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# **Judiciary Committee**

**March 20, 2013**

**8:00 AM**

**404 HOB**

**Meeting Packet**

**Will Weatherford**  
Speaker

**Dennis Baxley**  
Chair

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Judiciary Committee

**Start Date and Time:** Wednesday, March 20, 2013 08:00 am  
**End Date and Time:** Wednesday, March 20, 2013 11:00 am  
**Location:** 404 HOB  
**Duration:** 3.00 hrs

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

CS/HB 229 Land Trusts by Civil Justice Subcommittee, Rodríguez, J.  
CS/HB 267 Real Property Liens and Conveyances by Local & Federal Affairs Committee, Wood  
CS/HB 311 Costs of Prosecution, Investigation, and Representation by Justice Appropriations Subcommittee,  
Ray  
CS/HB 353 Juvenile Justice by Criminal Justice Subcommittee, Harrell  
CS/HB 399 Florida College System Institution Police Officers by Criminal Justice Subcommittee, Eagle  
HB 407 Criminal Gang Prevention by Ingram  
CS/HB 571 Marshal of Supreme Court by Criminal Justice Subcommittee, Roberson, K.  
CS/HB 585 Law Enforcement by Criminal Justice Subcommittee, Hood  
CS/HB 611 False Reports to Law Enforcement Officers by Criminal Justice Subcommittee, Watson, C.  
HB 619 Controlled Substances by Ingram, Ford  
HB 685 Parole Interview Dates for Certain Inmates by McBurney  
HB 841 Powers of Attorney by Powell  
CS/HB 953 Warrants by Criminal Justice Subcommittee, Nuñez

**Consideration of the following proposed committee bill(s):**

PCB JDC 13-01 -- Inmate Reentry

**NOTICE FINALIZED on 03/18/2013 16:12 by Jones.Missy**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 229 Land Trusts  
**SPONSOR(S):** Civil Justice Subcommittee; Rodríguez, J.  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 0 N, As CS	Ward	Bond
2) Insurance & Banking Subcommittee	13 Y, 0 N	Bauer	Cooper
3) Judiciary Committee		Ward <i>JW</i>	Havlicak <i>RH</i>

**SUMMARY ANALYSIS**

A land trust is a form of ownership of real property in which a trustee holds legal title to the land and a beneficiary retains the power of direction over the trustee and thus retains the power to direct the trustee to sell or mortgage the real property. This bill:

- Better defines the difference between a land trust and a general trust, defining a land trust by the largely ministerial duties of the trustee.
- Codifies in the Florida Land Trust Act a number of land trust practices commonly used in Florida and Illinois and derived from judicial precedents or land trust treatises.
- Includes improvements based on the experience of Florida land trust practitioners that are intended to facilitate and encourage the use of land trusts in Florida real property transactions.

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

This bill has an effective date of upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Florida law recognizes a number of types of trusts. In most instances a trustee is obligated to use a high standard of care in investing and handling assets. There is a duty to account to the beneficiary and the assets of a trust might change. In contrast, the trustee of a land trust has legal title to a single asset for purposes of marketability, makes almost no discretionary decisions, and takes direction from the beneficiary regarding that asset. Thus, there is a distinct body of law that applies to land trusts already established, which this bill seeks to codify and standardize in Florida.

Land trusts were developed first in Illinois, which remains the model for the standard arrangement, in order to create a vehicle for simple transfer of title to property owned by a number of people. As opposed to other types of trusts in Florida, the trustee is a place-holder for ease of transfer and marketability of title. The trustee takes direction from the beneficiaries, and therefore has few if any fiduciary duties, nor any duties to account to the beneficiaries beyond sales transactions. This distinction is significant since Florida also has enacted the Florida Trust Code,<sup>1</sup> which imposes significant duties upon other types of trustees which have no real relevance to the duties of the land trust trustee described in the Florida Land Trust Act.<sup>2</sup>

Section 689.071, F.S., was enacted in 1963 as the Florida Land Trust Act, to validate the use of Illinois land trusts in Florida and to confirm the marketability of real property titles derived through a land trustee. Accordingly, this statute has always focused primarily on the authority of the land trustee to convey good title to third parties if the prior deed to the land trustee granted to the trustee certain powers to deal with and dispose of the property, commonly referred to as "deed powers."<sup>3</sup> Acting primarily as a "title estoppel"<sup>4</sup> statute, s. 689.071, F.S., protects third party grantees, mortgagees and lessees who rely on the statutory authority of the trustee based on those recorded deed powers, without requiring them to inquire into the identity of the beneficiaries or the terms of the unrecorded trust agreement.

Although the words "land trust" appear in the section caption, the operation and effect of the deed powers provisions are not expressly limited to trusts based on the Illinois land trust model. Rather, the title provisions of the statute operate with respect to any recorded instrument to a trustee containing deed powers. As a result, it became a common practice in Florida to include s. 689.071, F.S., deed powers in conveyances to all trustees even if the trust was not intended to be a land trust in order to obtain the title estoppel benefits of the statute.

Over the years, s. 689.071, F.S., was amended to include other provisions pertaining to land trusts, such as expanding former s. 737.306, F.S., (limitation on personal liability of trustees) to cover land trustees in response to a case holding that those protections were not available to land trustees. In 2006 and 2007, s. 689.071, F.S., was expanded to add rudimentary governance provisions for land trusts and a procedure for appointing successor land trustees, and the expanded section was renamed the "Florida Land Trust Act." The definition of the term "land trust" by reference to inclusion of deed powers in the conveyance deed to the trustee appeared in the statute for the first time in 2007.

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<sup>1</sup> Chapter 736, F.S.

<sup>2</sup> Section 689.071, et seq., F.S.

<sup>3</sup> See s. 679.071(3), F.S.

<sup>4</sup> "Title estoppel" is the representation to a bona fide purchaser by a land trustee that he or she is fully able to transfer the legal title to the subject property, that the transferee is protected from title assaults by the beneficiaries of the trust, that the beneficiaries need not be disclosed, that the trust document need not be disclosed, and other assurances that the purchaser and others may safely deal with the trustee.

## Effect of the Bill

### A. General Overview

This bill clarifies the distinction between a land trust governed by s. 689.071, F.S., and other express trusts governed by the Florida Trust Code,<sup>5</sup> yet preserves the title estoppel benefits of the existing statute for any conveyance to a trustee containing deed powers. To accomplish this objective, this bill:

- Defines land trusts based on the functional scope of the land trustee's duties, although deed powers would remain an essential element of a Florida land trust; and
- Relocates all the title estoppel provisions of s. 689.071, F.S., to a newly created section<sup>6</sup> which will remain equally applicable to any conveyance containing deed powers<sup>7</sup> to a trustee of any trust.

A transitional provision makes the new functional land trust definition apply only to trusts created on or after the effective date of the bill, and a trust existing before the effective date is classified as a land trust based on the intentions of the parties as expressed in or discerned from the existing trust agreement.

The relocated title estoppel provisions in the new section apply to any real property conveyed to a trustee at any time by an instrument containing deed powers, regardless of whether the trust is a land trust or not. By separating the title estoppel statute from the land trust statute in this way, this bill does not change the results intended by the parties to any trust agreement existing on the date that the bill becomes effective.

In addition to transferring the title estoppel provisions to a new section,<sup>8</sup> the bill also codifies in amended s. 689.071, F.S., a number of land trust practices and principles commonly used in Florida and Illinois and derived from judicial precedents or land trust treatises.

### B. Point-by-Point Analysis

#### 1. Title Estoppel Provisions - Creation of s. 689.073, F.S.

The marketability of title, and sometimes anonymity of the beneficial owner, are the primary reasons for a land trust. Anyone who deals with the trustee must be assured that the trustee has legal ownership and full authority to deal with the property, and must also be assured that any claims between the land trustee and the beneficiaries will not affect the transaction or the grantee.

Currently these assurance provisions, called "title estoppel" provisions are set out in ss. 689.071(3), (4), and (5), F.S. The bill relocates the title estoppel provisions to a new section entitled, "Powers conferred on trustee in recorded instrument,"<sup>9</sup> and creates a new subsection, s. 689.073, F.S.

In moving the provisions to the new statute,<sup>10</sup> changes were made to:

- Remove language regarding the vesting of both "legal and equitable title" in the trustee;

<sup>5</sup> Chapter 736, F.S.

<sup>6</sup> Section 689.073, F.S., is created.

<sup>7</sup> "Deed powers," as used in this analysis refer to the language of s. 689.071(3), F.S, which is, "to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded instrument."

<sup>8</sup> Section 689.073, F.S.

<sup>9</sup> Section 1 of the bill relocates and slightly revises ss. 689.071(3), (4) and (5), F.S., moving them to a new s. 689.073, F.S. Subsections (4) and (5) are simply relocated as-is and renumbered s. 689.073(2) and (3), F.S.

<sup>10</sup> As revised, s. 689.071(3), F.S., becomes s. 689.073(1), F.S.

- Remove the reference to real property “in this state;”<sup>11</sup>
- Relocate to s. 689.073(5), F.S., certain existing criteria for applicability; and
- Simplify the remaining language.

The bill continues to vest in a trustee full power and authority to deal with the property as provided in the deed powers granted in the deed. The exclusion for instruments governed by s. 689.07, F.S. [existing s. 689.071(12), F.S.], is relocated to s. 689.073(4), F.S., changing only the words “this act” to “this section.”

Currently, the title estoppel provisions are operative whether or not the conveyance deed refers to the beneficiaries or any unrecorded trust agreement.<sup>12</sup> The bill creates s. 689.073(5), F.S., which:

- Carries forward the provision that conveyance by the trustee is free of claims of beneficiaries;
- Expressly provides that the title estoppel provisions work regardless of the provisions of any unrecorded trust agreement and regardless of whether the trust is a land trust or an express trust; and
- Clarifies that the title estoppel section applies both to deeds recorded after the effective date of the proposed amendments and to deeds recorded under the present statute.<sup>13</sup>

This provision confirms that the relocation of the title estoppel section is not intended to change the legal effect of any previous conveyances under the present statute, and for good measure all such previous conveyances are validated as vesting the trustee with the requisite deed powers.

## 2. Definition of “Land Trust” - Revisions to s. 689.071(2), F.S.

The bill revises the remaining provisions of s. 689.071, F.S., which were not moved to the new section.<sup>14</sup> The revised definition of “land trust”<sup>15</sup> still requires a conveyance to a trustee by a recorded instrument containing deed powers, but beginning with the effective date of the bill this definition focuses on the key functional distinction between a land trust and other express trusts: that a land trustee functions almost entirely as the agent of the beneficiaries or the person holding the power of direction under the trust agreement, whereas a trustee who is subject to the Florida Trust Code in ch. 736, F.S., has more extensive fiduciary duties and responsibilities to the trust beneficiaries, along with more extensive potential liability if the trustee fails to perform the trustee’s discretionary duties prudently.

A land trustee has a fiduciary relationship to the land trust beneficiaries and the persons holding the “power of direction” over the actions of the land trustee, just as any agent is bound as a fiduciary to the principal for whom the agent acts.<sup>16</sup> However, in practice, land trustees are rarely delegated discretionary duties under a land trust agreement, beyond ministerial and administrative matters.<sup>17</sup> This lack of duties is a logical parallel to the exemption that land trustees enjoy from ch. 736, F.S., responsibilities and liabilities. The bill makes clear this practical distinction in the revised definition of a land trust<sup>18</sup> by stating that the trustee has limited duties as set out in the statute.

For trusts created on or after the effective date of the bill, the revised definition will limit the duties of a trustee of a “land trust” to the following:

<sup>11</sup> This provision confirms that out-of-state lands may be held in Florida land trust regimes.

<sup>12</sup> Section 689.071(3), F.S.

<sup>13</sup> Id.

<sup>14</sup> Section 689.073, F.S.

<sup>15</sup> Section 689.071(2)(c), F.S.

<sup>16</sup> *Raborn v. Menotte*, 974 So.2d 328 (Fla. 2008).

<sup>17</sup> “The trustee is a mere vessel of title.” *Brigham v. Brigham*, 11 So.3d 374 (Fla. 3d DCA 2009).

<sup>18</sup> Section 689.071(2)(c), F.S.

- The duty to exercise the trustee's deed powers as directed by the beneficiary or by the holder of the power of direction (i.e., this is the agent's fiduciary duty to follow the principal's directions);
- The duty to dispose of the trust property at the termination of the trust (i.e., the classic "active" duty that historically saved Illinois land trusts from the statute of uses);
- The duty to perform ministerial and administrative functions delegated to the trustee; and
- The duties required of certain timeshare trustees by ch. 721, F.S.<sup>19</sup>

If the trustee's duties exceed the foregoing limited duties and the trust is created after the effective date of the proposed amendment, then the trust will not be treated as a land trust and will not be excluded from the operation of ch. 736, F.S.<sup>20</sup>

Because the title estoppel provisions of the statute operate on any conveyance containing deed powers, the classification of the trust as a "land trust" will have no effect on the title to any real property held by the trustee.

### 3. Other Definitions - Revisions to s. 689.071(2), F.S.

Besides revising the definition of "land trust," section 2 of the bill adds and clarifies some other definitions of lesser significance in s. 689.071(2), F.S.:

- The definition for "holder of the power of direction" was revised and shortened to "power of direction" because "holder of" is not used consistently in the statute;
- The phrase "person or entity" is shortened to "person" in numerous places (beginning with the definition of "beneficiary") because the statutory definition of "person" includes entities;
- New definitions are created for some basic trust concepts, such as "trust agreement," "trust property" and "recorded instrument" (the latter being a cross-reference to the relocated deed powers provision now found in s. 689.073(1), F.S.); and
- "Trustee" is redefined so that the term will work in the "switchbox" provision to mean the trustee of a land trust or the trustee of another trust. For this reason, numerous references to "trustee" in revised s. 689.071, F.S., will be changed to "trustee of a land trust" where that meaning is intended.

### 4. Vesting of "Legal and Equitable Title" Revisions to s. 689.071(3), F.S.

The bill continues the existing statutory statement that a land trustee is vested with both legal and equitable title to the trust property. This vesting of "legal and equitable title" provision is a land trust characteristic imported from Illinois, and therefore it does not appear in the relocated title estoppel provisions in s. 689.073, F.S., that universally apply to any type of trust with deed powers. Although the "legal and equitable" language has been excised from a number of other subsections of s. 689.071, F.S., to avoid potential circularity, s. 689.071(3), F.S., will continue to contain the operative language regarding vesting of legal and equitable title in the land trustee.

The bill makes technical revisions to s. 689.071(3), F.S.:

- Because new s. 689.073, F.S., now defines the requirements for a "recorded instrument" containing deed powers, the bill does not repeat this in the new s. 689.071(3), F.S.;
- The statement that the recorded instrument does not by itself create an entity has been relocated to the end of s. 689.071(3), F.S., instead of appearing in the definition of "land trust."

<sup>19</sup> Section 721.08, F.S., provides that time share accommodations may be placed into a trust. This will be addressed in detail below, in regard to the effect of this statute.

<sup>20</sup> Chapter 736, F.S., is the Florida Trust Code and applies to express trusts.



- Other housekeeping edits to s. 689.071(3), F.S., concern the consistent use of defined terms such as “land trust,” “trust agreement” and “trust property.”

5. Statute of Uses and Doctrine of Merger - Revisions to ss. 689.071(4) and (5), F.S.

When s. 689.071, F.S., was first enacted for the purpose of validating the use of Illinois land trusts in Florida, one commonly assumed result was that land trusts would not be executed as “passive trusts” or “dry trusts” by the statute of uses, which is codified in Florida in s. 689.09, F.S. The bill makes that result explicit with respect to a land trust, overriding not only s. 689.09, F.S., but also the common-law statute of uses.

New subsection 689.071(5), F.S., overrides the doctrine of merger with respect to a land trust, so that a land trust will not be extinguished if the trustee is the sole beneficiary. Former s. 689.071(5), F.S., is one of the title estoppel provisions relocated verbatim to s. 689.073, F.S.

6. Personal Property Option-- Revisions to s. 689.071(6), F.S.

Currently, section 689.071, F.S., provides that the recorded instrument may define and declare the interests of land trust beneficiaries as personal property under Florida law.<sup>21</sup> The bill clarifies that this designation of personal property must be made in the recorded instrument or the trust agreement, or it will be considered real property.

Subsection 689.071(6), F.S., is changed in one regard: the optional personal property declaration can be made in the recorded instrument or in the trust agreement. This change is consistent with the relocation of the title estoppel provisions to new s. 689.073, F.S., which governs title matters that depend on the contents of the recorded instrument. Whether the beneficial interests are real property or personal property does not affect the nature of the title vested in the trustee or the ability of third parties to acquire good title to the trust property from the trustee in accordance with the powers contained in the recorded instrument.

As noted above, revised s. 689.071(6), F.S., contains edits for the consistent usage of defined terms such as “land trust” and “trust agreement.”

7. Beneficiary Provisions-- Revisions to s. 689.071(8), F.S.

Currently, customary provisions in land trusts are based upon treatises by Illinois land trust authorities, particularly *Kenoe on Land Trusts*.<sup>22</sup> The bill revises 689.071(8), F.S., in a number of respects to codify these land trust practices.

Revised s. 689.071(8)(a), F.S., is a non-substantive combination of former paragraphs (a), (b) and (d), intended to consolidate similar provisions and make paragraph numbers (b) and (d) available for other new provisions. The bill adds s. 689.071(8)(b), F.S., as a statutory endorsement of flexible beneficial ownership techniques described in the Kenoe treatise. The purpose of including these provisions directly in the Land Trust Act is to increase public awareness that such techniques are available without making reference to the treatise, thereby promoting the usage of land trusts in Florida generally.

The bill revises s. 689.071(8)(c), F.S., to reconcile the Land Trust Act with the U.C.C. Article 9 exclusion of interests in real property.<sup>23</sup> Case law<sup>24</sup> holds that a beneficial interest in a land trust is a general intangible within the scope of the Florida Uniform Commercial Code, and this result is codified in the present version of s. 689.071(8)(c), F.S., which provides that U.C.C. Article 9 governs the

<sup>21</sup> Except of course for the stamp tax provision in s. 201.02(4), F.S.

<sup>22</sup> The author, Henry W. Kenoe, wrote a number of treatises on land trusts which are now out of print.

<sup>23</sup> These provisions are found in s. 679.1091(4)(k), F.S.

<sup>24</sup> *In re Cowser*, 14 B.R. 335 (Bankr.S.D.Fla. 1981).

perfection of a security interest in a beneficial interest in a land trust. However, if the beneficial interest is defined as real property under s. 689.071(6), F.S., then there is a possible contradiction between the Land Trust Act (which says Article 9 applies to beneficial interests) and the U.C.C. (which says Article 9 excludes real property interests).

Currently, ch. 721, F.S. (the Florida Vacation Plan and Timeshare Act), authorizes the creation and marketing of timeshare estates through trusts.<sup>25</sup> Because timeshare estates are defined as real property,<sup>26</sup> the purchasers of Florida timeshare estates typically finance their purchase with a mortgage recorded against the timeshare estate. However, if the timeshare estate is created as a beneficial interest in a timeshare trust, a land trust is created. As a result, two different statutes prescribe two different methods of perfection, causing possible confusion in the mechanics of perfecting the lien.<sup>27</sup>

The bill revises s. 689.071(8)(c), F.S., to resolve this apparent contradiction by clarifying that the U.C.C. governs perfection if the beneficial interest in a land trust is declared to be personal property (as was the case in *Cowser*), but that a mortgage instrument recorded in the real estate records is the proper method of perfection if the beneficial interest in a land trust is declared to be real property. In the latter case, the proper county for recording the mortgage may be specified in the recorded instrument or in a declaration of trust or memorandum that is recorded in the same county as the recorded instrument; otherwise the location of the trust property determines the proper county for recording the mortgage. The bill provides a transition rule<sup>28</sup> to provide for the continuation of perfection for any U.C.C. financing statement that may have been filed before the effective date of this clarification. It is an abbreviated version of the transition rules that were included in Revised U.C.C. Article 9 in 2001.

The bill revises the existing last sentence of s. 689.071(8)(c), F.S., to state more clearly that a lien or security interest perfected against a beneficial interest in a land trust does not affect in any way the legal or equitable title of the land trustee to the trust property. New s. 689.071(8)(d), F.S., makes explicit a concept that is inherent in a beneficiary's ability to encumber a beneficial interest as described in existing s. 689.071(8)(c), F.S: the trustee's legal and equitable title to the trust property is separate and distinct from the beneficiary's beneficial interest in the land trust and the trust property. A lien, judgment, mortgage, security interest or other encumbrance against one interest does not automatically attach to the other interest. Section 689.071(8)(e), F.S., is also revised to clarify this same point: documents recorded by a beneficiary to transfer or encumber a beneficial interest do not affect the legal and equitable title of the trustee or the deed powers granted to the trustee in the recorded instrument.

Sections 689.071(8)(f) and (g), F.S., as well as other parts of s. 689.071(8), F.S., have been edited for consistent usage of the defined terms "land trust," "recorded instrument," "trust agreement," and "trust property."

The bill adds s. 689.071(8)(i), F.S., which is intended to end the reported occasional practice by some judges of appointing a guardian ad litem to represent the interests of land trust beneficiaries in a foreclosure or other litigation affecting title to the trust property. Because a land trustee is vested with both legal and equitable title to the trust property, joinder of the land trustee in the action is sufficient without incurring the additional expense of a guardian ad litem.

#### 8. Successor Trustee Provisions-- Revisions to s. 689.071(9), F.S.

Most of the revisions to s. 689.071(9), F.S., are non-substantive edits for consistent usage of defined terms and modernization of language (e.g., replacing "office of the recorder of deeds" with "public

<sup>25</sup> See s. 721.08(2)(c)4, F.S.

<sup>26</sup> See s. 721.05(34), F.S.

<sup>27</sup> The conflict exists between UCC Article 9 and the Land Trust Act.

<sup>28</sup> See the newly created s. 689.071(13), F.S.

records”). The bill deletes s. 689.071(9)(a), F.S., because the "switchbox" provision in subsection 689.071(12), F.S., globally addresses the inapplicability of chapter 736, F.S., to land trusts.

The current text of s. 689.071(9), F.S., uses the expression “each successor trustee” to avoid the longer phrase “the successor trustee or trustees.” Unfortunately, it is possible to misread the shorter phrase to mean “each and every successor trustee” in a series of successors.<sup>29</sup> The longer expression is clearer and replaces the shorter one.

Current s. 689.071(9)(f), F.S., provides that the beneficiaries may direct the land trustee to convey the trust property to another trustee. The bill changes this paragraph to provide that this direction to convey could also come from the person holding the power of direction.

9. Trustee as Creditor-- Revisions to s. 689.071(10), F.S.

The bill revises s. 689.071(10)(a), F.S., to include a conforming reference to a mortgage (as well as a security interest) against a beneficial interest in a land trust. Other non-substantive edits include consistent usage of defined terms and the deletion of “or entity” after “person.”

10. Notices to Trustee Provisions-- Revisions to s. 689.071(11), F.S.

The bill adds a new subsection to assure that the right parties receive any third-party notices concerning property held in a land trust by requiring that notice to a land trustee include certain identifying information if it appears in the recorded instrument.

11. “Switchbox” Provision; Timeshare Trusts-- Revisions to s. 689.071(12), F.S.

The revised “land trust” definition discussed above contains a cross-reference to a transition rule that appears in s. 689.071(12), F.S., sometimes referred to below as the “switchbox” provision. This transition rule exempts existing land trusts from the new duties-based test in s. 689.071(2)(c), F.S.; rather, an existing trust is a land trust (or not) based on the intentions expressed in (or discernible from) the existing trust agreement. As a practical matter, the overwhelming majority of existing land trusts sharply curtail the discretionary duties of the land trustee, such that those existing trusts would meet the new duties-based “land trust” definition even if it were applied to them retroactively. But because there are some land trust agreements that vest the land trustee with greater discretion, the switchbox provision does not apply the duties-based test to any existing land trust agreement that says the trust is a “land trust” or clearly was intended to be a land trust. In this way, existing obvious land trusts are “grandfathered” into the land trust statute.

There are two necessary exceptions to the switchbox provision: (1) if it is not obvious from reading the existing trust agreement that the parties intended to create a land trust, then the duties-based test applies; and (2) if an existing land trust agreement is amended to add or expand duties of the trustee, then the duties-based test is applied only to the added or expanded duties that were not found in the trust agreement before the effective date of the amended act. In either case, if the trustee has or adds too many duties beyond those in the land trust definition, the result is that the trustee becomes subject to the tougher trustee standards of ch. 736, F.S., but there is no effect on the title to the trust property.

As noted above in the discussion of timeshare interests, current statutes<sup>30</sup> authorize the use of trusts for the creation and marketing of timeshare estates; and specify similar requirements for using trusts for multi-site vacation clubs.<sup>31</sup> These statutes specify that certain provisions of the Florida Trust Code

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<sup>29</sup> E.g., existing paragraph s. 689.071(9)(c), F.S., requires that “each successor trustee shall file a declaration of appointment.”

<sup>30</sup> Chapter 721, F.S.

<sup>31</sup> Section 721.53(1)(e), F.S.

govern the liability of the trustees of such qualifying trusts,<sup>32</sup> and these provisions are usually recited in the ch. 721, F.S., trust agreements. If such an existing timeshare trust were created as a land trust, however, then the trust agreement would contain provisions stating that the trust is a land trust (making it a land trust<sup>33</sup> but would also refer to governance by these specific provisions of ch. 736, F.S.

Accordingly, the "switchbox" provision<sup>34</sup> expressly ignores these references to ch. 736, F.S., in the trust agreement of a trust qualifying as a timeshare estate trust<sup>35</sup> or a vacation club trust.<sup>36</sup>

Similar considerations under ch. 721, F.S., led to the inclusion in the revised s. 689.071(2)(c), F.S., a list of limited duties for land trustees. Most of the recited ch. 736, F.S., provisions that apply to timeshare trusts<sup>37</sup> pertain to limitations on the liability of the trustee, but one of them<sup>38</sup> also imposes duties on a trustee. In addition, ch. 721, F.S., also directly imposes certain duties on the trustee of a timeshare estate trust or a vacation club trust, although arguably those duties fall into the ministerial and administrative category. Further, it is conceivable that ch. 721, F.S., might be amended in the future to impose other duties on timeshare trustees. To preserve the utility of land trusts as a structure for organizing timeshare estate trusts and vacation club trusts qualifying under ch. 721, F.S., revised s. 689.071(2)(c), F.S., simply includes in the list of limited land trustee duties any duties that are imposed on the trustee under ch. 721, F.S.

## 12. Florida Trust Code - Scope Provision-- Revisions to s. 736.0102, F.S.

The bill includes a conforming amendment to s. 736.0102, F.S., of the Florida Trust Code. The bill divides this section into two logical subsections, and a third subsection is added to address the exclusion of land trusts from the Florida Trust Code. New s. 736.0102(3), F.S., provides that the Trust Code does not apply to land trusts under s. 689.071, F.S., except to the extent provided in subsection 689.071(7), F.S., of the Land Trust Act and in the two provisions of ch. 721, F.S., that apply parts of ch. 736, F.S., to timeshare trusts.

The bill adds s. 736.0102(3), F.S., to provide that a Trust Code trust remains a Trust Code trust (and does not become a land trust) regardless of any amendment or change in asset composition or utilization of a sub trust.

### B. SECTION DIRECTORY:

Section 1 creates s. 689.073, F.S., from portions of s. 689.071, F.S., regarding powers conferred on the trustee of a land trust.

Section 2 amends s. 689.071, F.S., regarding land trusts, definitions and law.

Section 3 amends s. 736.0102, F.S., relating to scope of trust code.

Section 4 is a direction regarding the effective date.

Section 5 provides that this bill is effective upon becoming law.

<sup>32</sup> See specifically, ss. 736.08125, 736.08163, 736.1013 and 736.1015, F.S.

<sup>33</sup> See s. 689.071(14)(b)1, F.S.

<sup>34</sup> See s. 689.071(12)(b), F.S.

<sup>35</sup> See s. 721.08(2)(c)4, F.S.

<sup>36</sup> See s. 721.53(1)(e), F.S.

<sup>37</sup> See ch. 721, F.S.

