



Judiciary Committee

December 5, 2012

9:00 AM

404 HOB

Meeting Packet

Will Weatherford
Speaker

Dennis Baxley
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 11/28/2012 4:16:35PM)

Amended(1)

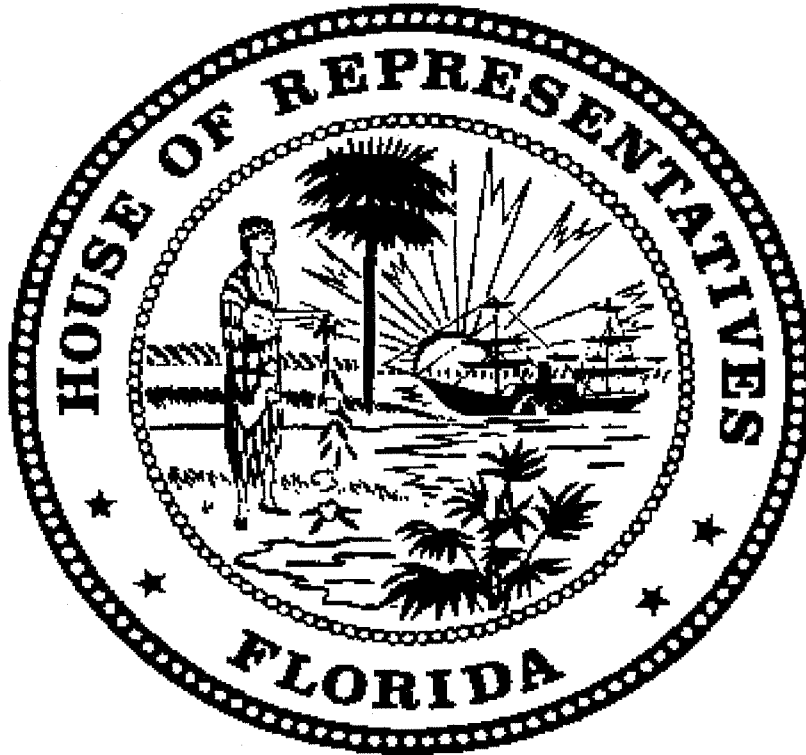
Judiciary Committee

Start Date and Time: Wednesday, December 05, 2012 09:00 am
End Date and Time: Wednesday, December 05, 2012 10:00 am
Location: 404 HOB
Duration: 1.00 hrs

Member and Staff Introduction

Overview of Committee Jurisdiction

NOTICE FINALIZED on 11/28/2012 16:16 by Jones.Missy



JUDICIARY COMMITTEE

Briefing Notebook

December 2012

Jurisdiction and Major Policy Areas

The Judiciary Committee's policy jurisdiction is divided among two areas; civil justice and criminal justice.

Civil Justice

Historically, the Judiciary Committee's civil jurisdiction has included bills related to civil litigation (including torts, civil rights, contracts and collections), business law (litigation, creation of business entities), family law (including marriage, divorce, adoption, child custody and child support), constitutional amendments, real property law (transactions, mortgages, foreclosures, condominiums, homeowners associations, mobile home parks), probate, guardianship, trust law, alternative dispute resolution (mediation and arbitration), the practice of law, and the clerks of court. Some previous Speakers have referred claim bills to the Committee.

In addition to hearing bills, all legislative committees have a governmental oversight role. Historical civil justice oversight assignments for the Committee have included the court system in general (including court rulemaking) clerks of court, and court-related entities such as the Justice Administrative Commission, Judicial Qualifications Commission, and the Judicial Nominating Commissions. Additionally, the Committee has been assigned oversight over the Department of Legal Affairs (Attorney General).

Criminal Justice

The Judiciary Committee handles a broad range of issues relating to criminal justice. The Committee hears bills relating to substantive criminal offenses (e.g., homicide, assault, battery, kidnapping, sexual battery, arson, burglary, and theft), as well as bills that involve criminal procedure issues, such as the arrest process, bail, pretrial proceedings, court costs, evidence, and sentencing.

In addition, the Committee handles legislation relating to the death penalty, specialty courts (e.g., drug court, veterans court, etc.), sexual offenders and predators, gangs, controlled substances, domestic violence, criminal traffic offenses (e.g., DUI), firearms, and weapons.

The Committee is usually referred any bill that affects the sentence for a criminal offense. This includes any bill that amends the Criminal Punishment Code or the Offense Severity Ranking Chart (Chapter 921, F.S.), creates prison diversion programs, creates new criminal penalties, or changes the criminal penalty for an existing criminal offense.

