- At the conference, the court must set a deadline for the filing of a Rule 3.851 postconviction motion, schedule a hearing to determine whether an evidentiary hearing should be held, and hear arguments on any purely legal claims not based on disputed facts.[119]

All motions for postconviction relief filed after a death warrant is issued are considered successive motions and must comply with the content requirements for successive motions.[120] If the motion, files, and records in the case conclusively show that the movant is not entitled to relief, the motion may be denied without an evidentiary hearing.[121] If, however, the trial court determines that an evidentiary

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[114] *Id.*

[115] Both the inmate and the state may serve responsive briefs. Fla. R. Crim. Proc. 3.851(i)(8). *Also see*, Fla. R. App. Proc. 9.142(d)(2)(A).

[116] Fla. R. Crim. Proc. 3.851(i)(9).

[117] Fla. R. Crim. Proc. 3.851(d)(4).

[118] Fla. R. Crim. Proc. 3.851 (comment).

[119] Fla. R. Crim. Proc. 3.851(h).

[120] Fla. R. Crim. Proc. 3.851(h)(5).

[121] Fla. R. Crim. Proc. 3.851(h)(6).

hearing should be held, it must hold the evidentiary hearing as soon as reasonably possible considering the time limitations set by the date of execution and the time required for appellate review.[122]

After the evidentiary hearing is completed, the court must immediately obtain a transcript of all proceedings and, as soon as possible after the hearing is concluded, render its order.[123] A copy of the final order must immediately be electronically transmitted to the Florida Supreme Court and to the attorneys of record.[124] The record must also be sent to the Florida Supreme Court—electronically, where possible.[125]

Federal Habeas Corpus

After state postconviction proceedings have been completed, a capital defendant is entitled to file a petition for writ of habeas corpus in federal court. In habeas proceedings, the federal court reviews whether the conviction or sentence violates federal law. Federal habeas is limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings. Federal habeas proceedings may require an evidentiary hearing and may, in specified instances, be appealed to the Eleventh Circuit Court of Appeals and the United States Supreme Court.[126]

Execution

An inmate's death sentence may not be carried out until the Governor issues a death warrant.[127] A death warrant may be issued after the inmate has pursued all possible collateral remedies in a timely manner or after the inmate has failed to pursue said remedies within specified time limits.[128] Upon issuance of a death warrant, the Governor must transmit the warrant and the record to the warden and direct the warden to execute the sentence at a time designated in the warrant.[129]

An inmate's death sentence will be carried out by lethal injection unless the inmate requests to be executed by electrocution.[130] The warden of the state prison designates the executioner.[131] The warden (or a deputy) must be present at the execution and must select twelve individuals to witness the execution.[132] A qualified physician must be present, and the inmate's counsel, ministers of religion, representatives of the media, and prison and correctional officers may be present.[133] Immediately before the inmate's execution, the death warrant must be read to the inmate.[134] The physician must announce when death has been inflicted.[135]

After the death sentence has been executed, the warden must send the warrant and a signed statement of the execution to the Secretary of State and file an attested copy of the warrant and statement with the clerk of the court that imposed the sentence.[136]

Sixty days after a capital sentence is carried out, after a defendant is released from incarceration following the granting of a pardon or reversal of the sentence, or after a defendant has been resentenced to a term of years, the AG must provide written notification of this occurrence to the

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[122] *Id.*
[123] Fla. R. Crim. Proc. 3.851(h)(8).
[124] *Id.*
[125] Fla. R. Crim. Proc. 3.851(h)(9).
[126] *See* 28 U.S.C. ss. 2161-2166.
[127] Section 922.052(1), F.S.
[128] Section 922.095, F.S.
[129] Section 922.052(1), F.S.
[130] Section 922.105, F.S.
[131] Section 922.10, F.S. A person authorized by state law to prepare, compound, or dispense medication and designated by the Department of Corrections may prepare, compound, or dispense a lethal injection. Section 922.105(6), F.S.
[132] Section 922.11, F.S.
[133] *Id.*
[134] Section 922.10, F.S.
[135] Section 922.11(2), F.S.
[136] Section 922.12, F.S.

Secretary of State.[137] After the expiration of the 60 days, the Secretary of State may destroy the copies of the public records held by the records repository that pertain to that case, unless an objection to the destruction is filed in the trial court and served upon the Secretary of State. If an objection is served, the records shall not be destroyed until a final disposition of the objection.[138]

Clemency

Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or any part of the punishment that the law imposed.[139] Types of clemency include pardons, commutation of sentence, remission of fines or forfeitures, restoration of the authority to possess a firearm, and restoration of civil rights.[140]

The Governor and members of the Cabinet collectively are the Board of Executive Clemency. Pursuant to the Florida Constitution, the Governor has the power to grant clemency with the consent of at least two Cabinet members.[141] The Florida Parole Commission acts as the agent of the Board of Executive Clemency in determining whether offenders are eligible for clemency, investigating clemency applications, conducting hearings when required, and making recommendations to the Board.[142]

Currently, ss. 27.40, 27.51, 27.511, 27.5303, and 27.5304, F.S., authorize the trial court to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings.

Death Penalty Reform Efforts

As noted above, as of March 3, 2013, there were 404 people on death row in Florida.[143] On average, Florida death row inmates spend 13.22 years on death row prior to execution.[144] Of the 404 inmates on death row, 155 have been in custody for more than 20 years, and 10 inmates have been on death row for more than 35 years.[145]

The capital postconviction process has often been cited as one of the areas that causes the most delays in capital cases.[146] There are several reasons for this - delays can result from litigation over public records requests, or from sentencing courts which may not hear or rule on postconviction motions for several months, or sometimes years. Postconviction attorneys often amend their motions to introduce new claims, which, if allowed, requires additional time to investigate and respond to. Sometimes these motions improperly attempt to revisit issues that were or could have been resolved at trial or during the first appeal.

In a 1998 Florida Supreme Court opinion reviewing the death penalty of an inmate convicted in 1974, Justice Wells strongly expressed his position that the process needs to be changed, stating that,

> . . . I do again state my view that such an extended time period to finally adjudicate these cases is totally unacceptable and is this Court's and the State's prime responsibility to

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[137] Fla. R. Crim. Proc. 3.852(m).
[138] *Id.*
[139] Rule 1, Rules of Executive Clemency. March 9, 2011.
[140] Section 940.01, F.S. Also see Rule 4 I., Rules of Executive Clemency. March 9, 2011.
[141] Article IV, Section 8(a), FLA. CONST.
[142] Annual Report 2009-2010. Florida Parole Commission, p. 23.
[143] California has 724 inmates on death row. *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center, www.deathpenaltyinfo.org/FactSheet.pdf (last visited on March 3, 2013). *Also see,* http://www.dc.state.fl.us/activeinmates/deathrowroster.asp (last visited on March 3, 2013).
[144] http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics (last visited on March 3, 2013).
[145] http://www.dc.state.fl.us/activeinmates/deathrowroster.asp (last visited on March 3, 2013).
[146] *See, In Rule of Criminal Procedure 3.851 (Collateral Relief after Death Sentence Has Been Imposed)*, 626 So.2d. 198, 199 (Fla. 1993)(stating that the Supreme Court Committee on Postconviction Relief in Capital Cases was created because of the substantial delays in the death penalty postconviction relief process).

> correct. (citation omitted). . . . The courts and the State must be able to do better, and any explanation of why we are unable to do so is insufficient.[147]

Numerous reforms have been made over the years in an effort to improve the capital postconviction process. In 1993, the Florida Supreme Court created Rule 3.851 of the Florida Rules of Criminal Procedure and adopted the recommendation of the "Florida Supreme Court Committee on Postconviction Relief" to require that postconviction motions be filed within one-year from the date the direct appeal became final.[148] In March of 1999, Chief Justice Harding established by administrative order a Supreme Court Committee on Postconviction Relief in Capital Cases (the "Morris Committee"), to assist the Court in identifying inherent delays in the current postconviction process and recommend improvements.[149] While the Court was considering the Morris Committee's report, the Florida Legislature passed the Death Penalty Reform Act of 2000.

Death Penalty Reform Act of 2000

During a special session in January of 2000, the Legislature passed the Death Penalty Reform Act (DPRA).[150] DPRA made a number of significant statutory changes to the capital postconviction process. However, on April 14, 2000, the Florida Supreme Court struck down the majority of the provisions of DPRA based on a separation of powers claim.[151,152] Specifically, the Court held that that the "DPRA is an unconstitutional encroachment on the Court's exclusive power to 'adopt rules for the practice and procedure in all courts.'"[153] The Court held that the provisions of the DPRA were "procedural" (rather than substantive) and ruled that because the constitution gives the court the authority to adopt rules of practice and procedure, the Legislature was not permitted to act in this area.

The Court rejected the state's argument that the deadlines for filing postconviction motions in DPRA were statutes of limitations which are substantive. The Court stated that Florida Rule of Criminal Procedure 3.850 is a "procedural vehicle for the collateral remedy otherwise available by a writ of habeas corpus"[154] and further held that:

> Due to the constitutional and quasi-criminal nature of habeas proceedings and the fact that such proceedings are the primary avenue through which convicted defendants are able to challenge the validity of a conviction and sentence, we hold that article V, section 2(a) of the Florida Constitution grants this Court the exclusive authority to set deadlines for postconviction motions.[155]

2001 Florida Supreme Court Rule Revisions

Shortly after the DPRA was held unconstitutional, the Florida Supreme Court made a variety of revisions to the rules applicable to postconviction proceedings in capital cases. For example:

- Rule 3.851(b) was added to ensure appointment of postconviction counsel upon the Florida Supreme Court's issuance of mandate on direct appeal.
- Rule 3.851(c) was added to provide for, among other things, the assignment of a qualified judge within 30 days after mandate issues on direct appeal and status conferences every 90 days after the assignment until the evidentiary hearing has been completed or the motion has been

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[147] *Knight v. State*, 746 So.2d 42, 439-440 (Fla. 1998).
[148] *In Rule of Criminal Procedure 3.851 (Collateral Relief after Death Sentence Has Been Imposed)*, 626 So.2d. 198 (Fla. 1993).
[149] *Amendments to Florida Rules Criminal Procedure 3.851, 3.852, and 3.993*, 772 So.2d 488 (Fla. 2000).
[150] Chapter 2000-3, L.O.F.
[151] Article II, Section 3 of the Florida Constitution provides, "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Further, Article V, Section 2 authorizes the Florida Supreme Court to "adopt rules of practice and procedure in all courts . . ." This same section of the constitution authorizes the Legislature to repeal court rules of procedure with a 2/3 vote of the membership of both houses.
[152] *Allen v. Butterworth*, 756 So.2d 52, 59 (Fla. 2000).
[153] *Id.* at 54.
[154] *Id.* at 61 (citations omitted).
[155] *Id.* at 62.

ruled on without a hearing. These status conferences are intended to provide a forum for the timely resolution of public records issues and other preliminary matters.
- Rule 3.851(f) was added to set forth general procedures relating to evidentiary hearings. Most significantly, to require an evidentiary hearing on claims listed in an initial motion as requiring a factual determination. The Court has identified the failure to hold evidentiary hearings on initial motions as a major cause of delay in the capital postconviction process and has determined that, in most cases, requiring an evidentiary hearing on initial motions presenting factually based claims will avoid this cause of delay.[156]

Effect of the Bill

This bill is tied to and is contingent upon the voter's approval of HJR 7081, which amends Article V, Section 2 of the Florida Constitution to require the procedures for postconviction or collateral review of capital cases resulting in a sentence of death to be governed by, and to the extent provided by, general law. This addresses the separation of powers concerns that were raised by the DPRA.

The bill codifies the majority of the provisions contained in Rules 3.811, 3.812, 3.850, 3.851, and 3.852 of the Florida Rules of Criminal Procedure, and Rule 9.142 of the Florida Rules of Appellate Procedure, all of which are described in detail above. The bill also creates new statutes related to capital postconviction proceedings that contain provisions not currently addressed in court rules.

Whereas Clauses

The bill is cited as the "Timely Justice Act of 2013" and provides the following whereas clauses:
- WHEREAS, it is in the best interest of the administration of justice that a sentence of death ordered by a court of this state be carried out in a manner that is fair, just, and humane and that conforms to constitutional requirements;
- WHEREAS, in order for capital punishment to be fair, just, and humane for both the family of victims and for offenders, there must be a prompt and efficient administration of justice following any sentence of death ordered by the courts of this state;
- WHEREAS, in order to ensure the fair, just, and humane administration of capital punishment, it is necessary for the Legislature to comprehensively address the processes by which an offender sentenced to death may pursue postconviction and collateral review of the judgment and the sentence of death;
- WHEREAS, the Death Penalty Reform Act of 2000, chapter 2000-3, Laws of Florida, was designed to accomplish these objectives and was passed by the Legislature and approved by the Governor of Florida in January of 2000;
- WHEREAS, the Death Penalty Reform Act of 2000, chapter 2000-3, Laws of Florida, was declared unconstitutional by the Florida Supreme Court three months after becoming a law in Allen v. Butterworth, 756 So.2d 52 (Fla. 2000), as being an encroachment on the court's "exclusive power to 'adopt rules for the practice and procedure in all courts;'"
- WHEREAS, the Constitution of the State of Florida has been amended to require postconviction and collateral review of capital cases resulting in a sentence of death to be governed by, and to the extent provided by, general law;
- WHEREAS, provisions of the Death Penalty Reform Act of 2000 which were held unconstitutional may now be reenacted, while other provisions can be modified, and new provisions added to ensure a prompt and efficient administration of justice following any sentence of death.