<sup>38</sup> See s. 736.08163, F.S., concerning environmental matters.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

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

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

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

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made grammatical and stylistic changes without changing the meaning of the bill. The amendment also amended effective dates for any needed transition from recorded instruments that identify a security interest in a land trust as a personal interest under the Uniform Commercial Code to a mortgage. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to land trusts; creating s. 689.073,  
 3           F.S., and transferring, renumbering, and amending s.  
 4           689.071(4) and (5), F.S.; providing requirements  
 5           relating to vesting of ownership in a trustee;  
 6           providing exclusion and applicability; amending s.  
 7           689.071, F.S.; revising and providing definitions;  
 8           revising provisions relating to land trust transfers  
 9           of real property and vesting of ownership in a  
 10          trustee; prohibiting the operation of the statute of  
 11          uses to execute a land trust or to vest the trust  
 12          property under certain conditions; prohibiting the  
 13          operation of the doctrine of merger to execute a land  
 14          trust or to vest the trust property under certain  
 15          conditions; providing conditions under which a  
 16          beneficial interest is deemed real property; revising  
 17          and providing rights, liabilities, and duties of land  
 18          trust beneficiaries; authorizing certain beneficial  
 19          ownership methods; providing for the perfection of  
 20          security documents; providing that a trustee's legal  
 21          and equitable title to the trust property is separate  
 22          and distinct from the beneficiary's beneficial  
 23          interest in the land trust and the trust property;  
 24          prohibiting a lien, judgment, mortgage, security  
 25          interest, or other encumbrance against one interest  
 26          from automatically attaching to another interest;  
 27          providing that the appointment of a guardian ad litem  
 28          is not necessary in certain foreclosure litigation

29 affecting the title to trust property of a land trust;  
 30 conforming provisions to changes made by the act;  
 31 deleting provisions relating to the applicability of  
 32 certain successor trustee provisions; providing notice  
 33 requirements; providing for the determination of  
 34 applicable law for certain trusts; providing for  
 35 applicability relating to Uniform Commercial Code  
 36 financing statements; providing requirements for  
 37 recording effectiveness; amending s. 736.0102, F.S.;  
 38 revising and providing scope of the Florida Trust  
 39 Code; providing a directive to the Division of Law  
 40 Revision and Information; providing an effective date.

41

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

43

44 Section 1. Section 689.073, Florida Statutes, is created,  
 45 and present subsections (4) and (5) of section 689.071, Florida  
 46 Statutes, are transferred and renumbered as subsections (2) and  
 47 (3), respectively, of section 689.073, Florida Statutes, and  
 48 amended, to read:

49 689.073 Powers conferred on trustee in recorded  
 50 instrument.—

51 (1) OWNERSHIP VESTS IN TRUSTEE.—Every conveyance, deed,  
 52 mortgage, lease assignment, or other instrument heretofore or  
 53 hereafter made, hereinafter referred to as the "recorded  
 54 instrument," transferring any interest in real property,  
 55 including, but not limited to, a leasehold or mortgagee  
 56 interest, to any person or any corporation, bank, trust company,

57 or other entity duly formed under the laws of its state of  
 58 qualification, which recorded instrument designates the person,  
 59 corporation, bank, trust company, or other entity "trustee" or  
 60 "as trustee" and confers on the trustee the power and authority  
 61 to protect, to conserve, to sell, to lease, to encumber, or  
 62 otherwise to manage and dispose of the real property described  
 63 in the recorded instrument, is effective to vest, and is  
 64 declared to have vested, in such trustee full power and  
 65 authority as granted and provided in the recorded instrument to  
 66 deal in and with such property, or interest therein or any part  
 67 thereof, held in trust under the recorded instrument.

68 (2)~~(4)~~ NO DUTY TO INQUIRE.—Any grantee, mortgagee, lessee,  
 69 transferee, assignee, or person obtaining satisfactions or  
 70 releases or otherwise in any way dealing with the trustee with  
 71 respect to the real property or any interest in such property  
 72 held in trust under the recorded instrument, as hereinabove  
 73 provided for, is not obligated to inquire into the  
 74 identification or status of any named or unnamed beneficiaries,  
 75 or their heirs or assigns to whom a trustee may be accountable  
 76 under the terms of the recorded instrument, or under any  
 77 unrecorded separate declarations or agreements collateral to the  
 78 recorded instrument, whether or not such declarations or  
 79 agreements are referred to therein; or to inquire into or  
 80 ascertain the authority of such trustee to act within and  
 81 exercise the powers granted under the recorded instrument; or to  
 82 inquire into the adequacy or disposition of any consideration,  
 83 if any is paid or delivered to such trustee in connection with  
 84 any interest so acquired from such trustee; or to inquire into



85 any of the provisions of any such unrecorded declarations or  
 86 agreements.

87 (3) ~~(5)~~ BENEFICIARY CLAIMS.—All persons dealing with the  
 88 trustee under the recorded instrument as hereinabove provided  
 89 take any interest transferred by the trustee thereunder, within  
 90 the power and authority as granted and provided therein, free  
 91 and clear of the claims of all the named or unnamed  
 92 beneficiaries of such trust, and of any unrecorded declarations  
 93 or agreements collateral thereto whether referred to in the  
 94 recorded instrument or not, and of anyone claiming by, through,  
 95 or under such beneficiaries. However, this section does not  
 96 prevent a beneficiary of any such unrecorded collateral  
 97 declarations or agreements from enforcing the terms thereof  
 98 against the trustee.

99 (4) EXCLUSION.—This section does not apply to any deed,  
 100 mortgage, or other instrument to which s. 689.07 applies.

101 (5) APPLICABILITY.—The section applies without regard to  
 102 whether any reference is made in the recorded instrument to the  
 103 beneficiaries of such trust or to any separate collateral  
 104 unrecorded declarations or agreements, without regard to the  
 105 provisions of any unrecorded trust agreement or declaration of  
 106 trust, and without regard to whether the trust is governed by s.  
 107 689.071 or chapter 736. This section applies both to recorded  
 108 instruments that are recorded after the effective date of this  
 109 act and to recorded instruments that were previously recorded  
 110 and governed by similar provisions formerly contained in s.  
 111 689.071(3), and any such recorded instrument purporting to  
 112 confer power and authority on a trustee under such formerly

113 effective provisions of s. 689.071(3) is valid and has the  
 114 effect of vesting full power and authority in such trustee as  
 115 provided in this section.

116 Section 2. Section 689.071, Florida Statutes, as amended  
 117 by this act, is amended to read:

118 689.071 Florida Land Trust Act.—

119 (1) SHORT TITLE.—This section may be cited as the "Florida  
 120 Land Trust Act."

121 (2) DEFINITIONS.—As used in this section, the term:

122 (a) "Beneficial interest" means any interest, vested or  
 123 contingent and regardless of how small or minimal such interest  
 124 may be, in a land trust which is held by a beneficiary.

125 (b) "Beneficiary" means any person or entity having a  
 126 beneficial interest in a land trust. A trustee may be a  
 127 beneficiary of the land trust for which such trustee serves as  
 128 trustee.

129 ~~(c) "Holder of the power of direction" means any person or~~  
 130 ~~entity having the authority to direct the trustee to convey~~  
 131 ~~property or interests, execute a mortgage, distribute proceeds~~  
 132 ~~of a sale or financing, and execute documents incidental to the~~  
 133 ~~administration of a land trust.~~

134 (c)(d) "Land trust" means any express written agreement or  
 135 arrangement by which a use, confidence, or trust is declared of  
 136 any land, or of any charge upon land, under which the title to  
 137 real property, including, but not limited to, a leasehold or  
 138 mortgagee interest, both legal and equitable, is vested in a  
 139 trustee by a recorded instrument that confers on the trustee the  
 140 power and authority prescribed in s. 689.073(1) and under which

141 the trustee has no duties other than the following:

142 1. The duty to convey, sell, lease, mortgage, or deal with  
 143 the trust property, or to exercise such other powers concerning  
 144 the trust property as may be provided in the recorded  
 145 instrument, in each case as directed by the beneficiaries or by  
 146 the holder of the power of direction;

147 2. The duty to sell or dispose of the trust property at  
 148 the termination of the trust;

149 3. The duty to perform ministerial and administrative  
 150 functions delegated to the trustee in the trust agreement or by  
 151 the beneficiaries or the holder of the power of direction; or

152 4. The duties required of a trustee under chapter 721, if  
 153 the trust is a timeshare estate trust complying with s.  
 154 721.08(2)(c)4. or a vacation club trust complying with s.  
 155 721.53(1)(e);

156  
 157 However, the duties of the trustee of a land trust created  
 158 before the effective date of this act may exceed the limited  
 159 duties listed in this paragraph to the extent authorized in  
 160 subsection (12) ~~subsection (3)~~. ~~The recorded instrument does not~~  
 161 ~~itself create an entity, regardless of whether the relationship~~  
 162 ~~among the beneficiaries and the trustee is deemed to be an~~  
 163 ~~entity under other applicable law.~~

164 (d) "Power of direction" means the authority of a person,  
 165 as provided in the trust agreement, to direct the trustee of a  
 166 land trust to convey property or interests, execute a lease or  
 167 mortgage, distribute proceeds of a sale or financing, and  
 168 execute documents incidental to the administration of a land

169 trust.

170 (e) "Recorded instrument" has the same meaning as provided  
 171 in s. 689.073(1).

172 (f) "Trust agreement" means the written agreement  
 173 governing a land trust or other trust, including any amendments.

174 (g) "Trust property" means any interest in real property,  
 175 including, but not limited to, a leasehold or mortgagee  
 176 interest, conveyed by a recorded instrument to a trustee of a  
 177 land trust or other trust.

178 (h)-(e) "Trustee" means the person or entity designated in  
 179 a recorded instrument or trust agreement ~~trust instrument~~ to  
 180 hold ~~legal and equitable~~ title to the trust property of a land  
 181 trust or other trust.

182 (3) OWNERSHIP VESTS IN TRUSTEE.—Every recorded instrument  
 183 ~~conveyance, deed, mortgage, lease assignment, or other~~  
 184 ~~instrument heretofore or hereafter made, hereinafter referred to~~  
 185 ~~as the "recorded instrument,"~~ transferring any interest in real  
 186 property to the trustee of a land trust and conferring upon the  
 187 trustee the power and authority prescribed in s. 689.073(1), ~~in~~  
 188 ~~this state, including, but not limited to, a leasehold or~~  
 189 ~~mortgagee interest, to any person or any corporation, bank,~~  
 190 ~~trust company, or other entity duly formed under the laws of its~~  
 191 ~~state of qualification, in which recorded instrument the person,~~  
 192 ~~corporation, bank, trust company, or other entity is designated~~  
 193 ~~"trustee" or "as trustee,"~~ whether or not reference is made in  
 194 the recorded instrument to the beneficiaries of such land trust  
 195 or to the trust agreement or any separate collateral unrecorded  
 196 declarations or agreements, is effective to vest, and is hereby

197 declared to have vested, in such trustee both legal and  
 198 equitable title, and full rights of ownership, over the trust  
 199 ~~real~~ property or interest therein, with full power and authority  
 200 as granted and provided in the recorded instrument to deal in  
 201 and with the trust property or interest therein or any part  
 202 thereof. The recorded instrument does not itself create an  
 203 entity, regardless of whether the relationship among the  
 204 beneficiaries and the trustee is deemed to be an entity under  
 205 other applicable law; provided, the recorded instrument confers  
 206 ~~on the trustee the power and authority to protect, to conserve,~~  
 207 ~~to sell, to lease, to encumber, or otherwise to manage and~~  
 208 ~~dispose of the real property described in the recorded~~  
 209 ~~instrument.~~

210 (4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the  
 211 statute of uses do not execute a land trust or vest the trust  
 212 property in the beneficiary or beneficiaries of the land trust,  
 213 notwithstanding any lack of duties on the part of the trustee or  
 214 the otherwise passive nature of the land trust.

215 (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of  
 216 merger does not extinguish a land trust or vest the trust  
 217 property in the beneficiary or beneficiaries of the land trust,  
 218 regardless of whether the trustee is the sole beneficiary of the  
 219 land trust.

220 (6) PERSONAL PROPERTY.—In all cases in which the recorded  
 221 instrument or the trust agreement, as hereinabove provided,  
 222 contains a provision defining and declaring the interests of  
 223 beneficiaries of a land trust thereunder to be personal property  
 224 only, such provision is shall be controlling for all purposes

225 when such determination becomes an issue under the laws or in  
 226 the courts of this state. If no such personal property  
 227 designation appears in the recorded instrument or in the trust  
 228 agreement, the interests of the land trust beneficiaries are  
 229 real property.

230 (7) TRUSTEE LIABILITY.—In addition to any other limitation  
 231 on personal liability existing pursuant to statute or otherwise,  
 232 the provisions of ss. 736.08125 and 736.1013 apply to the  
 233 trustee of a land trust created pursuant to this section.

234 (8) LAND TRUST BENEFICIARIES.—

235 (a) Except as provided in this section, the beneficiaries  
 236 of a land trust are not liable, solely by being beneficiaries,  
 237 under a judgment, decree, or order of court or in any other  
 238 manner for a debt, obligation, or liability of the land trust.

239 ~~(b)~~ Any beneficiary acting under the trust agreement of a  
 240 land trust is not liable to the land trust's trustee or to any  
 241 other beneficiary for the beneficiary's good faith reliance on  
 242 the provisions of the trust agreement. A beneficiary's duties  
 243 and liabilities under a land trust may be expanded or restricted  
 244 in a trust agreement or beneficiary agreement.

245 (b)1. If provided in the recorded instrument, in the trust  
 246 agreement, or in a beneficiary agreement:

247 a. A particular beneficiary may own the beneficial  
 248 interest in a particular portion or parcel of the trust property  
 249 of a land trust;

250 b. A particular person may be the holder of the power of  
 251 direction with respect to the trustee's actions concerning a  
 252 particular portion or parcel of the trust property of a land

253 trust; and

254 c. The beneficiaries may own specified proportions or  
 255 percentages of the beneficial interest in the trust property or  
 256 in particular portions or parcels of the trust property of a  
 257 land trust.

258 2. Multiple beneficiaries may own a beneficial interest in  
 259 a land trust as tenants in common, joint tenants with right of  
 260 survivorship, or tenants by the entireties.

261 (c) If a beneficial interest in a land trust is determined  
 262 to be personal property as provided in subsection (6), chapter  
 263 679 applies to the perfection of any security interest in that a  
 264 beneficial interest in a land trust. If a beneficial interest in  
 265 a land trust is determined to be real property as provided in  
 266 subsection (6), then to perfect a lien or security interest  
 267 against that beneficial interest, the mortgage, deed of trust,  
 268 security agreement, or other similar security document must be  
 269 recorded in the public records of the county that is specified  
 270 for such security documents in the recorded instrument or in a  
 271 declaration of trust or memorandum of such declaration of trust  
 272 recorded in the public records of the same county as the  
 273 recorded instrument. If no county is so specified for recording  
 274 such security documents, the proper county for recording such a  
 275 security document against a beneficiary's interest in any trust  
 276 property is the county where the trust property is located. The  
 277 perfection of a lien or security interest in a beneficial  
 278 interest in a land trust does not affect, attach to, or encumber  
 279 the legal or equitable title of the trustee in the trust  
 280 property and does not impair or diminish the authority of the

281 trustee under the recorded instrument, and parties dealing with  
 282 the trustee are not required to inquire into the terms of the  
 283 unrecorded trust agreement or any lien or security interest  
 284 against a beneficial interest in the land trust.

285 (d) The trustee's legal and equitable title to the trust  
 286 property of a land trust is separate and distinct from the  
 287 beneficial interest of a beneficiary in the land trust and in  
 288 the trust property. A lien, judgment, mortgage, security  
 289 interest, or other encumbrance attaching to the trustee's legal  
 290 and equitable title to the trust property of a land trust does  
 291 not attach to the beneficial interest of any beneficiary; and  
 292 any lien, judgment, mortgage, security interest, or other  
 293 encumbrance against a beneficiary or beneficial interest does  
 294 not attach to the legal or equitable title of the trustee to the  
 295 trust property held under a land trust, unless the lien,  
 296 judgment, mortgage, security interest, or other encumbrance by  
 297 its terms or by operation of other law attaches to both the  
 298 interest of the trustee and the interest of such beneficiary. A  
 299 ~~beneficiary's duties and liabilities may be expanded or~~  
 300 ~~restricted in a trust agreement or beneficiary agreement.~~

301 (e) Any subsequent document appearing of record in which a  
 302 beneficiary of a land trust transfers or encumbers any the  
 303 beneficial interest in the land trust does not transfer or  
 304 encumber the legal or equitable title of the trustee to the  
 305 trust property and does not diminish or impair the authority of  
 306 the trustee under the terms of the recorded instrument. Parties  
 307 dealing with the trustee of a land trust are not required to  
 308 inquire into the terms of the unrecorded trust agreement.



309           (f) ~~The An unrecorded trust agreement giving rise to a~~  
 310 ~~recorded instrument~~ for a land trust may provide that one or  
 311 more persons ~~or entities~~ have the power to direct the trustee to  
 312 convey property or interests, execute a mortgage, distribute  
 313 proceeds of a sale or financing, and execute documents  
 314 incidental to administration of the land trust. The power of  
 315 direction, unless provided otherwise in the ~~land~~ trust agreement  
 316 of the land trust, is conferred upon the holders of the power  
 317 for the use and benefit of all holders of any beneficial  
 318 interest in the land trust. In the absence of a provision in the  
 319 ~~land~~ trust agreement of a land trust to the contrary, the power  
 320 of direction shall be in accordance with the percentage of  
 321 individual ownership. In exercising the power of direction, the  
 322 holders of the power of direction are presumed to act in a  
 323 fiduciary capacity for the benefit of all holders of any  
 324 beneficial interest in the land trust, unless otherwise provided  
 325 in the ~~land~~ trust agreement. A beneficial interest in a land  
 326 trust is indefeasible, and the power of direction may not be  
 327 exercised so as to alter, amend, revoke, terminate, defeat, or  
 328 otherwise affect or change the enjoyment of any beneficial  
 329 interest in a land trust.

330           (g) A land trust ~~relating to real estate~~ does not fail,  
 331 and any use relating to the trust property ~~real estate~~ may not  
 332 be defeated, because beneficiaries are not specified by name in  
 333 the recorded instrument ~~deed of conveyance~~ to the trustee or  
 334 because duties are not imposed upon the trustee. The power  
 335 conferred by any recorded instrument ~~deed of conveyance~~ on a  
 336 trustee of a land trust to sell, lease, encumber, or otherwise

337 dispose of property described in the recorded instrument ~~deed~~ is  
 338 effective, and a person dealing with the trustee of a land trust  
 339 is not required to inquire any further into the right of the  
 340 trustee to act or the disposition of any proceeds.

341 (h) The principal residence of a beneficiary shall be  
 342 entitled to the homestead tax exemption even if the homestead is  
 343 held by a trustee in a land trust, provided the beneficiary  
 344 qualifies for the homestead exemption under chapter 196.

345 (i) In a foreclosure against trust property or other  
 346 litigation affecting the title to trust property of a land  
 347 trust, the appointment of a guardian ad litem is not necessary  
 348 to represent the interest of any beneficiary.

349 (9) SUCCESSOR TRUSTEE.—

350 ~~(a) The provisions of s. 736.0705 relating to the~~  
 351 ~~resignation of a trustee do not apply to the appointment of a~~  
 352 ~~successor trustee under this section.~~

353 ~~(a)(b)~~ If the recorded instrument and the unrecorded ~~land~~  
 354 trust agreement are silent as to the appointment of a successor  
 355 trustee of a land trust in the event of the death, incapacity,  
 356 resignation, or termination due to dissolution of a ~~land~~ trustee  
 357 or if a ~~land~~ trustee is unable to serve as trustee of a land  
 358 trust, one or more persons ~~or entities~~ having the power of  
 359 direction ~~of the land trust agreement~~ may appoint a successor  
 360 trustee or trustees of the land trust by filing a declaration of  
 361 appointment of a successor trustee or trustees in the public  
 362 records of office of the recorder of deeds in the county in  
 363 which the trust property is located. The declaration must be  
 364 signed by a beneficiary or beneficiaries of the land trust and

365 by the each successor trustee or trustees, must be acknowledged  
 366 in the manner provided for acknowledgment of deeds, and must  
 367 contain:

- 368 1. The legal description of the trust property.
- 369 2. The name and address of the former trustee.
- 370 3. The name and address of the each successor trustee or  
 371 trustees.
- 372 4. A statement that ~~each successor trustee has been~~  
 373 ~~appointed by~~ one or more persons ~~or entities~~ having the power of  
 374 direction of the land trust appointed the successor trustee or  
 375 trustees, together with an acceptance of appointment by the each  
 376 successor trustee or trustees.

377 (b)(e) If the recorded instrument is silent as to the  
 378 appointment of a successor trustee or trustees of a land trust  
 379 but an unrecorded ~~land~~ trust agreement provides for the  
 380 appointment of a successor trustee or trustees in the event of  
 381 the death, incapacity, resignation, or termination due to  
 382 dissolution of the ~~land~~ trustee, of a land trust, then upon the  
 383 appointment of any successor trustee pursuant to the terms of  
 384 the unrecorded ~~land~~ trust agreement, the each successor trustee  
 385 or trustees shall file a declaration of appointment of a  
 386 successor trustee in the public records of ~~office of the~~  
 387 ~~recorder of deeds in~~ the county in which the trust property is  
 388 located. The declaration must be signed by both the former  
 389 trustee and the each successor trustee or trustees, must be  
 390 acknowledged in the manner provided for acknowledgment of deeds,  
 391 and must contain:

- 392 1. The legal description of the trust property.

- 393           2. The name and address of the former trustee.  
 394           3. The name and address of the successor trustee or  
 395 trustees.  
 396           4. A statement of resignation by the former trustee and a  
 397 statement of acceptance of appointment by the ~~each~~ successor  
 398 trustee or trustees.  
 399           5. A statement that the ~~each~~ successor trustee or trustees  
 400 were ~~was~~ duly appointed under the terms of the unrecorded ~~land~~  
 401 trust agreement.

402  
 403 If the appointment of any successor trustee of a land trust is  
 404 due to the death or incapacity of the former trustee, the  
 405 declaration need not be signed by the former trustee and a copy  
 406 of the death certificate or a statement that the former trustee  
 407 is incapacitated or unable to serve must be attached to or  
 408 included in the declaration, as applicable.

409           ~~(c)-(d)~~ If the recorded instrument provides for the  
 410 appointment of any successor trustee of a land trust and any  
 411 successor trustee is appointed in accordance with the recorded  
 412 instrument, no additional declarations of appointment of any  
 413 successor trustee are required under this section.

414           ~~(d)-(e)~~ Each successor ~~land~~ trustee appointed with respect  
 415 to a land trust is fully vested with all the estate, properties,  
 416 rights, powers, trusts, duties, and obligations of the  
 417 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee  
 418 of a land trust is not under any duty to inquire into the acts  
 419 or omissions of a predecessor trustee and is not liable for any  
 420 act or failure to act of a predecessor trustee. A person dealing

421 with any successor trustee of a land trust pursuant to a  
 422 declaration filed under this section is not obligated to inquire  
 423 into or ascertain the authority of the successor trustee to act  
 424 within or exercise the powers granted under the recorded  
 425 instruments or any unrecorded trust agreement ~~declarations or~~  
 426 ~~agreements~~.

427 ~~(e)(f)~~ A ~~land~~ trust agreement may provide that the trustee  
 428 of a land trust, when directed to do so by the holder of the  
 429 power of direction or by the beneficiaries of the land trust or  
 430 legal representatives of the beneficiaries, may convey the trust  
 431 property directly to another trustee on behalf of the  
 432 beneficiaries or to another representative named in such  
 433 directive ~~others named by the beneficiaries~~.

434 (10) TRUSTEE AS CREDITOR.—

435 (a) If a debt is secured by a security interest or  
 436 mortgage against ~~in~~ a beneficial interest in a land trust or by  
 437 a mortgage on ~~land~~ trust property of a land trust, the validity  
 438 or enforceability of the debt, security interest, or mortgage  
 439 and the rights, remedies, powers, and duties of the creditor  
 440 with respect to the debt or the security are not affected by the  
 441 fact that the creditor and the trustee are the same person ~~or~~  
 442 ~~entity~~, and the creditor may extend credit, obtain any necessary  
 443 security interest or mortgage, and acquire and deal with the  
 444 property comprising the security as though the creditor were not  
 445 the trustee.

446 (b) A trustee of a land trust does not breach a fiduciary  
 447 duty to the beneficiaries, and it is not evidence of a breach of  
 448 any fiduciary duty owed by the trustee to the beneficiaries for

449 a trustee to be or become a secured or unsecured creditor of the  
 450 land trust, the beneficiary of the land trust, or a third party  
 451 whose debt to such creditor is guaranteed by a beneficiary of  
 452 the land trust.

453 (11) NOTICES TO TRUSTEE.—Any notice required to be given  
 454 to a trustee of a land trust regarding trust property by a  
 455 person who is not a party to the trust agreement must identify  
 456 the trust property to which the notice pertains or include the  
 457 name and date of the land trust to which the notice pertains, if  
 458 such information is shown on the recorded instrument for such  
 459 trust property.

460 (12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise  
 461 provided in this section, chapter 736 does not apply to a land  
 462 trust governed by this section.

463 (a) A trust is not a land trust governed by this section  
 464 if there is no recorded instrument that confers on the trustee  
 465 the power and authority prescribed in s. 689.073(1).

466 (b) For a trust created before the effective date of this  
 467 act:

468 1. The trust is a land trust governed by this section if a  
 469 recorded instrument confers on the trustee the power and  
 470 authority described in s. 689.073(1) and if:

471 a. The recorded instrument or the trust agreement  
 472 expressly provides that the trust is a land trust; or

473 b. The intent of the parties that the trust be a land  
 474 trust is discerned from the trust agreement or the recorded  
 475 instrument;

476

477 without regard to whether the trustee's duties under the trust  
 478 agreement are greater than those limited duties described in s.  
 479 689.071(2)(c).

480 2. The trust is not a land trust governed by this section  
 481 if:

482 a. The recorded instrument or the trust agreement  
 483 expressly provides that the trust is to be governed by chapter  
 484 736, or by any predecessor trust code or other trust law other  
 485 than this section; or

486 b. The intent of the parties that the trust be governed by  
 487 chapter 736, or by any predecessor trust code or other trust law  
 488 other than this section, is discerned from the trust agreement  
 489 or the recorded instrument;

490  
 491 without regard to whether the trustee's duties under the trust  
 492 agreement are greater than those limited duties listed in s.  
 493 689.071(2)(c), and without consideration of any references in  
 494 the trust agreement to provisions of chapter 736 made applicable  
 495 to the trust by chapter 721, if the trust is a timeshare estate  
 496 trust complying with s. 721.08(2)(c)4. or a vacation club trust  
 497 complying with s. 721.53(1)(e).

498 3. Solely for the purpose of determining the law governing  
 499 a trust under subparagraph 1. or subparagraph 2., the  
 500 determination shall be made without consideration of any  
 501 amendment to the trust agreement made on or after the effective  
 502 date of this act, except as provided in paragraph (d).

503 4. If the determination of whether a trust is a land trust  
 504 governed by this section cannot be made under either

505 subparagraph 1. or subparagraph 2., the determination shall be  
 506 made under paragraph (c) as if the trust was created on or after  
 507 the effective date of this act.

508 (c) If a recorded instrument confers on the trustee the  
 509 power and authority described in s. 689.073(1) and the trust was  
 510 created on or after the effective date of this act, the trust  
 511 shall be determined to be a land trust governed by this section  
 512 only if the trustee's duties under the trust agreement,  
 513 including any amendment made on or after such date, are greater  
 514 than those limited duties described in s. 689.071(2)(c).

515 (d) If the trust agreement for a land trust created before  
 516 the effective date of this act is amended on or after such date  
 517 to add to or increase the duties of the trustee beyond the  
 518 duties provided in the trust agreement as of the effective date  
 519 of this act, the trust shall remain a land trust governed by  
 520 this section only if the additional or increased duties of the  
 521 trustee implemented by the amendment are greater than those  
 522 limited duties described in s. 689.071(2)(c).

523 (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section  
 524 does not render ineffective any effective Uniform Commercial  
 525 Code financing statement filed before July 1, 2014, to perfect a  
 526 security interest in a beneficial interest in a land trust that  
 527 is determined to be real property as provided in subsection (6),  
 528 but such a financing statement ceases to be effective at the  
 529 earlier of July 1, 2019, or the time the financing statement  
 530 would have ceased to be effective under the law of the  
 531 jurisdiction in which it is filed, and the filing of a Uniform  
 532 Commercial Code continuation statement after July 1, 2014, does



533 not continue the effectiveness of such a financing statement.  
 534 The recording of a mortgage, deed of trust, security agreement,  
 535 or other similar security document against such a beneficial  
 536 interest that is real property in the public records specified  
 537 in subsection (8)(c) continues the effectiveness and priority of  
 538 a financing statement filed against such a beneficial interest  
 539 before July 1, 2014, if:

540 (a) The recording of the security document in that county  
 541 is effective to perfect a lien on such beneficial interest under  
 542 subsection (8)(c);

543 (b) The recorded security document identifies a financing  
 544 statement filed before July 1, 2014, by indicating the office in  
 545 which the financing statement was filed and providing the dates  
 546 of filing and the file numbers, if any, of the financing  
 547 statement and of the most recent continuation statement filed  
 548 with respect to the financing statement; and

549 (c) The recorded security document indicates that such  
 550 financing statement filed before July 1, 2014, remains  
 551 effective.