Oversight Agencies and Organizations -- Civil Justice

State Courts System

- Supreme Court
- 5 District Courts of Appeal
- 20 Judicial Circuits
- 67 County Courts

Organizations under the State Courts System, including:

- Dispute Resolution Center
- Court Interpreters Program
- Judicial Education Program
- Florida Bar
- Florida Board of Bar Examiners

Department of Legal Affairs, including:

- Office of the Attorney General
- Antitrust Division
- Civil Rights Division
- Victim Services
- Criminal Appeals
- Economic Crimes
- Civil Litigation
- Child Support Enforcement
- Medicaid Fraud
- Solicitor General
- Statewide Prosecution
- Lemon Law

Clerks of Court

Justice Administrative Commission, including:

- Clerk of Courts Operations Corporation
- Guardian Ad Litem program
- Offices of Criminal Conflict & Civil Regional Counsel
- Payment of court-appointed counsel for indigents
- Payment of due process services for indigents

Judicial Qualifications Commission

Judicial Nominating Commissions

Oversight Agencies and Organizations -- Criminal Justice

The Judiciary Committee has numerous state agencies under its criminal justice jurisdiction. These agencies include the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), the Department of Corrections (DOC), and the Florida Parole Commission (FPC).

Florida Department of Law Enforcement – Chapter 943, F.S.

FDLE's mission is to promote public safety and strengthen domestic security by providing services in partnership with local, state, and federal criminal justice agencies to prevent, investigate, and solve crimes while protecting Florida's citizens and visitors. Through its seven Regional Operations Centers and crime laboratories, FDLE delivers investigative, forensic, and information system services to Florida's criminal justice community.

FDLE is structured to deliver services in the following five program areas:

- Executive Direction and Business Support Program;
- Criminal Investigations and Forensic Science Program;
- Florida Capitol Police Program;
- Criminal Justice Information Program; and
- Criminal Justice Professionalism Program.

Florida Department of Juvenile Justice – Chapter 985, F.S.

DJJ's mission is to increase public safety by reducing juvenile delinquency through effective prevention, intervention and treatment services that strengthen families and turn around the lives of troubled youth. Currently, DJJ is organized in the following five programs areas:

- Administrative Services;
- Prevention and Victim Services;
- Probation and Community Intervention;
- Detention Services; and
- Residential Services.

Florida Department of Corrections—Ch's. 941, 944, 945, 946, 948, & 958, F.S.

DOC's mission is to protect the public safety, to ensure the safety of Department personnel, and to provide proper care and supervision of all offenders under its jurisdiction while assisting, as appropriate, their reentry into society. DOC is the third largest state prison system in the country with a budget of over \$2 billion, just over 100,000 inmates incarcerated, and approximately 115,000 offenders on active community supervision. Approximately three quarters of DOC's staff of more than 25,000 employees are either certified correctional or probation officers.

DOC is structured to serve the public and inmates in the following program areas:

- Institutions;

- Community Corrections; and
- Re-entry.

Florida Parole Commission – Chapter 947, F.S.

FPC administers parole, conditional release, conditional medical release, control release, and addiction recovery supervision to all eligible criminal offenders. Additionally, FPC administers the clemency process for the Executive Clemency Board pursuant to the Rules of Executive Clemency.

Other Criminal Justice Entities

The Committee often works with other criminal justice entities to determine the substantive and fiscal impact of criminal justice-related bills. These entities include:

Florida Prosecuting Attorneys Association

The Florida Prosecuting Attorneys Association (FPAA) is a nonprofit corporation created to serve the needs of prosecutors. FPAA's members are the 20 elected State Attorneys and Assistant State Attorneys.

Florida Public Defenders Association

The Florida Public Defender Association (FPDA) provides training, support, and services to the Public Defenders and Assistant Public Defenders of the state of Florida.

Office of the State Courts Administrator

The Office of the State Courts Administrator (OSCA) oversees the operation of numerous court initiatives and administrative functions. Additionally, OSCA serves as the liaison between the court system and the legislative branch, the executive branch, the auxiliary agencies of the Court, and national court research and planning agencies.

Florida Association of Court Clerks & Comptrollers

The Florida Association of Court Clerks & Comptrollers (FCCC) is a statewide, non-profit member association comprised of the Florida Clerks of the Circuit Court and Comptrollers. FCCC provides education and accreditation for Clerks of the Court and Comptrollers, information, and technical assistance to local governments.

Florida Association of Counties

The Florida Association of Counties (FAC) represents each of Florida's 67 counties on a range of issues from health care to transportation. FAC's Public Safety Committee concentrates on general public safety, the judicial system, juvenile detention, impacts to county jails, and emergency management.

Florida Sheriffs Association

The Florida Sheriffs Association (FSA) is a not-for-profit corporation comprised of the 67 Sheriffs of Florida as well as approximately 3,500 business leaders and 70,000 citizens throughout the state. Through the FSA, Sheriffs are given a forum to address lawmakers to push for positive changes in Florida's public safety arena.

Florida Police Chiefs Association

The Florida Police Chiefs Association (FPCA), composed of more than 750 of the state's top law enforcement executives, promotes legislation that enhances public security by providing superior police protection for the residents of Florida and its many visitors. The FPCA serves municipal police departments, airport police, college and university police, private business and security firms, as well as federal, state and county law enforcement agencies.