Legislative Intent

The DPRA amended s. 924.055, F.S., to provide that it was the Legislature's intent to "reduce delays in capital cases and to ensure that all appeals and postconviction actions in capital cases are resolved within 5 years after the date a sentence of death is imposed in the circuit court." The section also provided the following legislative intent:

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[156] *Amendments to Florida Rules of Criminal Procedure 3.851, 3.852 and 3.993*, 772 So.2d 488, 491 (Fla. 2000).

- All postconviction actions should be filed as early as possible after imposition of the death sentence, which may be during a direct appeal of the conviction and sentence;
- No death-sentenced person or that person's capital postconviction counsel should file more than one postconviction action in a sentencing court and one appeal therefrom to the Florida Supreme Court;
- No state resources be expended in violation of DPRA; and
- The AG must deliver to the Speaker of the House of Representatives and the President of the Senate a copy of any court pleading or order that describes or adjudicates a violation of DPRA by any state employee or party contracting with the state.

The bill amends s. 924.055, F.S., to specify that it is the Legislature's intent to "reduce delays in capital cases and to ensure that all postsconviction actions in capital cases are resolved as quickly as possible after the date a sentence of death is imposed in the circuit court." The bill removes obsolete intent language relating to postconviction actions being filed during a direct appeal.

State Postconviction Death Penalty Proceedings

The bill amends ss. 27.703, 924.056, 924.058, F.S., to codify the majority of Rules 3.811, 3.812, 3.850, 3.851, and 3.852 of the Florida Rules of Criminal Procedure, and Rule 9.142 of the Florida Rules of Appellate Procedure. The significant differences between the current rules and the bill are outlined below.

Appointment of Counsel, Judge, and other Preliminary Matters

- The bill amends s. 924.056, F.S., to require the CCRC to file a notice of appearance in the trial court or a motion to withdraw based on an actual conflict of interest or some other legal ground within 30 days *of being appointed by the Florida Supreme Court* (the rule requires such notice or motion to be filed within 30 days of the issuance of the mandate affirming a judgment and sentence of death on direct appeal).
- The bill adds new language to s. 924.056, F.S., specifying that if the defendant requests without good cause that an appointed attorney be removed or replaced, the court must notify the defendant that no further state resources will be expended for postconviction representation, unless the defendant withdraws his or her request.

Conflicts of Interest

- The bill amends ss. 27.703 and 924.056, F.S., to require the court to conduct a hearing in accordance with s. 924.059, F.S. (created by the bill), if postconviction counsel alleges a conflict of interest.
- The bill creates s. 924.059, F.S., to require the court to hold a hearing within 30 days of an allegation that there is a conflict of interest with postconviction counsel to determine whether an actual conflict exists, and whether such conflict will adversely affect a defendant's lawyer's performance. An actual conflict exists when an attorney actively represents conflicting interests. To demonstrate an actual conflict, the defendant must identify specific evidence suggesting that his or her interests may be compromised. A possible, speculative, or merely hypothetical conflict is insufficient to support an allegation that a conflict of interest exists. The bill requires the court to rule within 10 days of the conclusion of the hearing.

Public Records

The bill codifies Rule 3.852 of the Florida Rules of Criminal Procedure, which specifically relates to public records in capital postconviction proceedings, in s. 27.7081, F.S. The bill retains language currently in s. 27.7081, F.S., requiring the Secretary of State to establish and maintain a public records repository for the purpose of archiving capital postconviction public records.

Time Limits for Filing an Initial Postconviction Motion

- As noted above, any person sentenced to death whose judgment of conviction and sentence have been affirmed on direct appeal may file an initial postconviction motion within one year after the inmate's judgment and sentence become final. Rule 3.851 of the Florida Rules of

Criminal Procedure specifies that an extension of time may be granted by the Florida Supreme Court if the inmate's counsel makes a showing of good cause for counsel's inability to file the postconviction pleadings within the one-year period. The bill does not authorize any extension of time.

- Rule 3.851 of the Florida Rules of Criminal Procedure permits a postconviction motion to be amended within 30 days of a scheduled evidentiary hearing upon motion and good cause shown. The bill amends s. 924.056, F.S., to prohibit a postconviction motion from being amended beyond the one-year time period established for the filing of the motion, and to require court approval.

Contents of an Initial Postconviction Motion

- Rule 3.851 of the Florida Rules of Criminal Procedure requires a defendant's initial postconviction motion to include certain information. The bill amends s. 924.056, F.S., to add the following to the list of information that an initial postconviction motion must include:
  - Whether a previous postconviction motion has been filed and, if so, the disposition of all previous claims raised in postconviction litigation and the reasons claims in the present postconviction motion were not raised in the previous motion.
- The bill also specifies that postconviction motions must be *fully pled* and raise all cognizable claims that the defendant's judgment or sentence was entered in violation of the Constitution or laws of the United States or the Constitution or laws of Florida (including any claim of ineffective assistance of trial or direct appeal counsel, allegations of innocence, or that the state withheld evidence favorable to the defendant).
- Rule 3.851 of the Florida Rules of Criminal Procedure allows a postconviction motion to include claims that could have or should have been raised at trial or on direct appeal if explained in a memorandum of law. The bill bars such claims altogether.
- The bill prohibits a postconviction motion from including a claim of ineffective assistance of postconviction counsel.

Discovery and Evidentiary Hearing

- Rule 3.851 of the Florida Rules of Criminal Procedure requires the court to hold a case management conference within 90 days of the filing of the state's answer. The bill amends s. 924.056, F.S., to change the timeframe to within 30 days of the filling of the state's answer.
- Rule 3.851 of the Florida Rules of Criminal Procedure authorizes the court to extend the time for holding an evidentiary hearing for 90 days if good cause is shown. The bill does not contain such a provision.
- The bill adds a provision to s. 924.056, F.S., specifying that if the court determines that an evidentiary hearing is not necessary and that the defendant's postconviction motion is legally insufficient or that the motion, files, and records show that the defendant is not entitled to relief, the court must, within 30 days of the conclusion of the case management conference, deny the postconviction motion. The court must include a detailed rationale therefore and attach or reference the portions of the record that will allow for meaningful appellate review of the order denying relief.
- Rule 3.851 of the Florida Rules of Criminal Procedure provides that an appeal of a court's ruling on an initial postconviction motion may be filed within 30 days of the entry of the order. The bill changes this timeframe to within 15 days of the entry of the order, and specifies that interlocutory appeals are prohibited.

Successive Motions

The bill creates s. 924.058, F.S., which addresses the procedures relating to successive postconviction motions.

- Rule 3.851 of the Florida Rules of Criminal Procedure does not contain any time limitations on the filing of successive postconviction motions. The bill bars successive postconviction motions unless fully pled and filed within 90 days:

    - After the facts giving rise to the claim were discovered or should have been discovered with the exercise of due diligence; or
    - After the fundamental constitutional right asserted was established and held to apply retroactively.
- The bill prohibits successive postconviction motions from being filed or considered if filed beyond the timelines described above unless it alleges that postconviction counsel, through neglect, failed to file the motion.
- The bill bars successive postconviction motion claims that could have or should have been raised at trial, on direct appeal, or in the initial postconviction motion.
- The bill prohibits a successive postconviction motion from including a claim of ineffective assistance of postconviction counsel.
- Rule 3.851 of the Florida Rules of Criminal Procedure permits a successive postconviction motion to be amended within 30 days of a scheduled evidentiary hearing upon motion and good cause shown. The bill prohibits a successive postconviction motion from being amended beyond the time period established for the filing of the successive motion, and requires court approval.
- Rule 3.851 of the Florida Rules of Criminal Procedure requires the court to hold a case management conference within 90 days of the filing of the state's answer to a sucessive postconviction motion. The bill amends s. 924.056, F.S., to change the timeframe to within 30 days of the filling of the state's answer.
- The bill adds a provision to s. 924.056, F.S., specifying that if the court determines that an evidentiary hearing is not necessary and that the defendant's successive postconviction motion is legally insufficient or that the motion, files, and records show that the defendant is not entitled to relief, the court must, within 30 days of the conclusion of the case management conference, deny the successive postconviction motion. The court must include a detailed rationale therefore and attach or reference the portions of the record that will allow for meaningful appellate review of the order denying relief.
- Rule 3.851 of the Florida Rules of Criminal Procedure provides that an appeal of a court's ruling on a successive postconviction motion may be filed within 30 days of the entry of the order. The bill changes this timeframe to within 15 days of the entry of the order, and specifies that interlocutory appeals are prohibited.

Appeal to the Florida Supreme Court

The bill creates s. 924.0581, F.S., which establishes the procedures that must be followed when an initial or successive postconviction motion is appealed to the Florida Supreme Court. The majority of the provisions of s. 924.0581, F.S., mirror those found in Rule 9.142 of the Florida Rules of Appellate Procedure.

- The bill includes a provision in s. 924.0581, F.S., that requires the Court, in instances where the lower court denied the initial or successive motion without an evidentiary hearing, to review the case to determine whether the lower court correctly resolved the case without a hearing. If the Court determines that a hearing should have been held, the Court may remand the case for such hearing. The lower court must schedule such hearing within 30 days of the Court's order and conclude the hearing within 90 days of scheduling. The Florida Rules of Appellate Procedure does not contain a similar provision.
- Rule 9.142 of the Florida Rules of Appellate Procedure establishes timeframes in which briefs must be filed, and specifies that if a brief is delinquent, an order to show cause can be issued and sanctions may be imposed. The bill provides that a brief submitted after the timeframes is barred and cannot be heard.
- Rule 9.142 of the Florida Rules of Appellate Procedure does not establish a specific timeframe in which the Court must hear oral argument - only that oral argument be scheduled after the filing of the defendant's reply brief. The bill requires oral arguments to be schedule within 30 days after the filing of the defendant's reply brief.
- Rule 9.142 of the Florida Rules of Appellate Procedure does not establish a timeframe in which the Court must ultimately rule on an appeal of an initial or sucessive postconviction motion. The

bill requires the Court to rule within 180 days after oral arguments have concluded, and specifies that if the Court affirms a denial of an action for postconviction relief, the Governor may proceed to issue a warrant for execution.
- In instances in which the Court does not rule within 180 days of oral arguments, the bill requires the Chief Justice of the Court to, within 10 days after the expiration of the 180-day deadline, submit a report to the Legislature explaining why a decision was not timely rendered. Such report must be submitted every 30 days thereafter in which a decision is not rendered.

Reporting Requirements

The bill creates s. 924.0585, F.S., requiring the Court to annually report to the Legislature the status of each capital case in which a postconviction action has been filed that has been pending for more than three years. The report must include the name of the state court judge assigned to the case. This section of statute also specifies that in any capital postconviction action in which it has been determined that an attorney of record was ineffective, the court making such determination must furnish a copy of the findings of ineffectiveness to the Florida Bar for appropriate disciplinary action. The Florida Bar must submit an annual report to the Legislature listing the names of the attorneys found ineffective, the findings of the court, and the disciplinary action taken, if any. If no disciplinary action was taken, the report must specify why. The bill prohibits attorneys deemed ineffective in a capital case from representing capital defendants for five years.

The bill also bars postconviction actions filed in violation of established time limits, specifies that all claims raised in such actions are waived, and prohibits a court from hearing such actions. The bill requires the AG to deliver to the Governor and the Legislature a copy of any pleading or order that alleges or adjudicates any claim filed in violation of the established time limits.

Applicability

The bill includes language in ss. 924.056, 924.058, 924.0581, and 924.0592, F.S., clarifying that the statutes apply to postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

The bill amends s. 924.057, F.S., to specify that postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal *before* July 1, 2015, will be governed by the rules and laws in effect immediately prior to the effective date of the bill. The bill removes obsolete provisions (created by the DPRA) specifying otherwise.

Conforming Changes

The bill makes a variety of technical changes correcting statutory cross-references and obsolete references to the Florida Rules of Criminal Procedure.

Northern Region of the Capital Collateral Regional Counsel

Although s. 27.701, F.S., provides for three capital collateral regional offices, legislation passed in 2003 created a pilot program using a registry of attorneys instead of the capital collateral regional counsel in the northern region of the state.[157] The pilot program was extended indefinitely in 2004.[158] The bill amends ss. 27.701, 27.702, and 27.7091, F.S., to eliminate the "pilot program" and reestablish the capital collateral regional counsel in the northern region of the state.

Clemency

As noted above, ss. 27.40, 27.51, 27.511, 27.5303, and 27.5304, F.S., authorize the court to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings. The bill amends these sections of statute to remove this authorization in instances where the application for clemency is filed on or after July 1, 2013, by a person who has been convicted and sentenced to death.

[157] Chapter 2003-399, L.O.F.
[158] Chapter 2004-240, L.O.F.

Severability
The bill contains a severability clause specifying that if any provision of the act or the application thereof is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application.

Effective Dates
The "procedural" portions of the bill take effect July 1, 2015, contingent on voter approval of HJR 7081 in the general election of 2014. Other portions of the bill are effective July 1, 2013.

B. SECTION DIRECTORY:

Section 1. Entitles the bill the "Timely Justice Act of 2013."

Section 2. Amends s. 27.40, F.S., relating to court-appointed counsel; circuit registries; minimum requirements; appointment by court.

Section 3. Amends s. 27.51, F.S., relating to duties of public defender.

Section 4. Amends s. 27.51, F.S., relating to duties of public defender.