552  
 553 If no original security document bearing the debtor's signature  
 554 is readily available for recording in the public records, a  
 555 secured party may proceed under this subsection with such  
 556 financing statement filed before July 1, 2014, by recording a  
 557 copy of a security document verified by the secured party as  
 558 being a true and correct copy of an original authenticated by  
 559 the debtor. This subsection does not apply to the perfection of  
 560 a security interest in any beneficial interest in a land trust

561 that is determined to be personal property under subsection (6).

562 (14)~~(11)~~ REMEDIAL ACT.—This act is remedial in nature and  
563 shall be given a liberal interpretation to effectuate the intent  
564 and purposes hereinabove expressed.

565 (15)~~(12)~~ EXCLUSION.—This act does not apply to any deed,  
566 mortgage, or other instrument to which s. 689.07 applies.

567

568 Section 3. Section 736.0102, Florida Statutes, is amended  
569 to read:

570 736.0102 Scope.—

571 (1) Except as otherwise provided in this section, this  
572 code applies to express trusts, charitable or noncharitable, and  
573 trusts created pursuant to a law, judgment, or decree that  
574 requires the trust to be administered in the manner of an  
575 express trust.

576 (2) This code does not apply to constructive or resulting  
577 trusts; conservatorships; custodial arrangements pursuant to the  
578 Florida Uniform Transfers to Minors Act; business trusts  
579 providing for certificates to be issued to beneficiaries; common  
580 trust funds; ~~land trusts under s. 689.071, except to the extent~~  
581 ~~provided in s. 689.071(7);~~ trusts created by the form of the  
582 account or by the deposit agreement at a financial institution;  
583 voting trusts; security arrangements; liquidation trusts; trusts  
584 for the primary purpose of paying debts, dividends, interest,  
585 salaries, wages, profits, pensions, or employee benefits of any  
586 kind; and any arrangement under which a person is nominee or  
587 escrowee for another.

588 (3) This code does not apply to any land trust under s.

589 689.071, except to the extent provided in s. 689.071(7), s.  
 590 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its  
 591 creation by chapter 736, former chapter 737, or any prior trust  
 592 statute superseded or replaced by any provision of former  
 593 chapter 737, is not a land trust regardless of any amendment or  
 594 modification of the trust, any change in the assets held in the  
 595 trust, or any continuing trust resulting from the distribution  
 596 or retention in further trust of assets from the trust.

597 Section 4. The Division of Law Revision and Information is  
 598 directed to replace the phrase "the effective date of this act"  
 599 wherever it occurs in this act with such date.

600 Section 5. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
2 Representative Rodríguez, J. offered the following:

3  
4 **Amendment**

5 Remove lines 110-113 and insert:  
6 and governed by similar provisions contained in s. 689.071(3),  
7 Florida Statutes 2012, and any such recorded instrument  
8 purporting to confer power and authority on a trustee under such  
9 provisions of s. 689.071(3), Florida Statutes 2012, is valid and  
10 has the



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 267 Real Property Liens and Conveyances  
**SPONSOR(S):** Local & Federal Affairs Subcommittee; Wood  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N	Keegan	Bond
2) Local & Federal Affairs Committee	17 Y, 0 N, As CS	Nelson	Rojas
3) Judiciary Committee		<i>AK</i> Keegan	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Current Florida law requires that the form of a warranty deed conveying real property include a blank space for the grantee's social security number. Providing this social security number on a warranty deed is not mandatory, and failure to do so does not affect the validity of the deed.

A lien is a form of security interest to ensure payment of a debt or other obligation. In general, a lien or other encumbrance against real property is legally binding against the owner of the property from the time the lien is created. However, certain unrecorded liens may also affect the title to real property.

The bill removes the requirement to include the space for a social security number on a warranty deed. The bill further requires that a lien against real property must be recorded in the official records of a county in order to be valid. This bill only applies to liens entered by a governmental or quasi-governmental entity for services, fines, or penalties, and does not affect liens for taxes, non-ad valorem or special assessments, or utilities.

The bill does not appear to have a fiscal impact on state government, and may have an indeterminate, minimal fiscal impact on local governments.

The bill has an effective date of October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### The Statutory Warranty Deed Form

A warranty deed memorializes the transfer of real property,<sup>1</sup> and current Florida law provides a form for these deeds. However, this statutory form is not required for a deed to be valid.<sup>2</sup> If a warranty deed substantially conforms to the statutory form, the deed will convey real property.

The statutory warranty deed form includes a blank space for the social security number of the individual (or individuals) acquiring real property (known as a "grantee").<sup>3</sup> This requirement originally was added to the warranty deed form in 1988.<sup>4</sup> There is no penalty for failure to include a grantee's social security number on a warranty deed,<sup>5</sup> and it is commonly omitted.

This blank space requirement was created legislatively in the course of alimony and child support reform.<sup>6</sup> The apparent purpose of the space was to allow more effective recordkeeping of real property for the purpose of collecting overdue child support.<sup>7</sup> However, the requirement does not achieve this goal because the social security number is not indexed. There is no other obvious use for a social security number on a deed.

The bill amends s. 689.02(2), F.S., to remove the specification that warranty deeds contain a blank space for the grantee's social security number. This change will have no effect on any verifiable need for the social security number on these documents, and prevent the unnecessary use of such numbers.

##### Lien Recording Requirements

A lien is a form of security interest to ensure payment of a debt or other obligation.<sup>8</sup> Liens include mortgages,<sup>9</sup> construction liens, and other liens authorized judicially, statutorily or consensually. In general, a lien or other encumbrance against real property is legally binding against the owner of the property from the time the lien is created.<sup>10</sup> However, a lien normally is not effective against the rights of another lienholder unless that lienholder has notice of the lien.<sup>11</sup>

A lienholder may comply with this notice requirement by recording the lien in the official records, which are retained by the clerk of court in the county where the property is located.<sup>12</sup> The law recognizes the

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<sup>1</sup> Section 689.03, F.S.

<sup>2</sup> Section 689.03, F.S.; 19 FLA. PRAC. SERIES, §3:8 (2012-2013 ed.).

<sup>3</sup> Section 689.02(2), F.S.

<sup>4</sup> S.B. 487, 1987-1988 Reg. Sess. (Fla. 1988).

<sup>5</sup> Section 689.02(2), F.S.

<sup>6</sup> Chapter 88-175, L.O.F.

<sup>7</sup> Florida Dept. of Revenue, Office of Child Support Enforcement, *1988 HRS Legislative Proposal* (1988) (on file with the State Archives of Florida.)

<sup>8</sup> 19 FLA. PRAC. SERIES, *Florida Real Estate* § 37:1 (2012-2013 ed.).

<sup>9</sup> Under Florida law, a mortgage is a specific lien on the property and not a conveyance of the legal title or the right to possession.

<sup>10</sup> *See*, s. 697.02, F.S.

<sup>11</sup> *Id.*

<sup>11</sup> *Argent Mortg. Co., LLC v. Wachovia Bank, N.A.*, 52 So.3d 796, 799 (Fla. 5th DCA 2010).

<sup>12</sup> *City of Palm Bay v. Wells Fargo Bank*, 57 So.3d 226 (Fla. 5th DCA 2011); *Argent Mortg. Co., LLC v. Wachovia Bank, N.A.*, 52 So.3d 796, 799 (Fla. 5th DCA 2010); s. 695.11, F.S.; s. 28.222, F.S.

date a lien is recorded as the presumptive date the lien becomes effective against other parties, determining priority of the lien, i.e., "first in time, first in line."<sup>13</sup>

Florida has a recording statute which provides:

No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser. See, s. 695.01, F.S.

However, there is a class of liens commonly referred to as "hidden liens," which are not recorded in the official records.<sup>14</sup> Local governments may impose liens on real property for improvements, services, costs of repairs and associated penalties levied in accordance with local building code enforcement.<sup>15</sup> A number of local governments are of the opinion that s. 695.01, F.S., does not apply to their liens.<sup>16</sup> When these liens are not recorded, a general title or public records search will not reveal that a lien is attached to the title of property. Courts have upheld hidden liens in various circumstances.<sup>17</sup>

The bill amends s. 695.01(3), F.S., to require that governmental and quasi-governmental entities<sup>18</sup> record liens that attach to real property in order for the liens to be effective against creditors or subsequent purchasers, thereby protecting purchasers of real property from hidden liens.

This bill only pertains to governmental or quasi-governmental liens for improvements, services, fines, or penalties, and does not apply to liens for taxes, non-ad valorem or special assessments, or utilities, as these liens are readily identified via public records. A properly recorded lien must include the property owner's name, a property description or address, and the tax or parcel identification number. This requirement serves to prevent instances in which property descriptions have been incomplete or incomprehensible, and consequently incorrectly posted.

The elimination of lien rights will not affect liability for the underlying debt. That is, where a hidden lien is prohibited and the entity elects not to record a lien, the underlying debt is still owed and remains collectible. In practice, however, a debt without a lien is considered difficult to collect.

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<sup>13</sup> *Id.*

<sup>14</sup> Wanda Borges, *Hidden Liens: Who is Entitled to What?*, 103 COM. L.J. 284, 285 (1998).

<sup>15</sup> Chapter 162, F.S., covers the powers of counties and municipalities to enforce municipal and county codes. Counties and municipalities are authorized to appoint code enforcement boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method for enforcing local codes and ordinances, where a pending or repeated violation continues to exist. The local government may record in the public records a certified copy of an order imposing a code enforcement fine, thereby constituting a lien against the land where the violation exists and upon any other real or personal property owned by the violator. No lien may continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is brought to foreclose on the lien or to sue to recover a money judgment for the lien plus interest. The local government also is allowed to collect all costs incurred in recording and satisfying a valid lien.

<sup>16</sup> March 4, 2013, conversation with Russ Hale, attorney for the Florida Banker's Association.

<sup>17</sup> *Dade County v. Certain Lands*, 247 So.2d 787, 789 (Fla. 3rd DCA 1971).

<sup>18</sup> While these terms are not defined by ch. 695, F.S., "governmental entity" typically refers to a state agency, a county agency, or any other entity, however styled, that independently exercises any type of state or local governmental function. See, s. 11.45, F.S. A "quasi-governmental" entity may be found by the courts in instances where a private body performs public functions. See, *Turkey Creek, Inc. v. Londono*, 567 So.2d 943, (Fla. 1st DCA 1990).



**B. SECTION DIRECTORY:**

Section 1: amends s. 689.02, F.S., regarding the statutory warranty deed form.

Section 2: amends s. 695.01, F.S., regarding lien recording.

Section 3: provides an effective date of October 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

This bill does not appear to have an impact on state revenues.

2. Expenditures:

This bill does not appear to have an impact on state expenditures.

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

1. Revenues:

Some local governments may experience an increase in revenues as a result of increased collection on recorded liens, which are more easily detected by property owners and title insurance companies. However, the fiscal impact is indeterminate.

2. Expenditures:

This bill may have an unknown impact on local government expenditures. See, Fiscal Comments, below.

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

This bill does not appear to have a direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

The bill is likely to have a positive but unknown fiscal impact on the private sector. It appears that this bill will lower transaction costs and limit unknown liabilities of transfer agents and purchasers of real property.

It is unknown how many local governments do not record liens. Local governments may be able to elect one of three apparent means by which to respond to this bill, with the following fiscal impacts:

- A local government may elect to record previously unrecorded liens. Most liens only require a single page, which has a recording cost payable to the clerk of court or county recorder of \$10.00.<sup>19</sup> The cost to such a local government would be these recording costs, which could ultimately be recoverable.
- A local government may elect to amend any relevant ordinance to add the recording cost to the amount of the outstanding lien.

<sup>19</sup> FLORIDA COURT CLERKS & COMPTROLLERS, DISTRIBUTION SCHEDULE 73 (2012), *available at* [http://www.flclerks.com/public\\_info.html](http://www.flclerks.com/public_info.html) (last viewed Feb. 11, 2013).

- A local government may elect to forgo recording liens and attempt to collect such monies without utilizing liens. In this case, the local government would save on “up front” recording costs, but may experience a decline in its collections rate.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill 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:

None.

#### B. RULE-MAKING AUTHORITY:

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

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

In 2002, the Office of Statewide Prosecution issued an interim report from the 16th Statewide Grand Jury on identity theft in Florida. The report implies that social security number requirements facilitate identity theft. Reforms were passed in 2002 in reaction to this report, including an amendment to s. 119.0714, F.S., which prohibits including social security numbers on official records unless expressly required by law.

The Florida Department of Revenue (DOR) neither receives nor uses the social security numbers on deeds for the purpose of collecting child support or alimony. DOR has indicated that it does not foresee any problem with eliminating the blank space for a social security number on warranty deeds.<sup>20</sup>

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 7, 2013, the Local & Federal Affairs Committee adopted an amendment that makes technical changes to the bill. This amendment conforms the language of the bill to other provisions in ch. 695, F.S.

This analysis is drafted to the Committee Substitute.

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<sup>20</sup> Legislative and Cabinet Services, Florida Department of Revenue, *Written Communication* (2012) (on file with the Civil Justice Subcommittee, Florida House of Representatives).

1 A bill to be entitled  
 2 An act relating to real property liens and  
 3 conveyances; amending s. 689.02, F.S.; deleting a  
 4 requirement that blank spaces be included on a  
 5 warranty deed to allow for entry of social security  
 6 numbers of grantees on the deed; conforming  
 7 provisions; amending s. 695.01, F.S.; providing that  
 8 certain types of governmental or quasi-governmental  
 9 liens on real property are valid and effectual against  
 10 certain creditors or purchasers only if recorded in a  
 11 specified manner; providing an effective date.  
 12

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

15 Section 1. Subsection (2) of section 689.02, Florida  
 16 Statutes, is amended to read:

17 689.02 Form of warranty deed prescribed.—

18 (2) The form for warranty deeds of conveyance to land  
 19 shall include a blank space for the property appraiser's parcel  
 20 identification number describing the property conveyed, which  
 21 number, if available, shall be entered on the deed before it is  
 22 presented for recording, ~~and blank spaces for the social~~  
 23 ~~security numbers of the grantees named in the deed, if~~  
 24 ~~available, which numbers may be entered on the deed before it is~~  
 25 ~~presented for recording.~~ The failure to include such blank space  
 26 ~~spaces,~~ or the parcel identification number, ~~or any social~~  
 27 ~~security number,~~ or the inclusion of an incorrect parcel  
 28 identification number ~~or social security number,~~ does shall not

29 affect the validity of the conveyance or the recordability of  
 30 the deed. Such parcel identification number is ~~shall~~ not  
 31 ~~constitute~~ a part of the legal description of the property  
 32 otherwise set forth in the deed and may ~~shall~~ not be used as a  
 33 substitute for the legal description of the property being  
 34 conveyed, ~~nor shall a social security number serve as a~~  
 35 ~~designation of the grantee named in the deed.~~

36 Section 2. Subsection (3) is added to section 695.01,  
 37 Florida Statutes, to read:

38 695.01 Conveyances and liens to be recorded.—

39 (3) A lien by a governmental entity or quasi-governmental  
 40 entity that attaches to real property for an improvement,  
 41 service, fine, or penalty, other than a lien for taxes, non-ad  
 42 valorem or special assessments, or utilities, is valid and  
 43 effectual in law or equity against creditors or subsequent  
 44 purchasers for a valuable consideration only if the lien is  
 45 recorded in the official records of the county in which the  
 46 property is located. The recorded notice of lien must contain  
 47 the name of the owner of record, a description or address of the  
 48 property, and the tax or parcel identification number applicable  
 49 to the property as of the date of recording.

50 Section 3. This act shall take effect October 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 311 Costs of Prosecution, Investigation, and Representation  
**SPONSOR(S):** Justice Appropriations Subcommittee; Ray  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Jones	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	Toms	Jones Darity
3) Judiciary Committee		Jones <i>LIT</i>	Havlicak <i>RN</i>

### SUMMARY ANALYSIS

Currently, convicted persons are liable for the costs of prosecution, as well as the costs of representation. These costs may be imposed at a rate of \$50 in misdemeanor or criminal traffic offense cases, and \$100 in felony criminal cases.

The bill amends s. 903.286, F.S., to add the costs of prosecution and representation to the list of costs a clerk of the court is required to withhold from the return of a cash bond posted on behalf of a criminal defendant.

The bill also requires:

- The clerk to collect and dispense cost payments in any case, regardless of whether the case takes place before a judge in open court or in any other manner; and
- The costs of prosecution to be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

The bill provides that upon determination of a juvenile's inability to pay court costs assessed against the delinquent, including costs of prosecution, public defender application fees and the costs of representation, the juvenile may perform community service in lieu of payment.

This bill will create a minimal increase in workload and an insignificant negative fiscal impact for the Clerks of the Court. This bill will likely have an insignificant positive fiscal impact on state attorneys and public defenders. However, the impact is indeterminate because the number of affected offenders and their levels of payment is unknown.

The bill is effective on July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Costs of Prosecution**

Section 938.27, F.S., provides that convicted<sup>1</sup> persons are liable for the costs of prosecution at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases.<sup>2</sup> The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.<sup>3</sup>

If requested, convicted persons are also liable for the investigative costs incurred by a law enforcement agency, fire department,<sup>4</sup> the Department of Financial Services, and the Office of Financial Regulation of the Financial Services Commission.<sup>5</sup> Section 938.27, F.S., requires a court to impose the cost of prosecution and investigation notwithstanding the convicted person's present ability to pay.

##### **Costs of Representation**

Section 938.29(1)(a), F.S., provides that convicted<sup>6</sup> persons are liable for payment of a \$50 public defender application fee under s. 27.52(1)(b), F.S.,<sup>7</sup> attorney's fees, and costs if he or she received assistance from the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or if he or she has received due process services after being found indigent for costs.

Costs of representation may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases.<sup>8</sup> The costs of representation are deposited into the Public Defender's Indigent Criminal Defense Trust Fund.<sup>9</sup>

Section 938.29(1)(a), F.S., requires a court to impose the cost of representation notwithstanding the convicted person's present ability to pay. A court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence.<sup>10</sup>

The clerk within the county where the defendant was tried or received services from a public defender is responsible for enforcing, satisfying, compromising, settling, subordinating, releasing or otherwise disposing of any debt or lien imposed.<sup>11</sup>

##### **Cash Bonds**

Section 903.286, F.S., requires the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent<sup>12</sup> to pay unpaid:

- Court fees;
- Court costs; and
- Criminal penalties.

<sup>1</sup> Section 938.27(1), F.S., defines "convicted" as the determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

<sup>2</sup> A court may set a higher amount upon the showing of sufficient proof of higher costs incurred. Section 938.27(8), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> For arson investigations. Section 938.27, F.S.

<sup>5</sup> Section 938.27(1), F.S.

<sup>6</sup> The definition of "convicted" is the same as that in s. 938.27(1), F.S. See, *supra* note 1 and s. 938.29(1)(a), F.S.

<sup>7</sup> Section 27.52(1)(a), F.S., provides that a person seeking the appointment of a public defender under s. 27.51, F.S., based upon an inability to pay, must apply to the clerk of the court for a determination of indigent status.

<sup>8</sup> A court may set a higher amount upon the showing of sufficient proof of higher fees or costs incurred. Section 938.29(1)(a), F.S.

<sup>9</sup> Section 27.562, F.S.

<sup>10</sup> Section 938.29(1)(c), F.S.

<sup>11</sup> Section 938.29(3), F.S.

<sup>12</sup> Licensed under ch. 648, F.S.

If sufficient funds are not available to pay the above costs, the clerk must immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.<sup>13</sup>

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above-described costs on behalf of the criminal defendant, regardless of who posted the funds.<sup>14</sup>

#### *Effect of the Bill*

The bill amends s. 903.286, F.S., to add the costs of prosecution and costs of representation to the list of costs a clerk is required to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If sufficient funds are not available to pay such costs from the cash bond, the clerk must immediately obtain payment from the defendant or enroll the defendant in a payment plan. The bill also requires the cash bond form to include a notice that the costs of prosecution and representation are subject to forfeiture and withholding.

#### **Costs of Prosecution – Disposition by the Clerk**

Section 938.27, F.S., requires the clerk to collect and disburse cost of prosecution payments in every case. In certain instances, the clerk, rather than the judge, is authorized to dispose of a case. For example, s. 318.14, F.S., authorizes the clerk to dispose of certain misdemeanor criminal traffic violations<sup>15</sup> in which the defendant shows the clerk that he or she is in compliance with the law under which the charge was made prior to the court date.

#### *Effect of the Bill*

The bill amends s. 938.27, F.S., to require the clerk to collect and disburse costs of prosecution in all cases, *regardless of whether the cases are disposed of before a judge in open court or in any other manner provided by law.*

#### **Delinquency Cases**

Currently, juveniles who are adjudicated delinquent or who have had the adjudication of delinquency withheld are not required to pay the costs of prosecution although they can be required to pay for the costs of representation.<sup>16</sup>

#### *Effect of the Bill*

The bill requires that costs of prosecution be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. The bill also provides that upon determination of a juvenile's inability to pay court costs assessed against the delinquent, including costs of prosecution, public defender application fees and the costs of representation, the juvenile may perform community service in lieu of payment.

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

Section 1. Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 2. Amends s. 938.27, F.S., relating to judgment for costs of prosecution and investigation.

Section 3. Amends s. 985.032, F.S., relating to legal representation for delinquency cases.

Section 4. Amends s. 985.455, F.S., relating to other dispositional issues.

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<sup>13</sup> Section 903.286(1), F.S.

<sup>14</sup> Section 903.286(2), F.S.

<sup>15</sup> Examples of these traffic offenses include operating a motor vehicle without a valid registration under s. 320.131, F.S., and presenting invalid proof of insurance under s. 316.646, F.S.

<sup>16</sup> Sections 27.52(6) and 938.29(2)(a)2., F.S.



Section 5. Provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

There is likely an insignificant positive fiscal impact on state attorneys and public defenders for the following reasons:

- The clerk is required to collect and dispense cost payments in any case, regardless of whether the disposition of the case takes place before a judge in open court or in any other manner provided by law. This may result in more costs of prosecution being collected and paid to state attorneys;
- The costs of prosecution will be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact on state attorneys as these costs were not assessed in these specific cases in the past; and
- The costs of prosecution and representation are allowed to be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This will likely have a positive fiscal impact on state attorneys and public defenders as the cost of prosecution and representation will be deducted from any cash bonds posted on behalf of a criminal defendant.

However, the impact is indeterminate because the number of affected offenders and their ultimate level of payment is unknown.

There is also a possible negative fiscal impact on state attorneys and public defenders providing that the court may order a juvenile to perform community service in lieu of all court costs assessed against a delinquent child, including costs of prosecution, public defender application fees and costs of representation. Per the Public Defenders Association, this bill will have an insignificant fiscal impact to their offices.

#### 2. Expenditures:

See "fiscal comments" section.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

See "fiscal comments" section.

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

Juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld may now be assessed the costs of prosecution. However, the bill also allows for the court to order the child to perform community service in lieu of all court costs assessed against the delinquent child, including costs of prosecution, public defender application fees and costs of representation. This may provide for a savings for juveniles.

Criminal defendants must now pay the costs of prosecution and the costs of representation regardless of whether the cases are disposed of before a judge in open court or in any other manner provided by law.

**D. FISCAL COMMENTS:**

The bill clarifies the types of cases that are subject to the collection and dispensing of cost payments by the Clerks of the Court. The bill will create a minimal increase in workload for the Clerks of the Court. The Florida Association of Court Clerks has stated that this bill will have an indeterminate fiscal impact on the office of the Clerk.

**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 6, 2013, the Justice Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute.

- The first and second amendments added a cross reference to s. 938.29, F.S.
- The third amendment provided that upon determination of a juvenile's inability to pay court costs assessed against the delinquent, including costs of prosecution, public defender application fees and the costs of representation, the juvenile may perform community service in lieu of payment.

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

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A bill to be entitled  
 An act relating to costs of prosecution,  
 investigation, and representation; amending s.  
 903.286, F.S.; providing for the withholding of unpaid  
 costs of prosecution and representation from the  
 return of a cash bond posted on behalf of a criminal  
 defendant; requiring a notice on bond forms of such  
 possible withholding; amending s. 938.27, F.S.;  
 clarifying the types of cases that are subject to the  
 collection and dispensing of cost payments by the  
 clerk of the court; amending s. 985.032, F.S.;  
 providing for assessment of costs of prosecution  
 against a juvenile who has been adjudicated delinquent  
 or has adjudication of delinquency withheld; amending  
 s. 985.455, F.S.; providing that a child adjudicated  
 delinquent may perform community service in lieu of  
 certain costs and fees; providing an effective date.

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

Section 1. Section 903.286, Florida Statutes, is amended  
 to read:

903.286 Return of cash bond; requirement to withhold  
 unpaid fines, fees, court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court  
 shall withhold from the return of a cash bond posted on behalf  
 of a criminal defendant by a person other than a bail bond agent  
 licensed pursuant to chapter 648 sufficient funds to pay any

CS/HB 311

2013

29 unpaid costs of prosecution, costs of representation as provided  
 30 by ss. 27.52 and 938.29, court fees, court costs, and criminal  
 31 penalties. If sufficient funds are not available to pay all  
 32 unpaid costs of prosecution, costs of representation as provided  
 33 by ss. 27.52 and 938.29, court fees, court costs, and criminal  
 34 penalties, the clerk of the court shall immediately obtain  
 35 payment from the defendant or enroll the defendant in a payment  
 36 plan pursuant to s. 28.246.

37 (2) All cash bond forms used in conjunction with the  
 38 requirements of s. 903.09 must prominently display a notice  
 39 explaining that all funds are subject to forfeiture and  
 40 withholding by the clerk of the court for the payment of costs  
 41 of prosecution, costs of representation as provided by ss. 27.52  
 42 and 938.29, court fees, court costs, and criminal penalties on  
 43 behalf of the criminal defendant regardless of who posted the  
 44 funds.

45 Section 2. Section 938.27, Florida Statutes, is amended to  
 46 read:

47 938.27 Judgment for costs of prosecution and investigation  
 48 ~~on conviction.~~-

49 (1) In all criminal and violation-of-probation or  
 50 community-control cases, convicted persons are liable for  
 51 payment of the costs of prosecution, including investigative  
 52 costs incurred by law enforcement agencies, by fire departments  
 53 for arson investigations, and by investigations of the  
 54 Department of Financial Services or the Office of Financial  
 55 Regulation of the Financial Services Commission, if requested by  
 56 such agencies. The court shall include these costs in every

57 judgment rendered against the convicted person. For purposes of  
 58 this section, "convicted" means a determination of guilt, or of  
 59 violation of probation or community control, which is a result  
 60 of a plea, trial, or violation proceeding, regardless of whether  
 61 adjudication is withheld.

62 (2)(a) The court shall impose the costs of prosecution and  
 63 investigation notwithstanding the defendant's present ability to  
 64 pay. The court shall require the defendant to pay the costs  
 65 within a specified period or pursuant to a payment plan under s.  
 66 28.246(4).

67 (b) The end of such period or the last such installment  
 68 must not be later than:

- 69 1. The end of the period of probation or community  
 70 control, if probation or community control is ordered;
- 71 2. Five years after the end of the term of imprisonment  
 72 imposed, if the court does not order probation or community  
 73 control; or
- 74 3. Five years after the date of sentencing in any other  
 75 case.

76  
 77 However, the obligation to pay any unpaid amounts does not  
 78 expire if not paid in full within the period specified in this  
 79 paragraph.

80 (c) If not otherwise provided by the court under this  
 81 section, costs must ~~shall~~ be paid immediately.

82 (3) If a defendant is placed on probation or community  
 83 control, payment of any costs under this section shall be a  
 84 condition of such probation or community control. The court may

85 | revoke probation or community control if the defendant fails to  
 86 | pay these costs.

87 |       (4) Any dispute as to the proper amount or type of costs  
 88 | shall be resolved by the court by the preponderance of the  
 89 | evidence. The burden of demonstrating the amount of costs  
 90 | incurred is on the state attorney. The burden of demonstrating  
 91 | the financial resources of the defendant and the financial needs  
 92 | of the defendant is on the defendant. The burden of  
 93 | demonstrating such other matters as the court deems appropriate  
 94 | is upon the party designated by the court as justice requires.

95 |       (5) Any default in payment of costs may be collected by  
 96 | any means authorized by law for enforcement of a judgment.