Contact Names and Phone Numbers—Civil Justice

State Courts System

State Courts Administrator: Lisa Goodner

Telephone: 850-922-5081

E-mail: goodnerl@flcourts.org

Director of Community and Intergovernmental Relations: Eric Maclure

E-mail: macluree@flcourts.org

Website: <http://www.flcourts.org/>

Department of Legal Affairs

Director of Legislative and Cabinet Affairs: Rob Johnson

Telephone: 850-245-0188

E-mail: Rob.Johnson@myfloridalegal.com

Website: <http://myfloridalegal.com/>

Clerks of Court

Fred Baggett, Esquire

Telephone: 850-222-6891

E-mail: baggetf@gtlaw.com

Website: <http://www.flclerks.com/>

Justice Administrative Commission

Executive Director: Alton L. "Rip" Colvin, Jr.

Telephone: 850-488-2415 x221

E-mail: rip.colvin@justiceadmin.org

Website: <http://www.justiceadmin.org/>

Judicial Qualifications Commission

Executive Director: Brooke Kennerly

Telephone: 850-488-1581

E-mail: bkennerly@floridajqc.com

Website: <http://www.floridajqc.com/>

The Florida Bar

General Counsel: Paul Hill, Esquire

Telephone: 850-561-5661

E-mail: phill@flabar.org

Website: <http://www.floridabar.org/>

Contact Names and Phone Numbers—Criminal Justice

Florida Department of Law Enforcement

Legislative Affairs Director: Lynn Dodson

Telephone: 850-410-7001

E-mail: lynndodson@fdle.state.fl.us

Website: <http://www.fdle.state.fl.us>

Florida Department of Juvenile Justice

Legislative Affairs Director: Ana Maria Sanchez

Telephone: 850-410-1097

E-mail: anamaria.sanchez@djj.state.fl.us

Website: <http://www.djj.state.fl.us>

Florida Department of Corrections

Legislative Affairs Director: Will Kendrick

Telephone: 850-488-7436

E-mail: kendrick.will@mail.dc.state.fl.us

Website: <http://www.dc.state.fl.us>

Florida Parole Commission

Legislative Affairs Director: Brian Logan

Telephone: 850-921-2816

E-mail: brianlogan@fpc.state.fl.us

Website: <https://fpc.state.fl.us>

Florida Prosecuting Attorneys Association

President: Honorable Bill Eddins, State Attorney, 1st Judicial Circuit

Executive Director: John N. Hogenmuller

Telephone: 850-488-3070

<http://www.myfpaa.org>

Florida Public Defender's Association

President: Honorable Julianne Holt, Public Defender, 13th Judicial Circuit

Executive Director: Sheldon Gusky

Telephone: 850-488-6850

<http://www.flpda.org>

Office of the State Courts Administrator

State Courts Administrator: Lisa Goodner

Telephone: 850-922-5081

<http://www.flcourts.org>

Florida Association of Court Clerks & Comptrollers

President: Honorable Rebecca Norris, Gulf County Clerk

General Counsel: Fred Baggett

Telephone: 850-921-0808

Website: <http://www.flclerks.com>

Florida Association of Counties

President: Bryan Desloge, Leon County Commissioner

Public Safety Legislative Advocate: Lisa Hurley

Telephone: 850-922-4300

Website: <http://www.fl-counties.com>

Florida Sheriffs Association

President: Sheriff Susan Benton, Highlands County Sheriff

Assistant Executive Director: Sarrah Carroll

Telephone: 800-877-2168

Website: <http://www.flsheriffs.org>

Florida Police Chiefs Association

President: Police Chief Dennis Jones, Tallahassee Police Department

Executive Director: Amy Mercer

Telephone: 850-219-3631

Website: <http://www.fpca.com>

Overview of Recently Passed Civil Justice Legislation

In the past two sessions, significant civil justice legislation that passed the Committee and subsequently passed both chambers includes:

Business Law

Laws on limited liability companies were changed to provide that a charging order is the sole and exclusive remedy by which a judgment creditor may satisfy a judgment unless the debtor is a single-member LLC and distributions under the charging order will not satisfy the judgment. The bill was referred to as the Olmstead fix.¹

Tax law was changed to provide that the buyer of a business may take possession of the business without incurring carryover tax liability under certain circumstances.²

Florida's Uniform Commercial Code was amended to conform to a revision of Article 9 of the Model Uniform Commercial Code.³

The legal-notice requirements that owners of a self-storage facility must provide to a tenant prior to sale of the unit contents were simplified.⁴

Civil Law

The statute of limitations within which a wrongful death action against the state must be brought was shortened to be consistent with the statute of limitations applicable to a lawsuit against private persons.⁵

A revision to the state constitution relating to state courts was proposed, although the proposal failed to receive the necessary approval by the voters for adoption.⁶

An additional exception to the hearsay rule was created to allow for admission of hearsay statements when the unavailability of the witness is caused by the opposing party's wrongful conduct.⁷

Florida's long-arm jurisdiction, choice-of-law and forum-selection statutes were revised to make courts more accessible to nonresidents of the state.⁸

¹ 2011 H.B. 253

² 2012 H.B. 103

³ 2012 H.B. 483

⁴ 2012 H.B. 715

⁵ 2011 H.B. 277

⁶ 2011 H.J.R. 7111

⁷ 2012 H.B. 701

⁸ 2012 H.B. 917. This bill was vetoed.