Section 5. Amends s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

Section 6. Amends s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

Section 7. Amends s. 27.5303, F.S., relating to public defenders; criminal conflict and civil regional counsel; conflict of interest.

Section 8. Amends s. 27.5304, F.S., relating to private court-appointed counsel; compensation; notice.

Section 9. Amends s. 27.701, F.S., relating to capital collateral regional counsel.

Section 10. Reenacts s. 27.702, F.S., relating to duties of the capital collateral regional counsel; reports.

Section 11. Amends s. 27.702, F.S., relating to duties of the capital collateral regional counsel; reports.

Section 12. Amends s. 27.703, F.S., relating to conflict of interest and substitute counsel.

Section 13. Amends s. 27.708, F.S., relating to access to prisoners; compliance with the Florida Rules of Criminal Procedure; records requests.

Section 14. Amends s. 27.7081, F.S., relating to capital postconviction public records production.

Section 15. Amends s. 27.7091, F.S., relating to legislative recommendations to Supreme Court; postconviction proceedings; pro bono service credit.

Section 16. Amends s. 27.711, F.S., relating to terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.

Section 17. Amends s. 27.711, F.S., relating to terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.

Section 18. Amends s. 922.095, F.S., relating to grounds for death warrant; limitations of actions.

Section 19. Reenacts s. 922.108, F.S., relating to sentencing orders in capital cases.

Section 20. Amends s. 924.055, F.S., relating to postconviction review in capital cases; legislative findings and intent.

Section 21. Amends s. 924.056, F.S., relating to Commencement of capital postconviction actions for which sentence of death is imposed on or after January 14, 2000; limitations on actions.

Section 22. Amends s. 924.057, F.S., relating to limitation on postconviction cases in which the death sentence was imposed before January 14, 2000.

Section 23. Amends s. 924.058, F.S., relating to capital postconviction claims.

Section 24. Creates s. 924.0581, F.S., relating to capital postconviction appeals to the Florida Supreme Court.

Section 25. Creates s. 924.0585, F.S., relating to capital postconviction proceedings; reporting requirements.

Section 26. Amends s. 924.0585, F.S., relating to capital postconviction proceedings; reporting requirements.

Section 27. Amends s. 924.059, F.S., relating to time limitations and judicial review in capital postconviction actions.

Section 28. Creates s. 924.0591, F.S., relating to incompetence to proceed in capital postconviction proceedings.

Section 29. Creates s. 924.0592, F.S., relating to capital postconviction proceedings after a death warrant has been issued.

Section 30. Creates s. 924.0593, F.S., relating to insanity at the time of execution.

Section 31. Creates s. 924.0594, F.S., relating to dismissal of postconviction proceedings.

Section 32. Provides a severability clause.

Section 33. Provides effective dates.

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:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Due to the nuances of capital cases and the multitude of agencies and personnel involved (e.g., judges, clerks, CCRC, public defenders, registry attorneys, AG staff, etc.), it is difficult to precisely quantify the costs associated with Florida's capital postconviction process. Research shows that the time it takes to litigate a capital case on appeal in both state and federal court is a major factor in determining how long it takes for an inmate to progress through the judicial system. How much that litigation costs can vary widely from case to case, depending on the legal matters involved.[159]

Capital Postconviction Proceedings

The bill codifies many of the current procedures that relate to capital postconviction proceedings. However, the bill modifies the rules or creates provisions designed to make the postconviction process more efficient. For example, the bill:

- Sets standards for conflict of interest determinations;
- Bars postconviction motions that are not filed within statutorily established timeframes or that are not fully pled;
- Prohibits courts from granting extensions of time at various stages of the postconviction process;
- Shortens timeframes relating to case management conferences and the amendment of postconviction motions;
- Establishes timeframes in which the Florida Supreme Court must hear oral arguments;
- Requires the Florida Supreme Court to rule on an appeal of an initial or sucessive postconviction motion within 180 days after oral arguments have concluded; and
- Creates reporting requirements that hold courts accountable for delays in the postconviction process.

The Office of State Courts Administrator (OSCA) has stated this bill would decrease judicial workload due to the reduction of postconviction filings. OSCA also noted that it is unclear how much the changes this bill proposes would reduce postconviction death penalty litigation. The new reporting requirements would create an insignificant impact to judicial workload.[160]

Death Row Inmates

Death row inmates are currently housed at Union Correctional Institution and Florida State Prison. The average per diem for inmates housed at these facilities is $67.58 and $61.35, respectively, per day. It should be noted that these figures are not specific to death row inmates but instead apply to the entire inmate populations at those facilities.

On average, Florida death row inmates spend 13.22 years on death row prior to execution. Using the per diem figures above, Florida spends anywhere between $326,093 and $296,032 housing a death row inmate prior to his or her execution. To the extent the bill shortens the postconviction process and thereby the time an inmate spends on death row prior to execution, the bill would have a positive fiscal impact on DOC.

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[159] *Special report: Cost of Florida's death row easily exceeds $1M per inmate*, http://www.tcpalm.com/news/2012/oct/07/newspaper-investigates-florida-death-row-cost/?print=1 (last visited on March 3, 2013).

[160] Office of State Courts Administrator 2013 Judicial Impact Statement, HB 7083, March 25, 2013. On file with Justice Appropriations Subcommittee staff.

Clemency

Currently, the court is authorized to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings. Section 27.5304, F.S., requires the appointed attorney to be allowed compensation, not to exceed $1,000, for attorney's fees and costs incurred in representing the defendant in clemency proceedings. However, a judge may order payment of over $1,000 if he or she deems it necessary. Such compensation is paid out of general revenue within DOC.

Effective and ethical clemency representation requires experienced attorneys, investigators, and support staff to investigate evidence of the underlying crime, the original proceedings, and the appellate proceedings for indications of uncertainty regarding the defendant's guilt and the possibility of ineffective representation by trial counsel.[161] Public Defenders must pay above-average salaries in order to employ and retain attorneys who are qualified to be appointed to capital clemency cases.

The bill removes the court's authorization to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings in instances where the application for clemency is filed on or after July 1, 2013. This will result in a savings to DOC and the public defenders.

Capital Collateral Regional Counsel

The bill eliminates the registry attorney "pilot program" and reestablishes the CCRC in the northern region of the state.

For FY 2013-14, the base budget for the South Region CCRC office is $3 million with 32 positions and $3.6 million with 41 positions for the Middle Region CCRC office. In FY 2011-12, the Department of Financial Services spent $1.6 million compensating registry attorneys, who are paid based on the amounts set forth in s. 27.711, F.S. (note that this figure represents the amount paid to registry attorneys appointed in postconviction proceedings throughout the state, not just those in the northern region).

Reestablishing the North Region CCRC will have an annualized fiscal impact of $417,506 recurring on the General Revenue Fund and a $14,832 nonrecurring impact. The funding includes $307,000 for salaries and benefits for a director, an attorney, an investigator, and support staff; $32,806 for routine expenses, such as telephones, office supplies, building rental, and data communication. The estimate also includes $77,700 for due process-related expenses, such as expert witness fees, and funding for court transcripts. The $14,832 in nonrecurring costs will go towards the purchase of telephones, office furniture, computer equipment and the costs of training staff.

The North Region CCRC would only be appointed to new cases, making the staff and funding minimal to start. The current private appointed attorneys would continue to work on the cases they have already been appointed to. Over the next few years the legislature will decrease the funding for the private appointed attorneys and increase the funding for the North Region CCRC as they are appointed to more cases. In FY 2002-03, the last year the North Region existed, the legislature appropriated $125K for private attorneys who were appointed to conflict capital collateral cases. In FY 2002-03 the GAA appropriated $2.7 million for the North Region, $3.6 million for the Middle Region and $3 million for the South Region.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[161] Public Defenders Legislative Budget Request, Agency Issue Narrative. March 2013.

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

A bill to be entitled

An act relating to postconviction capital case proceedings; providing a short title; amending s. 27.40, F.S.; providing that counsel is not required to be appointed in clemency proceedings filed by persons sentenced to death; amending s. 27.51, F.S.; removing the trial court's authority to appoint the public defender to represent a person sentenced to death in clemency proceedings; amending s. 27.51, F.S.; contingent upon adoption of a specified constitutional amendment, replacing a reference to a rule of criminal procedure with a reference to a statute; amending s. 27.511, F.S.; removing the trial court's authority to appoint the office of criminal conflict and civil regional counsel or other attorney to represent a person sentenced to death in clemency proceedings; amending s. 27.511, F.S.; replacing a reference to a rule of criminal procedure with a reference to a statute; amending s. 27.5303, F.S.; removing a court's authority to appoint the public defender or other attorney to represent a person sentenced to death in clemency proceedings; amending s. 27.5304, F.S., specifying that a person may be compensated for representing a person sentenced to death who submits an application for executive clemency before July 1, 2013; repealing s. 27.701(2), F.S., relating to a pilot project using registry attorneys to provide capital collateral counsel services in the northern

region of the Capital Collateral Regional Counsel; reenacting s. 27.702(1), F.S., relating to duties of capital collateral regional counsel; amending s. 27.702, F.S.; conforming provisions to changes made by the act; amending s. 27.703, F.S.; requiring the court to hold a hearing when a conflict of interest in a postconviction capital case proceeding is alleged; amending s. 27.708, F.S.; specifying that postconviction capital case attorneys comply with statutory requirements; amending s. 27.7081, F.S.; providing definitions; establishing procedures for public records production in postconviction capital cases proceedings; amending s. 27.7091, F.S.; deleting language recommending that the Florida Supreme Court adopt certain rules relating to postconviction capital case proceedings; amending s. 27.711, F.S.; deleting obsolete language relating to the northern regional office of the capital collateral regional counsel; amending s. 27.711, F.S., removing references to rules of criminal procedure that relate to postconviction capital case proceedings; amending s. 922.095, F.S.; specifying that postconviction claims in capital cases that are not pursued within statutory time limits are barred; reenacting s. 922.108, F.S.; relating to requirements for orders for a sentence of death may not specify any particular method of execution; amending s. 924.055, F.S.; revising legislative intent regarding postconviction proceedings in capital cases;

amending s. 924.056, F.S.; establishing procedures for initial postconviction motions in capital cases; providing time limits for motions; specifying contents; providing for hearings; amending s. 924.057, F.S.; providing that postconviction proceedings in capital cases in which conviction and sentence of death have been affirmed on direct appeal before July 1, 2015, are governed by the rules and laws in effect before that date; deleting language concerning cases before the effective date of a prior act; amending s. 924.058, F.S.; establishing procedures for successive postconviction motions in capital cases; specifying contents; providing for hearings and procedures; creating s. 924.0581, F.S.; establishing procedures for the appeal of capital case postconviction motions to the Florida Supreme Court; creating s. 924.0585, F.S.; requiring the Florida Supreme Court to annually report certain information regarding capital postconviction cases to the Legislature; requiring courts to report specified findings of ineffective assistance of counsel to The Florida Bar; requiring The Florida Bar to annually report to the Legislature certain information about attorneys found to have provided ineffective assistance; amending s. 924.0585, F.S.; specifying that capital postconviction actions filed in violation of statutory timeframes are barred and claims raised therein waived; amending s. 924.059, F.S.; requiring the court to hold a hearing when a

conflict of interest in a postconviction capital case proceeding is alleged; providing timeframes relating to such hearing; creating s. 924.0591, F.S.; establishing procedures for capital case postconviction proceedings when a prisoner is incompetent to proceed; creating s. 924.0592, F.S.; establishing procedures for capital case postconviction proceedings after a death warrant has been issued; creating s. 924.0593, F.S.; establishing procedures for capital case postconviction proceedings when a prisoner is insane at the time of scheduled execution; creating s. 924.0594, F.S.; establishing procedures for capital case postconviction proceedings when a prisoner seeks to dismiss postconviction proceedings and postconviction counsel; providing for severability; providing effective dates and a contingent effective date.

WHEREAS, it is in the best interest of the administration of justice that a sentence of death ordered by a court of this state be carried out in a manner that is fair, just, humane, and conforms to constitutional requirements, and

WHEREAS, in order for capital punishment to be fair, just, and humane for both the family of victims and for offenders, there must be a prompt and efficient administration of justice after any sentence of death ordered by the courts of this state, and

WHEREAS, in order to ensure the fair, just, and humane administration of capital punishment, it is necessary for the Legislature to comprehensively address the processes by which an offender sentenced to death may pursue postconviction and collateral review of the judgment and the sentence of death, and

WHEREAS, the Death Penalty Reform Act of 2000, chapter 2000-3, Laws of Florida, was designed to accomplish these objectives and was passed by the Legislature and approved by the Governor of Florida in January of 2000, and

WHEREAS, the Death Penalty Reform Act of 2000, chapter 2000-3, Laws of Florida, was declared unconstitutional by the Florida Supreme Court three months after becoming a law in Allen v. Butterworth, 756 So.2d 52 (Fla. 2000), as being an encroachment on the court's "exclusive power to 'adopt rules for the practice and procedure in all courts,'", and

WHEREAS, the Constitution of the State of Florida has been amended to require postconviction and collateral review of capital cases resulting in a sentence of death to be governed by, and to the extent provided by, general law, and

WHEREAS, provisions of the Death Penalty Reform Act of 2000 which were held unconstitutional may now be reenacted, while other provisions can be modified, and new provisions added to ensure a prompt and efficient administration of justice following any sentence of death, NOW, THEREFORE,

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

Section 1. <u>This act may be cited as the "Timely Justice</u>

Act of 2013."