97 |       (6) The clerk of the court shall collect and dispense cost  
 98 | payments in any case, regardless of whether the disposition of  
 99 | the case takes place before the judge in open court or in any  
 100 | other manner provided by law.

101 |       (7) Investigative costs that are recovered must ~~shall~~ be  
 102 | returned to the appropriate investigative agency that incurred  
 103 | the expense. Such costs include actual expenses incurred in  
 104 | conducting the investigation and prosecution of the criminal  
 105 | case; however, costs may also include the salaries of permanent  
 106 | employees. Any investigative costs recovered on behalf of a  
 107 | state agency must be remitted to the Department of Revenue for  
 108 | deposit in the agency operating trust fund, and a report of the  
 109 | payment must be sent to the agency, except that any  
 110 | investigative costs recovered on behalf of the Department of Law  
 111 | Enforcement must ~~shall~~ be deposited in the department's  
 112 | Forfeiture and Investigative Support Trust Fund under s.

CS/HB 311

2013

113 943.362.

114 (8) Costs for the state attorney must ~~shall~~ be set in all  
 115 cases at no less than \$50 per case when a misdemeanor or  
 116 criminal traffic offense is charged and no less than \$100 per  
 117 case when a felony offense is charged, including a proceeding in  
 118 which the underlying offense is a violation of probation or  
 119 community control. The court may set a higher amount upon a  
 120 showing of sufficient proof of higher costs incurred. Costs  
 121 recovered on behalf of the state attorney under this section  
 122 must ~~shall~~ be deposited into the State Attorneys Revenue Trust  
 123 Fund to be used during the fiscal year in which the funds are  
 124 collected, or in any subsequent fiscal year, for actual expenses  
 125 incurred in investigating and prosecuting criminal cases, which  
 126 may include the salaries of permanent employees, or for any  
 127 other purpose authorized by the Legislature.

128 Section 3. Section 985.032, Florida Statutes, is amended  
 129 to read:

130 985.032 Legal representation for delinquency cases.—

131 (1) For cases arising under this chapter, the state  
 132 attorney shall represent the state.

133 (2) A juvenile who has been adjudicated delinquent or has  
 134 adjudication of delinquency withheld shall be assessed costs of  
 135 prosecution as provided in s. 938.27.

136 Section 4. Paragraph (d) is added to subsection (1) of  
 137 section 985.455, Florida Statutes, to read:

138 985.455 Other dispositional issues.—

139 (1) The court that has jurisdiction over an adjudicated  
 140 delinquent child may, by an order stating the facts upon which a

CS/HB 311

2013

141 | determination of a sanction and rehabilitative program was made  
142 | at the disposition hearing:

143 |       (d) Order the child, upon a determination of the child's  
144 | inability to pay, to perform community service in lieu of all  
145 | court costs assessed against the delinquent child, including  
146 | costs of prosecution, public defender application fees, and  
147 | costs of representation.

148 |       Section 5. This act shall take effect July 1, 2013.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 353 Juvenile Justice  
**SPONSOR(S):** Criminal Justice Subcommittee; Harrell and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee	10 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee		Cox <i>Ma</i>	Havlicak <i>RH</i>

**SUMMARY ANALYSIS**

Section 985.02, F.S., which outlines the legislative intent for the juvenile justice system, provides that the children of the state shall be provided with protection from abuse, neglect and exploitation; as well as adequate nutrition, shelter and clothing. While uncommon, there are instances in which a Department of Juvenile Justice (DJJ) employee neglects a juvenile offender in the Department's custody, resulting in harm to the juvenile.

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances in which a DJJ employee is alleged to have neglected a youth in DJJ's custody. As a result, prosecutors have to look to statutes outside of ch. 985, F.S., to prosecute a DJJ employee alleged to have neglected a youth.

The bill creates s. 985.702, F.S., establishing a new criminal offense relating to malicious infliction of cruel or inhuman treatment by neglect.

The bill makes it a first degree misdemeanor for a DJJ employee, with malicious intent, to inflict cruel or inhuman treatment by neglect or otherwise on a juvenile offender without causing great bodily harm, permanent disability, or permanent disfigurement. If the infliction does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a third degree felony.

The bill defines "neglect of a juvenile offender" as an employee's:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

The bill also creates reporting requirements and provides criminal penalties for failing to comply with the reporting requirements.

The bill creates s. 985.702, F.S., which contains both misdemeanor and felony penalties. This could have a negative prison and jail bed impact.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Neglect of Youth Committed to the Department of Juvenile Justice**

Section 985.02, F.S., which outlines the legislative intent for the juvenile justice system, provides that the children of the state shall be provided with protection from abuse, neglect and exploitation; as well as adequate nutrition, shelter and clothing. While uncommon, there have been instances in which a Department of Juvenile Justice (DJJ) employee neglects a juvenile offender in DJJ's custody resulting in harm to the juvenile offender.<sup>1</sup>

Currently, ch. 985, F.S., does not contain any provisions specifically addressing instances where a DJJ employee is alleged to have neglected a youth in DJJ's custody. As a result, prosecutors have looked to statutes outside of ch. 985, F.S., to prosecute a DJJ employee alleged to have neglected a youth. One statute prosecutors have attempted to use for such prosecutions is s. 827.03, F.S., relating to criminal child neglect. However, the child neglect statute is not designed to prosecute neglect cases which arise within the unique framework of the juvenile justice environment, nor does it apply to youth in DJJ's custody who are 18 or older.<sup>2</sup>

##### Effect of the Bill

The bill creates s. 985.702, F.S., establishing a new criminal offense relating to malicious infliction of cruel or inhuman treatment by neglect.

The bill makes it a first degree misdemeanor<sup>3</sup> for a DJJ employee, with malicious intent, to inflict cruel or inhuman treatment by neglect or otherwise on a juvenile offender *without* causing great bodily harm, permanent disability, or permanent disfigurement. If the infliction does cause great bodily harm, permanent disability, or permanent disfigurement to the juvenile offender, the employee commits a third degree felony.<sup>4</sup>

The bill defines an "employee" as a paid staff member, volunteer, or intern who works in a DJJ program or a program operated by a provider under contract with DJJ,<sup>5</sup> and defines a "juvenile offender" as "any person of any age who is detained by, or committed to the custody of, the department." "Neglect of a juvenile offender" is defined as an employee's:

- Failure or omission to provide a juvenile offender with the proper level of care, supervision, and services necessary to maintain the juvenile offender's physical and mental health, including, but not limited to, adequate food, nutrition, clothing, shelter, supervision, medicine, and medical services; or
- Failure to make a reasonable effort to protect a juvenile offender from abuse, neglect, or exploitation by another person.

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<sup>1</sup> *DJJ supervisor thought Eric Perez was "faking" as he dies in juvie lockup, officer testifies*, [http://blogs.browardpalmbeach.com/pulp/2012/03/djj\\_eric\\_perez\\_death\\_grand\\_jury\\_report.php](http://blogs.browardpalmbeach.com/pulp/2012/03/djj_eric_perez_death_grand_jury_report.php) (last visited on February 18, 2013); *Parents of teen who died at Palm Beach County juvenile center say they'll sue DJJ*, <http://www.palmbeachpost.com/news/news/crime-law/parents-of-teen-who-died-at-palm-beach-county-ju-1/nLhcN/> (last visited on February 18, 2013).

<sup>2</sup> Chapter 827, F.S., defines a child as "any person under the age of 18 years." While the majority of youth in DJJ's custody are under 18 years old, there are instances which DJJ has custody of a person who is 18 years old or older. For example, s. 985.0301(5)(a), F.S., states DJJ must retain jurisdiction over a child alleged to have committed a delinquent act until the child reaches 19 years old and may retain jurisdiction for an additional 365 days following the child's 19<sup>th</sup> birthday if the child is participating in transition-to-adulthood services.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> This is the same definition as provided in s. 985.701(1)(a)1.b., F.S., relating to sexual misconduct by an employee.

If the Public Employees Relations Commission determines that a DJJ employee violates the newly created s. 985.702, F.S., such determination constitutes sufficient cause under s. 110.227, F.S.,<sup>6</sup> for dismissal from employment with DJJ, and prohibits the employee from being employed in any capacity in connection with the juvenile justice system.

The bill requires employees who witness the infliction of cruel or inhuman treatment against a juvenile offender to immediately report the incident to DJJ's incident hotline. The witness must also prepare an independent report specifically describing the nature of the incident, the location and time, and the persons involved. This report must be submitted to the witness's supervisor or program director, who in turn must provide copies of the report to the inspector general and the circuit juvenile justice manager. The inspector general must immediately conduct an appropriate administrative investigation and, if there is probable cause to believe that a violation occurred, notify the state attorney in the circuit in which the incident occurred.

Any person who is required to prepare a report under this section who knowingly or willfully fails to file a report, or prevents another person from filing a report commits a first degree misdemeanor. In addition, any person who knowingly or willfully:

- Submits inaccurate, incomplete, or untruthful information on a report commits a first degree misdemeanor; and
- Coerces or threatens another person with the intent to alter testimony or a written report commits a third degree felony.

### **Sexual Misconduct by an Employee**

Section 985.701, F.S., makes it a second degree felony<sup>7</sup> for a DJJ employee<sup>8</sup> to engage in sexual misconduct<sup>9</sup> with juvenile offenders "detained or supervised by, or committed to the custody, of the department." The statute does not define the term "juvenile offender."

#### Effect of the Bill

The bill amends s. 985.701, F.S., relating to sexual misconduct, to define "juvenile offender" as "any person of any age who is detained, or committed to the custody of, the department." This mirrors the definition used in s. 985.702, F.S.

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

Section 1. Creates s. 985.702, F.S., relating to malicious infliction of cruel or inhuman treatment prohibited; reporting required; penalties.

Section 2. Amends s. 985.701, F.S., relating to sexual misconduct prohibited; reporting required; penalties.

Section 3. The bill is effective upon becoming a law.

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<sup>6</sup> Section 110.227, F.S., relates to the suspension and dismissal of career service employees.

<sup>7</sup> 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.

<sup>8</sup> Section 985.701(1)(a)1.b., F.S., defines "employee" as paid staff members, volunteers, and interns who work in a department program or a program operated by a provider under a contract.

<sup>9</sup> Section 985.701(1)(a)1.a., F.S., defines "sexual misconduct" as fondling the genital area, groin, inner thighs, buttocks, or breasts of a person; the oral, anal, or vaginal penetration by or union with the sexual organ of another; or the anal or vaginal penetration of another by any other object. The term does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of duty by an employee of the department or an employee of a provider under contract with the department.

## 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 creates a new felony offense relating to malicious infliction of cruel or inhuman treatment by neglect. The bill also creates a new felony offense related to the reporting requirements in the bill. To the extent that DJJ employees are prosecuted for either of these new felony offenses, it could have a negative prison bed impact on the Department of Corrections.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

The bill creates a new misdemeanor offense relating malicious infliction of cruel or inhuman treatment. The bill also creates new misdemeanor offenses related to the reporting requirements in the bill. To the extent that DJJ employees are prosecuted for any of these new misdemeanor offenses, it could have a negative jail bed impact on local governments.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 12, 2013, the Criminal Justice Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Creates s. 985.702, F.S., which prohibits a DJJ employee from committing malicious infliction of cruel or inhuman treatment by neglect on a juvenile offender.
- Defines the terms "employee," "juvenile offender," and "neglect of a juvenile offender;"
- Creates reporting requirements;
- Defines the term "juvenile offender" in s. 985.701, F.S.;
- Deletes section 2 of the original bill, which repealed s. 945.74, F.S., relating to Department of Corrections inmate training programs.

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

1                                   A bill to be entitled  
 2           An act relating to juvenile justice; creating s.  
 3           985.702, F.S.; providing definitions; providing for  
 4           the imposition of criminal penalties against specified  
 5           employees who inflict cruel or inhuman treatment upon  
 6           juvenile offenders; providing enhanced penalties for  
 7           such treatment that results in great bodily harm,  
 8           permanent disability, or permanent disfigurement to a  
 9           juvenile offender; specifying that such conduct  
 10          constitutes sufficient cause for an employee's  
 11          dismissal from employment; prohibiting such employee  
 12          from future employment with the juvenile justice  
 13          system; providing incident reporting requirements;  
 14          prohibiting an employee who witnesses such an incident  
 15          from knowingly or willfully failing to report;  
 16          prohibiting false reporting, preventing another from  
 17          reporting, or coercing another to alter testimony or  
 18          reports; providing penalties; amending s. 985.701,  
 19          F.S.; defining the term "juvenile offender" for  
 20          purposes of prohibiting sexual misconduct with  
 21          juvenile offenders; providing an effective date.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

24  
 25           Section 1. Section 985.702, Florida Statutes, is created to  
 26   read:  
 27           985.702 Malicious infliction of cruel or inhuman treatment  
 28   prohibited; reporting required; penalties.-

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

30 (a) "Employee" means a paid staff member, volunteer, or  
31 intern who works in a department program or a program operated  
32 by a provider under a contract with the department.

33 (b) "Juvenile offender" means any person of any age who is  
34 detained, or committed to the custody of, the department.

35 (c) "Neglect of a juvenile offender" means:

36 1. An employee's failure or omission to provide a juvenile  
37 offender with the proper level of care, supervision, and  
38 services necessary to maintain the juvenile offender's physical  
39 and mental health, including, but not limited to, adequate food,  
40 nutrition, clothing, shelter, supervision, medicine, and medical  
41 services; or

42 2. An employee's failure to make a reasonable effort to  
43 protect a juvenile offender from abuse, neglect, or exploitation  
44 by another person.

45 (2) (a) Any employee who, with malicious intent, inflicts  
46 cruel or inhuman treatment by neglect or otherwise, without  
47 causing great bodily harm, permanent disability, or permanent  
48 disfigurement to a juvenile offender, commits a misdemeanor of  
49 the first degree, punishable as provided in s. 775.082 or s.  
50 775.083.

51 (b) Any employee who, with malicious intent, inflicts  
52 cruel or inhuman treatment by neglect or otherwise, and in so  
53 doing causes great bodily harm, permanent disability, or  
54 permanent disfigurement to a juvenile offender, commits a felony  
55 of the third degree, punishable as provided in s. 775.082, s.  
56 775.083, or s. 775.084.



57 (c) Notwithstanding prosecution, any violation of  
 58 paragraph (a) or paragraph (b), as determined by the Public  
 59 Employees Relations Commission, constitutes sufficient cause  
 60 under s. 110.227 for dismissal from employment with the  
 61 department, and such person may not again be employed in any  
 62 capacity in connection with the juvenile justice system.

63 (3) An employee who witnesses the infliction of cruel or  
 64 inhuman treatment committed against a juvenile offender shall  
 65 immediately report the incident to the department's incident  
 66 hotline and prepare, date, and sign an independent report that  
 67 specifically describes the nature of the incident, the location  
 68 and time of the incident, and the persons involved. The employee  
 69 shall deliver the report to the employee's supervisor or program  
 70 director, who must provide copies to the department's inspector  
 71 general and the circuit juvenile justice manager. The inspector  
 72 general shall immediately conduct an appropriate administrative  
 73 investigation, and, if there is probable cause to believe that a  
 74 violation of subsection (2) has occurred, the inspector general  
 75 shall notify the state attorney in the circuit in which the  
 76 incident occurred.

77 (4) (a) Any person who is required to prepare a report  
 78 under this section who knowingly or willfully fails to do so, or  
 79 who knowingly or willfully prevents another person from doing  
 80 so, commits a misdemeanor of the first degree, punishable as  
 81 provided in s. 775.082 or s. 775.083.

82 (b) Any person who knowingly or willfully submits  
 83 inaccurate, incomplete, or untruthful information with respect  
 84 to a report required under this section commits a misdemeanor of

85 the first degree, punishable as provided in s. 775.082 or s.  
 86 775.083.

87 (c) Any person who knowingly or willfully coerces or  
 88 threatens any other person with the intent to alter testimony or  
 89 a written report regarding an incident of the infliction of  
 90 cruel or inhuman treatment commits a felony of the third degree,  
 91 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

92 Section 2. Paragraph (a) of subsection (1) of section  
 93 985.701, Florida Statutes, is amended to read:

94 985.701 Sexual misconduct prohibited; reporting required;  
 95 penalties.-

96 (1)(a)1. As used in this subsection, the term:

97 a. "Sexual misconduct" means fondling the genital area,  
 98 groin, inner thighs, buttocks, or breasts of a person; the oral,  
 99 anal, or vaginal penetration by or union with the sexual organ  
 100 of another; or the anal or vaginal penetration of another by any  
 101 other object. The term does not include an act done for a bona  
 102 fide medical purpose or an internal search conducted in the  
 103 lawful performance of duty by an employee of the department or  
 104 an employee of a provider under contract with the department.

105 b. "Employee" includes paid staff members, volunteers, and  
 106 interns who work in a department program or a program operated  
 107 by a provider under a contract.

108 c. "Juvenile offender" means a person of any age who is  
 109 detained or supervised by, or committed to the custody of, the  
 110 department.

111 2. An employee who engages in sexual misconduct with a  
 112 juvenile offender detained or supervised by, or committed to the

113 custody of, the department commits a felony of the second  
 114 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 115 775.084. An employee may be found guilty of violating this  
 116 subsection without having committed the crime of sexual battery.

117 3. The consent of the juvenile offender to any act of  
 118 sexual misconduct is not a defense to prosecution under this  
 119 subsection.

120 4. This subsection does not apply to an employee of the  
 121 department, or an employee of a provider under contract with the  
 122 department, who:

123 a. Is legally married to a juvenile offender who is  
 124 detained or supervised by, or committed to the custody of, the  
 125 department.

126 b. Has no reason to believe that the person with whom the  
 127 employee engaged in sexual misconduct is a juvenile offender  
 128 detained or supervised by, or committed to the custody of, the  
 129 department.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 399 Florida College System Institution Police Officers  
**SPONSOR(S):** Criminal Justice Subcommittee; Eagle and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 454

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Cunningham
2) Higher Education & Workforce Subcommittee	12 Y, 0 N	Thomas	Sherry
3) Judiciary Committee		Jones <i>LTS</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Prior to 2009, Florida College System (FCS) institution and State University System (SUS) institution police officers generally had the same arrest and traffic enforcement authority. This authority was limited to making arrests for violations of law that occurred on FCS institution or SUS institution property, and enforcing traffic laws when traffic violations occurred on FCS institution or SUS institution property.

In 2009, the legislature expanded the arrest and traffic enforcement authority for SUS police officers – the legislation did not apply to FCS police officers.

The bill provides FCS institution police officers the authority to:

- Make arrests for violations of state law or city or county ordinances that occur:
  - On any property or facility or within 1,000 feet of any property of the officer's employing FCS institution; or
  - Within a specified jurisdictional area as agreed upon in a mutual aid agreement.
- Make an off campus arrest for a violation committed on campus when hot pursuit begins on or within 1,000 feet of FCS institution property.

The bill provides FCS institution police officers the authority to enforce traffic laws:

- When a violation occurs:
  - On or within 1,000 feet of any property or facility that is under the guidance, supervision, regulation, or control of the FCS institution; or
  - Within a specified jurisdictional area as agreed upon in a mutual aid agreement.
- Off campus, when hot pursuit originates on or within 1,000 feet of FCS institution property, or in accordance with a mutual aid agreement.

The bill specifies that mutual aid agreements may authorize state university police officers and FCS institution police officers to enforce laws within a specified jurisdictional area.

The bill does not appear to have a fiscal impact.

The bill becomes effective on July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Florida College System Institution Police and University Police

###### Present Situation

The term Florida College System (FCS) institution refers to any public college, state college, or community college in the state of Florida.<sup>1</sup> Currently, FCS and SUS institutions<sup>2</sup> are allowed to employ police officers.<sup>3</sup> Each police officer of an FCS or SUS institution is considered a law enforcement officer of the state and must meet the minimum standards established by ch. 943, F.S., and the Criminal Justice Standards and Training Commission.<sup>4</sup>

Current law authorizes FCS institution police officers to arrest any person for violations of state law or applicable county or city ordinances when the violation occurs on the property or facilities of the officer's employing FCS institution, or on the property or facilities of a direct-support organization of such FCS institution. FCS institution police officers may also arrest a person off campus for a violation that occurred on campus if hot pursuit began on the property or facilities referenced above.<sup>5</sup> In terms of traffic violations, s. 316.640, F.S., currently authorizes FCS institution police officers to enforce traffic laws when such violations occur on any property or facility under the guidance, supervision, regulation, or control of an FCS institution.<sup>6</sup>

Prior to 2009, SUS police officers generally had the same arrest and traffic enforcement authority as that currently given to FCS institution police officers. However, in 2009, the Legislature passed Senate Bill 554, expanding this authority.<sup>7</sup> Currently, SUS police officers are authorized to:

- Make arrests for violations of state law or city or county ordinances that occur:
  - On or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of the state university, a direct-support organization of such university, or any other organization controlled by the state university; or
  - Within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225, F.S.
- Make an off campus arrest when hot pursuit begins on or within 1,000 feet of university property or facilities described above;
- Enforce all of the traffic laws of this state when violations occur:

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<sup>1</sup> The term includes all of the following public postsecondary educational institutions in the Florida College System and any branch campuses, centers, or other affiliates of the institution: Brevard Community College; Broward College; College of Central Florida; Chipola College; Daytona State College; Edison State College; Florida State College at Jacksonville; Florida Keys Community College; Gulf Coast State College; Hillsborough Community College; Indian River State College; Florida Gateway College; Lake-Sumter Community College; State College of Florida, Manatee-Sarasota; Miami Dade College; North Florida Community College; Northwest Florida State College; Palm Beach State College; Pasco-Hernando Community College; Pensacola State College; Polk State College; St. Johns River State College; St. Petersburg College; Santa Fe College; Seminole State College of Florida; South Florida Community College; Tallahassee Community College; and Valencia College. Sections 1000.21(3) and 1004.66, F.S.

<sup>2</sup> The term "state university" includes the following institutions and any branch campuses, centers, or other affiliates of the institution: the University of Florida; Florida State University; Florida Agricultural and Mechanical University; the University of South Florida; Florida Atlantic University; the University of West Florida; the University of Central Florida; the University of North Florida; Florida International University; Florida Gulf Coast University; New College of Florida; and the Florida Polytechnic University. Section 1000.21(6), F.S.

<sup>3</sup> Sections 1012.88 and 1012.97, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 1012.88(2), F.S.

<sup>6</sup> Section 316.640(1)(a)c., F.S.

<sup>7</sup> Chapter 2009-216, L.O.F.

- On or within 1,000 feet of any property or facilities that are under the guidance, supervision, regulation, or control of a state university, a direct-support organization of such state university, or any other organization controlled by the state university or a direct-support organization of the state university; or
- Within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency pursuant to s. 23.1225, F.S.
- Enforce traffic laws off campus when hot pursuit originates on or within 1,000 feet of any such property or facilities, or as agreed upon in accordance with the mutual aid agreement.<sup>8</sup>

Due to the 2009 legislation, SUS institution police officers currently have greater authority to make arrests and enforce traffic violations than FCS institution police officers.

### Effect of Proposed Changes

The bill provides the same enforcement authority to FCS institution police officers that are currently afforded to SUS institution police officers by authorizing FCS institution police officers to:

- Make arrests for violations of state law or city or county ordinances that occur:
  - On or in any property or facility or within 1,000 feet of any property of the officer's employing FCS institution, or on the property or facilities of a direct-support organization of such FCS institution; or
  - Within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency.
- Make an off campus arrest for a violation committed on campus when hot pursuit begins on or within 1,000 feet of the FCS institution property or facilities described above.

The bill authorizes FCS institution police officers to enforce traffic laws:

- When a violation occurs:
  - On or within 1,000 feet of any property or facility that is under the guidance, supervision, regulation, or control of the FCS institution; or
  - Within a specified jurisdictional area as agreed upon in a mutual aid agreement entered into with a law enforcement agency.
- Off campus, when hot pursuit originates on or within 1,000 feet of such property or facility, or in accordance with a mutual aid agreement.

### **Mutual Aid Agreements**

#### Present Situation

Current law authorizes law enforcement agencies to enter into mutual aid agreements. The term "mutual aid agreement" is defined, in part, to mean, "a voluntary cooperation written agreement between two or more law enforcement agencies, which agreement permits voluntary cooperation and assistance of a routine law enforcement nature across jurisdictional lines."<sup>9</sup> The statute gives examples of the types of law enforcement activities that may be addressed in a voluntary cooperation written agreement.<sup>10</sup> The 2009 legislation authorized state university police officers to enforce laws within a specified jurisdictional area as agreed upon in the voluntary cooperation written agreement.<sup>11</sup>

<sup>8</sup> See ss. 1012.97(2) and 316.640(1)(a)1.b., F.S.

<sup>9</sup> Section 23.1225, F.S.

<sup>10</sup> Section 23.1225(1)(a), F.S.

<sup>11</sup> Chapter 2009-216, L.O.F.; s. 23.1225(1)(a), F.S.

### Effect of Proposed Changes

The bill amends s. 23.1225(1)(a), F.S., to add "Florida College System institution" officers to the example described above. As a result, voluntary cooperation written agreements may authorize both SUS institution police officers and FCS institution police officers to enforce laws within a specified jurisdictional area.

#### B. SECTION DIRECTORY:

- Section 1. Amends s. 23.1225, F.S., relating to mutual aid agreements.
- Section 2. Amends s. 316.640, F.S., relating to enforcement.
- Section 3. Amends s. 1012.88, F.S., relating to Florida College System institution police.
- Section 4. Provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:  
None.
- 2. Expenditures:  
None.

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

- 1. Revenues:  
None.
- 2. Expenditures:  
None.

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

None.

#### D. FISCAL COMMENTS:

None.

## III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require a city or county to expend funds or to take any action requiring the expenditure of funds.



The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 12, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment changed the term "Florida College System," which is not defined in statute, to "Florida College System institution" which is defined in statute.

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

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A bill to be entitled  
An act relating to Florida College System institution  
police officers; amending s. 23.1225, F.S.; providing  
for mutual aid agreements involving Florida College  
System institution police officers; amending s.  
316.640, F.S.; providing for enforcement of traffic  
laws in certain areas by Florida College System  
institution police officers; amending s. 1012.88,  
F.S.; revising provisions relating to the  
jurisdictional authority of Florida College System  
institution police officers; providing an effective  
date.

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

Section 1. Paragraph (a) of subsection (1) of section  
23.1225, Florida Statutes, is amended to read:

23.1225 Mutual aid agreements.—

(1) The term "mutual aid agreement," as used in this part,  
refers to one of the following types of agreement:

(a) A voluntary cooperation written agreement between two  
or more law enforcement agencies, which agreement permits  
voluntary cooperation and assistance of a routine law  
enforcement nature across jurisdictional lines. The agreement  
must specify the nature of the law enforcement assistance to be  
rendered, the agency or entity that shall bear any liability  
arising from acts undertaken under the agreement, the procedures  
for requesting and for authorizing assistance, the agency or

29 | entity that has command and supervisory responsibility, a time  
 30 | limit for the agreement, the amount of any compensation or  
 31 | reimbursement to the assisting agency or entity, and any other  
 32 | terms and conditions necessary to give it effect. Examples of  
 33 | law enforcement activities that may be addressed in a voluntary  
 34 | cooperation written agreement include, but are not limited to,  
 35 | establishing a joint city-county task force on narcotics  
 36 | smuggling, authorizing school safety officers to enforce laws in  
 37 | an area within 1,000 feet of a school or school board property,  
 38 | authorizing state university or Florida College System  
 39 | institution police officers to enforce laws within a specified  
 40 | jurisdictional area as agreed upon in a ~~the~~ voluntary  
 41 | cooperation written agreement, or establishing a joint city-  
 42 | county traffic enforcement task force.

43 |       Section 2. Paragraph (a) of subsection (1) of section  
 44 | 316.640, Florida Statutes, is amended to read:

45 |       316.640 Enforcement.—The enforcement of the traffic laws  
 46 | of this state is vested as follows:

47 |       (1) STATE.—

48 |       (a)1.a. The Division of Florida Highway Patrol of the  
 49 | Department of Highway Safety and Motor Vehicles; the Division of  
 50 | Law Enforcement of the Fish and Wildlife Conservation  
 51 | Commission; and the agents, inspectors, and officers of the  
 52 | Department of Law Enforcement each have authority to enforce all  
 53 | of the traffic laws of this state on all the streets and  
 54 | highways thereof and elsewhere throughout the state wherever the  
 55 | public has a right to travel by motor vehicle.