Family Law

The law relating to time-sharing between the unmarried parents of a minor child was amended to significantly limit visitation with a parent previously convicted of certain criminal offenses⁹ and to provide that military activation or deployment cannot be the sole factor in the court's decision to grant a modification of permanent time-sharing and parental responsibility.¹⁰

The most recent Uniform Interstate Family Support Act was adopted.¹¹

The parental notification statute was amended to provide factors for the court to consider for minors seeking an abortion without parental consent.¹²

Probate & Guardianship Law

The law relating to estates, wills and trusts was changed to address intestate divestment, will and trust revocation and confidentiality of communications between a lawyer and a client.¹³

Laws regarding protection from creditor claims were amended to provide that an Inherited Individual Retirement Account (IRA) retains the same protection from creditors that the original IRA enjoyed.¹⁴

The Uniform Power of Attorney Act was adopted.¹⁵

Estate law was changed to provide that beneficiary designations that had named the ex-spouse as the beneficiary become void upon dissolution of the marriage, unless such designation is specifically readopted or required to be retained as part of the dissolution.¹⁶

The definition of a "protected homestead" was revised to create parity between property held as joint tenants with right of survivorship and property held as tenants by the entireties. Inheritance through intestate succession was barred where parental rights had previously been terminated.¹⁷

⁹ 2011 S.B. 504

¹⁰ 2011 H.B. 621

¹¹ 2011 H.B. 1111

¹² 2011 H.B. 1247

¹³ 2011 H.B. 325

¹⁴ 2011 H.B. 469

¹⁵ 2011 S.B. 670

¹⁶ 2012 H.B. 401

¹⁷ 2012 H.B. 733

Real Property Law

Adverse possession law was modified to require formal notice to the owner of record of the commencement of the adverse possession period.¹⁸

Regarding construction liens, the filing requirements and the effects of a lease were modified¹⁹ and the requirements for construction surety bonds and notice requirements for recording a claim against a bond were revised.²⁰

The common law implied warranty of fitness and merchantability does not apply to off-site improvements such as roads and drainage areas.²¹

Where a mobile home park owner has given notice of intent to close the mobile home park and where the tenants have formed an organization, the mobile home park owner must offer to sell the park to such tenants association.²²

Laws relating to community associations, condominiums and homeowners associations were amended.²³

Tort Law

The application of the concept of contributory negligence in products liability cases involving enhanced injuries was modified to require the jury to hear about all facts relating to the injury.²⁴

Tort law was changed to give lawsuit immunity to a person who provides, gratuitously and in good faith, housing, food or electricity to emergency first responders or their families in an emergency.²⁵

The concept of vicarious liability of an employer was changed to provide that an employer is not liable for a negligent or intentional act or omission of a developmentally disabled employee provided that the employer does not have actual notice of the act or omission.²⁶

Tort law protections for volunteer athletic team physicians were expanded.²⁷

¹⁸ 2011 S.B. 1142

¹⁹ 2011, S.B. 1196

²⁰ 2012 H.B. 897

²¹ 2012 H.B. 1013

²² 2011 S.B. 650

²³ 2011 H.B. 1195

²⁴ 2011 S.B. 142

²⁵ 2011 S.B. 450

²⁶ 2011 S.B. 926

²⁷ 2011 H.B. 479

The lawsuit protection for volunteers for nonprofit organizations was amended to provide that the protection applies even if the volunteer receives compensation from an outside source.²⁸

Certain teaching hospitals were granted sovereign immunity.²⁹

The law limiting the liability of landowners was expanded to provide that a private landowner may be exempt from liability when the landowner enters into a written agreement with the state to allow the state or the public to access the land for certain purposes.³⁰

Overview of Recently Passed Criminal Justice Legislation

In the past two sessions, significant criminal justice legislation that passed the Committee and subsequently passed by both chambers includes:

Controlled Substances

Florida's controlled substances laws were changed to prohibit the possession or use of synthetic cannabis and canthinone substances, which are psychoactive designer drugs known as K2, Spice and Bath Salts.³¹ These substances were added to Schedule I of Florida's controlled substance schedules.

As a result, anyone in possession of the newly scheduled substances commits a third degree felony (possession of 3 grams or less of synthetic cannabinoids is a first degree misdemeanor unless the synthetic cannabinoid is in powdered form). Selling, manufacturing, delivering, or purchasing such substances is a third degree felony.