Section 2. Effective July 1, 2013, subsection (1) of section 27.40, Florida Statutes, is amended to read:

27.40 Court-appointed counsel; circuit registries; minimum requirements; appointment by court.—

(1) Counsel shall be appointed to represent any individual in a criminal or civil proceeding entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. Such proceedings do not include proceedings for relief by executive clemency in which the application for executive clemency was filed by a person who is convicted and sentenced to death on or after July 1, 2013. The court shall appoint a public defender to represent indigent persons as authorized in s. 27.51. The office of criminal conflict and civil regional counsel shall be appointed to represent persons in those cases in which provision is made for court-appointed counsel but the public defender is unable to provide representation due to a conflict of interest or is not authorized to provide representation.

Section 3. Effective July 1, 2013, paragraph (a) of subsection (5) of section 27.51, Florida Statutes, is amended to read:

27.51 Duties of public defender.—

(5)(a) When direct appellate proceedings prosecuted by a public defender on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmance of such conviction and sentence, whether by the Florida Supreme Court or by the United States Supreme Court or

by expiration of any deadline for filing such appeal in a state or federal court, the public defender shall notify the accused of his or her rights pursuant to Rule 3.850, Florida Rules of Criminal Procedure, including any time limits pertinent thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital collateral regional counsel. The public defender shall then forward all original files on the matter to the capital collateral regional counsel, retaining such copies for his or her files as may be desired. However, for clemency applications pending or filed before July 1, 2013, the trial court shall retain the power to appoint the public defender or other attorney not employed by the capital collateral regional counsel to represent such person in proceedings for relief by executive clemency pursuant to ss. 27.40 and 27.5303.

Section 4. Paragraph (a) of subsection (5) of section 27.51, Florida Statutes, as amended by this act, is amended to read:

27.51 Duties of public defender.—

(5)(a) When direct appellate proceedings prosecuted by a public defender on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmance of such conviction and sentence, whether by the Florida Supreme Court or by the United States Supreme Court or by expiration of any deadline for filing such appeal in a state or federal court, the public defender shall notify the accused of his or her rights pursuant to s. 924.056 ~~Rule 3.850, Florida Rules of Criminal Procedure~~, including any time limits pertinent

thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital collateral regional counsel. The public defender shall then forward all original files on the matter to the capital collateral regional counsel, retaining such copies for his or her files as may be desired. However, for clemency applications pending or filed before July 1, 2013, the trial court shall retain the power to appoint the public defender or other attorney not employed by the capital collateral regional counsel to represent such person in proceedings for relief by executive clemency pursuant to ss. 27.40 and 27.5303.

Section 5. Effective July 1, 2013, subsection (9) of section 27.511, Florida Statutes, is amended to read:

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

(9) When direct appellate proceedings prosecuted by the office of criminal conflict and civil regional counsel on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmance of such conviction and sentence, whether by the Supreme Court or by the United States Supreme Court or by expiration of any deadline for filing such appeal in a state or federal court, the office of criminal conflict and civil regional counsel shall notify the accused of his or her rights pursuant to Rule 3.850, Florida Rules of Criminal Procedure, including any time limits pertinent thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital

collateral regional counsel. The office of criminal conflict and civil regional counsel shall forward all original files on the matter to the capital collateral regional counsel, retaining such copies for his or her files as may be desired or required by law. However, for clemency applications pending or filed before July 1, 2013, the trial court shall retain the power to appoint the office of criminal conflict and civil regional counsel or other attorney not employed by the capital collateral regional counsel to represent such person in proceedings for relief by executive clemency pursuant to ss. 27.40 and 27.5303.

Section 6. Subsection (9) of section 27.511, Florida Statutes, as amended by this act, is amended to read:

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

(9) When direct appellate proceedings prosecuted by the office of criminal conflict and civil regional counsel on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmance of such conviction and sentence, whether by the Supreme Court or by the United States Supreme Court or by expiration of any deadline for filing such appeal in a state or federal court, the office of criminal conflict and civil regional counsel shall notify the accused of his or her rights pursuant to s. 924.056 ~~Rule 3.850, Florida Rules of Criminal Procedure~~, including any time limits pertinent thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital collateral regional counsel. The office of criminal conflict and

civil regional counsel shall forward all original files on the matter to the capital collateral regional counsel, retaining such copies for his or her files as may be desired or required by law. However, for clemency applications pending or filed before July 1, 2013, the trial court shall retain the power to appoint the office of criminal conflict and civil regional counsel or other attorney not employed by the capital collateral regional counsel to represent such person in proceedings for relief by executive clemency pursuant to ss. 27.40 and 27.5303.

Section 7. Effective July 1, 2013, subsection (4) of section 27.5303, Florida Statutes, is amended to read:

27.5303 Public defenders; criminal conflict and civil regional counsel; conflict of interest.—

(4)(a) If a defendant is convicted and the death sentence is imposed, the appointed attorney shall continue representation through appeal to the Supreme Court. The attorney shall be compensated as provided in s. 27.5304. If the attorney first appointed is unable to handle the appeal, the court shall appoint another attorney and that attorney shall be compensated as provided in s. 27.5304.

(b) The public defender or an attorney appointed pursuant to this section may be appointed by the court rendering the judgment imposing the death penalty to represent an indigent defendant who, before July 1, 2013, has an application for executive clemency pending or has applied for executive clemency as relief from the execution of the judgment imposing the death penalty.

(c) When the appointed attorney in a capital case has

completed the duties imposed by this section, the attorney shall file a written report in the trial court stating the duties performed by the attorney and apply for discharge.

Section 8. Effective July 1, 2013, subsection (5) of section 27.5304, Florida Statutes, is amended to read:

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

(5) The compensation for representation in a criminal proceeding shall not exceed the following:

(a)1. For misdemeanors and juveniles represented at the trial level: $1,000.

2. For noncapital, nonlife felonies represented at the trial level: $2,500.

3. For life felonies represented at the trial level: $3,000.

4. For capital cases represented at the trial level: $15,000. For purposes of this subparagraph, a "capital case" is any offense for which the potential sentence is death and the state has not waived seeking the death penalty.

5. For representation on appeal: $2,000.

(b) If a death sentence is imposed and affirmed on appeal to the Supreme Court, the appointed attorney shall be allowed compensation, not to exceed $1,000, for attorney fees and costs incurred in representing the defendant as to an application for executive clemency <u>submitted before July 1, 2013</u>, with compensation to be paid out of general revenue from funds budgeted to the Department of Corrections.

Section 9. Effective July 1, 2013, section 27.701, Florida

Statutes, is amended to read:

27.701 Capital collateral regional counsel.—

~~(1)~~ There are created three regional offices of capital collateral counsel, which shall be located in a northern, middle, and southern region of the state. The northern region shall consist of the First, Second, Third, Fourth, Eighth, and Fourteenth Judicial Circuits; the middle region shall consist of the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth, and Eighteenth Judicial Circuits; and the southern region shall consist of the Eleventh, Fifteenth, Sixteenth, Seventeenth, Nineteenth, and Twentieth Judicial Circuits. Each regional office shall be administered by a regional counsel. A regional counsel must be, and must have been for the preceding 5 years, a member in good standing of The Florida Bar or a similar organization in another state. Each capital collateral regional counsel shall be appointed by the Governor, and is subject to confirmation by the Senate. The Supreme Court Judicial Nominating Commission shall recommend to the Governor three qualified candidates for each appointment as regional counsel. The Governor shall appoint a regional counsel for each region from among the recommendations, or, if it is in the best interest of the fair administration of justice in capital cases, the Governor may reject the nominations and request submission of three new nominees by the Supreme Court Judicial Nominating Commission. Each capital collateral regional counsel shall be appointed to a term of 3 years. Vacancies in the office of capital collateral regional counsel shall be filled in the same manner as appointments. A person appointed as a regional counsel

may not run for or accept appointment to any state office for 2 years following vacation of office.

~~(2) Notwithstanding the provisions of subsection (1), the responsibilities of the regional office of capital collateral counsel for the northern region of the state shall be met through a pilot program using only attorneys from the registry of attorneys maintained pursuant to s. 27.710. Each attorney participating in the pilot must be qualified to provide representation in federal court. The Auditor General shall schedule a performance review of the pilot program to determine the effectiveness and efficiency of using attorneys from the registry compared to the capital collateral regional counsel. The review, at a minimum, shall include comparisons of the timeliness and costs of the pilot and the counsel and shall be submitted to the President of the Senate and the Speaker of the House of Representatives by January 30, 2007. The Legislature may determine whether to convert the pilot program to a permanent program after receipt of the Auditor General's review.~~

Section 10. Subsection (1) of section 27.702, Florida Statutes, is reenacted to read:

27.702 Duties of the capital collateral regional counsel; reports.—

(1) The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals

for the Eleventh Circuit, and the United States Supreme Court. The capital collateral regional counsel and the attorneys appointed pursuant to s. 27.710 shall file only those postconviction or collateral actions authorized by statute. The three capital collateral regional counsel's offices shall function independently and be separate budget entities, and the regional counsel shall be the office heads for all purposes. The Justice Administrative Commission shall provide administrative support and service to the three offices to the extent requested by the regional counsel. The three regional offices shall not be subject to control, supervision, or direction by the Justice Administrative Commission in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

Section 11. Effective July 1, 2013, paragraph (b) of subsection (4) of section 27.702, Florida Statutes, is amended to read:

27.702 Duties of the capital collateral regional counsel; reports.—

(4)

(b) Each capital collateral regional counsel ~~and each attorney participating in the pilot program in the northern region pursuant to s. 27.701(2)~~ shall provide a quarterly report to the President of the Senate and the Speaker of the House of Representatives which details the number of hours worked by investigators and legal counsel per case and the amounts per case expended during the preceding quarter in investigating and litigating capital collateral cases.

Section 12. Section 27.703, Florida Statutes, is amended to read:

27.703 Conflict of interest and substitute counsel.—

(1) The capital collateral regional counsel shall not accept an appointment or take any other action that will create a conflict of interest. If, at any time during the representation of a person, the capital collateral regional counsel alleges ~~determines~~ that the continued representation of that person creates a conflict of interest, the sentencing court shall hold a hearing in accordance with s. 924.059 to determine if an actual conflict exists. If the court determines that an actual conflict exists and that such conflict will adversely affect the capital collateral regional counsel's performance, the court shall~~, upon application by the regional counsel,~~ designate another regional counsel. If the replacement regional counsel alleges that a conflict of interest exists, the sentencing court shall hold a hearing in accordance with s. 924.059 to determine if an actual conflict exists. If the court determines that an actual conflict exists and that such conflict will adversely affect the replacement regional counsel's performance, the court shall ~~and, only if a conflict exists with the other two counsel,~~ appoint one or more members of The Florida Bar to represent the person ~~one or more of such persons~~.

(2) Appointed counsel shall be paid from funds appropriated to the Chief Financial Officer. The hourly rate may not exceed $100. However, all appointments of private counsel under this section shall be in accordance with ss. 27.710 and 27.711.

(3) Before ~~Prior to~~ employment, counsel appointed pursuant to this section must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings, or any combination of at least five of such proceedings.

Section 13. Subsection (2) of section 27.708, Florida Statutes, is amended to read:

27.708 Access to inmates ~~prisoners; compliance with the Florida Rules of Criminal Procedure;~~ records requests.—

(2) The capital collateral regional counsel and contracted private counsel must timely comply with all statutory requirements ~~provisions of the Florida Rules of Criminal Procedure~~ governing collateral review of capital cases.

Section 14. Section 27.7081, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 27.7081, F.S., for present text.)

27.7081 Capital postconviction public records production.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Agency" has the same meaning as provided in s. 119.011.

(b) "Collateral counsel" means a capital collateral regional counsel from one of the three regions in Florida, a private attorney who has been appointed to represent a capital defendant for postconviction litigation, or a private attorney who has been hired by the capital defendant or who has agreed to work pro bono for a capital defendant for postconviction litigation.

(c) "Public records" has the same meaning as provided in s. 119.011.

(d) "Trial court" means:

1. The judge who entered the judgment and imposed the sentence of death; or

2. If a motion for postconviction relief in a capital case has been filed and a different judge has already been assigned to that motion, the judge who is assigned to rule on that motion.

(2) APPLICABILITY AND SCOPE.—This section only applies to the production of public records for capital postconviction defendants and does not change or alter the time periods specified in s. 924.056 or s. 924.058. Furthermore, this section does not affect, expand, or limit the production of public records for any purpose other than use in a proceeding held pursuant to s. 924.056 or s. 924.058. This section shall not be a basis for renewing public records requests that have been initiated previously or for relitigating issues pertaining to production of public records upon which a court has ruled before July 1, 2015. Public records requests made in postconviction proceedings in capital cases in which the conviction and sentence of death have been affirmed on direct appeal before July 1, 2015, shall be governed by the rules and laws in effect immediately before July 1, 2015.

(3) RECORDS REPOSITORY.—The Secretary of State shall establish and maintain a records repository to archive capital postconviction public records as provided for in this section.

(4) FILING AND SERVICE.—

(a) The original of all notices, requests, or objections filed under this section must be filed with the clerk of the trial court. Copies must be served on the trial court, the attorney general, the state attorney, collateral counsel, and any affected person or agency, unless otherwise required by this section.

(b) Service shall be made pursuant to Rule 3.030, Florida Rules of Criminal Procedure.

(c) In all instances requiring written notification or request, the party who has the obligation of providing a notification or request shall provide proof of receipt.

(d) Persons and agencies receiving postconviction public records notifications or requests pursuant to this section are not required to furnish records filed in a trial court before the receipt of the notice.