56 |       b. University police officers may enforce all of the

57 traffic laws of this state when violations occur on or within  
 58 1,000 feet of any property or facilities that are under the  
 59 guidance, supervision, regulation, or control of a state  
 60 university, a direct-support organization of such state  
 61 university, or any other organization controlled by the state  
 62 university or a direct-support organization of the state  
 63 university, or when such violations occur within a specified  
 64 jurisdictional area as agreed upon in a mutual aid agreement  
 65 entered into with a law enforcement agency pursuant to s.  
 66 23.1225(1). Traffic laws may also be enforced off-campus when  
 67 hot pursuit originates on or within 1,000 feet of any such  
 68 property or facilities, or as agreed upon in accordance with the  
 69 mutual aid agreement.

70 c. Florida Community College System institution police  
 71 officers may enforce all the traffic laws of this state only  
 72 when such violations occur on or within 1,000 feet of any  
 73 property or facilities that are under the guidance, supervision,  
 74 regulation, or control of the Florida College System  
 75 institution, or when such violations occur within a specified  
 76 jurisdictional area as agreed upon in a mutual aid agreement  
 77 entered into with a law enforcement agency pursuant to s.  
 78 23.1225. Traffic laws may also be enforced off-campus when hot  
 79 pursuit originates on or within 1,000 feet of any such property  
 80 or facilities, or as agreed upon in accordance with the mutual  
 81 aid agreement ~~community college system.~~

82 d. Police officers employed by an airport authority may  
 83 enforce all of the traffic laws of this state only when such  
 84 violations occur on any property or facilities that are owned or

85 | operated by an airport authority.

86 |       (I) An airport authority may employ as a parking  
 87 | enforcement specialist any individual who successfully completes  
 88 | a training program established and approved by the Criminal  
 89 | Justice Standards and Training Commission for parking  
 90 | enforcement specialists but who does not otherwise meet the  
 91 | uniform minimum standards established by the commission for law  
 92 | enforcement officers or auxiliary or part-time officers under s.  
 93 | 943.12. This sub-sub-subparagraph may not be construed to permit  
 94 | the carrying of firearms or other weapons, nor shall such  
 95 | parking enforcement specialist have arrest authority.

96 |       (II) A parking enforcement specialist employed by an  
 97 | airport authority may enforce all state, county, and municipal  
 98 | laws and ordinances governing parking only when such violations  
 99 | are on property or facilities owned or operated by the airport  
 100 | authority employing the specialist, by appropriate state,  
 101 | county, or municipal traffic citation.

102 |       e. The Office of Agricultural Law Enforcement of the  
 103 | Department of Agriculture and Consumer Services may enforce  
 104 | traffic laws of this state.

105 |       f. School safety officers may enforce all of the traffic  
 106 | laws of this state when such violations occur on or about any  
 107 | property or facilities that are under the guidance, supervision,  
 108 | regulation, or control of the district school board.

109 |       2. An agency of the state as described in subparagraph 1.  
 110 | is prohibited from establishing a traffic citation quota. A  
 111 | violation of this subparagraph is not subject to the penalties  
 112 | provided in chapter 318.

113           3. Any disciplinary action taken or performance evaluation  
 114 conducted by an agency of the state as described in subparagraph  
 115 1. of a law enforcement officer's traffic enforcement activity  
 116 must be in accordance with written work-performance standards.  
 117 Such standards must be approved by the agency and any collective  
 118 bargaining unit representing such law enforcement officer. A  
 119 violation of this subparagraph is not subject to the penalties  
 120 provided in chapter 318.

121           4. The Division of the Florida Highway Patrol may employ  
 122 as a traffic accident investigation officer any individual who  
 123 successfully completes instruction in traffic accident  
 124 investigation and court presentation through the Selective  
 125 Traffic Enforcement Program as approved by the Criminal Justice  
 126 Standards and Training Commission and funded through the  
 127 National Highway Traffic Safety Administration or a similar  
 128 program approved by the commission, but who does not necessarily  
 129 meet the uniform minimum standards established by the commission  
 130 for law enforcement officers or auxiliary law enforcement  
 131 officers under chapter 943. Any such traffic accident  
 132 investigation officer who makes an investigation at the scene of  
 133 a traffic accident may issue traffic citations, based upon  
 134 personal investigation, when he or she has reasonable and  
 135 probable grounds to believe that a person who was involved in  
 136 the accident committed an offense under this chapter, chapter  
 137 319, chapter 320, or chapter 322 in connection with the  
 138 accident. This subparagraph does not permit the officer to carry  
 139 firearms or other weapons, and such an officer does not have  
 140 authority to make arrests.

141 Section 3. Subsection (2) of section 1012.88, Florida  
 142 Statutes, is amended to read:  
 143 1012.88 Florida College System institution police.—  
 144 (2) Each Florida College System institution police officer  
 145 is a law enforcement officer of the state and a conservator of  
 146 the peace who has the authority to arrest, in accordance with  
 147 the laws of this state, any person for a violation of state law  
 148 or applicable county or municipal ordinance if that violation  
 149 occurs on or in any property or facilities or within 1,000 feet  
 150 of any property of the Florida College System institution by  
 151 which he or she is employed or any property or facilities of a  
 152 direct-support organization of such Florida College System  
 153 institution or any other organization controlled by the Florida  
 154 College System institution, or when such violations occur within  
 155 a specified jurisdictional area as agreed upon in a mutual aid  
 156 agreement entered into with a law enforcement agency pursuant to  
 157 s. 23.1225. A Florida College System institution police officer  
 158 may also arrest a person off campus for a violation committed on  
 159 campus after a hot pursuit of that person that began on or  
 160 within 1,000 feet of any such property or facilities. A Florida  
 161 College System institution police officer may bear arms in the  
 162 performance of his or her duties and carry out a search pursuant  
 163 to a search warrant on the campus where he or she is employed.  
 164 Florida College System institution police, upon request of the  
 165 sheriff or local police authority, may serve subpoenas or other  
 166 legal process and may make arrests of persons against whom  
 167 arrest warrants have been issued or against whom charges have  
 168 been made for violations of federal or state laws or county or

CS/HB 399

2013

169 | municipal ordinances.

170 |       Section 4. This act shall take effect July 1, 2013.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 407 Criminal Gang Prevention  
**SPONSOR(S):** Ingram and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 788

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee		Cunningham	Havlicak RH

### SUMMARY ANALYSIS

The bill contains a variety of provisions relating to criminal gangs. Specifically, the bill:

- Increases the penalty for violating s. 810.0975(2), F.S. (trespassing in school safety zones), from a second degree misdemeanor to a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. (relating to criminal gangs).
- Amends s. 874.05, F.S., to make it a second degree felony, ranked in Level 5 of the offense severity ranking chart, for a person to intentionally cause, encourage, solicit, or recruit another person *under the age of 13* to become a criminal gang member where a condition of membership or continued membership is the commission of any crime. The bill makes second or subsequent violations of this provision a first degree felony, ranked in Level 7 of the offense severity ranking chart.
- Authorizes jails to designate an individual to be responsible for assessing whether each inmate is a criminal gang member or associate and to transmit information on inmates believed to be criminal gang members or associates to the arresting law enforcement agency.
- Amends the criminal gang multiplier in s. 921.0024, F.S., so that the multiplier can be applied with a finding by the judge (rather than the jury) that the defendant committed the offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang in instances where the lowest permissible sentence does not exceed the statutory maximum sentence for the offense.

The Criminal Justice Impact Conference (CJIC) met on February 27, 2013 and determined this bill may have an insignificant impact on state prison beds.

The bill is effective October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **School Safety Zones**

Section 810.0975, F.S., relates to trespassing in “school safety zones,” which is defined as “in, on, or within 500 feet of any real property owned by or leased to any public or private elementary, middle, or high school or school board and used for elementary, middle, or high school education.” Subsection (2) of the statute:

- Requires public and private school principals to notify law enforcement to prohibit specified persons<sup>1</sup> from loitering in a school safety zone.<sup>2</sup>
- Prohibits specified persons<sup>3</sup> from entering the premises or trespassing within a school safety zone or remaining on such premises or within such school safety zone one hour before the start of a school session until one hour after the conclusion of a school session.
- Prohibits specified persons<sup>4</sup> from willfully failing to remove themselves from a school safety zone after a principal, who has a reasonable belief that the person will commit a crime or is engaged in harassment or intimidation of students entering or leaving school property, requests the person to leave the school safety zone.<sup>5</sup>

A violation of s. 810.0975(2), F.S., is currently a second degree misdemeanor, punishable by up to 60 days in county jail and a \$500 fine.<sup>6</sup>

##### *Effect of the Bill*

The bill makes a violation of s. 810.0975(2), F.S., a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. (relating to criminal gangs). A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine.<sup>7</sup>

##### **Causing, Encouraging, Soliciting, or Recruiting Criminal Gang Membership**

Section 874.05, F.S., makes it a third degree felony<sup>8</sup> for a person to intentionally cause, encourage, solicit, or recruit another person to become a criminal gang member<sup>9</sup> where a condition of membership or continued membership is the commission of any crime. This offense is ranked in Level 4 (22 sentencing points) of the offense severity ranking chart (ranking chart).<sup>10</sup> Second or subsequent

<sup>1</sup> These persons include those who do not have legitimate business in the school safety zone, those who do not have authorization or license to enter or remain in a school safety zone, and those who do not have invitee status in the school safety zone. Section 810.0975(2)(a), F.S.

<sup>2</sup> Section 810.0975(2)(a), F.S.

<sup>3</sup> *Supra* note 1.

<sup>4</sup> *Supra* note 1.

<sup>5</sup> Section 810.0975(2)(c), F.S.

<sup>6</sup> Sections 775.082 and 775.083, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> 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.

<sup>9</sup> Section 874.03(3), F.S., defines the term “criminal gang member” as a person who meets two or more of the following criteria: admits to criminal gang membership; is identified as a criminal gang member by a parent or guardian; is identified as a criminal gang member by a documented reliable informant; adopts the style of dress of a criminal gang; adopts the use of a hand sign identified as used by a criminal gang; has a tattoo identified as used by a criminal gang; associates with one or more known criminal gang members; is identified as a criminal gang member by an informant of previously untested reliability and such identification is corroborated by independent information; is identified as a criminal gang member by physical evidence; has been observed in the company of one or more known criminal gang members four or more times; has authored any communication indicating responsibility for the commission of any crime by the criminal gang.

<sup>10</sup> 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. A defendant’s sentence is calculated based on points, which are assigned for factors including: the offense for which the defendant is being sentenced; victim injury; the defendant’s prior record and other

violations of the statute are second degree felonies, ranked in Level 5 (28 sentencing points) of the ranking chart.<sup>11</sup>

#### *Effect of the Bill*

The bill amends s. 874.05, F.S., to make it a second degree felony for a person to intentionally cause, encourage, solicit, or recruit another person *under the age of 13* to become a criminal gang member where a condition of membership or continued membership is the commission of any crime. This offense is ranked in Level 5 of the ranking chart. The bill makes second or subsequent violations of this provision a first degree felony, ranked in Level 7 (56 sentencing points) of the ranking chart.<sup>12</sup>

The bill makes a conforming change in s. 435.04, F.S. (relating to background screening), correcting a reference to s. 874.05, F.S.

#### **Jails – Inmate Gang Status**

Section 951.23, F.S., contains a variety of provisions relating to county and municipal detention facilities (jails). For example, the statute requires county detention facilities to provide specified inmate data to the Department of Corrections, requires that jail model standards be developed, requires jails to contract for fire safety inspections, authorizes commissaries to be operated in jails and provides requirements for such operation, and provides criminal penalties for jail inmates who violate certain jail rules.<sup>13</sup>

#### *Effect of the Bill*

The bill amends s. 951.23, F.S., to authorize jails to designate an individual to be responsible for assessing whether each current inmate is a criminal gang member or associate using the criteria contained in s. 874.03, F.S., and to transmit information on inmates believed to be criminal gang members or associates to the arresting law enforcement agency.

#### **Criminal Gang Offenses – Penalty Enhancements and Sentencing Multipliers**

Criminal offenses are ranked in the ranking chart from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points, which are assigned for factors such as: the offense for which the defendant is being sentenced; victim injury; the defendant's prior record; and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. The Criminal Punishment Code worksheet, found in s. 921.0024, F.S., is used to compute a defendant's total sentence points.

The Criminal Punishment Code worksheet contains a variety of sentencing multipliers that act to multiply a defendant's sentencing points by a certain number, thereby increasing the defendant's lowest permissible sentence. The worksheet currently contains a criminal gang multiplier that multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang as prohibited under s. 874.04, F.S.

Section 874.04, F.S., provides that upon a finding by the factfinder that a defendant committed the charged offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang, the penalty for such offense can be enhanced. The statute specifies the extent to which such enhancement can be made and requires each of the findings required as a basis for such enhancement to be found beyond a reasonable doubt.

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aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. If the total sentence points equals or is less than 44 points, the lowest permissible sentence is a non-state prison sanction (i.e., jail). If the total sentence points exceed 44 points, a prison sentence is the lowest permissible sentence.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> Section 951.23, F.S.

As noted above, the criminal gang multiplier in the worksheet multiplies a defendant's sentence points by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as prohibited under s. 874.04, F.S.* Section 874.04, F.S., requires the factfinder (i.e., the jury) to find that a defendant committed the offense for such purposes. This limits the instances in which the criminal gang multiplier can be used to those instances in which the jury has made the required finding. If the reference to s. 874.04, F.S., were removed from the multiplier, a *judge* could make the required finding so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the charged offense.<sup>14</sup>

#### *Effect of the Bill*

The bill amends the criminal gang multiplier in s. 921.0024, F.S., to specify that a defendant's sentence points are multiplied by 1.5 if the defendant committed the offense for the purpose of benefitting, promoting, or furthering the interests of a criminal gang *as defined in s. 874.03, F.S.* As a result, the multiplier will be able to be applied with a finding by a *judge* that the defendant committed the offense for the purposes of benefitting, promoting, or furthering the interests of a criminal gang so long as the lowest permissible sentence does not exceed the statutory maximum sentence for the offense.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 810.0975, F.S., relating to school safety zones; definition; trespass prohibited; penalty.

Section 2. Amends s. 874.05, F.S., relating to causing, encouraging, soliciting, or recruiting criminal gang membership.

Section 3. Amends s. 951.23, F.S., relating to county and municipal detention facilities; definitions; administration; standards and requirements.

Section 4. Amends s. 435.04, F.S., relating to level 2 screening standards.

Section 5. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 6. Amends s. 921.0024, F.S., relating to Criminal Punishment Code; worksheet computations; scoresheets.

Section 7. 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 not appear to have any impact on state revenues.

##### 2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met on February 27, 2013, and determined this bill may have an insignificant impact on state prison beds.

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<sup>14</sup> See *Mathew v. State*, 837 So.2d 1167 (Fla. 4<sup>th</sup> DCA 2003)(holding that pursuant to *Apprendi v. New Jersey*, 530 U.S. 466 (2000), a jury must find that the facts necessary to impose a domestic violence multiplier exist beyond a reasonable doubt when the multiplier results in a sentence that exceeds the statutory maximum for the charged offense).

**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 may have an insignificant negative jail bed impact on local governments. The bill increases the penalty for violating s. 810.0975(2), F.S. (trespassing in school safety zones), from a second degree misdemeanor to a first degree misdemeanor if the person has previously been convicted of any offense contained in ch. 874, F.S. (relating to criminal gangs).

The bill authorizes jails to designate an individual to be responsible for assessing whether each current inmate is a criminal gang member or associate. However, the provision is permissive, so any fiscal impact would be at the discretion of the county or municipal detention facility.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

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

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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A bill to be entitled

An act relating to criminal gang prevention; amending s. 810.0975, F.S.; providing enhanced criminal penalties for certain trespassing offenses in school safety zones by a person convicted of certain gang-related offenses; amending s. 874.05, F.S.; providing enhanced criminal penalties for a person who intentionally causes, encourages, solicits, or recruits another person under a specified age to become a criminal gang member in certain circumstances; amending s. 951.23, F.S.; authorizing county and municipal detention facilities to designate an individual to be responsible for assessing whether each inmate is a criminal gang member or associate; providing duties of such individuals; amending ss. 435.04 and 921.0022, F.S.; conforming cross-references and assigning offense severity rankings for violations of s. 874.05, F.S.; amending s. 921.0024, F.S.; revising the criteria for application of the sentencing multiplier for offenses related to criminal gangs; limiting application of the multiplier if application would result in the lowest permissible sentence exceeding the statutory maximum sentence; providing an effective date.

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

28 Section 1. Section 810.0975, Florida Statutes, is amended  
 29 to read:

30 810.0975 School safety zones; definition; trespass  
 31 prohibited; penalty.—

32 (1) For the purposes of this section, the term "school  
 33 safety zone" means in, on, or within 500 feet of any real  
 34 property owned by or leased to any public or private elementary,  
 35 middle, or high school or school board and used for elementary,  
 36 middle, or high school education.

37 (2) (a) Each principal or designee of each public or  
 38 private school in this state shall notify the appropriate law  
 39 enforcement agency to prohibit any person from loitering in the  
 40 school safety zone who does not have legitimate business in the  
 41 school safety zone or any other authorization, or license to  
 42 enter or remain in the school safety zone or does not otherwise  
 43 have invitee status in the designated safety zone.

44 (b) 1. During the period from 1 hour prior to the start of  
 45 a school session until 1 hour after the conclusion of a school  
 46 session, it is unlawful for any person to enter the premises or  
 47 trespass within a school safety zone or to remain on such  
 48 premises or within such school safety zone when that person does  
 49 not have legitimate business in the school safety zone or any  
 50 other authorization, license, or invitation to enter or remain  
 51 in the school safety zone.

52 2.a. Except as provided in sub-subparagraph b., a ~~Any~~  
 53 person who violates this subsection commits a misdemeanor of the  
 54 second degree, punishable as provided in s. 775.082 or s.  
 55 775.083.



56            b. A person who violates this subsection and who has been  
 57 previously convicted of any offense contained in chapter 874  
 58 commits a misdemeanor of the first degree, punishable as  
 59 provided in s. 775.082 or s. 775.083.

60            (c) 1. Except as provided in subparagraph 2., a ~~Any~~ person  
 61 who does not have legitimate business in the school safety zone  
 62 or any other authorization, license, or invitation to enter or  
 63 remain in the school safety zone who shall willfully fail to  
 64 remove himself or herself from the school safety zone after the  
 65 principal or designee, having a reasonable belief that he or she  
 66 will commit a crime or is engaged in harassment or intimidation  
 67 of students entering or leaving school property, requests him or  
 68 her to leave the school safety zone commits a misdemeanor of the  
 69 second degree, punishable as provided in s. 775.082 or s.  
 70 775.083.

71            2. A person who violates subparagraph 1. and who has been  
 72 previously convicted of any offense contained in chapter 874  
 73 commits a misdemeanor of the first degree, punishable as  
 74 provided in s. 775.082 or s. 775.083.

75            (3) Nothing in This section does not shall be construed to  
 76 abridge or infringe upon the right of any person to peaceably  
 77 assemble and protest.

78            (4)(3) This section does not apply to residents or persons  
 79 engaged in the operation of a licensed commercial business  
 80 within the school safety zone.

81            Section 2. Section 874.05, Florida Statutes, is amended to  
 82 read:

83            874.05 Causing, encouraging, soliciting, or recruiting

84 criminal gang membership.-

85 (1)(a) Except as provided in paragraph (b) subsection (2),  
 86 a person who intentionally causes, encourages, solicits, or  
 87 recruits another person to become a criminal gang member where a  
 88 condition of membership or continued membership is the  
 89 commission of any crime commits a felony of the third degree,  
 90 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

91 (b)(2) A person who commits a second or subsequent  
 92 violation of this subsection commits a felony of the second  
 93 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 94 775.084.

95 (2)(a) Except as provided in paragraph (b), a person who  
 96 intentionally causes, encourages, solicits, or recruits another  
 97 person under 13 years of age to become a criminal gang member  
 98 where a condition of membership or continued membership is the  
 99 commission of any crime commits a felony of the second degree,  
 100 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

101 (b) A person who commits a second or subsequent violation  
 102 of this subsection commits a felony of the first degree,  
 103 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

104 Section 3. Subsection (11) is added to section 951.23,  
 105 Florida Statutes, to read:

106 951.23 County and municipal detention facilities;  
 107 definitions; administration; standards and requirements.-

108 (11) GANG STATUS OF INMATES.-A county or municipal  
 109 detention facility may designate an individual to be responsible  
 110 for assessing whether each current inmate is a criminal gang  
 111 member or associate using the criteria in s. 874.03. The

HB 407

2013

112 individual should at least once biweekly transmit information on  
 113 inmates believed to be a criminal gang member or associate to  
 114 the arresting law enforcement agency.

115 Section 4. Paragraph (qq) of subsection (2) of section  
 116 435.04, Florida Statutes, is amended to read:

117 435.04 Level 2 screening standards.—

118 (2) The security background investigations under this  
 119 section must ensure that no persons subject to the provisions of  
 120 this section have been arrested for and are awaiting final  
 121 disposition of, have been found guilty of, regardless of  
 122 adjudication, or entered a plea of nolo contendere or guilty to,  
 123 or have been adjudicated delinquent and the record has not been  
 124 sealed or expunged for, any offense prohibited under any of the  
 125 following provisions of state law or similar law of another  
 126 jurisdiction:

127 (qq) Section 874.05~~(1)~~, relating to encouraging or  
 128 recruiting another to join a criminal gang.

129 Section 5. Paragraphs (d), (e), and (g) of subsection (3)  
 130 of section 921.0022, Florida Statutes, are amended to read:

131 921.0022 Criminal Punishment Code; offense severity  
 132 ranking chart.—

133 (3) OFFENSE SEVERITY RANKING CHART

134 (d) LEVEL 4

135

Florida Statute	Felony Degree	Description
316.1935(3)(a)	2nd	Driving at high speed or with

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HB 407

2013

			wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
137	499.0051 (1)	3rd	Failure to maintain or deliver pedigree papers.
138	499.0051 (2)	3rd	Failure to authenticate pedigree papers.
139	499.0051 (6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
140	517.07 (1)	3rd	Failure to register securities.
141	517.12 (1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
142	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
143	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
144			

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

HB 407

2013

145	784.075	3rd	Battery on detention or commitment facility staff.
146	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
147	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
148	784.081(3)	3rd	Battery on specified official or employee.
149	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
150	784.083(3)	3rd	Battery on code inspector.
151	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
152	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
	787.04(2)	3rd	Take, entice, or remove child

HB 407

2013

			beyond state limits with criminal intent pending custody proceedings.
153	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
154	787.07	3rd	Human smuggling.
155	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
156	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
157	790.115 (2) (c)	3rd	Possessing firearm on school property.
158	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
159	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied

HB 407

2013

			structure; unarmed; no assault or battery.
160	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
161	810.06	3rd	Burglary; possession of tools.
162	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
163	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
164	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
165	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
166	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s.

HB 407

2013

			893.03(5) drugs.
167	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
168	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
169	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
170	837.02(1)	3rd	Perjury in official proceedings.
171	837.021(1)	3rd	Make contradictory statements in official proceedings.
172	838.022	3rd	Official misconduct.
173	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
174	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.



HB 407

2013

175	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
176	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
177	843.15(1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
178	847.0135(5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
179	874.05(1) <u>(a)</u>	3rd	Encouraging or recruiting another to join a criminal gang.
180	893.13(2) (a)1.	2nd	Purchase of cocaine (or other s. 893.03(1) (a), (b), or (d), (2) (a), (2) (b), or (2) (c)4. drugs).
181	914.14(2)	3rd	Witnesses accepting bribes.

HB 407

2013

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914.22 (1) 3rd Force, threaten, etc., witness, victim, or informant.

183

914.23 (2) 3rd Retaliation against a witness, victim, or informant, no bodily injury.

184

918.12 3rd Tampering with jurors.

185

934.215 3rd Use of two-way communications device to facilitate commission of a crime.

186

187 (e) LEVEL 5

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Florida	Felony	
Statute	Degree	Description

189

316.027 (1) (a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
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190

316.1935 (4) (a)	2nd	Aggravated fleeing or eluding.
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191

322.34 (6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious
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HB 407

2013

192			bodily injury.
	327.30 (5)	3rd	Vessel accidents involving personal injury; leaving scene.
193			
	379.367 (4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
194			
	379.3671 (2) (c) 3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
195			
	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
196			
	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
197			
	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
198			
	440.381 (2)	2nd	Submission of false, misleading, or incomplete information with the purpose of

avoiding or reducing workers' compensation premiums.

199

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

200

626.902(1)(c) 2nd Representing an unauthorized insurer; repeat offender.

201

790.01(2) 3rd Carrying a concealed firearm.

202

790.162 2nd Threat to throw or discharge destructive device.

203

790.163(1) 2nd False report of deadly explosive or weapon of mass destruction.

204

790.221(1) 2nd Possession of short-barreled shotgun or machine gun.

205

790.23 2nd Felons in possession of firearms, ammunition, or electronic weapons or devices.

206

800.04(6)(c) 3rd Lewd or lascivious conduct;

HB 407

2013

			offender less than 18 years.
207	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
208	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
209	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
210	812.015(8)	3rd	Retail theft; property stolen; is valued at \$300 or more and one or more specified acts.
211	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
212	812.131(2)(b)	3rd	Robbery by sudden snatching.
213	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
214	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.



HB 407

2013

220			person or disabled adult.
	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
221			
	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
222			
	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
223			
	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
224			
	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
225			

HB 407

2013

226	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
227	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
228	<u>874.05(1)(b)</u> <del>874.05(2)</del>	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
229	<u>874.05(2)(a)</u>	<u>2nd</u>	<u>Encouraging or recruiting person under 13 to join a criminal gang.</u>
230	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs)



231	893.13(1)(d)1.	1st	<p>within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p> <p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.</p>
232	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.</p>
233	893.13(1)(f)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d),</p>

			or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
234	893.13(4)(b)	2nd	Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
235	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
236			
237	(g) LEVEL 7		
238			
	Florida Statute	Felony Degree	Description
239	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
240	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
241	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person;

HB 407

2013

			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.
242	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
243	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
244	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
245	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
246	456.065(2)	3rd	Practicing a health care profession without a license.
247	456.065(2)	2nd	Practicing a health care profession without a license

HB 407

2013

			which results in serious bodily injury.
248	458.327(1)	3rd	Practicing medicine without a license.
249	459.013(1)	3rd	Practicing osteopathic medicine without a license.
250	460.411(1)	3rd	Practicing chiropractic medicine without a license.
251	461.012(1)	3rd	Practicing podiatric medicine without a license.
252	462.17	3rd	Practicing naturopathy without a license.
253	463.015(1)	3rd	Practicing optometry without a license.
254	464.016(1)	3rd	Practicing nursing without a license.
255	465.015(2)	3rd	Practicing pharmacy without a license.
256	466.026(1)	3rd	Practicing dentistry or dental

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

HB 407

2013

257			hygiene without a license.
467.201	3rd		Practicing midwifery without a license.
258			
468.366	3rd		Delivering respiratory care services without a license.
259			
483.828(1)	3rd		Practicing as clinical laboratory personnel without a license.
260			
483.901(9)	3rd		Practicing medical physics without a license.
261			
484.013(1)(c)	3rd		Preparing or dispensing optical devices without a prescription.
262			
484.053	3rd		Dispensing hearing aids without a license.
263			
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.
264			

HB 407

2013

265	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.
266	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
267	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
268	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
269	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

HB 407

2013

270	782.051(3)	2nd	conceal a sexual predator.
271	782.07(1)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
272	782.071	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
273	782.072	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
274	784.045(1)(a)1.	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
275			Aggravated battery; intentionally causing great bodily harm or disfigurement.

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

HB 407

2013

276	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
277	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
278	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
279	784.048 (7)	3rd	Aggravated stalking; violation of court order.
280	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
281	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
282	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
283	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.



HB 407

2013

284

784.083(1) 1st Aggravated battery on code  
inspector.

285

787.06(3)(a) 1st Human trafficking using  
coercion for labor and  
services.

286

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.

287

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

288

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

289

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

290

790.165(3) 2nd Possessing, displaying, or  
threatening to use any hoax  
bomb while committing or

HB 407

2013

291			attempting to commit a felony.
	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
292			
	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
293			
	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
294			
	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.
295			
	796.03	2nd	Procuring any person under 16 years for prostitution.
296			
	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of

HB 407

2013

			age; offender less than 18 years.
297	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.
298	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
299	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
300	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
301	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
302	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
303	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.
304	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
305	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
306	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
307	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
308	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
309	812.131(2)(a)	2nd	Robbery by sudden snatching.
310	812.133(2)(b)	1st	Carjacking; no firearm, deadly

HB 407

2013

311			weapon, or other weapon.
312	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
313	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
314	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
315	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.
316	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

HB 407

2013

			valued at \$20,000 or more, but less than \$100,000.
317	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
318	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
319	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
320	838.015	2nd	Bribery.
321	838.016	2nd	Unlawful compensation or reward for official behavior.
322	838.021(3)(a)	2nd	Unlawful harm to a public servant.
323	838.22	2nd	Bid tampering.
324	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.