Firearm Legislation

The Committee heard several bills that deal with firearm regulation issues. Some of those issues included:

- **Regulation of Firearms:** The state's firearm laws were amended to prohibit local governments, subject to certain exceptions, from enacting or enforcing local ordinances or regulations that impinge upon the Legislature's exclusive occupation of the field of firearm and ammunition regulation. The law authorizes a court to assess a fine of up to \$5,000 and termination of government employment if there was a knowing and willful violation.³²

²⁸ 2011 H.B. 647

²⁹ 2011 S.B. 1676

³⁰ 2012 H.B. 313

³¹ 2011 H.B.'s 39 & 1039; 2012 HB 1175

³² 2011 H.B. 45

- **Privacy of Firearm Owners:** Prohibited a licensed health care practitioner or licensed health care facility from intentionally entering any disclosed information concerning firearm ownership into a patient's health record if the information is not relevant to the patient's medical care or safety or the safety of others. Non-compliance by licensed health care practitioners and health care facilities constitutes grounds for disciplinary action.³³
- **Open Carry:** Generally, it is unlawful for a person to openly carry a firearm. The bill specified that it is not a crime for a concealed firearm permit holder, who is lawfully carrying a firearm in a concealed manner, to briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner, not necessary in self-defense.³⁴

Sexting

The act of electronically sending sexually explicit messages or photos of oneself is generally referred to as "sexting." Legislation passed creating the offense of sexting and specified that a minor commits sexting if he or she knowingly transmits data electronically to another minor that includes any photograph or video that depicts nudity and is harmful to minors. Penalties for a sexting violation range from 8 hours of community service (or in lieu of community service a \$60 fine) for a minor's first violation to a third degree felony for a third or subsequent sexting conviction.³⁵

Correctional Facilities

Chapter 944, F.S., was amended to add legislative intent language encouraging the Department of Corrections to expand its faith- and character-based initiative through the use of faith- and character-based institutions while phasing out the faith-based/self-improvement dormitories.³⁶

Drug Offenders

The Committee heard several bills addressing issues related to individuals with substance abuse problems within the criminal justice system. Some of those issues included:

- **Drug Court Program:** Florida's existing drug court program was expanded to increase the eligibility criteria for post-adjudicatory treatment-based drug court programs by increasing the number of sentencing points allowed for admission into the program from 52 to 60, and allowing an offender to be

³³ 2011 H.B. 155. This bill became effective on June 2, 2011, but has been challenged in the courts on First Amendment grounds. The litigation is currently pending before the United States Court of Appeals for the Eleventh Circuit.

³⁴ 2011 S.B. 234

³⁵ 2011 H.B. 75

³⁶ 2011 H.B. 369

placed into a post-adjudicatory drug court program after violating the terms of his or her probation or community control.³⁷

- **Drug Offender Re-entry**: Legislation directed the Department of Corrections to develop and administer a nonviolent offender reentry program. If approved for participation in the program (offender criteria required the inmate: be a nonviolent offender; served at least ½ of original sentence; and has an identified need for substance abuse treatment), the offender must serve at least six months in the reentry program. If program performance is satisfactory, the court may issue an order modifying the original sentence imposed and place the offender on drug offender probation.³⁸
- **Pretrial Substance Abuse Programs**: Legislation passed that expanded Florida's existing misdemeanor pretrial substance abuse and education programs to make these programs available to more individuals without compromising public safety.³⁹

Juvenile Justice

Florida had an *optional* juvenile civil citation program that provided law enforcement with an alternative to arresting youth and placing them in custody. Legislation passed in 2011 *requires* these programs to be established and administered at the local level. It restricts the use of a civil citation to juveniles who are first-time misdemeanor offenders and requires them to complete no more than 50 hours of community service and intervention services as indicated by the assessment of the juvenile's needs in lieu of arrest and confinement.⁴⁰

Protective Injunctions

The Committee also has heard bills that amend Florida's protective injunction statutes. Those bills addressed the following issues:

- **Notification of Service of Injunction**: Legislation passed that provides a person seeking a protective injunction, if requested, be notified by the Clerk of Court when the respondent has been served with the injunction against domestic violence, repeat violence, dating violence, or sexual violence. This notification must be made within 12 hours after the law enforcement officer has served the injunction upon the respondent.⁴¹
- **Stalking**: The Committee passed legislation that created a statutory cause of action for a victim to get an injunction for protection against stalking, and

³⁷ 2011 S.B. 400

³⁸ 2012 H.B. 177; While this bill passed both the House and the Senate, it was vetoed by the Governor before taking effect.