(5) ACTION UPON ISSUANCE OF THE MANDATE ON DIRECT APPEAL.—

(a) Within 15 days after receiving written notification of the Florida Supreme Court's mandate affirming the sentence of death, the attorney general shall file with the trial court a written notice of the mandate and serve a copy of the notice upon the state attorney who prosecuted the case, the Department of Corrections, and the defendant's trial counsel. The notice to the state attorney shall direct the state attorney to submit public records to the records repository within 90 days after receipt of written notification and to notify each law enforcement agency involved in the investigation of the capital offense to submit public records to the records repository within 90 days after receipt of written notification. The notice

to the Department of Corrections shall direct the department to submit public records to the records repository within 90 days after receipt of written notification.

(b) Within 90 days after receiving written notification of issuance of the Florida Supreme Court's mandate affirming a death sentence, the state attorney shall provide written notification to the attorney general of the name and address of an additional person or agency that has public records pertinent to the case.

(c) Within 90 days after receiving written notification of issuance of the Florida Supreme Court's mandate affirming a death sentence, the defendant's trial counsel shall provide written notification to the attorney general of the name and address of a person or agency with information pertinent to the case which has not previously been provided to collateral counsel.

(d) Within 15 days after receiving written notification of any additional person or agency pursuant to paragraph (b) or paragraph (c), the attorney general shall notify all persons or agencies identified pursuant to paragraph (b) or paragraph (c) that these persons or agencies are required by law to copy, index, and deliver to the records repository all public records pertaining to the case that are in their possession. The person or agency shall bear the costs related to copying, indexing, and delivering the records.

(6) ACTION UPON RECEIPT OF NOTICE OF MANDATE.—

(a) Within 15 days after receipt of a written notice of the mandate from the attorney general, the state attorney shall

provide written notification to each law enforcement agency involved in the specific case to submit public records to the records repository within 90 days after receipt of written notification. A copy of the notice shall be served upon the defendant's trial counsel.

(b) Within 90 days after receipt of a written notice of the mandate from the attorney general, the state attorney shall copy, index, and deliver to the records repository all public records that were produced in the state attorney's investigation or prosecution of the case. The state attorney shall bear the costs. The state attorney shall also provide written notification to the attorney general of compliance with this section, including certifying that, to the best of the state attorney's knowledge or belief, all public records in the state attorney's possession have been copied, indexed, and delivered to the records repository as required by this section.

(c) Within 90 days after receipt of written notification of the mandate from the attorney general, the Department of Corrections shall, at its own expense, copy, index, and deliver to the records repository all public records determined by the department to be relevant to the subject matter of a proceeding under s. 924.056 or s. 924.058, unless such copying, indexing, and delivering would be unduly burdensome. The secretary of the department shall provide written notification to the attorney general of compliance with this paragraph certifying that, to the best of the secretary of the department's knowledge or belief, all such public records in the possession of the secretary of the department have been copied, indexed, and

delivered to the records repository.

(d) Within 90 days after receipt of written notification of the mandate from the state attorney, a law enforcement agency shall, at its own expense, copy, index, and deliver to the records repository all public records that were produced in the investigation or prosecution of the case. The chief law enforcement officer of each law enforcement agency shall provide written notification to the attorney general of compliance with this paragraph including certifying that, to the best of the chief law enforcement officer's knowledge or belief, all such public records in possession of the agency or in possession of an employee of the agency, have been copied, indexed, and delivered to the records repository.

(e) Within 90 days after receipt of written notification of the mandate from the attorney general, each additional person or agency identified pursuant to paragraph (5)(b) or paragraph (5)(c) shall copy, index, and deliver to the records repository all public records which were produced during the prosecution of the case. The person or agency shall bear the costs. The person or agency shall provide written notification to the attorney general of compliance with this subdivision and shall certify, to the best of the person or agency's knowledge and belief, all such public records in the possession of the person or agency have been copied, indexed, and delivered to the records repository.

(7) EXEMPT OR CONFIDENTIAL PUBLIC RECORDS.—

(a) Public records delivered to the records repository pursuant to this section that are confidential or exempt from

the requirements of s. 119.07(1) or article I, section 24(a), of the Constitution, must be separately contained, without being redacted, and sealed. The outside of the container must clearly identify that the public record is confidential or exempt and that the seal may not be broken without an order of the trial court. The outside of the container must identify the nature of the public records and the legal basis for the exemption.

(b) Upon the entry of an appropriate court order, sealed containers subject to an inspection by the trial court shall be shipped to the clerk of court. The containers may be opened only for inspection by the trial court in camera. The moving party shall bear all costs associated with the transportation and inspection of such records by the trial court. The trial court shall perform the unsealing and inspection without ex parte communications and in accord with procedures for reviewing sealed documents.

(8) DEMAND FOR ADDITIONAL PUBLIC RECORDS.—

(a) Within 240 days after collateral counsel is appointed, retained, or appears pro bono, such counsel shall send a written demand for additional public records to each person or agency submitting public records or identified as having information pertinent to the case under subsection (5).

(b) Within 90 days after receipt of the written demand, each person or agency notified under this subsection shall deliver to the records repository additional public records in the possession of the person or agency that pertain to the case and shall certify to the best of the person or agency's knowledge and belief that all additional public records have

been delivered to the records repository or, if no additional public records are found, shall recertify that the public records previously delivered are complete.

(c) Within 60 days after receipt of the written demand, a person or agency may file with the trial court an objection to the written demand described in paragraph (a). The trial court shall hold a hearing and issue a ruling within 30 days after the filing of an objection, ordering a person or agency to produce additional public records if the court determines that:

1. Collateral counsel has made a timely and diligent search as provided in this section.

2. Collateral counsel's written demand identifies, with specificity, those additional public records that are not at the records repository.

3. The additional public records sought are relevant to the subject matter of a postconviction proceeding under s. 924.056 or s. 924.058, or appear reasonably calculated to lead to the discovery of admissible evidence.

4. The additional public records request is not overly broad or unduly burdensome.

(9) LIMITATION ON POSTPRODUCTION REQUEST FOR ADDITIONAL RECORDS.—

(a) In order to obtain public records in addition to those provided under subsections (6), (7), and (8), collateral counsel shall file an affidavit in the trial court which:

1. Attests that collateral counsel has made a timely and diligent search of the records repository.

2. Identifies with specificity those public records not at

the records repository.

3. Establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence.

4. Shall be served in accord with subsection (4).

(b) Within 30 days after the affidavit of collateral counsel is filed, the trial court shall order a person or agency to produce additional public records only upon finding that:

1. Collateral counsel has made a timely and diligent search of the records repository.

2. Collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository.

3. The additional public records sought are either relevant to the subject matter of a capital postconviction proceeding or appear reasonably calculated to lead to the discovery of admissible evidence.

4. The additional records request is not overly broad or unduly burdensome.

(10) COPYING RECORDS.—Collateral counsel shall provide the personnel, supplies, and any necessary equipment to copy records held at the records repository.

(11) AUTHORITY OF THE COURT.—In proceedings under this section the trial court may:

(a) Compel or deny disclosure of records.

(b) Conduct an inspection in camera.

(c) Extend the time periods in this section upon a showing

of good cause.

(d) Impose sanctions upon a party, person, or agency affected by this section, including initiating contempt proceedings, taxing expenses, extending time periods, ordering facts to be established, and granting other relief.

(e) Resolve a dispute arising under this section unless jurisdiction is in an appellate court.

(12) SCOPE OF PRODUCTION AND RESOLUTION OF PRODUCTION ISSUES.—

(a) Unless otherwise limited, the scope of production under any part of this section shall be that the public records sought are not privileged or immune from production and are either relevant to the subject matter of a postconviction proceeding under s. 924.056 or s. 924.058 or are reasonably calculated to lead to the discovery of admissible evidence.

(b) Objections or motions to compel production of public records pursuant to this section shall be filed within 30 days after the end of the production time period provided by this section. Counsel for the party objecting or moving to compel shall file a copy of the objection or motion directly with the trial court. The trial court shall hold a hearing on the objection or motion on an expedited basis.

(c) The trial court may order mediation for a controversy as to public records production pursuant to this section in accord with Rules 1.700, 1.710, 1.720, and 1.730, Florida Rules of Civil Procedure, or the trial court may refer such controversy to a magistrate in accord with Rule 1.490, Florida Rules of Civil Procedure.

(13) DESTRUCTION OF RECORDS.—Sixty days after a capital sentence is carried out, after a defendant is released from incarceration after the granting of a pardon or reversal of the sentence, or after a defendant has been resentenced to a term of years, the attorney general shall provide written notification of this occurrence to the Secretary of State. After the expiration of the 60 days, the Secretary of State may destroy the copies of the records held by the records repository that pertain to that case, unless an objection to the destruction is filed in the trial court and served upon the Secretary of State. If no objection is served within the 60-day period, the records may then be destroyed. If an objection is served, the records shall not be destroyed until a final disposition of the objection.

Section 15. Effective July 1, 2013, section 27.7091, Florida Statutes, is amended to read:

27.7091 Legislative recommendations to Supreme Court; ~~postconviction proceedings;~~ pro bono service credit.—In the interest of promoting justice and integrity with respect to capital collateral representation, the Legislature recommends that the Supreme Court~~:~~

~~(1) Adopt by rule the provisions of s. 924.055, which limit the time for postconviction proceedings in capital cases.~~

~~(2)~~ award pro bono service credit for time spent by an attorney in providing legal representation to an individual sentenced to death in this state, regardless of whether the attorney receives compensation for such representation.

Section 16. Effective July 1, 2013, subsections (3) and

(14) of section 27.711, Florida Statutes, are amended to read:

27.711 Terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.—

(3) An attorney appointed to represent a capital defendant is entitled to payment of the fees set forth in this section only upon full performance by the attorney of the duties specified in this section and approval of payment by the trial court, and the submission of a payment request by the attorney, subject to the availability of sufficient funding specifically appropriated for this purpose. ~~An attorney may not be compensated under this section for work performed by the attorney before July 1, 2003, while employed by the northern regional office of the capital collateral counsel.~~ The Chief Financial Officer shall notify the executive director and the court if it appears that sufficient funding has not been specifically appropriated for this purpose to pay any fees which may be incurred. The attorney shall maintain appropriate documentation, including a current and detailed hourly accounting of time spent representing the capital defendant. The fee and payment schedule in this section is the exclusive means of compensating a court-appointed attorney who represents a capital defendant. When appropriate, a court-appointed attorney must seek further compensation from the Federal Government, as provided in 18 U.S.C. s. 3006A or other federal law, in habeas corpus litigation in the federal courts.

~~(14) Each attorney participating in the pilot program in the northern region pursuant to s. 27.701(2), as a condition of payment pursuant to this section, shall report on the~~

~~performance measures adopted by the Legislature for the capital collateral regional counsel.~~

Section 17. Paragraph (b) of subsection (4) of section 27.711, Florida Statutes, is amended to read:

27.711 Terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.—

(4) Upon approval by the trial court, an attorney appointed to represent a capital defendant under s. 27.710 is entitled to payment of the following fees by the Chief Financial Officer:

(b) The attorney is entitled to $100 per hour, up to a maximum of $20,000, after timely filing in the trial court the capital defendant's complete original motion for postconviction relief ~~under the Florida Rules of Criminal Procedure~~. The motion must raise all issues to be addressed by the trial court. However, an attorney is entitled to fees under this paragraph if the court schedules a hearing on a matter that makes the filing of the original motion for postconviction relief unnecessary or if the court otherwise disposes of the case.

The hours billed by a contracting attorney under this subsection may include time devoted to representation of the defendant by another attorney who is qualified under s. 27.710 and who has been designated by the contracting attorney to assist him or her.

Section 18. Section 922.095, Florida Statutes, is amended to read:

922.095 Grounds for death warrant; limitations of

actions.—A person who is convicted and sentenced to death must pursue all possible collateral remedies within the time limits provided by statute. Failure to seek relief within the statutory time limits constitutes grounds for issuance of a death warrant under s. 922.052 or s. 922.14. Any postconviction claim not pursued within the statutory time limits is barred. No postconviction claim filed after the time required by law shall be grounds for a judicial stay of any warrant.

Section 19. Section 922.108, Florida Statutes, is reenacted to read:

922.108 Sentencing orders in capital cases.—The sentence of death must not specify any particular method of execution. The wording or form of the sentencing order shall not be grounds for reversal of any sentence.

Section 20. Section 924.055, Florida Statutes, is amended to read:

924.055 Postconviction review in capital cases; legislative findings and intent.—

(1) It is the intent of the Legislature to reduce delays in capital cases and to ensure that all ~~appeals and~~ postconviction actions in capital cases are resolved as quickly as possible ~~within 5 years~~ after the date a sentence of death is imposed in the circuit court. ~~All capital postconviction actions must be filed as early as possible after the imposition of a sentence of death which may be during a direct appeal of the conviction and sentence.~~ A person sentenced to death or that person's capital postconviction counsel must file any postconviction ~~legal~~ action in compliance with the timeframes

~~statutes of limitation~~ established in ss. ~~s.~~ 924.056 and 924.058, and elsewhere in this chapter. Except as expressly allowed by s. 924.058 ~~s. 924.056(5)~~, a person sentenced to death or that person's capital postconviction counsel may not file more than one postconviction action in a sentencing court and one appeal therefrom to the Florida Supreme Court, unless authorized by law.