HB 407

2013

325

847.0135(4) 2nd Traveling to meet a minor to  
commit an unlawful sex act.

326

872.06 2nd Abuse of a dead human body.

327

874.05(2)(b) 1st Encouraging or recruiting  
person under 13 to join a  
criminal gang; second or  
subsequent offense.

328

874.10 1st, PBL Knowingly initiates, organizes,  
plans, finances, directs,  
manages, or supervises criminal  
gang-related activity.

329

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.

330

HB 407

2013

	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.
331	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).
332	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
333	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
334	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
335	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than



			200 grams.
336	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
337	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
338	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
339	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
340	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
341	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
342	893.1351(2)	2nd	Possession of place for

			trafficking in or manufacturing of controlled substance.
343	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
344	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
345	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
346	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
347	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
348	943.0435(13)	3rd	Failure to report or providing

HB 407

2013

			false information about a sexual offender; harbor or conceal a sexual offender.
349	943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
350	944.607 (9)	3rd	Sexual offender; failure to comply with reporting requirements.
351	944.607 (10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
352	944.607 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
353	944.607 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
354	985.4815 (10)	3rd	Sexual offender; failure to

submit to the taking of a  
digitized photograph.

355

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

356

985.4815(13)            3rd    Sexual offender; failure to  
report and reregister; failure  
to respond to address  
verification.

357

358            Section 6. Paragraph (b) of subsection (1) of section  
359 921.0024, Florida Statutes, is amended to read:

360            921.0024 Criminal Punishment Code; worksheet computations;  
361 scoresheets.—

362            (1)

363            (b) WORKSHEET KEY:

364

365            Legal status points are assessed when any form of legal status  
366 existed at the time the offender committed an offense before the  
367 court for sentencing. Four (4) sentence points are assessed for  
368 an offender's legal status.

369

370            Community sanction violation points are assessed when a  
371 community sanction violation is before the court for sentencing.  
372 Six (6) sentence points are assessed for each community sanction

373 violation and each successive community sanction violation,  
 374 unless any of the following apply:

375 1. If the community sanction violation includes a new  
 376 felony conviction before the sentencing court, twelve (12)  
 377 community sanction violation points are assessed for the  
 378 violation, and for each successive community sanction violation  
 379 involving a new felony conviction.

380 2. If the community sanction violation is committed by a  
 381 violent felony offender of special concern as defined in s.  
 382 948.06:

383 a. Twelve (12) community sanction violation points are  
 384 assessed for the violation and for each successive violation of  
 385 felony probation or community control where:

386 (I) The violation does not include a new felony  
 387 conviction; and

388 (II) The community sanction violation is not based solely  
 389 on the probationer or offender's failure to pay costs or fines  
 390 or make restitution payments.

391 b. Twenty-four (24) community sanction violation points  
 392 are assessed for the violation and for each successive violation  
 393 of felony probation or community control where the violation  
 394 includes a new felony conviction.

395  
 396 Multiple counts of community sanction violations before the  
 397 sentencing court shall not be a basis for multiplying the  
 398 assessment of community sanction violation points.

399

400 Prior serious felony points: If the offender has a primary

HB 407

2013

401 offense or any additional offense ranked in level 8, level 9, or  
 402 level 10, and one or more prior serious felonies, a single  
 403 assessment of thirty (30) points shall be added. For purposes of  
 404 this section, a prior serious felony is an offense in the  
 405 offender's prior record that is ranked in level 8, level 9, or  
 406 level 10 under s. 921.0022 or s. 921.0023 and for which the  
 407 offender is serving a sentence of confinement, supervision, or  
 408 other sanction or for which the offender's date of release from  
 409 confinement, supervision, or other sanction, whichever is later,  
 410 is within 3 years before the date the primary offense or any  
 411 additional offense was committed.

412  
 413 Prior capital felony points: If the offender has one or more  
 414 prior capital felonies in the offender's criminal record, points  
 415 shall be added to the subtotal sentence points of the offender  
 416 equal to twice the number of points the offender receives for  
 417 the primary offense and any additional offense. A prior capital  
 418 felony in the offender's criminal record is a previous capital  
 419 felony offense for which the offender has entered a plea of nolo  
 420 contendere or guilty or has been found guilty; or a felony in  
 421 another jurisdiction which is a capital felony in that  
 422 jurisdiction, or would be a capital felony if the offense were  
 423 committed in this state.

424  
 425 Possession of a firearm, semiautomatic firearm, or machine gun:  
 426 If the offender is convicted of committing or attempting to  
 427 commit any felony other than those enumerated in s. 775.087(2)  
 428 while having in his or her possession: a firearm as defined in

429 s. 790.001(6), an additional eighteen (18) sentence points are  
 430 assessed; or if the offender is convicted of committing or  
 431 attempting to commit any felony other than those enumerated in  
 432 s. 775.087(3) while having in his or her possession a  
 433 semiautomatic firearm as defined in s. 775.087(3) or a machine  
 434 gun as defined in s. 790.001(9), an additional twenty-five (25)  
 435 sentence points are assessed.

436  
 437 Sentencing multipliers:

438  
 439 Drug trafficking: If the primary offense is drug trafficking  
 440 under s. 893.135, the subtotal sentence points are multiplied,  
 441 at the discretion of the court, for a level 7 or level 8  
 442 offense, by 1.5. The state attorney may move the sentencing  
 443 court to reduce or suspend the sentence of a person convicted of  
 444 a level 7 or level 8 offense, if the offender provides  
 445 substantial assistance as described in s. 893.135(4).

446  
 447 Law enforcement protection: If the primary offense is a  
 448 violation of the Law Enforcement Protection Act under s.  
 449 775.0823(2), (3), or (4), the subtotal sentence points are  
 450 multiplied by 2.5. If the primary offense is a violation of s.  
 451 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points  
 452 are multiplied by 2.0. If the primary offense is a violation of  
 453 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
 454 Protection Act under s. 775.0823(10) or (11), the subtotal  
 455 sentence points are multiplied by 1.5.

456

457 Grand theft of a motor vehicle: If the primary offense is grand  
 458 theft of the third degree involving a motor vehicle and in the  
 459 offender's prior record, there are three or more grand thefts of  
 460 the third degree involving a motor vehicle, the subtotal  
 461 sentence points are multiplied by 1.5.

462  
 463 Offense related to a criminal gang: If the offender is convicted  
 464 of the primary offense and committed that offense for the  
 465 purpose of benefiting, promoting, or furthering the interests of  
 466 a criminal gang as defined in s. 874.03 ~~prohibited under s.~~  
 467 ~~874.04~~, the subtotal sentence points are multiplied by 1.5. If  
 468 applying the multiplier results in the lowest permissible  
 469 sentence exceeding the statutory maximum sentence for the  
 470 primary offense under chapter 775, the court may not apply the  
 471 multiplier and must sentence the defendant to the statutory  
 472 maximum sentence.

473  
 474 Domestic violence in the presence of a child: If the offender is  
 475 convicted of the primary offense and the primary offense is a  
 476 crime of domestic violence, as defined in s. 741.28, which was  
 477 committed in the presence of a child under 16 years of age who  
 478 is a family or household member as defined in s. 741.28(3) with  
 479 the victim or perpetrator, the subtotal sentence points are  
 480 multiplied by 1.5.

481 Section 7. This act shall take effect October 1, 2013.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 571 Marshal of Supreme Court  
**SPONSOR(S):** Criminal Justice Subcommittee; Roberson and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Arguelles	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee		Arguelles	CMA Havlicak RH

### SUMMARY ANALYSIS

Section 25.271, F.S., specifies that the Marshal of the Florida Supreme Court (Court) is the conservator of the peace and authorizes the Marshal to apprehend, without a warrant, any person disturbing the peace without a warrant and deliver such person to an appropriate law enforcement officer. However, the Marshal's authority as conservator of the peace is limited to *the Court building or any building where the Court is sitting*.

Section 25.251, F.S., requires the Marshal and his or her assistants to successfully complete a minimum standards training program approved by the Criminal Justice Standards and Training Commission (CJSTC). Notably, the statute does not require the Marshal and his or her assistants to be certified officers (i.e., they do not have to meet *all* of the requirements in s. 943.13, F.S.).

The bill:

- Replaces the term "assistant" with the word "deputy;"
- Removes the language in s. 25.271, F.S., specifying that the Marshal and his or her assistants are conservators of the peace in the Court building, or in any building where the Court is sitting; and
- Creates a new subsection (3) in s. 25.251, F.S., specifying that the Marshal and his or her deputies are law enforcement officers with the authority to bear arms and make arrests in accordance with the laws of the state and in connection with the performance of their official duties for the Court.

As a result, the Marshal's jurisdiction will be statewide, and no longer limited to the Court building or buildings where the Court is sitting.

The bill also amends s. 25.251, F.S., to require the Marshal and his or her deputies to comply with the *all* of the requirements of s. 943.13, F.S., rather than the single requirement of successfully completing a CJSTC-approved basic training program. As a result, CJSTC will be required to certify the Marshal and his or her deputies must be certified by the CJSTC as law enforcement officers.

According to the Office of the State Courts Administrator, the bill does not have a fiscal impact because it simply codifies the current hiring practice of the Court, which is to fill vacancies in the Marshal's Office with certified officers (i.e., persons who meet all of the requirements of s. 943.13, F.S.). Citing the same rationale, the Florida Department of Law Enforcement reports that the bill does not have a fiscal impact on the department.

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida Supreme Court Marshal - Background**

Article V, Section 3 of the Florida Constitution and s. 25.251, F.S., require the Florida Supreme Court (Court) to appoint a Marshal. The Marshal is the custodian of the building and grounds of the Court,<sup>1</sup> which includes responsibility for Court security; custodianship of all Court property, buildings, and grounds maintenance; and the administration of Court building facilities.<sup>2</sup> The Marshal is also responsible for ensuring the execution of all the Court's orders throughout the state.<sup>3</sup>

##### **Florida Supreme Court Marshal – Training Requirements**

The Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers (LEOs). Currently, CJSTC must certify a person for employment as a LEO if:

- The person complies with s. 943.13(1)-(10), F.S., which requires every person employed or appointed as a LEO to:
  - Be at least 19 years of age;
  - Be a citizen of the United States;
  - Be a high school graduate or its “equivalent;”
  - Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States;
  - Have documentation of his or her fingerprints on file with the employing agency;
  - Pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by CJSTC;
  - Have a good moral character as determined by a background investigation under procedures established by CJSTC;
  - Execute and submit to the employing agency an affidavit-of-applicant form, adopted by CJSTC, attesting to his or her compliance with s. 943.13(1)-(7), F.S.;
  - Complete a CJSTC-approved basic recruit training program for the applicable criminal justice discipline, unless exempt;
  - Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline; and
- The employing agency<sup>4</sup> complies with s. 943.133(2) and (3), F.S.<sup>5,6</sup>

In 2005, FDLE determined that the Court was an “employing agency” for purposes of ch. 943, F.S.<sup>7</sup> However, s. 25.251, F.S., only requires the Marshal and his or her assistants to successfully complete a minimum standards training program approved by CJSTC - it does not require compliance with *all* of the

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<sup>1</sup> Section 25.271(1), F.S.

<sup>2</sup> <http://www.floridasupremecourt.org/about/marshal.shtml> (last visited on February 26, 2013).

<sup>3</sup> *Id.* Also see, s. 25.262, F.S.

<sup>4</sup> Section 943.10, F.S., defines the term “employing agency” as any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility.

<sup>5</sup> Section 943.1395(1), F.S.

<sup>6</sup> Section 943.133, F.S., sets forth the general responsibilities and requirements of employing agencies and specifies that an employing agency is responsible for the collection, verification, and maintenance of documentation establishing that an applicant complies with the requirements of s. 943.13, F.S.

<sup>7</sup> FDLE Legal Memorandum re: Florida Supreme Court Marshal and Assistants, June 30, 2005 (on file with the Criminal Justice Subcommittee).

criteria in s. 943.13, F.S. As such, unless the Marshal or his or her assistants voluntarily elect to comply with all of the requirements of s. 943.13, F.S., CJSTC would not be able to certify them.

According to the Office of the State Courts Administrator (OSCA), the current practice of the Court is to fill vacancies in the Marshal's Office with certified officers (i.e., persons who meet all of the requirements of s. 943.13, F.S.).<sup>8</sup> Currently, the Marshal's Office employs 11 certified officers, 5 individuals who are certified armed security officers,<sup>9</sup> and 2 OPS certified officers.<sup>10</sup>

#### Effect of the Bill

The bill amends s. 25.251, F.S., to replace the term "assistant" with the word "deputy," and requires the Marshal and his or her deputies to comply with the *all* of the above-described requirements of s. 943.13, F.S. As a result, such persons will be required to be certified by the CJSTC as law enforcement officers. These changes appear to codify the current hiring practices of the Marshal's Office.

#### **Florida Supreme Court Marshal – Jurisdiction**

In addition to being the custodian of the Court's building and grounds, s. 25.271, F.S., specifies that the Marshal is the conservator of the peace and authorizes the Marshal and his or her assistants to apprehend, without a warrant, any person disturbing the peace and deliver such person to an appropriate law enforcement officer. However, the Marshal's authority as conservator of the peace is limited to the Court building or any building where the Court is sitting.<sup>11</sup>

According to OSCA, the Marshal and his or her assistants are often called upon to escort and provide security for justices at locations outside of the Court building and outside of places where the Court may be sitting. However, the Marshal's Office does not have jurisdiction at these locations because the statute limits the jurisdiction of the Marshal's Office to only the Court building or in buildings where the Court is sitting.

#### Effect of the Bill

The bill removes language in s. 25.271, F.S., specifying that the Marshal and his or her assistants are conservators of the peace in the Court building, or in any building where the Court is sitting.

The bill creates a new subsection (3) in s. 25.251, F.S., which specifies that the Marshal and his or her deputies are law enforcement officers as defined in s. 943.10, F.S., under the direction and control of the Court with full powers to bear arms and make arrests in accordance with the laws of the state. In connection with their official duties for the Court, the Marshal and his or her deputies may apprehend a person disturbing the peace without a warrant, and deliver such person to an appropriate law enforcement officer for further proceedings. The bill specifies that the Marshal and his or her deputies' duties may only be exercised in connection with the performance of their official duties for the Court.

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

Section 1. Amends s. 25.251, F.S., relating to Marshal of Supreme Court; appointment; training.

Section 2. Amends s. 25.271, F.S., relating to Custody of Supreme Court Building and grounds.

Section 3. The bill is effective upon becoming a law.

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<sup>8</sup> *Revised Proposed Legislative Issue*, Supreme Court Marshal Requirements and Authority, January 16, 2013 (on file with the Criminal Justice Subcommittee).

<sup>9</sup> Chapter 493, F.S., provides requirements for the licensure of security officers.

<sup>10</sup> *Revised Proposed Legislative Issue*, Supreme Court Marshal Requirements and Authority, January 16, 2013 (on file with the Criminal Justice Subcommittee).

<sup>11</sup> Section 25.271(2), F.S.

## 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:

According to OSCA, the bill does not have a fiscal impact because it simply codifies the current hiring practice of the Court, which is to fill vacancies in the Marshal's Office with certified officers (i.e., persons who meet all of the requirements of s. 943.13, F.S.). Citing the same rationale, FDLE reports that the bill does not have a fiscal impact on the department.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill 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 5, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment clarifies that the Marshal's law enforcement authority is limited to instances in which the Marshal is performing official duties for the Florida Supreme Court.

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

1                                   A bill to be entitled  
 2           An act relating to the marshal of the Supreme Court;  
 3           amending s. 25.251, F.S.; revising terminology;  
 4           requiring the marshal and his or her deputies to  
 5           comply with specified requirements for law enforcement  
 6           officers; specifying that the marshal and his or her  
 7           deputies are law enforcement officers with full powers  
 8           to bear arms and make arrests under certain  
 9           conditions; limiting the use of those powers to the  
 10          performance of official duties for the Supreme Court;  
 11          amending s. 25.271, F.S.; deleting provisions relating  
 12          to the marshal and his or her deputies being  
 13          conservators of the peace; providing an effective  
 14          date.

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

17  
 18           Section 1. Section 25.251, Florida Statutes, is amended to  
 19   read:

20           25.251 Marshal of Supreme Court; appointment;  
 21   qualification; authority training.—

22           (1) The Supreme Court shall appoint a marshal who shall  
 23   hold office during the pleasure of the court.

24           (2) The marshal and his or her deputies must comply with  
 25   s. 943.13 relating to requirements for law enforcement officers  
 26   in this state ~~assistants shall attend and successfully complete~~  
 27   ~~a minimum standards training program approved by the Criminal~~  
 28   ~~Justice Standards and Training Commission within the Department~~

29 ~~of Law Enforcement.~~

30 (3) The marshal and his or her deputies shall be law  
 31 enforcement officers, as defined in s. 943.10(1), under the  
 32 direction and control of the Supreme Court with full powers to  
 33 bear arms and make arrests in accordance with the laws of this  
 34 state. In performance of their official duties for the Supreme  
 35 Court, they may apprehend without warrant a person disturbing  
 36 the peace and deliver that person to the appropriate law  
 37 enforcement officer of the municipality or county in which  
 38 further proceedings may be held according to law. The powers  
 39 granted in this subsection may be exercised only in furtherance  
 40 of and in connection with the performance of official duties for  
 41 the Supreme Court.

42 Section 2. Section 25.271, Florida Statutes, is amended to  
 43 read:

44 25.271 Custody of Supreme Court Building and grounds.—

45 ~~(1)~~ The ~~said~~ marshal shall, under the direction of the  
 46 Supreme Court, be custodian of the Supreme Court Building and  
 47 grounds and shall keep the same clean, sanitary, and free of  
 48 trespassers and marauders and shall maintain the same in good  
 49 state of repair and cause the grounds to be beautified and  
 50 preserved against depredations and trespasses.

51 ~~(2) The marshal and his or her assistants shall be~~  
 52 ~~conservators of the peace in the Supreme Court Building, or in~~  
 53 ~~any building in which the Supreme Court is sitting, and shall~~  
 54 ~~apprehend without warrant any person disturbing the peace and~~  
 55 ~~deliver that person to the appropriate law enforcement officer~~  
 56 ~~of the municipality or county in which further proceedings may~~



CS/HB 571

2013

57 | ~~be held according to law.~~

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



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 585 Law Enforcement  
**SPONSOR(S):** Criminal Justice Subcommittee; Hood and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1434

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

**SUMMARY ANALYSIS**

CS/HB 585 is the Florida Department of Law Enforcement's (FDLE) 2013 legislative package. The bill amends a variety of statutes in ch. 943, F.S., relating to FDLE, its duties, and its programs. Specifically, the bill:

- Adds additional individuals to the list of persons that counties and cities may conduct state and national criminal history screenings on;
- Adds an additional item to the list of items that a secondary metal recycler cannot purchase;
- Revises duties relating to missing person reporting;
- Requires the Violence Crime and Drug Control Council to meet annually instead of semiannually, and specifies that additional meetings may take place when determined by FDLE and the chair;
- Requires sexual offenders to provide additional information during registration;
- Requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work at specified locations, to conduct a search of that person's name or other identifying information through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice;
- Redesignates the statewide automated fingerprint identification system as the statewide automated biometric identification system;
- Increases the period in which a minor can seek expunction after completing a diversion program;
- Clarifies that a person may only seal or expunge a record if the person has never before sealed or expunged a record (except in specified instances);
- Provides for accreditation of correctional facilities, public agency offices of inspectors general, and pretrial diversion programs; and
- Amends provisions relating to state-operated crime labs to specify who can have access to such labs.

The bill also amends a variety of statutes to make conforming changes, correct statutory cross-references, update terminology, and to delete obsolete provisions.

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

The bill is effective July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **City and County Criminal History Checks (Sections 1 and 2)**

Sections 125.5801 and 166.0442, F.S., authorizes counties and cities, by ordinance, to require employment screening for:

- Any position of county/city employment or appointment which the governing body of the county/city finds is critical to security or public safety; and
- Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility that the governing body of the county/city finds is critical to security or public safety.

The statutes do not currently permit a county or city to conduct criminal history checks on persons such as taxi drivers, tow truck operators, and other individuals likely to have close contact with persons in vulnerable situations, because such contact could not be construed as “ha[ving] access to any public facility or publicly operated facility that the governing body of the municipality finds is critical to security or public safety.”<sup>1</sup>

##### Effect of the Bill

The bill amends ss. 125.5801 and 166.0442, F.S., to specify that counties and cities are authorized to require state and national criminal history screening for:

- Any position of county/city employment or appointment, whether paid, unpaid, or contractual, which the governing body of the county/city finds is critical to security or public safety;
- Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who is subject to licensing or regulation by the county; and
- Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing body of the county/city finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.

##### **Unidentified Deceased Persons (Section 3)**

Section 406.145, F.S., requires a law enforcement officer investigating the death of an unidentified person to immediately identify the body. If not immediately identified, the investigating law enforcement agency (LEA) must complete an Unidentified Person Report and enter the data, through the Florida Crime Information Center (FCIC), into the Unidentified Person File of the National Crime Information Center (NCIC).<sup>2</sup> An Unidentified Person Report is the form identified by the Florida Department of Law Enforcement (FDLE) that LEAs use to compile information entered into the Unidentified Person File.<sup>3</sup>

According to the FDLE, while the Unidentified Person Report continues to exist, the form is unnecessary to complete an unidentified entry into FCIC/NCIC, and many LEAs prefer electronic or automated methods of exchanging information that are more accurate, timely and efficient than the form.<sup>4</sup>

##### Effect of the Bill

The bill amends s. 406.145, F.S., to delete the requirement that a LEA investigating the death of an unidentified person complete an Unidentified Person Report when submitting information for entry into the Unidentified Person File of the NCIC. LEAs are still required to enter data concerning the unidentified body into the Unidentified Person File of the NCIC.

<sup>1</sup> FDLE Analysis of House Bill 585, March 6, 2013 (on file with the Criminal Justice Subcommittee).

<sup>2</sup> Section 406.145, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

## **Secondary Metal Recyclers (Section 4)**

Section 538.26(5), F.S., prohibits a secondary metals recycler<sup>5</sup> from purchasing any restricted regulated metals property listed in s. 538.26(5)(b), F.S. unless the secondary metals recycler obtains reasonable proof that the seller:

- Owns such property. Reasonable proof of ownership may include, but is not limited to, a receipt or bill of sale; or
- Is an employee, agent, or contractor of the property's owner who is authorized to sell the property on behalf of the owner. Reasonable proof of authorization to sell the property includes, but is not limited to, a signed letter on the owner's letterhead, dated no later than 90 days before the sale, authorizing the seller to sell the property.

### Effect of the Bill

The bill amends s. 538.26(5)(b), F.S., to add the following to the list of items that a secondary metal recycler cannot purchase:

- More than two lead-acid batteries, or any part or component thereof, in a single purchase or from the same individual in a single day.

## **Missing Persons (Sections 5, 6, 7, and 8)**

The Missing Endangered Persons Information Clearinghouse (MEPIC) is the central repository of information regarding missing endangered persons in Florida.<sup>6</sup> MEPIC assists law enforcement agencies and Florida's citizens in finding missing persons by providing analytical services and engaging the public in the search. As part of these services, MEPIC has worked with partner agencies to develop the Florida AMBER Plan<sup>7</sup> and Florida Silver Alert Plan.<sup>8</sup> Under these plans, MEPIC is responsible for issuing all AMBER Alerts, Missing Child Alerts<sup>9</sup> and State Silver Alerts in Florida. MEPIC also provides assistance to law enforcement in cases involving unidentified deceased and crimes against children.<sup>10</sup>

### *Immunity*

Section 937.021(5)(b), F.S., grants specified entities immunity from civil liability when responding to a request from a law enforcement agency to release information or photographs pertaining to a missing adult (similar immunity is given to entities responding to requests to release information pertain to Amber Alerts and Silver Alerts). Currently, there is no such immunity for those responding to requests to release information relating to missing children.

### *Birth Records*

Section 937.024, F.S., requires the Office of Vital Statistics (Office) to, on a monthly basis, collect a list of missing children provided by FDLE and:

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<sup>5</sup> Section 538.18, F.S., defines the term "secondary metals recycler" as any person who:

- Is engaged, from a fixed location, in the business of purchase transactions or gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or
- Has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, other than by the exclusive use of hand tools, by methods including, without limitation, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content thereof.

<sup>6</sup> <http://www.fdle.state.fl.us/MCICSearch/> (last visited on March 8, 2013).

<sup>7</sup> The Florida AMBER Plan was established in 2000, making Florida the second state in the nation to develop a statewide AMBER Alert. The purpose of the Plan is to broadcast critical information of an abducted child as quickly as possible to the media and general public. <http://www.fdle.state.fl.us/MCICSearch/Amber.asp> (last visited on March 8, 2013).

<sup>8</sup> The statewide Silver Alert is a plan to aid local law enforcement in the rescue or recovery of a missing elderly person who suffers from irreversible deterioration of intellectual faculties. (last visited on March 8, 2013).

<sup>9</sup> To aid in the recovery of missing children who are in danger where there is no evidence of an abduction, FDLE established the Missing Child Alert in 2003. <http://www.fdle.state.fl.us/MCICSearch/Amber.asp> (last visited on March 8, 2013).

<sup>10</sup> *Id.*

- Flag the birth certificate of each identified missing child in order to make its employees aware that a birth certificate is that of a child reported as missing; and
- Recall each missing child's birth certificate or birth record from the local registrar of vital statistics in the county of the missing child's birth.

The state and local registrar are prohibited from providing a copy of the birth certificate or information concerning the birth record of a child whose record has been flagged unless the flag has been removed.<sup>11</sup>

#### *False Information*

Section 937.025, F.S., requires schools to take certain actions and report information about missing children who are students at the school. Subsection (7) of the statute makes it a first degree misdemeanor<sup>12</sup> for a person to knowingly provide false information concerning a missing child or the efforts to locate and return a missing child to a parent, family member, or guardian of a child who has been reported missing. As drafted, it is unclear whether crime involves providing false information to a law enforcement officer, or to the parents of the missing child.

#### *Fingerprints*

Section 937.028, F.S., requires fingerprints taken and retained by any state agency, public or private organization, or other person, excluding the parent or guardian of the child, for the purpose of identifying a child, be destroyed when the child reaches 18 years of age. According to FDLE, this provision was designed in response to a concern that private fingerprinting companies might keep children's fingerprints on file after they had reached adulthood.<sup>13</sup>

#### Effect of the Bill

The bill amends s. 937.021, F.S., to grant specified entities immunity from civil liability when responding to a request from a law enforcement agency to release information or photographs pertaining to a missing child.

The bill amends s. 937.024, F.S., to remove the requirement that the Office of Vital Statistics recall each missing child's birth certificate or birth record from the local registrar of vital statistics in the county of the missing child's birth. The Office is still required to flag the record and the state and local registrar are still prohibited from releasing the record unless the flag is removed. However, the bill adds language authorizing the state and local registrar to remove a flag from a record upon MEPIC's official request. According to FDLE, this will allow parents of missing children to obtain vital statistics records through a request from MEPIC.

The bill amends s. 937.025(7), F.S., to provide that it is a first degree misdemeanor for a person to knowingly provide false information concerning a missing child or the efforts to locate and return a missing child whose parent, family member, or guardian reported the child missing. This language clarifies that the crime requires providing false information to a law enforcement officer, and not the parents of a missing child.

The bill amends s. 937.028, F.S., to allow FDLE to retain the fingerprints of any missing person, including children, until FDLE is notified that the missing person has been recovered.

<sup>11</sup> Section 937.024(2)(a), F.S. The Office must also collect from FCIC a list of missing children who have been located, identify which of the located children were born in Florida, and remove its flags from the birth certificates or birth records of such children. Section 937.024(1), F.S.

<sup>12</sup> 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.

<sup>13</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

### **Violent Crime & Drug Control Council (Section 10)**

In 1993, the Florida Violent Crime Council was established to financially assist local law enforcement agencies in extraordinary violent crime cases.<sup>14</sup> After Florida's crime trend slightly shifted from violent crime to drug crimes, the 2001 Legislature approved the expansion of the Council to include funding for drug investigations. Renamed the Violent Crime and Drug Control Council (Council), the Council now has the ability to provide supplemental funding to local and state law enforcement agencies working violent crime, major drug and money laundering investigations, and victim/witness protection and relocation efforts.<sup>15</sup> The Council is currently required to conduct at least two meetings a year, but may meet more often when determined by the chair that extraordinary circumstances require it.<sup>16</sup>

The Legislature supports the funding of the Council on a year-to-year basis.<sup>17</sup> However, as a result of budget reductions, the violent crime and drug funding has not been appropriated since FY 2007-2008, and the victim/witness protection funding was reduced to \$100,000.<sup>18</sup>

#### Effect of the Bill

The bill requires the Council to meet annually instead of semiannually, and specifies that additional meetings may take place when determined by FDLE and the chair. The bill authorizes Council meetings to take place via conference call, teleconference, or other similar technology. The bill also specifies that the duties of the Council must be carried out *subject to available funding*, and requires recipients of the Council's funding to return unexpended funds to the Council.