³⁹ 2012 S.B. 186

⁴⁰ 2011 H.B. 997

⁴¹ 2011 H.B. 563

created a first degree misdemeanor penalty for violating an injunction against stalking.⁴²

Law Enforcement Investigations

Legislation passed the Committee stemming from the Casey Anthony murder investigation. The bill creates a third degree felony for one to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger. The defendant must have intended to mislead the officer or impede the investigation. Additionally, this offense only applies in cases where the child who is the subject of the investigation suffers great bodily harm or death.⁴³

Video Voyeurism

Florida's video voyeurism statute was amended to apply to residential dwellings; increase criminal penalties under certain circumstances, e.g., if the victim is a student or a child less than 16 years of age; and adding s. 810.145(8), F.S., to the list of offenses that qualify a person for sexual offender status and s. 810.145(8)(b), F.S., to the list of qualifying offenses for a sexual predator designation.⁴⁴

⁴² 2012 H.B. 1099

⁴³ 2012 H.B. 37

⁴⁴ 2012 S.B. 436, H.B. 437

Anticipated Future Policy Issues—Civil Justice⁴⁵

Business Law

The Judiciary Committee often considers bills related to the laws governing business relationships. Anticipated in the upcoming session are changes to the Revised Uniform Limited Liability Company Act; regulation of benefit corporations; modification of the statutes related to assignments for the benefit of creditors; and consideration of whether, or to what extent, charitable organizations should be relieved of liability under fraudulent conveyance laws.

Civil Law

The Committee considers bills changing the general civil law. The general civil law includes contract law, employment, civil rights, and general civil litigation matters. Anticipated in the upcoming session are bills related to electronic publication of notices of action; revision of the arbitration code; service of process; local wage ordinances; and the application of foreign law.

Clerks of Court

The Committee is typically referred bills that affect the clerks of the court. Similar to what is seen from executive branch agencies, the clerks annually offer a bill amending various statutes relating to the clerks to address problems that have arisen. It is anticipated that clerks' issues in this upcoming session will include collections issues and creation of a better definition of the split between court functions and county functions.

Court System

Similar to executive branch agencies, the state court system annually reviews the statutes governing its operations and recommends changes. It is also anticipated that a bill repealing terms of court may be presented.

Family Law

It is anticipated that family law bills regarding alimony reform and valuation of assets for purposes of divorce will be filed. Also, there may be a bill resolving the inconsistent methods for termination of parental rights. Bills regarding child support enforcement are commonly filed and heard by the Committee.

Probate & Guardianship Law

Bills amending probate and guardianship laws are commonly filed. Some are filed to clarify the law, others to account for and conform to changes in federal tax laws. Anticipated bills in this area include bills regarding designation of estate beneficiaries; attorney's fees in guardianships; regulation of guardianship

⁴⁵ Note that this is not a list of what should pass but simply a listing of issues that may be considered. This list is a compilation of issues that are often discussed before the Committee plus those that interested parties have indicated may be part of filed bills in the upcoming session.

examiners; confidentiality of tort settlements of minors in guardianship cases; and changes to laws on accountings.

Real Property Law

Bills amending real property law are also commonly filed. The Committee typically hears one or more bills a year regarding condominiums and homeowners associations. Other anticipated areas of real property law that may be heard before the Committee include bills on: landlord and tenant law; real property titles; limits on hidden liens; and land trust reform.

Florida leads the nation in per capita foreclosure filings. Bills in reaction to the nation's and state's foreclosure crises have been filed in past few years and are anticipated again.

Tort Law

The Judiciary Committee typically hears several bills amending tort law every session. Such bills generally focus on a single issue. Comprehensive tort bills were last passed in 1999 (general tort law) and 2003 (medical malpractice). In the upcoming session, it is anticipated that bills will be filed and referred to the Committee on: the evidentiary standard for admission of expert testimony; restrictions on third party excess liability; admissible evidence for proof of compensatory damages; and modification of medical malpractice laws.

Anticipated Future Policy Issues—Criminal Justice

Stand Your Ground

Governor Scott created the “Task Force on Citizen Safety and Protection” in response to the February 2012, shooting of 17-year old Trayvon Martin by George Zimmerman, a neighborhood watch coordinator in Sanford, Florida. The task force’s mission was to review Florida’s Stand Your Ground law and its implementation, listen to the concerns and ideas from Floridians, and make recommendations to the Legislature to ensure the rights of all Floridians and visitors are protected. The Task Force will release its final report on December 7, 2012, from which proposed legislation is anticipated.

Florida Innocence Commission

The Innocence Commission (Commission) was established by an administrative order issued by Chief Justice Canady on July 2, 2010, and funded by the Legislature. It was directed to conduct a comprehensive study of the causes of wrongful convictions and of measures to prevent such convictions. The Commission issued its final report on June 25, 2012, which identified the following primary causes of wrongful convictions: eyewitness identification; false confessions; informants and jailhouse snitches; improper/invalid scientific evidence; professional responsibility; and underfunding of Florida’s criminal justice system. The Commission recommended the Legislature consider the following proposals:

- Statutorily mandate the electronic recording of statements of suspects during a custodial interrogation.
- The Legislature continue its work in evidence preservation for DNA testing, which could lead to the exoneration of innocent defendants.
- The Legislature provide supplemental funding to help pay for student loans of lawyers working for the State Attorneys, Public Defenders, Attorney General and Regional Conflict Counsel offices.
- Legislative review of the current funding process for private court appointed counsel to reduce potential ineffective assistance of counsel and wrongful convictions. The Commission proposes that the funding for private court-appointed counsel be based on the level of the felony involved and not a flat fee approach.