(2) It is the further intent of the Legislature that no state resources be expended in violation of this act. In the event that any state employee or party contracting with the state violates the provisions of this act, the Attorney General shall deliver to the Speaker of the House of Representatives and the President of the Senate a copy of any court pleading or order that describes or adjudicates a violation.

Section 21. Section 924.056, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 924.056, F.S., for present text.)

924.056 Capital postconviction proceedings.—

(1) APPLICABILITY.—This section governs all postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

(2) APPOINTMENT OF POSTCONVICTION COUNSEL.—

(a) Upon the issuance of the mandate affirming a judgment and sentence of death on direct appeal, the Florida Supreme Court shall at the same time issue an order appointing the appropriate office of the capital collateral regional counsel.

(b) Within 30 days after being appointed, the regional counsel shall file a notice of appearance in the trial court or a motion to withdraw based on an actual conflict of interest or another legal ground. Motions to withdraw filed more than 30 days after being appointed shall not be entertained unless based on an actual conflict of interest.

(c) The court shall conduct a hearing in accordance with s. 924.059 if the regional counsel's motion to withdraw is based on an actual conflict. If the regional counsel files a motion to withdraw based on another legal ground, the chief judge or assigned judge shall rule on the motion within 15 days after the filling of the motion. If the court determines that new postconviction counsel should be appointed, the court shall appoint another regional counsel and, only if a conflict exists with the replacement regional counsel, appoint new postconviction counsel from the statewide registry of attorneys compiled and maintained by the Justice Administrative Commission pursuant to s. 27.710.

(d) If the defendant requests without good cause that an attorney appointed under this subsection be removed or replaced, the court shall notify the defendant that no further state resources may be expended for postconviction representation for that defendant unless the defendant withdraws the request to remove or replace postconviction counsel. If the defendant does not withdraw his or her request, then an appointed attorney must be removed from the case and no further state resources may be expended for the defendant's postconviction representation.

(3) PRELIMINARY PROCEDURES.—

(a) Within 30 days after the issuance of mandate affirming a judgment and sentence of death on direct appeal, the chief judge shall assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital proceedings.

(b) The assigned judge shall conduct a status conference within 90 days after the judicial assignment, and shall hold status conferences at least every 90 days thereafter until the evidentiary hearing has been completed or the postconviction motion has been ruled on without a hearing. The attorneys may, with leave of the court, appear electronically at the status conferences. Requests to appear electronically shall be liberally granted. Pending motions, disputes involving public records, or other matters ordered by the court shall be heard at the status conferences. The defendant's presence is not required at status conferences held pursuant to this paragraph.

(c) Within 45 days after appointment of postconviction counsel, the defendant's trial counsel shall provide to postconviction counsel all information pertaining to the defendant's capital case that was obtained during the representation of the defendant. Postconviction counsel shall maintain the confidentiality of all confidential information received.

(4) TIME LIMITATIONS ON FILING A POSTCONVICTION MOTION.—

(a) A postconviction motion must be filed by the death-sentenced inmate within 1 year after the judgment and sentence become final. For the purposes of this subsection, a judgment is final:

1. Upon the expiration of the time permitted to file in

the United States Supreme Court a petition for writ of certiorari seeking review of the Florida Supreme Court decision affirming a judgment and sentence of death; or

2. Upon the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.

(b) No postconviction motion shall be filed or considered pursuant to this subsection if filed beyond the time limitation provided in paragraph (a) unless it alleges:

1. The facts on which the motion is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence;

2. The fundamental constitutional right asserted was not established within the period provided for in paragraph (a) and has been held to apply retroactively; or

3. Postconviction counsel, through neglect, failed to file the motion.

(c) All petitions for extraordinary relief in which the Florida Supreme Court has original jurisdiction, including petitions for writs of habeas corpus, shall be filed simultaneously with the initial brief filed on behalf of the death-sentenced inmate in the appeal of the circuit court's order on the initial motion for postconviction relief filed under this subsection.

(d) The time limitation provided in paragraph (a) is established with the understanding that each death-sentenced inmate will have counsel assigned and available to begin addressing the inmate's postconviction issues within the time specified in this subsection. Should the Governor sign a death

warrant before the expiration of the time limitation provided in paragraph (a), the Florida Supreme Court, on a death-sentenced inmate's request, will grant a stay of execution to allow a postconviction relief motions to proceed in a timely manner.

(5) CONTENTS OF POSTCONVICTION MOTION.—

(a) A state court may not consider a postconviction motion unless the motion is fully pled. For the purposes of this subsection, a fully pled postconviction motion is one that complies with paragraph (b). The fully pled postconviction motion must raise all cognizable claims that the inmate's judgment or sentence was entered in violation of the Constitution or laws of the United States or the Constitution or the laws of this state, including a claim of ineffective assistance of trial counsel or direct appeal counsel, allegations of innocence, or that the state withheld evidence favorable to the inmate.

(b) The inmate's postconviction motion shall be filed under oath and shall be fully pled to include the following:

1. The judgment or sentence under attack and the court that rendered the same.

2. A statement of each issue raised on appeal and the disposition thereof.

3. Whether a previous postconviction motion has been filed and, if so, the disposition of all previous claims raised in postconviction litigation or, if a previous motion or motions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions.

4. The nature of the relief sought.

5. A fully detailed allegation of the factual basis for a claim for which an evidentiary hearing is sought, including the attachment of a document supporting the claim, the name and address of a witness, the attachment of affidavits of the witnesses or a proffer of the testimony.

6. A fully detailed allegation as to the basis for a purely legal or constitutional claim for which an evidentiary hearing is not required and the reason that this claim could not have been or was not raised on direct appeal.

7. A concise memorandum of applicable case law as to each claim asserted.

(c) A postconviction motion and memorandum of law filed under this subsection may not exceed 75 pages, exclusive of the attachments. Attachments shall include, but are not limited to, the judgment and sentence. The memorandum of law must set forth the applicable case law supporting the granting of relief as to each separately pled claim.

(d) Claims raised in a postconviction motion that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence, are barred.

(e) A postconviction motion may not include a claim of ineffective assistance of collateral postconviction counsel.

(f) A postconviction motion may not be amended without court approval. In no instance shall such motion be amended beyond the time limitations provided by subsection (3) for the filing of a postconviction motion. If amendment is allowed, the

state shall file an amended answer within 20 days after the amended motion is filed.

(g) A postconviction motion that does not comply with a requirement in this subsection shall not be considered in a state court.

(6) PROCEDURE; EVIDENTIARY HEARING; DISPOSITION.—

(a) All pleadings in a postconviction proceeding shall be filed with the clerk of the trial court and served on the assigned judge, opposing party, and the attorney general. The clerk shall immediately deliver to the chief judge or the assigned judge a motion filed in a postconviction proceeding along with the court file.

(b) If the defendant intends to offer expert testimony of his or her mental status in a postconviction proceeding, the state shall be entitled to have the defendant examined by its own mental health expert. If the defendant fails to cooperate with the state's expert, the trial court may, in its discretion, proceed as provided in Rule 3.202(e), Florida Rules of Criminal Procedure. Reports provided to either party by an expert witness shall be disclosed to opposing counsel upon receipt.

(c) The state shall file its answer within 60 days after the filing of an initial postconviction motion. The answer and accompanying memorandum of law may not exceed 75 pages, exclusive of attachments and exhibits. The answer must address the legal sufficiency of a claim in the motion, respond to the allegations of the motion, address procedural bars, and state the reasons that an evidentiary hearing is or is not required. As to a claim of legal insufficiency or procedural bar, the

state must include a short statement of any applicable case law.

(d) Within 30 days after the state files its answer to an initial motion, the trial court shall hold a case management conference. At the case management conference, both parties shall disclose all documentary exhibits that they intend to offer at the evidentiary hearing, provide a list of all such exhibits, and exchange a witness list with the names and addresses of a potential witness. All expert witnesses must be specifically designated on the witness list, and copies of all expert reports shall be attached. At the case management conference, the trial court shall:

1. Schedule an evidentiary hearing, to be held within 90 days after the conference, on claims listed by the defendant as requiring a factual determination.

2. Hear arguments on a purely legal claims not based on disputed facts.

3. Resolve disputes arising from the exchange of information under this paragraph.

(e) If the court determines that an evidentiary hearing is not necessary and that the defendant's postconviction motion is legally insufficient or that the motion, files, and records in the case show that the defendant is not entitled to relief, the court shall, within 30 days after the conclusion of the case management conference, deny the motion, setting forth a detailed rationale therefore, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review.

(f) Immediately after an evidentiary hearing, the trial

court shall order a transcript of the hearing that shall be filed within 30 days. Within 30 days after receipt of the transcript, the court shall render its order, ruling on each claim considered at the evidentiary hearing and all other claims raised in the postconviction motion, making detailed findings of fact and conclusions of law with respect to each claim, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review. The order issued after the evidentiary hearing shall resolve all the claims raised in the postconviction motion and shall be considered the final order for purposes of appeal. The clerk of the trial court shall promptly serve upon the parties and the attorney general a copy of the final order, with a certificate of service.

(g) Motions for rehearing must be filed within 15 days after the rendition of the trial court's order and a response thereto must filed within 10 days thereafter. The trial court's order disposing of the motion for rehearing shall be rendered within 15 days after the response is filed.

(h) An appeal may be taken by filing a notice to appeal with the Florida Supreme Court within 15 days after the entry of a final order on a capital postconviction motion. An interlocutory appeal is not permitted.

Section 22. Section 924.057, Florida Statutes, is amended to read:

924.057 Capital ~~Limitation on~~ postconviction proceedings; conviction and death sentence affirmed on direct appeal before July 1, 2015 ~~cases in which the death sentence was imposed~~

~~before January 14, 2000. This section shall govern all capital postconviction actions in cases in which the trial court imposed the sentence of death before the effective date of this act.~~

(1) ~~Nothing in~~ This act does not ~~shall~~ expand any right or time period allowed for the prosecution of capital postconviction claims in any case in which a postconviction action was commenced or should have been commenced before July 1, 2015 ~~prior to the effective date of this act~~.

(2) Postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal before July 1, 2015, shall be governed by the rules and laws in effect immediately before July 1, 2015.

~~(2) Except as provided in s. 924.056(5), in every case in which mandate has issued in the Florida Supreme Court concluding at least one capital postconviction action in the state court system, a successive capital postconviction action shall be barred on the effective date of this act, unless the rules or law in effect immediately prior to the effective date of this act permitted the successive postconviction action, in which case the action shall be barred on the date provided in subsection (4).~~

~~(3) All capital postconviction actions pending on the effective date of this act shall be barred, and shall be dismissed with prejudice, unless fully pled in substantial compliance with s. 924.058, or with any superseding order or rule, on or before:~~

~~(a) The time in which the action would be barred by this section if the action had not begun prior to the effective date~~

~~of this act, or~~

~~(b) Any earlier date provided by the rules or law, or court order, in effect immediately prior to the effective date of this act.~~

~~(4) In every capital case in which the trial court imposed the sentence of death before the effective date of this act, a capital postconviction action shall be barred unless it is commenced on or before January 8, 2001, or any earlier date provided by the rule or law in effect immediately prior to the effective date of this act.~~

Section 23. Section 924.058, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 924.058, F.S., for present text.)

924.058 Successive postconviction motions.—

(1) APPLICABILITY.—

(a) This section governs successive postconviction motions in all postconviction proceedings in each capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

(b) A postconviction motion is successive if a state court has previously ruled on a postconviction motion challenging the same judgment and sentence.

(2) TIME LIMITATIONS ON FILING A SUCCESSIVE MOTION.—

(a) A successive postconviction motion is barred unless commenced by filing a fully pled successive postconviction motion within 90 days:

1. After the facts giving rise to the claim were

discovered or should have been discovered with the exercise of due diligence; or

2. After the fundamental constitutional right asserted was established and held to apply retroactively.

(b) A successive postconviction motion may not be filed or considered pursuant to this subsection if filed beyond the time limitation provided in paragraph (a) unless it alleges that postconviction counsel, through neglect, failed to file the motion.

(3) CONTENTS OF MOTION.—

(a) A state court may not consider a successive postconviction motion unless the motion is fully pled. For the purposes of this subsection, a fully pled successive postconviction motion includes the following:

1. All of the pleading requirements of an initial postconviction motion under s. 924.056.

2. The disposition of all previous claims raised in postconviction proceedings and the reason or reasons the claim or claims raised in the present motion were not raised in the former motion or motions.

3. If based upon newly discovered evidence, Brady v. Maryland, 373 U.S. 83 (1963), or Giglio v. United States, 405 U.S. 150 (1972), the motion must include:

a. The names, addresses, and telephone numbers of all witnesses supporting the claim.

b. A statement that the witness will be available, should an evidentiary hearing be scheduled, to testify under oath to the facts alleged in the motion or affidavit.

c. If evidentiary support is in the form of documents, copies of all documents shall be attached, including any affidavits obtained.

d. As to a witness or document listed in the motion or attachment to the motion, a statement of the reason why the witness or document was not previously available.

(b) A successive postconviction motion and memorandum of law filed under this subsection may not exceed 25 pages, exclusive of the attachments. Attachments shall include, but are not limited to, the judgment and sentence. The memorandum of law must set forth the applicable case law supporting the granting of relief as to each separately pled claim.

(c) Claims raised in a successive postconviction motion that could have or should have been raised at trial, on direct appeal of the judgment and sentence, if properly preserved, and in the initial postconviction motion, are barred.

(d) A successive postconviction motion may not include a claim of ineffective assistance of collateral postconviction counsel.