### **Sexual Offender Registration Information (Section 11)**

Sexual offenders must comply with a number of statutory registration requirements.<sup>19</sup> For example, sexual offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.<sup>20</sup> During initial registration, a sexual offender is required to provide certain information, including their name, address, e-mail address, home and cellular telephone number, and instant message name, to the sheriff's department, who then provides the information to FDLE for inclusion in the statewide database.<sup>21</sup> Failure to comply with these requirements is generally a third degree felony.<sup>22</sup>

#### Effect of the Bill

The bill amends s. 943.0435, F.S., to require sexual offenders to provide their fingerprints and photograph during the initial registration period. This conforms s. 943.0435, F.S., to the other sexual offender registration statutes.

### **Search of Registration Information (Section 12)**

Section 943.04351, F.S., requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at specified locations,<sup>23</sup> to conduct a search of that person's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

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<sup>14</sup> <http://www.fdle.state.fl.us/Content/getdoc/5bcffc57-b3f4-4190-833b-0236a4608d1e/Home.aspx> (last visited on March 10, 2013).

<sup>15</sup> *Id.*

<sup>16</sup> Section 943.031(4), F.S.

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

<sup>18</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>19</sup> *See generally*, ss. 943.0435, 944.607, and 985.4815, F.S.

<sup>20</sup> Section 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of the Department of Corrections (DOC) or a local jail are required to register with DOC and the jail, respectively.

<sup>21</sup> *See generally*, ss. 943.0435, 944.607, and 985.4815, F.S.

<sup>22</sup> Section 943.0435, F.S. 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.

<sup>23</sup> These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.

### Effect of the Bill

The bill amends s. 943.04351, F.S., to require state agencies and governmental subdivisions to search the person's name through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice, rather than FDLE's database. According to FDLE, the entire Florida sexual offender registry is submitted to the national registry daily. As such, results from a search of the national registry will include any Florida registry matches as well as any publically available matches from other state registries.<sup>24</sup> If the national site is not available, the bill requires a search of FDLE's database.

### **Biometric Data (Sections 14 and 15)**

Section 943.045, F.S., defines terms used in relation to FDLE's Criminal Justice Information Program.

### Effect of the Bill

The bill amends s. 943.045, F.S., to define "biometric" as "impressions, reproductions, or representations of human physical characteristics, such as DNA, fingerprints, palm prints, footprints, retina and iris images, voice patterns, and facial images, such as booking and driver license photographs, that, when measured and analyzed, can be used for identification purposes."

The bill also amends s. 943.05, F.S., to require the Criminal Justice Information Program to establish, implement, and maintain a statewide automated biometric identification system (rather than simply a fingerprint system) that is capable of reading, classifying, matching, and storing fingerprints, rolled fingerprints, latent fingerprints, palm prints, and facial images.

The bill amends a variety of statutes in ch. 943, F.S., to refer to various biometric data rather than simply fingerprints.

### **Criminal Justice Information Program (Section 15)**

Section 943.05, F.S., requires the Criminal Justice Information Program to establish, implement, and maintain a Domestic and Repeat Violence Injunction Statewide Verification System capable of electronically transmitting information to and between criminal justice agencies relating to domestic and repeat violence injunctions.

### Effect of the Bill

The bill amends s. 943.05, F.S., to require that the Domestic and Repeat Violence Injunction Statewide Verification System be capable of electronically transmitting information relating to injunctions to prevent child abuse issued under ch. 39, F.S.

### **Minors - Fingerprints (Section 16)**

Section 943.051, F.S., requires a minor who is charged with or found to have committed specified offenses to be fingerprinted, which must be submitted to FDLE. This results in the creation of a criminal history record for the minor.

### Effect of the Bill

The bill amends s. 943.051, F.S., to create an exception to the fingerprinting requirement if the minor is issued a civil citation pursuant to s. 985.12, F.S.

### **Dissemination of Information (Sections 18 and 19)**

Section 943.053, F.S., prohibits criminal justice information derived from federal criminal justice information systems or criminal justice information systems of other states from being disseminated in a manner inconsistent with the laws, regulations, or rules of the originating agency.

Section 943.054, F.S., specifies that criminal history information derived from any United States Department of Justice criminal justice information system is available pursuant to applicable federal

<sup>24</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).



laws and regulations for use in connection with or local or state employment for other uses as authorized by federal or state laws which have been approved by the United State Attorney General.

According to FDLE, the National Crime Prevention and Privacy Compact Act of 1998 established an infrastructure by which states can exchange criminal history records for noncriminal justice purposes according to the laws of the requesting state and provide reciprocity among the states to share records without charging each other for the information. The Compact establishes a Council to promulgate rules and procedures for the effective use of the Interstate Identification Index (III) System for noncriminal justice purposes.<sup>25</sup>

#### Effect of the Bill

The bill amends s. 943.053, F.S., to prohibit criminal justice information derived from federal criminal justice information systems or systems of other states from being disseminated in a manner inconsistent with the rules instituted by the National Crime Prevention and Privacy Compact or with other applicable laws or rules.

The bill amends s. 943.054, F.S., to specify that criminal history information derived from any United States Department of Justice criminal justice information system is available pursuant to applicable federal laws and regulations, including those instituted by the National Crime Prevention and Privacy Compact.

#### **Access to Criminal History Information (Section 20)**

Section 943.0542, F.S., provides for access to criminal history information by certain qualified entities. Currently, a qualified entity must submit to FDLE a request for screening an employee or volunteer "on a completed fingerprint card" or the request may be submitted electronically.<sup>26</sup> Each such request must be accompanied by a fee for a statewide criminal history check as established in s. 943.053, F.S., plus the amount charged by the FBI for the national criminal history check.<sup>27</sup>

#### Effect of the Bill

The bill updates language to remove the reference to fingerprint cards and instead only reference electronic fingerprint submissions. According to FDLE, the FBI stopped accepting fingerprint cards in April 2011.<sup>28</sup> The bill also provides that payments made for criminal history checks must be made in the manner prescribed by FDLE by rule. According to FDLE, these fees are set in law, but the timing of payments is established in administrative rule. Last year's Legislature authorized invoicing of these entities, and the bill clarifies that this option may be set in rule in the future.<sup>29</sup>

#### **Agency Audits (Section 22)**

The Criminal Justice Information Program audits state and local criminal justice agencies to assure compliance with federal and state laws and regulations pertaining to the operation of criminal justice information systems.<sup>30</sup> The program also audits noncriminal justice agencies including state agencies that receive state and national criminal history record checks and public and private organizations that submit record check requests under the National Child Protection Act and s. 943.0542, F.S.<sup>31</sup> The FBI Criminal Justice Information Services Security Policy, v.5.1 Appendix J, offers guidelines for auditing noncriminal justice agencies.<sup>32</sup>

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

<sup>26</sup> Section 943.0542(2), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>29</sup> *Id.*

<sup>30</sup> Section 943.055, F.S.

<sup>31</sup> *Id.* Also see, FDLE Analysis of House Bill 585, February 19, 2013 (on file with Criminal Justice Subcommittee).

<sup>32</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

### Effect of the Bill

The bill amends s. 943.055, F.S., to expand the audit requirements for the Criminal Justice Information Program to apply to noncriminal justice agencies. This conforms the statute to FDLE's current practices.<sup>33</sup>

### **Correcting Criminal History Records (Section 23)**

Section 943.056, F.S., provides a mechanism for an individual to verify the accuracy and completeness of a criminal history record. Upon determining what the record should contain in order to be complete and accurate, the statute requires the Criminal Justice Information Program must conform state *and federal* records to reflect corrected criminal history information. However, the Criminal Justice Information Program cannot make corrections directly to federal records.<sup>34</sup>

### Effect of the Bill

The bill amends s. 943.056, F.S., to require the Criminal Justice Information Program to *request that* federal records be corrected by notifying the FBI of the need for correction of records.

### **Juvenile Expunction (Section 24)**

Section 943.0582, F.S., requires FDLE to expunge the nonjudicial arrest record of a minor who successfully completes a prearrest, postarrest, or teen court diversion program after being arrested for a nonviolent misdemeanor. Applications for prearrest or postarrest diversion expunction must be submitted no later than six months after completion of the diversion program.<sup>35</sup> Paragraph (3)(c) requires the applicant to submit an official written statement from the state attorney of the county in which the arrest occurred certifying that the applicant has successfully completed the county's diversion program and that participation in the program is limited to minors arrested for a nonviolent misdemeanor who have not otherwise been charged with or found to have committed any criminal offense or comparable ordinance violation.

According to FDLE, paragraph (3)(c) unworkable in practice, as it conditions eligibility for expunction on the admission criteria of the particular diversion program in which the juvenile defendant participated.<sup>36</sup> Eligibility should not (and was not intended) to vary according to the way different diversion programs are organized and administered from county to county. Eligibility should be based on criteria (first-time, non-violent misdemeanor, as defined) applied to the juvenile applicant as an individual, not to the diversion program in which he or she participates.<sup>37</sup>

### Effect of the Bill

Extends the time limit for applying for a juvenile diversion expunction after completion of the diversion program from 6 to 12 months, and conditions eligibility on the qualifications of the applicant rather than on those of the diversion program in which he or she participates.

### **Sealing and Expunging Criminal History Records (Section 25 and 26)**

Sections 943.0585 and 943.059, F.S., set forth the criteria that must be met in order to be eligible to have a criminal history record expunged or sealed. In addition, these statutes also state that in order to have a criminal history record expunged or sealed within the State of Florida, an individual must first make application to the FDLE for a Certificate of Eligibility.

In order to be eligible to have a record sealed or expunged, both s. 943.0585 and s. 943.059, F.S., require that applicant have never secured a prior sealing or expunction "under this section." FDLE understands this language to mean that a person can only get one court-ordered expunction (s.

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Section 943.0582(3)(b), F.S.

<sup>36</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>37</sup> *Id.*

943.0585, F.S.) or one court-ordered seal (s. 943.059, F.S.) in a lifetime.<sup>38</sup> However, very close reading of the current statutes leaves a potential for this once in a lifetime limitation to be disputed.

For example, currently, a person must state, when applying for a seal, that he or she “has never secured a *prior sealing or expunction* of a criminal history record *under this section*.” However, the section relates to sealing only, so a person could argue that he or she does have an expunction but that it is under *another section* of the statute, therefore he or she has never applied for an expunction *under this section*. The same glitch appears in both the seal section of the statutes (s. 943.059, F.S.) and the expunction section of the statutes (s. 943.0585, F.S.).

Additionally, in order to be eligible to have a record sealed or expunged, both s. 943.0585 and s. 943.059, F.S., require that applicant have never secured a prior sealing or expunction “from any jurisdiction outside the state.” According to FDLE, the laws of other states vary widely with regard to sealing and expunging criminal history records.<sup>39</sup> In order to make a determination whether an action taken on a record from another state should disqualify a person from applying for a court-ordered expunction or seal in Florida, FDLE attorneys must conduct extensive research to determine if the action more closely resembles our state’s court-ordered expunction or seal (limited to once in a lifetime) or one of the other kinds of expunction that would not disqualify an application if it occurred in Florida e.g. juvenile diversion expunction, automatic juvenile “purge” expunction or administrative expunction.<sup>40</sup>

#### Effect of the Bill

The bill amends ss. 943.0585 and 943.059, F.S., to replace the phrase “under this section” with a clarification that the subject cannot have secured either a court-ordered expunction or a court-ordered seal under s. 943.0585 or s. 943.059, F.S., as applicable. The bill also removes references to having received an expunction or sealing “from any jurisdiction outside the state” as a disqualifier for seeking expunction or sealing in Florida.

#### **Accreditation (Section 27)**

An accreditation program has long been recognized as a means of maintaining the highest standards of professionalism. Accreditation is the certification by an independent reviewing authority that an entity has met specific requirements and prescribed standards.<sup>41</sup>

Section 943.125, F.S., provides legislative intent that law enforcement agencies voluntarily adopt standards of operation designed to promote equal and fair law enforcement, to maximize the capability of law enforcement agencies to prevent and control criminal activities, and to increase interagency cooperation. The statute further encourages the Florida Sheriffs Association and the Florida Police Chiefs Association to develop a law enforcement agency accreditation program that addresses specified aspects of law enforcement (e.g., vehicle pursuits, use of force, prisoner transfers, etc.).<sup>42</sup> In response, the Commission for Florida Law Enforcement Accreditation (CFA) was created in 1995 and is staffed by FDLE.<sup>43</sup>

In 1996, when the Legislature repealed the Department of Corrections' oversight authority of county correctional facilities, county correctional professionals determined that a state accreditation process should be established.<sup>44</sup> The Florida Corrections Accreditation Commission (FCAC) was formed in 1998 to create a process for correctional facilities to incorporate uniform standards for county jails.<sup>45</sup>

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<sup>38</sup> *Id.* The exception is that a person can apply to have a record expunged after it has been sealed for 10 years (s. 985.0585(1), F.S.). Also, the juvenile diversion expunction (s. 943.0582, F.S.) and the automatic juvenile “purge” expunction (s. 943.0515, F.S.) do not count against this once in a lifetime limitation.

<sup>39</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>40</sup> *Id.*

<sup>41</sup> <http://www.flaccreditation.org/> (last visited on March 10, 2013).

<sup>42</sup> Section 943.125(1)-(4), F.S.

<sup>43</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

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

<sup>45</sup> *Id.*

In 2005, the Association of Pretrial Professionals approached FCAC and requested an accreditation program for agencies with pretrial responsibilities. Two years later, Florida's Chief Inspector General asked for the development of an accreditation program for the Inspectors General investigation function.<sup>46</sup> As a result of requests by county correctional, pretrial diversion, and inspectors general professionals for accreditation programs, CFA's and FCAC's accreditation duties were expanded beyond "law enforcement."

#### Effect of the Bill

The bill amends s. 943.125, F.S., to provide additional legislative intent relating to accreditation standards for correctional facilities, public agency offices of inspectors general, and pretrial diversion programs within offices of the state attorneys, county government, or sheriff's offices. The bill encourages the continuation of a state accreditation program for each of these entities. The CFA is responsible for determining the accreditation standards for law enforcement and inspectors general, and the FCAC must do the same for correctional functions and pretrial diversion programs. FDLE is required, subject to available funding, to employ adequate support staff to the CFA and FCAC in support of each accreditation program.

#### **Minimum Qualifications for Employment (Section 28)**

Section 943.13, F.S., provides the minimum qualifications for employment as a law enforcement officer (LEO) or correctional officer (CO). The statute specifies that in the case of administrative delays in processing fingerprints, a person may be employed for a period not to exceed one year while the fingerprint check is pending if he or she meets other hiring criteria.<sup>47</sup> Previously, when the FBI received paper inked fingerprint cards, the delay in processing was often six weeks and at times, up to three months. Because of these delays, there was a need to hire an applicant before the state and national criminal history results were available to the employing agency.<sup>48</sup>

According to FDLE, technology has improved response times to the point that response times are measured in hours rather than months.<sup>49</sup> All submissions to FDLE and the FBI are electronic so mailing time is eliminated. In addition, FDLE has committed to a three business day turn around on these submissions.<sup>50</sup> FDLE packages the state and national responses into a single response and provides it to the employing agency via secure email or secure file transfer. Since response delays no longer exist, this provision is not needed.<sup>51</sup>

#### Effect of the Bill

The bill amends s. 943.13, F.S., to delete the provision allowing an individual to be employed up to one year while a fingerprint check is pending.

#### **Firearms - Law Enforcement Officers (Section 29)**

Section 943.132, F.S., requires the Criminal Justice Standards and Training Commission (CJSTC) to authorize a uniform firearms proficiency verification card to facilitate implementation of the federal Law Enforcement Officers Safety Act of 2004. The federal act relates to the carrying of concealed firearms by qualified law enforcement officers and qualified retired law enforcement officers.

#### Effect of the Bill

The bill deletes the reference to the "Law Enforcement Officers Safety Act of 2004," but retains the reference to the U.S. Code. By not referring to a particular Congressional Act, the statute will not have to be amended each time Congress makes changes to the federal law, as each such change is made by a bill with a particular "common name." The bill also requires the uniform firearms proficiency

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<sup>46</sup> *Id.*

<sup>47</sup> Section 943.13(5), F.S.

<sup>48</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

verification card to be issued by a firearms instructor with current certifications from the CJSTC (rather than instructors certified by CJSTC).

### **CJSTC Investigations (Section 30)**

Section 943.1395, F.S., authorizes CJSTC to revoke the certification of an officer who is not in compliance with specified provisions. Section 943.1395(6)(a), F.S., provides that the commission shall cause to be investigated any ground for revocation from an employing agency or from the Governor, and provides that the commission may investigate verifiable complaints against an officer. However, according to FDLE, CJSTC is a politically appointed body that does not have the authority to investigate verifiable complaints against an officer.<sup>52</sup>

#### Effect of the Bill

The bill amends s. 943.1395(6)(a), F.S., to clarify that CJSTC may *cause* verifiable complaints to be investigated.

### **Florida Criminal Justice Executive Institute (Sections 31 and 32)**

The Florida Criminal Justice Executive Institute (FCJEI) delivers educational programs for Florida criminal justice executives and training for high-level criminal justice executives, LEOs, and law enforcement and officials.<sup>53</sup> Section 943.1755, F.S., establishes FCJEI within FDLE and provides that FCJEI is affiliated with the State University System. FCJEI must cooperate with CJSTC, and must be guided and directed by a policy board composed of specified members. Currently, 6 members constitute a quorum of the policy board.

Section 943.1757, F.S., requires the FCJEI policy board to, beginning January 1, 1995, and every five years thereafter, to provide the appropriate substantive committees of the legislature a report describing executive training needs. The statute also requires the FCJEI policy board to submit a biennial report to the legislature describing how the executive training needs are being met.

#### Effect of the Bill

The bill amends s. 943.1755, F.S., to clarify that FDLE maintains responsibility for delivering and facilitating all FCJEI training, and to specify that 7 members of the policy board constitutes a quorum. The bill also amends s. 943.1757, F.S., to remove the requirement that the FCJEI policy board submit the training needs report every five years. The biennial report is still required.

### **Regional Training Councils (Section 33)**

Regional training councils advise and assist CJSTC in assessing regional criminal justice training needs and act as extensions of CJSTC in planning, programming, and budgeting for expenditures of moneys in the Criminal Justice Standards and Training Trust Fund. Section 943.25, F.S., requires CJSTC to annually forward to each regional training council a list of its specific recommended priority issues or items to be funded. According to FDLE, CJSTC defers to each regional training council to make their own determination of priorities for their jurisdictions, as this is a specific duty for each council.<sup>54</sup>

#### Effect of the Bill

The bill amends s. 943.25, F.S., to authorize, rather than require, CJSTC to annually forward to each regional training council a list of specific recommended priority issues or items for funding.

### **State-Operated Crime Labs (Section 35)**

Section 943.33, F.S., requires state-operated labs to furnish lab services upon request to law enforcement officials in the state. Lab services must also be available to a defendant in a criminal case

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

upon a showing of good cause and upon order of the court with jurisdiction in the case. The statute defines "good cause" as:

- A finding by the court that the laboratory service being sought by the defendant is anticipated to produce evidence that is relevant and material to the defense;
- That the service sought is one which is reasonably within the capacity of the state-operated laboratory and will not be unduly burdensome upon the laboratory; and
- That the service cannot be obtained from any qualified private or nonstate operated laboratory within the state or otherwise reasonably available to the defense.

FDLE reports that they have recently encountered a spate of orders seeking to allow defense experts access to FDLE labs for purposes of testing evidence relevant to the defendant's defense in an ongoing prosecution.<sup>55</sup> The presence of any non-FDLE personnel in FDLE labs causes significant concern regarding contamination, misuse of equipment, and other recognized lab protocol concerns. FDLE has always considered s. 943.33, F.S., to allow court-ordered testing on behalf of a defendant to be conducted by FDLE personnel, not defense experts or others acting on behalf of the defense.<sup>56</sup>

#### Effect of the Bill

The bill amends s. 943.33, F.S., to specify that the *testing* services of state-operated labs *by persons employed by or acting on behalf of the department* must be available to criminal defendants upon good cause shown and court order. The bill adds the following definition of "good cause:"

- That the service sought is one which is reasonably within the capacity of the state-operated laboratory will not be unduly burdensome upon the laboratory, will not impede normal daily lab operations, will not negatively impact lab certifications or equipment calibrations, and does not violate the lab's national certification or accreditation standards.

#### **Protective Services (Section 36)**

Section 943.68, F.S., requires FDLE to provide protective services to the Governor, the Governor's immediate family, and the Governor's office and mansion. The statute also requires FDLE to provide protective or transportation services to other individuals in certain circumstances when requested by the Governor, the Lieutenant Governor, a member of the Cabinet, the President of the Senate, the Speaker of the House, or the Chief Justice of the Supreme Court. FDLE must submit a report each July 15<sup>th</sup> to the Governor, Legislature and Cabinet detailing all transportation and protective services provided within the preceding fiscal year.<sup>57</sup>

According to FDLE, FDLE special agents are assigned to two different pay cycles (160 hours) in which they document their hours of service in FDLE's Automated Investigative Management System (AIM). Therefore, some agents may be at the beginning or middle of a pay cycle on June 30<sup>th</sup> (the end of the fiscal year) when the transportation and protective services costs are obtained from AIM.<sup>58</sup>

#### Effect of the Bill

The bill amends s. 943.68(9), F.S., to change the due date of the annual Transportation and Protective Services Report from July 15<sup>th</sup> to August 15<sup>th</sup>. FDLE reports that this will allow for a more accurate reflection of costs associated with protective services provided during a fiscal year. This will allow all agents who worked protective operations during the fiscal year but whose pay cycle has not ended by June 30<sup>th</sup> to submit their hours at the end of their cycle.<sup>59</sup>

#### **Obsolete Provisions & Technical Changes**

The bill amends a variety of statutes to make conforming changes, correct statutory cross-references, to update terminology, and to delete obsolete provisions.

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<sup>55</sup> FDLE Analysis of House Bill 585, March 6, 2013 (on file with the Criminal Justice Subcommittee).

<sup>56</sup> *Id.*

<sup>57</sup> Section 943.68(9), F.S.

<sup>58</sup> FDLE Analysis of House Bill 585, February 19, 2013 (on file with the Criminal Justice Subcommittee).

<sup>59</sup> *Id.*

**B. SECTION DIRECTORY:**

Section 1. Amends s. 125.5801, F.S., relating to criminal history record checks for certain county employees and appointees.

Section 2. Amends s. 166.0442, F.S., relating to criminal history record checks for certain municipal employees and appointees.

Section 3. Amends s. 406.145, F.S., relating to unidentified persons; reporting requirements.

Section 4. Amends s. 538.26, F.S., relating to certain cats and practices prohibited.

Section 5. Amends s. 937.021, F.S., relating to missing child and missing adult reports.

Section 6. Amends s. 937.024, F.S., relating to birth records of missing children; registrars' duties.

Section 7. Amends s. 937.025, F.S., relating to missing children; student records; reporting requirements; penalties.

Section 8. Amends s. 937.028, F.S., relating to fingerprints; missing children.

Section 9. Amends s. 943.03, F.S., relating to Department of Law Enforcement.

Section 10. Amends s. 943.031, F.S., relating to Florida Violent Crime and Drug Control Council.

Section 11. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 12. Amends s. 943.04351, F.S., relating to search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

Section 13. Amends s. 943.0438, F.S., relating to athletic coaches for independent sanctioning authorities.

Section 14. Amends s. 943.045, F.S., relating to definitions; ss. 943.045-943.08.

Section 15. Amends s. 943.05, F.S., relating to Criminal Justice Information Program; duties; crime reports.

Section 16. Amends s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

Section 17. Amends s. 943.052, F.S., relating to disposition reporting.

Section 18. Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.

Section 19. Amends s. 943.054, F.S., relating to exchange of federal criminal history records and information.

Section 20. Amends s. 943.0542, F.S., relating to access to criminal history information provided by the department to qualified entities.

Section 21. Amends s. 943.0544, F.S., relating to criminal justice information network and information management.

Section 22. Amends s. 943.055, F.S., relating to records and audit.

- Section 23. Amends s. 943.056, F.S., relating to access to, review and challenge of, criminal history records.
- Section 24. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.
- Section 25. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.
- Section 26. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.
- Section 27. Amends s. 943.125, F.S., relating to law enforcement agency accreditation; intent.
- Section 28. Amends s. 943.13, F.S., relating to officers' minimum qualifications for employment or appointment.
- Section 29. Amends s. 943.132, F.S., relating to implementation of federal Law Enforcement Officers Safety Act of 2004.
- Section 30. Amends s. 943.1395, F.S., relating to certification for employment or appointment; concurrent certification; reemployment or reappointment; inactive status; revocation; suspension; investigation.
- Section 31. Amends s. 943.1755, F.S., relating to Florida Criminal Justice Executive Institute.
- Section 32. Amends s. 943.1757, F.S., relating to criminal justice executives; training; policy report.
- Section 33. Amends s. 943.25, F.S., relating to criminal justice trust funds; source of funds; use of funds.
- Section 34. Amends s. 943.325, F.S., relating to DNA database.
- Section 35. Amends s. 943.33, F.S., relating to state-operated criminal analysis laboratories.
- Section 36. Amends s. 943.68, F.S., relating to transportation and protective services.
- Section 37. Amends s. 285.18, F.S., relating to tribal council as governing body; powers and duties.
- Section 38. Amends s. 414.40, F.S., relating to Stop Inmate Fraud Program established; guidelines.
- Section 39. Amends s. 447.045, F.S., relating to information confidential.
- Section 40. Amends s. 455.213, F.S., relating to general licensing provisions.
- Section 41. Amends s. 468.453, F.S., relating to licensure required; qualifications; license nontransferable; service of process; temporary license; license or application from another state.
- Section 42. Amends s. 475.615, F.S., relating to qualifications for registration or certification.
- Section 43. Amends s. 493.6105, F.S., relating to initial application for license.
- Section 44. Amends s. 493.6108, F.S., relating to investigation of applicants by Department of Agriculture and Consumer Services.
- Section 45. Amends s. 494.00312, F.S., relating to loan originator license.



Section 46. Amends s. 494.00321, F.S., relating to mortgage broker license.

Section 47. Amends s. 494.00611, F.S., relating to mortgage lender license.

Section 48. Amends s. 517.12, F.S., relating to registration of dealers, associated persons, investment advisers, and branch offices.

Section 49. Amends s. 538.09, F.S., relating to registration.

Section 50. Amends s. 538.25, F.S., relating to registration.

Section 51. Amends s. 548.024, F.S., relating to background investigation of applicants for licensure.

Section 52. Amends s. 550.105, F.S., relating to occupational licenses of racetrack employees; fees; denial, suspension, and revocation of license; penalties and fines.

Section 53. Amends s. 550.908, F.S., relating to powers and duties of compact committee.

Section 54. Amends s. 551.107, F.S., relating to slot machine occupational license; findings; application; fee.

Section 55. Amends s. 560.141, F.S., relating to license applications.

Section 56. Amends s. 628.906, F.S., relating to application requirements; restrictions on eligibility of officers and directors.

Section 57. Amends s. 633.34, F.S., relating to firefighters; qualifications for employment.

Section 58. Amends s. 744.3135, F.S., relating to credit and criminal investigation.

Section 59. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 60. Amends s. 775.261, F.S., relating to the Florida Career Offender Registration Act.

Section 61. Amends s. 790.06, F.S., relating to license to carry concealed weapon or firearm.

Section 62. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 63. Amends s. 944.608, F.S., relating to notification to Department of Law Enforcement of information on career offenders.

Section 64. Amends s. 985.11, F.S., relating to fingerprinting and photographing.

Section 65. Amends s. 985.644, F.S., relating to departmental contracting powers; personnel standards and screening.

Section 66. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.

Section 67. Amends s. 1002.395, F.S., relating to Florida Tax Credit Scholarship Program.

Section 68. Amends s. 1002.421, F.S., relating to accountability of private schools participating in state school choice scholarship program.

Section 69. Amends s. 1012.32, F.S., relating to qualifications of personnel.

Section 70. Amends s. 1012.467, F.S., relating to noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.

Section 71. 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 a fiscal impact on state revenues.