Smart Justice

In recent years, organizations such as TaxWatch and Associated Industries of Florida have advocated for what are commonly referred to as “Smart Justice” reforms. These reforms largely address ways to reduce the state prison population, prevent juveniles from entering the adult criminal justice system unnecessarily, and improve offender reentry efforts. Past Smart Justice proposals have included:

- Expanding ways in which certain elderly or sick inmates can be released from prison;
- Requiring courts to justify, in writing, a prison sentence for persons who score low sentencing scores;
- Updating the value thresholds for property crimes; and
- Providing non-violent drug-addicted prisoners the opportunity to have their sentences reduced upon successful completion of an in-prison drug treatment program and entry into a drug offender probation program.⁴⁶

This past summer, a variety of public safety and business organizations have participated in a series of planning meetings to discuss Smart Justice proposals for the 2013 session. These meetings will culminate in a Justice Summit from December 12-14, 2012, where it is anticipated that formal Smart Justice recommendations will be made to the Legislature.

Juvenile Sentencing

Graham Decision

In 2010, the United States Supreme Court held in *Graham v. Florida* that the 8th Amendment of the U.S. Constitution prohibits states from sentencing juvenile nonhomicide offenders to life imprisonment without providing a meaningful

⁴⁶ This proposal was passed in the 2012 Legislative Session in H.B. 177. However, this bill was vetoed by the Governor.

opportunity to obtain release. The court requested states “to explore the means and mechanisms for compliance” with the decision.⁴⁷

Miller Decision

On June 25, 2012, the U.S. Supreme Court held in *Miller v. Alabama* that the 8th Amendment forbids a sentencing scheme that *mandates* life in prison without the possibility of parole for juvenile offenders. The Eighth Amendment “guarantees individuals the right not to be subjected to excessive sanctions” and requires that punishments be proportionate to the crime committed. In this case the Court determined that proportionality must take into account “the mitigating qualities of youth.”

It is possible that legislation addressing the *Graham* and *Miller* decisions will be filed during the 2013 Legislative Session.

Synthetic Drugs

New and dangerous synthetic substances are continually being created that are not prohibited by Florida’s controlled substance laws. This is done by slightly modifying the chemical compound of an existing prohibited substance. The solution thus far has been to file legislation every year adding the newly developed substances to the list. The problem with this approach is that designer drugs can be created more rapidly than they can be identified and controlled by action of the Legislature. The Legislature may see legislation to address this issue.

Department of Juvenile Justice - Chapter 985 Rewrite

In July 2012, the Florida Department of Juvenile Justice (DJJ) began hosting a series of meetings in which interested parties and DJJ officials discussed whether and how Chapter 985, F.S., should be rewritten to improve the juvenile justice system. DJJ is expected to work on a rewrite of Ch. 985, F.S., after thorough review and input from interested parties. They expect to have the legislative rewrite ready for the 2014 Legislative Session.

⁴⁷ During the 2012 Session, the House passed CS/H.B. 5 in response to the *Graham* decision. Rather than opening up the option of parole in Florida, the bill provided that a juvenile offender who is sentenced to life imprisonment for a nonhomicide offense may be eligible to go back before a judge for resentencing after serving 25 years of incarceration and meeting specified criteria. CS/H.B. 5 died in Senate messages.

JUDICIARY COMMITTEE STAFF

Randy Havlicak, *Staff Director*

Randy Havlicak is the Staff Director of the Judiciary Committee. Mr. Havlicak has worked for the House of Representatives for 14 years. During that time, he has worked in a variety of positions covering diverse subject matter areas in the following committees and councils: council attorney for the Criminal Justice & Corrections Council and the Ready Infrastructure Council; staff director of the Judiciary Committee; and council director of the State Infrastructure Council, the Safety & Security Council and the Criminal & Civil Justice Policy Council. He has also served on various select committees.

Mr. Havlicak attained his undergraduate and law degrees from the University of Utah. Upon graduation from law school, he accepted a direct commission as a JAG officer with the United States Army. He was an Army lawyer for 5 years at Fort Bragg, North Carolina. During his Army experience, he served as a claims attorney, legal assistance attorney, a Special Assistant U.S. Attorney and as a criminal defense attorney representing soldiers before administrative boards and courts martial. Upon leaving the Army, he accepted a position with the Florida Attorney General's Office working in the criminal appeals division representing the state in criminal cases on appeal before the First District Court of Appeal and the Florida Supreme Court.

Tom Thomas, *Deputy Staff Director*

Tom Thomas is the Deputy Staff Director of the Judiciary Committee. Mr. Thomas interned for the House in 1989 and upon graduation from law school, worked as a staff attorney for the House Business & Professional Regulation Committee. In 1993, he left the House and served as an assistant general counsel and Chief Attorney for the Department of Business and Professional Regulation, before being appointed General Counsel for the Florida Department of Elder Affairs.