(e) A successive postconviction motion may not be amended without court approval. In no instance shall such motion be amended beyond the time limitations provided by subsection (1) for the filing of a successive postconviction motion. If amendment is allowed, the state shall file an amended answer within 20 days after the amended motion is filed.

(f) A successive postconviction motion that does not comply with a requirement in this subsection shall not be considered in a state court.

(4) PROCEDURE; EVIDENTIARY HEARING; DISPOSITION.—

(a) If the defendant intends to offer expert testimony of his or her mental status in a successive postconviction motion proceeding, the state shall be entitled to have the defendant examined by its own mental health expert. If the defendant fails to cooperate with the state's expert, the trial court may, in its discretion, proceed as provided in Rule 3.202(e), Florida Rules of Criminal Procedure. Reports provided to either party by an expert witness shall be disclosed to opposing counsel upon receipt.

(b) The state must file its answer within 20 days after the filing of a successive postconviction motion. The answer may not exceed 25 pages, exclusive of attachments and exhibits. The answer shall address the legal sufficiency of a claim in the motion, respond to the allegations of the motion, address any procedural bars, and state the reasons that an evidentiary hearing is or is not required. As to a claim of legal insufficiency or procedural bar, the answer must include a short statement of any applicable case law.

(c) Within 30 days after the state files its answer to a successive postconviction motion, the trial court shall hold a case management conference. At the case management conference, both parties shall disclose all documentary exhibits that they intend to offer at the evidentiary hearing, provide an exhibit list of all such exhibits, and exchange a witness list with the name and address of any potential witness. All expert witnesses shall be specifically designated on the witness list, and copies of all expert reports shall be attached. At the case management

conference, the trial court shall:

1. Schedule an evidentiary hearing, to be held within 90 days, on claims listed by the defendant as requiring a factual determination.

2. Hear arguments on a purely legal claim not based of disputed facts.

3. Resolve disputes arising from the exchange of information under this paragraph.

(d) If the court determines that an evidentiary hearing is not necessary and that the defendant's successive postconviction motion is legally insufficient or that the motion, files, and records in the case show that the defendant is not entitled to relief, the court shall, within 30 days after the conclusion of the case management conference, deny the motion, setting forth a detailed rationale therefore, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review.

(e) Immediately after an evidentiary hearing, the trial court shall order a transcript of the hearing that shall be filed within 30 days. Within 30 days after receipt of the transcript, the court shall render its order, ruling on each claim considered at the evidentiary hearing and all other claims raised in the successive postconviction motion, making detailed findings of fact and conclusions of law with respect to each claim, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review. The order issued after the evidentiary hearing shall resolve all the claims raised in the successive postconviction motion and shall

be considered the final order for purposes of appeal. The clerk of the trial court shall promptly serve upon the parties and the attorney general a copy of the final order, with a certificate of service.

(f) Motions for rehearing must be filed within 15 days after the rendition of the trial court's order and a response thereto must filed within 10 days thereafter. The trial court's order disposing of the motion for rehearing shall be rendered within 15 days after the response is filed.

(g) An appeal may be taken by filing a notice to appeal with the Florida Supreme Court within 15 days after the entry of a final order on a capital postconviction motion. No interlocutory appeal shall be permitted.

Section 24. Section 924.0581, Florida Statutes, is created to read:

924.0581 Capital postconviction appeals to the Florida Supreme Court.—

(1) APPLICABILITY.—This section governs capital postconviction appeals to the Florida Supreme Court in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

(2) INITIAL AND SUCCESSIVE POSTCONVICTION MOTION APPEALS.—

(a) When the notice of appeal is filed in the Florida Supreme Court, the chief justice shall direct the appropriate chief judge of the circuit court to monitor the preparation of the complete record for timely filing in the Florida Supreme Court.

(b) The complete record in a death penalty appeal shall

include transcripts of all proceedings conducted in the lower court, all items required by Rule 9.200, Florida Rules of Appellate Procedure, and any item listed in an order issued by the Florida Supreme Court. The record shall begin with the most recent mandate issued by the Florida Supreme Court; or, in the event the preceding appeal was disposed of without a mandate, the most recent filing not already transmitted to the Florida Supreme Court in a prior record. The record shall exclude the materials already transmitted to the Florida Supreme Court as the record in a prior appeal.

(c) The Florida Supreme Court shall take judicial notice of the appellate records in all prior appeals and writ proceedings involving a challenge to the same judgment of conviction and sentence of death. Appellate records subject to judicial notice under this section shall not be duplicated in the record transmitted for the appeal under review.

(d) If the sentencing court has denied the initial or successive postconviction motion without an evidentiary hearing, the Florida Supreme Court shall initially review the case to determine whether the trial court correctly resolved the defendant's claims without an evidentiary hearing. If the Florida Supreme Court determines an evidentiary hearing should have been held, the court may remand the case for an evidentiary hearing. Jurisdiction shall be relinquished to the trial court for the purpose of conducting an evidentiary hearing on the issues identified in the Florida Supreme Court's order. The trial court must schedule an evidentiary hearing within 30 days after the Florida Supreme Court's order and conclude the hearing

within 90 days after scheduling. Upon conclusion of the evidentiary hearing, the record shall be supplemented with the hearing transcript.

(e) The defendant has 30 days after the date the record is filed to file an initial brief. The answer brief must be filed within 20 days after filing of the initial brief. The reply brief, if any, must be filed within 20 days after filing of the answer brief. The cross-reply brief, if any, shall be filed within 20 days thereafter. A brief submitted after these time periods is barred and may not be heard.

(f) Oral arguments shall be scheduled within 30 days after the filing of the defendant's reply brief.

(g)1. The Florida Supreme Court shall render its decision within 180 days after oral arguments have concluded. If a denial of an action for postconviction relief is affirmed, the Governor may proceed to issue a warrant for execution.

2. In instances where the Florida Supreme Court does not comply with subparagraph 1., the Chief Justice of the Florida Supreme Court shall, within 10 days after the expiration of the 180 day deadline, submit a report to the President of the Senate and the Speaker of the House of Representatives explaining why a decision was not timely rendered. The Chief Justice shall submit a report to the President of the Senate and the Speaker of the House of Representatives every 30 days thereafter in which a decision is not rendered explaining the reasons therefore.

(3) PETITIONS FOR EXTRAORDINARY RELIEF.—

(a) Review proceedings under this subsection shall be treated as original proceedings under Rule 9.100, Rules of

Appellate Procedure, except as otherwise provided in this subsection.

(b) A petition for extraordinary relief shall be in the form prescribed by Rule 9.100, Rules of Appellate Procedure, may include supporting documents, and shall recite in the statement of facts:

1. The date and nature of the lower court's order sought to be reviewed.

2. The name of the lower court rendering the order.

3. The nature, disposition, and dates of all previous court proceedings.

4. If a previous petition was filed, the reason the claim in the present petition was not raised previously.

5. The nature of the relief sought.

(c)1. A petition for belated appeal must include a detailed allegation of the specific acts sworn to by the petitioner or petitioner's counsel that constitute the basis for entitlement to belated appeal, including whether the petitioner requested counsel to proceed with the appeal and the date of such request, whether counsel misadvised the petitioner as to the availability of appellate review or the filing of the notice of appeal, or whether there were circumstances unrelated to counsel's action or inaction, including names of individuals involved and dates of the occurrences, that were beyond the petitioner's control and otherwise interfered with the petitioner's ability to file a timely appeal.

2. A petition for belated appeal may not be filed more than 1 year after the expiration of time for filing the notice

of appeal from a final order denying relief pursuant to s. 924.056 or s. 924.058, unless the petition alleges under oath with a specific factual basis that the petitioner:

a. Was unaware an appeal had not been timely filed, was not advised of the right to an appeal, was misadvised as to the right to an appeal, or was prevented from timely filing a notice of appeal due to circumstances beyond the petitioner's control.

b. Could not have ascertained such facts by the exercise of due diligence.

(d) A petition alleging ineffective assistance of appellate counsel must include detailed allegations of the specific acts that constitute the alleged ineffective assistance of counsel on direct appeal and must be filed simultaneously with the initial brief in the appeal from the lower tribunal's final order denying relief pursuant to s. 924.056 or s. 924.058.

(4) PETITIONS SEEKING RELIEF OF NONFINAL ORDERS.—

(a) This subsection applies to proceedings that invoke the jurisdiction of the Florida Supreme Court for review of nonfinal orders issued in postconviction proceedings after the imposition of the death penalty. Review of such proceedings shall be treated as original proceedings under Rule 9.100, Rules of Appellate Procedure, except as otherwise provided in this subsection.

(b) Jurisdiction of the Florida Supreme Court shall be invoked by filing a petition with the Clerk of the Florida Supreme Court within 30 days after rendition of the nonfinal order to be reviewed. A copy of the petition shall be served on the opposing party and furnished to the judge who issued the

order to be reviewed. Either party to the death penalty postconviction proceedings may seek review under this subsection.

(c) The petition shall be in the form prescribed by Rule 9.100, Rules of Appellate Procedure, and shall contain the following:

1. The basis for invoking the court's jurisdiction.

2. The date and nature of the order sought to be reviewed.

3. The name of the lower tribunal rendering the order.

4. The name, disposition, and dates of all previous trial, appellate, and postconviction proceedings relating to the conviction and death sentence that are the subject of the proceedings in which the order sought to be reviewed was entered.

5. The facts on which the petitioner relies, with references to the appropriate pages of the supporting appendix.

6. Arguments in support of the petition, including an explanation of why the order departs from the essential requirements of law and how the order may cause material injury for which there is no adequate remedy on appeal, and appropriate citations of authority.

7. The nature of the relief sought.

(d) The petition shall be accompanied by an appendix, as prescribed by Rule 9.220, Rules of Appellate Procedure, which shall contain the portions of the record necessary for a determination of the issues presented.

(e) If the petition demonstrates a preliminary basis for relief or a departure from the essential requirements of law

that may cause material injury for which there is no adequate remedy by appeal, the court may issue an order directing the respondent to show cause, within the time set by the court, why relief should not be granted. No response shall be permitted unless ordered by the court. Within 20 days after service of the response or such other time set by the court, the petitioner may serve a reply, which shall not exceed 15 pages in length, exclusive of supplemental appendix.

(f) A stay of proceedings under this subsection is not automatic. The party seeking a stay must petition the Florida Supreme Court for a stay of proceedings. During the pendency of a review of a nonfinal order, unless a stay is granted by the Florida Supreme Court, the lower tribunal may proceed with all matters, except that the lower tribunal may not render a final order disposing of the cause pending review of the nonfinal order.

(g) The parties may not file other pleadings, motions, replies, or miscellaneous papers without leave of court.

(h) Seeking review under this subsection shall not extend the time limitations in s. 27.7081, s. 924.056, or s. 924.058.

Section 25. Effective July 1, 2013, section 924.0585, Florida Statutes, is created to read:

924.0585 Capital postconviction proceedings; reporting requirements.—

(1) The Florida Supreme Court shall annually report to the Speaker of the House of Representatives and the President of the Senate the status of each capital case in which a postconviction action has been filed that has been pending for more than 3

years. The report must include the name of the state court judge involved in the case.

(2) In a capital postconviction proceeding in which it has been determined that an attorney of record was ineffective, the court making such determination shall furnish a copy of the findings of ineffectiveness to The Florida Bar for an appropriate disciplinary action. The Florida Bar shall submit an annual report to the Speaker of the House of Representatives and the President of the Senate listing the names of attorneys found ineffective, the findings of the court, and detailing what disciplinary action, if any, was taken by The Florida Bar. If no disciplinary action was taken, the report shall specify why no action was taken. An attorney who has been deemed ineffective in a capital case is ineligible to represent capital case defendants for 5 years.

Section 26. Subsection (3) is added to section 924.0585, Florida Statutes, as created by this act, to read:

924.0585 Capital postconviction proceedings; reporting requirements.—

(3) A capital postconviction action filed in violation of the time limitations provided by statute is barred, and all claims raised therein are waived. A state court may not consider any capital postconviction action filed in violation of s. 924.056 or s. 924.058. The Attorney General shall deliver to the Governor, the President of the Senate, and the Speaker of the House of Representatives a copy of any pleading or order that alleges or adjudicates any violation of this subsection.

Section 27. Section 924.059, Florida Statutes, is amended

to read:

(Substantial rewording of section. See s. 924.059, F.S., for present text.)

924.059 Conflicts of interest in capital postconviction proceedings.—In any capital postconviction proceeding in which it is alleged that there is a conflict of interest with postconviction counsel, the court shall hold a hearing within 30 days after such allegation to determine whether an actual conflict exists and whether such conflict will adversely affect the performance of a defendant's lawyer. An actual conflict of interest exists when an attorney actively represents conflicting interests. To demonstrate an actual conflict, the defendant must identify specific evidence suggesting that the defendant's interests were or may be compromised. A possible, speculative, or merely hypothetical conflict is insufficient to support an allegation that a conflict of interest exists. The court must rule within 10 days after the conclusion of the hearing.

Section 28. Section 924.0591, Florida Statutes, is created to read:

924.0591 Incompetence to proceed in capital postconviction proceedings.—

(1) A death-sentenced inmate pursuing collateral relief who is found by the court to be mentally incompetent shall not be proceeded against if there are factual matters at issue, the development or resolution of which require the inmate's input. However, all collateral relief issues that involve only matters of record and claims that do not require the inmate's input shall proceed in collateral proceedings, notwithstanding the

inmate's incompetency.

(2) If, at any stage of a postconviction proceeding, the court determines that there are reasonable grounds to believe that a death-sentenced inmate is incompetent to proceed and that factual matters are at issue, the development or resolution of which require the inmate's input, a judicial determination of incompetency is required.

(3) Collateral counsel may file a motion for competency determination and an accompanying certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the death-sentenced inmate is incompetent to proceed. The motion and certificate shall replace the signed oath by the inmate that otherwise must accompany a postconviction motion filed under s. 924.056 and s. 924.058.

(4) The motion for competency examination shall be in writing and shall allege with specificity the factual matters at issue and the reason that a competency consultation with the death-sentenced inmate is necessary with respect to each factual matter specified. To the extent that it does not invade the lawyer-client privilege with collateral counsel, the motion shall contain a recital of the specific observations of, and conversations with, the inmate that have formed the basis of the motion.

(5) If the court finds that there are reasonable grounds to believe that a death-sentenced inmate is incompetent to proceed in a postconviction proceeding in which factual matters are at issue, the development or resolution of which require the inmate's input, the court shall order the inmate examined by no

more than three, nor fewer than two, experts before setting the matter for a hearing. The court may seek input from the inmate's counsel and the state attorney before appointment of the experts.

(6) The order appointing experts shall:

(a) Identify the purpose of the evaluation and specify the area of inquiry that should be addressed.

(b) Specify the legal criteria to be applied.

(c) Specify the date by which the report shall be submitted and to whom it shall be submitted.

(7) Counsel for both the death-sentenced inmate and the state may be present at the examination, which shall be conducted at a date and time convenient for all parties and the Department of Corrections.

(8) On appointment by the court, the experts shall examine the death-sentenced inmate with respect to the issue of competence to proceed, as specified by the court in its order appointing the experts to evaluate the inmate, and shall evaluate the inmate as ordered.

(a) The experts first shall consider factors related to the issue of whether the death-sentenced inmate meets the criteria for competence to proceed by determining whether the inmate has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the inmate has a rational as well as factual understanding of the pending collateral proceedings.

(b) In considering the issue of competence to proceed, the experts shall consider and include in their report:

1. The inmate's capacity to understand the adversary nature of the legal process and the collateral proceedings.

2. The inmate's ability to disclose to collateral counsel facts pertinent to the postconviction proceeding at issue.

3. Any other factors considered relevant by the experts and the court as specified in the order appointing the experts.

(c) Any written report submitted by an expert shall:

1. Identify the specific matters referred for evaluation.

2. Describe the evaluative procedures, techniques, and tests used in the examination and the purpose or purposes for each.

3. State the expert's clinical observations, findings, and opinions on each issue referred by the court for evaluation, and indicate specifically the issues, if any, on which the expert could not give an opinion.

4. Identify the sources of information used by the expert and present the factual basis for the expert's clinical findings and opinions.

(9) If the experts find that the death-sentenced inmate is incompetent to proceed, the experts shall report on the recommended treatment for the inmate to attain competence to proceed. In considering the issues relating to treatment, the experts shall report on:

(a) The mental illness or mental retardation causing the incompetence.

(b) The treatment or treatments appropriate for the mental illness or mental retardation of the inmate and an explanation of each of the possible treatment alternatives in order of

preference.

(c) The likelihood of the inmate attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the inmate will attain competence to proceed in the foreseeable future.

(10) Within 30 days after the experts have completed their examinations of the death-sentenced inmate, the court shall schedule a hearing on the issue of the inmate's competence to proceed.

(11) If, after a hearing, the court finds the death-sentenced inmate competent to proceed or, after having found the inmate incompetent, finds that competency has been restored, the court shall enter its order so finding and shall proceed with a postconviction motion. The inmate shall have 60 days to amend his or her postconviction motion only as to those issues that the court found required factual consultation with counsel.

(12) If the court does not find the inmate incompetent, the order shall contain:

(a) Findings of fact relating to the issues of competency.

(b) Copies of the reports of the examining experts.

(c) Copies of any other psychiatric, psychological, or social work reports submitted to the court relative to the mental state of the death-sentenced inmate.

(13) If the court finds the death-sentenced inmate incompetent or finds the inmate competent subject to the continuation of appropriate treatment, the court shall follow the procedures in Rule 3.212(c), Florida Rules of Criminal

Procedure, except that, to the extent practicable, any treatment shall take place at a custodial facility under the direct supervision of the Department of Corrections.

Section 29. Section 924.0592, Florida Statutes, is created to read:

924.0592 Capital postconviction proceedings after a death warrant has been issued.—

(1) This section governs all postconviction proceedings in a capital case in which the conviction and sentence of death is affirmed on direct appeal on or after July 1, 2015, and in which a death warrant has been issued.

(2) Upon issuance of a death warrant pursuant to s. 922.052 or s. 922.14, the issuing entity shall notify the chief judge of the circuit that sentenced the inmate to death. The chief judge shall assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital cases immediately upon receipt of such notification.

(3) Postconviction proceedings after a death warrant is issued shall take precedence over all other cases. The assigned judge shall make every effort to resolve scheduling conflicts with other cases, including cancellation or rescheduling of hearings or trials and requesting senior judge assistance.

(4) The time limitations provided in s. 924.056 and s. 924.058 do not apply after a death warrant has been issued. All postconviction motions filed after a death warrant has been issued shall be heard expeditiously considering the time limitations set by the date of execution and the time required for appellate review.

(5) The location of any hearing after a death warrant is issued shall be determined by the trial judge considering the availability of witnesses or evidence, the security problems involved in the case, and each other factor determined by the trial court.

(6) All postconviction motions filed after a death warrant is issued shall be considered successive motions and subject to the content requirement of s. 924.058.

(7) The assigned judge shall schedule a case management conference as soon as reasonably possible after receiving notification that a death warrant has been issued. During the case management conference the court shall set a time for filing a postconviction motion, shall schedule a hearing to determine whether an evidentiary hearing should be held, and shall hear arguments on any purely legal claims not based on disputed facts. If the postconviction motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing. If the trial court determines that an evidentiary hearing should be held, the court shall schedule the hearing to be held as soon as reasonably possible considering the time limitations set by the date of execution and the time required for appellate review.

(8) The assigned judge shall require all proceedings conducted pursuant to this section to be reported using the most advanced and accurate technology available in general use at the location of the hearing. The proceedings shall be transcribed expeditiously considering the time limitations set by the execution date.

(9) The court shall obtain a transcript of all proceedings conducted pursuant to this section and shall render its order in accordance with s. 924.056(6)(e) as soon as possible after the hearing is concluded. A copy of the final order shall be electronically transmitted to the Florida Supreme Court and to the attorneys of record. The record shall be immediately delivered to the clerk of the Florida Supreme Court by the clerk of the trial court or as ordered by the assigned judge. The record shall also be electronically transmitted if the technology is available. A notice of appeal is not required to transmit the record.

Section 30. Section 924.0593, Florida Statutes, is created to read:

924.0593 Insanity at the time of scheduled execution.—

(1) A person under sentence of death may not be executed while he or she is insane. A person under sentence of death is insane for purposes of this section if the person lacks the mental capacity to understand the fact of the impending execution and the reason for the execution.

(2) A motion for a stay of execution pending hearing, based on grounds of the death-sentenced inmate's insanity to be executed, may be entertained by any court until such time as the Governor has held appropriate proceedings for determining the issue pursuant to s. 922.07.

(3)(a) On determination of the Governor, subsequent to the signing of a death warrant for an inmate under sentence of death and pursuant to s. 922.07, that the death-sentenced inmate is sane and may be executed, counsel for the inmate may move for a

stay of execution and a hearing based on the inmate's insanity to be executed. The motion:

1. Shall be filed in the circuit court of the circuit in which the execution is to take place and shall be heard by one of the judges of that circuit or such other judge as shall be assigned by the Chief Justice of the Florida Supreme Court to hear the motion. The state attorney of the circuit shall represent the state in any proceedings held on the motion.

2. Shall be in writing and shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the inmate is insane may not be executed.

(b) Counsel for the inmate shall file, along with the motion, all reports of experts that were submitted to the Governor pursuant to s. 922.07. If any of the evidence is not available to counsel for the inmate, counsel shall attach to the motion an affidavit so stating, with an explanation of why the evidence is unavailable.

(c) Counsel for the inmate and the state may submit such other evidentiary material and written submissions, including reports of experts on behalf of the inmate, that are relevant to determination of the issue.

(d) A copy of the motion and all supporting documents shall be served on the Department of Legal Affairs and the state attorney of the circuit in which the motion has been filed.

(4) If the circuit judge, upon review of the motion and submissions, has reasonable grounds to believe that the death-sentenced inmate is insane and may not be executed, the judge

shall grant a stay of execution and may order further proceedings, which may include a hearing.

(5) Any hearing on the death-sentenced inmate's insanity to be executed shall not be a review of the Governor's determination, but shall be a hearing de novo. At the hearing, the issue the court must determine whether the inmate presently meets the criteria for insanity at time of execution, that is, whether the prisoner lacks the mental capacity to understand the fact of the pending execution and the reason for it.

(6) The court may do any of the following as may be appropriate and adequate for a just resolution of the issues raised:

(a) Require the presence of the death-sentenced inmate at the hearing;

(b) Appoint no more than three disinterested mental health experts to examine the death-sentenced inmate with respect to the criteria for determining the inmate's sanity for purposes of this section and to report their findings and conclusions to the court; or

(c) Enter such other orders as may be appropriate to effectuate a speedy and just resolution of the issues raised.

(7) At hearings held pursuant to this section, the court may admit such evidence as the court deems relevant to the issues, including, but not limited to, the reports of expert witnesses. The court shall not be strictly bound by the rules of evidence.

(8) If, at the conclusion of the hearing, the court finds by clear and convincing evidence that the death-sentenced inmate

is insane for purpose of this section, the court shall enter its order continuing the stay of the death warrant; otherwise, the court shall deny the motion and enter its order dissolving the stay of execution.

Section 31. Section 924.0594, Florida Statutes, is created to read:

924.0594 Dismissal of postconviction proceedings.—

(1) This section applies only when a death-sentenced inmate seeks both to dismiss a pending postconviction proceedings and to discharge collateral counsel.

(2) If a death-sentenced inmate files a motion to dismiss a pending postconviction motion and to discharge collateral counsel pro se, the clerk of the court shall serve copies of the motion on counsel of record for both the inmate and the state. Counsel of record may file responses within 10 days.

(3) The trial judge shall review the motion and the responses and schedule a hearing. The death-sentenced inmate, collateral counsel, and the state shall be present at the hearing.

(4) The judge shall examine the inmate at the hearing and shall hear argument of the death-sentenced inmate, collateral counsel, and the state. No fewer than two nor more than three qualified experts shall be appointed to examine the inmate if the judge concludes that there are reasonable grounds to believe the inmate is not mentally competent for purposes of this section. The experts shall file reports with the court setting forth their findings. Thereafter, the court shall conduct an evidentiary hearing and enter an order setting forth findings of

competency or incompetency.

(5) If the death-sentenced inmate is found to be incompetent for purposes of this section, the court shall deny the motion without prejudice.

(6) If the death-sentenced inmate is found to be competent for purposes of this section, the court shall conduct a complete inquiry that complies with the requirements of Durocher v. Singletary, 623 So. 2d 483 (Fla. 1993), and Faretta v. California, 422 U.S. 806 (1975), to determine whether the inmate knowingly, freely, and voluntarily wants to dismiss pending postconviction proceedings and discharge collateral counsel.

(7) If the court determines that the death-sentenced inmate has made the decision to dismiss pending postconviction proceedings and discharge collateral counsel knowingly, freely, and voluntarily, the court shall enter an order dismissing all pending postconviction proceedings and discharging collateral counsel. If the court determines that the inmate has not made the decision to dismiss pending postconviction proceedings and discharge collateral counsel knowingly, freely, and voluntarily, the court shall enter an order denying the motion without prejudice.

(8) If the court denies the motion, the death-sentenced inmate may seek review pursuant to s. 924.0581(3). If the court grants the motion:

(a) A copy of the motion, order, and transcript of the hearing or hearings conducted on the motion shall be forwarded to the clerk of the Florida Supreme Court within 30 days.

(b) Discharged counsel shall, within 10 days after

issuance of the order, file with the clerk of the circuit court two copies of a notice seeking review in the Supreme Court, and shall, within 20 days after the filing of the transcript, serve an initial brief. Both the inmate and the state may serve responsive briefs.

(9)(a) Within 10 days after the rendition of an order granting a death-sentenced inmate's motion to discharge counsel and dismiss the motion for postconviction relief, discharged counsel must file with the clerk of the circuit court a notice seeking review in the Supreme Court.

(b) The circuit judge presiding over the motion to dismiss and discharge counsel shall order a transcript of the hearing to be prepared and filed with the clerk of the circuit court within 25 days after rendition of the final order. Within 30 days after the granting of a motion to dismiss and discharge counsel, the clerk of the circuit court shall forward a copy of the motion, order, and transcripts of all hearings held on the motion to the clerk of the Supreme Court.

(c) Within 20 days after the filing of the record in the Supreme Court, discharged counsel shall serve an initial brief. Both the state and the prisoner may serve responsive briefs. All briefs must be served and filed as prescribed by Rule 9.210 of the Rules of Appellate Procedure.

(d) The Supreme Court shall rule on the motion within 60 days after the last brief filing deadline.

Section 32. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or

applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 33. Except as otherwise provided herein, this act shall take effect July 1, 2015, contingent upon voter approval of HJR 7081, or a similar joint resolution having substantially the same specific intent and purpose, in the General Election of 2014.