Since returning to the House in 2003, Mr. Thomas has served as an attorney for the Insurance Committee and the Judiciary Committee, as chief attorney for the Judiciary Committee and the Constitution & Civil Law Committee, and the past four years has served as Special Master on claim bills for the House and as Deputy Staff Director of the Judiciary Committee.

Mr. Thomas received his bachelor's degree in political science from Florida Atlantic University and his juris doctorate from The Florida State University College of Law.

Tanesha Williams, *Legislative Research Assistant*

Tanesha Williams is the Legislative Research Assistant for the Judiciary Committee. Ms. Williams has worked for the House of Representatives for seven years. During that time, she has served as an Administrative Assistant with the Judiciary Committee and a Council Administrative Assistance for Rules & Calendar Council where she was primarily responsible for creating and publishing the weekly schedule and special order letter and providing session scripts for the Speaker and Members.

Ms. Williams holds a bachelor's degree in English Writing from Florida State University and is currently enrolled in the Paralegal and Legal Studies Program at Tallahassee Community College. Prior to joining the House, she served as a Human Resources Assistant for 4 years with the Florida Bar. Upon leaving the Florida Bar, she accepted a position with the Florida League of Cities as the Assistant to the Assistant Legislative Affairs Director.

Missy Jones, *Senior Administrative Assistant*

Missy Jones is the Administrative Assistant for the Judiciary Committee. Missy has worked for the Florida House of Representatives for 21 years serving on staff in a variety of capacities at the Committee and Council level and in the Speaker's Office. Several of her assignments include serving on the Public Transportation Committee, Insurance Committee, Business & Professional Regulation Committee, Business Development & International Trade Committee, and the Judiciary Committee.

Jennifer Keegan, *Intern*

Jennifer Keegan is a 3rd year law student at Florida State University College of Law and a 2007 graduate of FSU with a bachelor's degree in criminology and psychology. For three years preceding law school, she worked in various positions at the Florida Department of Law Enforcement, including positions in the Alcohol Testing Program and the Criminal Justice Information Services Division.

Christina Arguelles, *Intern*

Christina Arguelles is a 3rd year law student at Florida State University College of Law. She graduated from the University of Florida with a bachelor's degree in History. Christina has worked in both the public and private sectors and most recently interned at the Hillsborough County State Attorney's Office.

Civil Justice Subcommittee Staff

Nathan Bond, *Policy Chief*

Nathan Bond is the Policy Chief for the Subcommittee. He graduated from The Florida State University College of Business in 1985 and the College of Law in 1988. After 11 years in private practice, he joined the House staff in 1999.

John Cary, *Attorney*

John Cary is an attorney for the Subcommittee. He graduated from The Florida State University College of Law in 2009 and interned for the Attorney General and the Florida Senate during law school. He has previously worked in private practice and for the City of Ocala. This will be his second session working in the Civil Justice Subcommittee.

Teresa Ward, *Senior Attorney*

Teresa Ward is an attorney for the Subcommittee. She is a graduate of Stetson University College of Law. She was in the private practice of law until she joined the staff of the House of Representatives in 2010 as Deputy General Counsel.

Criminal Justice Subcommittee Staff

Katie Cunningham, *Policy Chief*

Katie Cunningham joined the Legislature in 2005 as Staff Attorney with the Committee on Criminal Justice. She left the House in 2009 to serve as the Department of Corrections' Legislative Affairs Director, but returned to the House in 2010. She is currently the Policy Chief for the Criminal Justice Subcommittee.

Prior to joining the House in 2005, Mrs. Cunningham was a Senior Attorney with the Department of Corrections where she specialized in probation and community corrections issues. Ms. Cunningham's experience in the criminal justice field includes working as an attorney on a domestic violence legal hotline and working with the Florida Department of Law Enforcement as an online sex crimes investigator. Katie is a graduate of the Florida State University College of Law and holds a bachelor's degree in criminology from Florida State University.

Ryan Cox, *Attorney*

Ryan Cox recently joined House staff as an Attorney with the Criminal Justice Subcommittee. Ryan's criminal justice experience includes working as an Assistant Public Defender for the 17th Judicial Circuit. Prior to joining the House, Ms. Cox handled workers' compensation issues as an Assistant General Counsel with the Department of Financial Services. Ryan earned both her bachelor and juris doctorate degrees from Florida State University.

Lauren Jones, *Attorney*

Lauren Jones recently joined House staff as an Attorney with the Criminal Justice Subcommittee. Lauren's criminal justice experience includes working as an Assistant State Attorney in the 2nd Judicial Circuit. Lauren earned her bachelor degree from Florida State University and her juris doctorate degree from Florida Coastal School of Law.

Jessica Hudson, *Administrative Assistant*

Jessica Hudson has been the Administrative Assistant for the Criminal Justice Subcommittee since 2010. Prior to joining the House, Ms. Hudson worked as the Unit Secretary for the Neonatal Intensive Care Unit at Tallahassee Memorial Hospital. She is considering pursuing a bachelor's degree from Florida State University.