#### 2. Expenditures:

FDLE reports that the bill does not have an impact on state expenditures.<sup>60</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take 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.

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<sup>60</sup> FDLE Analysis of House Bill 585, March 6, 2013 (on file with the Criminal Justice Subcommittee).  
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DATE: 3/18/2013

**B. RULE-MAKING AUTHORITY:**

Section 943.03(4), F.S., requires FDLE to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of law conferring powers or duties upon it. 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 12, 2013, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Adds additional individuals to the list of persons that counties and cities may conduct state and national criminal history screenings on;
- Adds an additional item to the list of items that a secondary metal recycler cannot purchase;
- Removes the provision repealing the triennial OPPAGA study regarding sexual offenders;
- Specifies that 7 members of the FCJEL policy board constitutes a quorum; and
- Amends provisions relating to state-operated crime labs to specify who can have access to such labs.

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

1                                   A bill to be entitled  
2       An act relating to law enforcement; amending ss.  
3       125.5801 and 166.0442, F.S.; revising provisions for  
4       criminal history record checks for certain county and  
5       municipal employees and appointees; amending s.  
6       406.145, F.S.; deleting duties of law enforcement  
7       agencies and the department relating to unidentified  
8       person reporting forms; amending s. 538.26, F.S.;  
9       limiting the number of lead-acid batteries or parts  
10      thereof that a secondary metals recycler may purchase  
11      in certain transactions in a single day; amending s.  
12      937.021, F.S.; revising provisions relating to missing  
13      child and adult reports; amending s. 937.024, F.S.;  
14      revising provisions relating to the birth records of  
15      missing children; amending s. 937.025, F.S.; revising  
16      provisions providing criminal penalties for persons  
17      who knowingly provide false information concerning a  
18      missing child; amending s. 937.028, F.S.; revising  
19      provisions relating to fingerprints of missing  
20      persons; authorizing retention of such fingerprints  
21      entered into the statewide biometric identification  
22      system; amending s. 943.03, F.S.; revising terminology  
23      relating to documents and information systems;  
24      deleting an obsolete provision; amending s. 943.031,  
25      F.S.; correcting a reference; revising provisions  
26      relating to meetings of the Florida Violent Crime and  
27      Drug Control Council, the Drug Control Strategy and  
28      Criminal Gang Committee, and the Victim and Witness

29 Protection Review Committee; making specified  
 30 provisions subject to legislative funding; providing  
 31 for return of unexpended funds by specified  
 32 recipients; amending s. 943.0435, F.S.; specifying  
 33 additional items to be reported by persons required to  
 34 register as sexual offenders; amending s. 943.04351,  
 35 F.S.; revising requirements for searches of  
 36 registration information regarding sexual predators  
 37 and sexual offenders; amending s. 943.0438, F.S.;  
 38 deleting an obsolete provision; amending s. 943.045,  
 39 F.S.; defining the term "biometric"; revising the  
 40 definition of the term "criminal justice information";  
 41 amending s. 943.05, F.S.; revising duties of the  
 42 Criminal Justice Information Program; redesignating  
 43 the statewide automated fingerprint identification  
 44 system as the statewide automated biometric  
 45 identification system; amending s. 943.051, F.S.;  
 46 requiring additional information to be collected from  
 47 persons charged with or convicted of specified  
 48 offenses and submitted electronically to the  
 49 department; providing an exception to the  
 50 fingerprinting of certain juveniles; amending s.  
 51 943.052, F.S.; revising terminology relating to  
 52 disposition reporting; revising information to be  
 53 submitted concerning persons received by or discharged  
 54 from the state correctional system or certain  
 55 juveniles committed to the Department of Juvenile  
 56 Justice; amending s. 943.053, F.S.; revising a

57 reference to rules governing criminal justice  
 58 information received from the Federal Government or  
 59 other states; conforming terminology; amending s.  
 60 943.054, F.S.; revising provisions relating to the  
 61 availability of criminal history information derived  
 62 from any United States Department of Justice criminal  
 63 justice information system; amending s. 943.0542,  
 64 F.S.; revising terminology relating to requests for  
 65 screening; authorizing rulemaking relating to payments  
 66 for screening; amending s. 943.0544, F.S.; revising  
 67 terminology relating to the Criminal Justice Network;  
 68 amending s. 943.055, F.S.; revising provisions  
 69 relating to dissemination of criminal justice  
 70 information derived from department information  
 71 systems; providing for audits of noncriminal justice  
 72 agencies when necessary to ensure compliance with  
 73 requirements; amending s. 943.056, F.S.; providing for  
 74 requests for corrections of federal criminal history  
 75 record information in certain circumstances; amending  
 76 s. 943.0582, F.S.; increasing the period in which a  
 77 minor may seek expunction of a nonjudicial arrest  
 78 record following completion of a diversion program;  
 79 revising language relating to a statement to the  
 80 department by a state attorney concerning such an  
 81 expunction request; deleting an obsolete provision;  
 82 amending ss. 943.0585 and 943.059, F.S.; revising  
 83 language relating to expunctions and sealing precluded  
 84 by prior criminal history sealings or expunctions;

85 | authorizing persons seeking authorization for  
 86 | employment with or access to certain seaports to deny  
 87 | or fail to acknowledge certain expunged or sealed  
 88 | records; amending s. 943.125, F.S.; providing for  
 89 | accreditation of correctional facilities, public  
 90 | agency offices of inspectors general, and certain  
 91 | pretrial diversion programs; authorizing funding and  
 92 | support of additional accreditation programs; amending  
 93 | s. 943.13, F.S.; deleting a provision authorizing  
 94 | temporary employment of a person seeking employment as  
 95 | a law enforcement or correctional officer if there is  
 96 | an administrative delay in fingerprint processing;  
 97 | deleting obsolete language; amending s. 943.132, F.S.;  
 98 | revising references to federal qualified active or  
 99 | qualified retired law enforcement concealed firearms  
 100 | provisions; deleting a requirement that the Criminal  
 101 | Justice Standards and Training Commission develop a  
 102 | uniform firearms proficiency verification card;  
 103 | amending s. 943.1395, F.S.; revising language relating  
 104 | to investigations on behalf of the Criminal Justice  
 105 | Standards and Training Commission; amending s.  
 106 | 943.1755, F.S.; providing that the department  
 107 | maintains responsibility for delivering and  
 108 | facilitating all Florida Criminal Justice Executive  
 109 | Institute training; revising membership of the  
 110 | institute's policy board; amending s. 943.1757, F.S.;  
 111 | deleting a requirement for a periodic report by the  
 112 | Criminal Justice Executive Institute concerning

113 executive training needs; amending s. 943.25, F.S.;

114 authorizing, rather than requiring, the Criminal

115 Justice Standards and Training Commission to forward

116 to each regional training council a list of its

117 specific recommended priority issues or items to be

118 funded; authorizing the commission to use computer-

119 based testing as an assessment instrument; amending s.

120 943.325, F.S.; conforming a cross-reference; amending

121 s. 943.33, F.S.; revising provisions relating to the

122 availability to defendants of state-operated criminal

123 analysis laboratories; specifying that defense experts

124 and others are not authorized to be present in such

125 laboratories or use laboratory equipment; revising

126 provisions relating to costs of laboratory testing

127 performed for defendants; amending s. 943.68, F.S.;

128 revising the due date of a report detailing

129 transportation and protective services provided by the

130 department; amending ss. 285.18, 414.40, 447.045,

131 455.213, 468.453, 475.615, 493.6105, 493.6108,

132 494.00312, 494.00321, 494.00611, 517.12, 538.09,

133 538.25, 548.024, 550.105, 550.908, 551.107, 560.141,

134 628.906, 633.34, 744.3135, 775.21, 775.261, 790.06,

135 944.607, 944.608, 985.11, 985.644, 985.4815, 1002.395,

136 1002.421, 1012.32, and 1012.467, F.S.; conforming

137 provisions to changes made by the act; providing an

138 effective date.

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



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Section 1. Section 125.5801, Florida Statutes, is amended to read:

125.5801 Criminal history record checks for certain county employees and appointees.—

(1) Notwithstanding chapter 435, a county may require, by ordinance, state and national criminal history ~~employment~~ screening for:

(a) Any position of county employment or appointment, whether paid, unpaid, or contractual, which the governing body of the county finds is critical to security or public safety; ~~or for~~

(b) Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who is subject to licensing or regulation by the county; or

(c) Any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has direct contact with individual members of the public or access to any public facility or publicly operated facility in such a manner or to such an extent that the governing body of the county finds that preventing unsuitable persons from having such contact or access is critical to security or public safety.

(2) The ordinance must require each person applying for, or continuing employment or appointment in, any such position, applying for initial or continuing licensing or regulation, or having such contact or access ~~to any such facility~~ to be fingerprinted. The fingerprints shall be submitted to the Department of Law Enforcement for a state criminal history

169 record check and to the Federal Bureau of Investigation for a  
 170 national criminal history record check. The information obtained  
 171 from the criminal history record checks conducted pursuant to  
 172 the ordinance may be used by the county to determine a person's  
 173 ~~an applicant's~~ eligibility for such employment or appointment  
 174 and to determine a person's ~~an employee's~~ eligibility for  
 175 continued employment or appointment. This section is not  
 176 intended to preempt or prevent any other background screening,  
 177 including, but not limited to, criminal history record checks,  
 178 which a county may lawfully undertake.

179 Section 2. Section 166.0442, Florida Statutes, is amended  
 180 to read:

181 166.0442 Criminal history record checks for certain  
 182 municipal employees and appointees.—

183 (1) Notwithstanding chapter 435, a municipality may  
 184 require, by ordinance, state and national criminal history  
 185 ~~employment~~ screening for:

186 (a) Any position of municipal employment or appointment,  
 187 whether paid, unpaid, or contractual, which the governing body  
 188 of the municipality finds is critical to security or public  
 189 safety; ~~or for~~

190 (b) Any private contractor, employee of a private  
 191 contractor, vendor, repair person, or delivery person who is  
 192 subject to licensing or regulation by the municipality; or

193 (c) Any private contractor, employee of a private  
 194 contractor, vendor, repair person, or delivery person who has  
 195 direct contact with individual members of the public or access  
 196 to any public facility or publicly operated facility in such a

197 manner or to such an extent that the governing body of the  
 198 municipality finds that preventing unsuitable persons from  
 199 having such contact or access is critical to security or public  
 200 safety.

201 (2) The ordinance must require each person applying for,  
 202 or continuing employment or appointment in, any such position,  
 203 applying for initial or continuing licensing or regulation, or  
 204 having such contact or access ~~to any such facility~~ to be  
 205 fingerprinted. The fingerprints shall be submitted to the  
 206 Department of Law Enforcement for a state criminal history  
 207 record check and to the Federal Bureau of Investigation for a  
 208 national criminal history record check. The information obtained  
 209 from the criminal history record checks conducted pursuant to  
 210 the ordinance may be used by the municipality to determine a  
 211 person's ~~an applicant's~~ eligibility for such employment or  
 212 appointment and to determine a person's ~~an employee's~~  
 213 eligibility for continued employment or appointment. This  
 214 section is not intended to preempt or prevent any other  
 215 background screening, including, but not limited to, criminal  
 216 history background checks, that a municipality may lawfully  
 217 undertake.

218 Section 3. Section 406.145, Florida Statutes, is amended  
 219 to read:

220 406.145 Unidentified persons; reporting requirements.—When  
 221 an unidentified body is transported to a district medical  
 222 examiner pursuant to this chapter, the medical examiner shall  
 223 immediately report receipt of such body to the appropriate law  
 224 enforcement agency, provided such law enforcement agency was not

225 responsible for transportation of the body to the medical  
 226 examiner. If the medical examiner cannot determine the law  
 227 enforcement agency having jurisdiction, he or she shall notify  
 228 the sheriff of the county in which the medical examiner is  
 229 located, who shall determine the law enforcement agency  
 230 responsible for the identification. It is the duty of the law  
 231 enforcement officer assigned to and investigating the death to  
 232 immediately establish the identity of the body. If the body is  
 233 not immediately identified, the law enforcement agency  
 234 responsible for investigating the death shall ~~complete an~~  
 235 ~~Unidentified Person Report and enter the data~~ concerning the  
 236 body, through the Florida Crime Information Center, into the  
 237 Unidentified Person File of the National Crime Information  
 238 Center. ~~An Unidentified Person Report is that form identified by~~  
 239 ~~the Florida Department of Law Enforcement for use by law~~  
 240 ~~enforcement agencies in compiling information for entrance into~~  
 241 ~~the Unidentified Person File.~~

242 Section 4. Paragraph (b) of subsection (5) of section  
 243 538.26, Florida Statutes, is amended to read:

244 538.26 Certain acts and practices prohibited.—It is  
 245 unlawful for a secondary metals recycler to do or allow any of  
 246 the following acts:

247 (5)

248 (b) The purchase of any of the following regulated metals  
 249 property is subject to the restrictions provided in paragraph

250 (a):

251 1. A manhole cover.

252 2. An electric light pole or other utility structure and

253 its fixtures, wires, and hardware that are readily identifiable  
 254 as connected to the utility structure.

255 3. A guard rail.

256 4. A street sign, traffic sign, or traffic signal and its  
 257 fixtures and hardware.

258 5. Communication, transmission, distribution, and service  
 259 wire from a utility, including copper or aluminum bus bars,  
 260 connectors, grounding plates, or grounding wire.

261 6. A funeral marker or funeral vase.

262 7. A historical marker.

263 8. Railroad equipment, including, but not limited to, a  
 264 tie plate, signal house, control box, switch plate, E clip, or  
 265 rail tie junction.

266 9. Any metal item that is observably marked upon  
 267 reasonable inspection with any form of the name, initials, or  
 268 logo of a governmental entity, utility company, cemetery, or  
 269 railroad.

270 10. A copper, aluminum, or aluminum-copper condensing or  
 271 evaporator coil, including its tubing or rods, from an air-  
 272 conditioning or heating unit, excluding coils from window air-  
 273 conditioning or heating units and motor vehicle air-conditioning  
 274 or heating units.

275 11. An aluminum or stainless steel container or bottle  
 276 designed to hold propane for fueling forklifts.

277 12. A stainless steel beer keg.

278 13. A catalytic converter or any nonferrous part of a  
 279 catalytic converter unless purchased as part of a motor vehicle.

280 14. Metallic wire that has been burned in whole or in part

281 to remove insulation.

282 15. A brass or bronze commercial valve or fitting,  
 283 referred to as a "fire department connection and control valve"  
 284 or an "FDC valve," that is commonly used on structures for  
 285 access to water for the purpose of extinguishing fires.

286 16. A brass or bronze commercial potable water backflow  
 287 preventer valve that is commonly used to prevent backflow of  
 288 potable water from commercial structures into municipal domestic  
 289 water service systems.

290 17. A shopping cart.

291 18. A brass water meter.

292 19. A storm grate.

293 20. A brass sprinkler head used in commercial agriculture.

294 21. More than two lead-acid batteries, or any part or  
 295 component thereof, in a single purchase or from the same  
 296 individual in a single day.

297 Section 5. Paragraphs (b), (d), and (e) of subsection (5)  
 298 of section 937.021, Florida Statutes, are amended to read:

299 937.021 Missing child and missing adult reports.-

300 (5)

301 (b) Upon receiving a request to record, report, transmit,  
 302 display, or release information and photographs pertaining to a  
 303 missing adult or missing child from the law enforcement agency  
 304 having jurisdiction over the missing adult or missing child, the  
 305 department, a state or local law enforcement agency, and the  
 306 personnel of these agencies; any radio or television network,  
 307 broadcaster, or other media representative; any dealer of  
 308 communications services as defined in s. 202.11; or any agency,

309 employee, individual, or person is immune from civil liability  
 310 for damages for complying in good faith with the request to  
 311 provide information and is presumed to have acted in good faith  
 312 in recording, reporting, transmitting, displaying, or releasing  
 313 information or photographs pertaining to the missing adult or  
 314 missing child.

315 (d) The presumption of good faith is not overcome if a  
 316 technical or clerical error is made by any agency, employee,  
 317 individual, or entity acting at the request of the local law  
 318 enforcement agency having jurisdiction, or if the Amber Alert,  
 319 Missing Child Alert, missing child information, missing adult  
 320 information, or Silver Alert information is incomplete or  
 321 incorrect because the information received from the local law  
 322 enforcement agency was incomplete or incorrect.

323 (e) Neither this subsection nor any other provision of law  
 324 creates a duty of the agency, employee, individual, or entity to  
 325 record, report, transmit, display, or release the Amber Alert,  
 326 Missing Child Alert, missing child information, missing adult  
 327 information, or Silver Alert information received from the local  
 328 law enforcement agency having jurisdiction. The decision to  
 329 record, report, transmit, display, or release information is  
 330 discretionary with the agency, employee, individual, or entity  
 331 receiving the information.

332 Section 6. Paragraphs (d) and (e) of subsection (1) and  
 333 paragraph (a) of subsection (2) of section 937.024, Florida  
 334 Statutes, are amended to read:

335 937.024 Birth records of missing children; registrars'  
 336 duties.—

337 (1) The Office of Vital Statistics shall:  
 338 ~~(d) Recall each missing child's birth certificate or birth~~  
 339 ~~record from the local registrar of vital statistics in the~~  
 340 ~~county of the missing child's birth.~~

341 (d)~~(e)~~ Collect each month a list of missing children who  
 342 have been located, as provided by the Department of Law  
 343 Enforcement's Florida Crime Information Center; identify which,  
 344 if any, of the located children were born in this state; and  
 345 remove its flags from the birth certificates or birth records of  
 346 such children accordingly.

347 (2) (a) A copy of the birth certificate or information  
 348 concerning the birth record of any child whose record has been  
 349 flagged ~~or recalled~~ pursuant to paragraph (1) (c) ~~or paragraph~~  
 350 ~~(1) (d)~~ may not be provided by the State Registrar or any local  
 351 registrar in response to any inquiry, unless the flag has been  
 352 removed pursuant to paragraph (1) (d) or upon the official  
 353 request of the Department of Law Enforcement's Missing  
 354 Endangered Persons Information Clearinghouse ~~(1) (e)~~.

355 Section 7. Subsection (7) of section 937.025, Florida  
 356 Statutes, is amended to read:

357 937.025 Missing children; student records; reporting  
 358 requirements; penalties.—

359 (7) A person who knowingly provides false information  
 360 concerning a missing child or the efforts to locate and return a  
 361 missing child whose ~~to a~~ parent, family member, or guardian ~~of a~~  
 362 ~~child who has been~~ reported the child missing commits a  
 363 misdemeanor of the first degree, punishable as provided in s.  
 364 775.082 or s. 775.083.



365 Section 8. Section 937.028, Florida Statutes, is amended  
 366 to read:

367 937.028 Fingerprints; missing persons ~~children~~.—

368 (1) If fingerprints have been taken for the purpose of  
 369 identifying a child, in the event that child becomes missing,  
 370 the state agency, public or private organization, or other  
 371 person who took such fingerprints shall not release the  
 372 fingerprints to any law enforcement agency or other person for  
 373 any purpose other than the identification of a missing child.  
 374 Such records and data are exempt from ~~the provisions of~~ s.  
 375 119.07(1).

376 (2) Fingerprints of children taken and retained by any  
 377 state agency other than the Department of Law Enforcement, any  
 378 public or private organization, or other person, excluding the  
 379 parent or legal custodian of the child, shall be destroyed when  
 380 the child attains ~~becomes~~ 18 years of age. Fingerprints of  
 381 persons, including children, who are reported missing that have  
 382 been entered into the automated biometric identification system  
 383 maintained by the Department of Law Enforcement may be retained  
 384 until the department is notified that the missing person has  
 385 been recovered.

386 Section 9. Paragraph (a) of subsection (6) and subsections  
 387 (12), (13), and (15) of section 943.03, Florida Statutes, are  
 388 amended to read:

389 943.03 Department of Law Enforcement.—

390 (6)(a) The department shall be governed by all laws  
 391 regulating the purchase of supplies and equipment as other state  
 392 agencies and may enter into contracts with other state agencies

393 to make photographs and photocopies ~~photostats~~, to transmit  
 394 information electronically ~~by teletype~~, and to perform all those  
 395 services consonant with the purpose of this chapter.

396 (12) The department may establish, implement, and maintain  
 397 a statewide, integrated ~~violent~~ crime information system capable  
 398 of transmitting criminal justice information relating to ~~violent~~  
 399 criminal offenses to and between criminal justice agencies  
 400 throughout the state.

401 (13) Subject to sufficient annual appropriations, the  
 402 department shall develop and maintain, in consultation with the  
 403 Criminal and Juvenile Justice Information Systems Council under  
 404 s. 943.08, an information system that supports the  
 405 administration of the state's criminal and juvenile justice  
 406 information sharing ~~system~~ in compliance with this chapter and  
 407 other provisions of law. The department shall serve as custodial  
 408 manager of the Criminal Justice ~~statewide telecommunications and~~  
 409 ~~data~~ Network developed and maintained as part of the information  
 410 system authorized by this subsection.

411 (15) The Department of Law Enforcement, in consultation  
 412 with the Criminal and Juvenile Justice Information Systems  
 413 Council established in s. 943.06, shall modify the existing  
 414 statewide uniform statute table in its criminal history system  
 415 to meet the business requirements of state and local criminal  
 416 justice and law enforcement agencies. In order to accomplish  
 417 this objective, the department shall:

418 (a) Define the minimum business requirements necessary for  
 419 successful implementation.

420 (b) Consider the charging and booking requirements of

421 sheriffs' offices and police departments and the business  
 422 requirements of state attorneys, public defenders, criminal  
 423 conflict and civil regional counsel, clerks of court, judges,  
 424 and state law enforcement agencies.

425 (c) Adopt rules establishing the necessary technical and  
 426 business process standards required to implement, operate, and  
 427 ensure uniform system use and compliance.

428

429 ~~The required system modifications and adopted rules shall be~~  
 430 ~~implemented by December 31, 2012.~~

431 Section 10. Paragraph (c) of subsection (2), subsections  
 432 (4) and (5), paragraphs (b) and (c) of subsection (6), and  
 433 paragraphs (a), (b), and (e) of subsection (8) of section  
 434 943.031, Florida Statutes, are amended to read:

435 943.031 Florida Violent Crime and Drug Control Council.—

436 (2) MEMBERSHIP.—The council shall consist of 14 members,  
 437 as follows:

438 (c) The Secretary of ~~the Department of~~ Corrections or a  
 439 designate.

440

441 The Governor, when making appointments under this subsection,  
 442 must take into consideration representation by geography,  
 443 population, ethnicity, and other relevant factors to ensure that  
 444 the membership of the council is representative of the state at  
 445 large. Designates appearing on behalf of a council member who is  
 446 unable to attend a meeting of the council are empowered to vote  
 447 on issues before the council to the same extent the designating  
 448 council member is so empowered.

449 (4) MEETINGS.—The council must meet at least annually  
 450 semiannually. Additional meetings may be held when ~~it is~~  
 451 determined by the department and the chair ~~that extraordinary~~  
 452 ~~circumstances require an additional meeting of the council~~. A  
 453 majority of the members of the council constitutes a quorum.  
 454 Council meetings may be conducted by conference call,  
 455 teleconferencing, or similar technology.

456 (5) DUTIES OF COUNCIL.—Subject to funding provided to the  
 457 department by the Legislature, the council shall provide advice  
 458 and make recommendations, as necessary, to the executive  
 459 director of the department.

460 (a) The council may advise the executive director on the  
 461 feasibility of undertaking initiatives which include, but are  
 462 not limited to, the following:

463 1. Establishing a program that provides grants to criminal  
 464 justice agencies that develop and implement effective violent  
 465 crime prevention and investigative programs and which provides  
 466 grants to law enforcement agencies for the purpose of drug  
 467 control, criminal gang, and illicit money laundering  
 468 investigative efforts or task force efforts that are determined  
 469 by the council to significantly contribute to achieving the  
 470 state's goal of reducing drug-related crime, that represent  
 471 significant criminal gang investigative efforts, that represent  
 472 a significant illicit money laundering investigative effort, or  
 473 that otherwise significantly support statewide strategies  
 474 developed by the Statewide Drug Policy Advisory Council  
 475 established under s. 397.333, subject to the limitations  
 476 provided in this section. The grant program may include an

477 innovations grant program to provide startup funding for new  
 478 initiatives by local and state law enforcement agencies to  
 479 combat violent crime or to implement drug control, criminal  
 480 gang, or illicit money laundering investigative efforts or task  
 481 force efforts by law enforcement agencies, including, but not  
 482 limited to, initiatives such as:

- 483 a. Providing enhanced community-oriented policing.
- 484 b. Providing additional undercover officers and other  
 485 investigative officers to assist with violent crime  
 486 investigations in emergency situations.
- 487 c. Providing funding for multiagency or statewide drug  
 488 control, criminal gang, or illicit money laundering  
 489 investigative efforts or task force efforts that cannot be  
 490 reasonably funded completely by alternative sources and that  
 491 significantly contribute to achieving the state's goal of  
 492 reducing drug-related crime, that represent significant criminal  
 493 gang investigative efforts, that represent a significant illicit  
 494 money laundering investigative effort, or that otherwise  
 495 significantly support statewide strategies developed by the  
 496 Statewide Drug Policy Advisory Council established under s.  
 497 397.333.

498 2. Expanding the use of automated biometric fingerprint  
 499 identification systems at the state and local levels ~~level~~.

500 3. Identifying methods to prevent violent crime.

501 4. Identifying methods to enhance multiagency or statewide  
 502 drug control, criminal gang, or illicit money laundering  
 503 investigative efforts or task force efforts that significantly  
 504 contribute to achieving the state's goal of reducing drug-

505 related crime, that represent significant criminal gang  
 506 investigative efforts, that represent a significant illicit  
 507 money laundering investigative effort, or that otherwise  
 508 significantly support statewide strategies developed by the  
 509 Statewide Drug Policy Advisory Council established under s.  
 510 397.333.

511 5. Enhancing criminal justice training programs that  
 512 address violent crime, drug control, illicit money laundering  
 513 investigative techniques, or efforts to control and eliminate  
 514 criminal gangs.

515 6. Developing and promoting crime prevention services and  
 516 educational programs that serve the public, including, but not  
 517 limited to:

518 a. Enhanced victim and witness counseling services that  
 519 also provide crisis intervention, information referral,  
 520 transportation, and emergency financial assistance.

521 b. A well-publicized rewards program for the apprehension  
 522 and conviction of criminals who perpetrate violent crimes.

523 7. Enhancing information sharing and assistance in the  
 524 criminal justice community by expanding the use of community  
 525 partnerships and community policing programs. Such expansion may  
 526 include the use of civilian employees or volunteers to relieve  
 527 law enforcement officers of clerical work in order to enable the  
 528 officers to concentrate on street visibility within the  
 529 community.

530 (b) The full council shall:

531 1. Receive periodic reports from regional violent crime  
 532 investigation and statewide drug control strategy implementation

533 coordinating teams which relate to violent crime trends or the  
 534 investigative needs or successes in the regions, including  
 535 discussions regarding the activity of significant criminal gangs  
 536 in the region, factors, and trends relevant to the  
 537 implementation of the statewide drug strategy, and the results  
 538 of drug control and illicit money laundering investigative  
 539 efforts funded in part by the council.

540         2. Maintain and use criteria for the disbursement of funds  
 541 from the Violent Crime Investigative Emergency and Drug Control  
 542 Strategy Implementation Account or any other account from which  
 543 the council may disburse proactive investigative funds as may be  
 544 established within the Department of Law Enforcement Operating  
 545 Trust Fund or other appropriations provided to the Department of  
 546 Law Enforcement by the Legislature in the General Appropriations  
 547 Act. The criteria shall allow for the advancement of funds to  
 548 reimburse agencies regarding violent crime investigations as  
 549 approved by the full council and the advancement of funds to  
 550 implement proactive drug control strategies or significant  
 551 criminal gang investigative efforts as authorized by the Drug  
 552 Control Strategy and Criminal Gang Committee or the Victim and  
 553 Witness Protection Review Committee. Regarding violent crime  
 554 investigation reimbursement, an expedited approval procedure  
 555 shall be established for rapid disbursement of funds in violent  
 556 crime emergency situations.

557         (c) As used in this section, "significant criminal gang  
 558 investigative efforts" eligible for proactive funding must  
 559 involve at a minimum an effort against a known criminal gang  
 560 that:

- 561 1. Involves multiple law enforcement agencies.
- 562 2. Reflects a dedicated significant investigative effort
- 563 on the part of each participating agency in personnel, time
- 564 devoted to the investigation, and agency resources dedicated to
- 565 the effort.
- 566 3. Reflects a dedicated commitment by a prosecuting
- 567 authority to ensure that cases developed by the investigation
- 568 will be timely and effectively prosecuted.
- 569 4. Demonstrates a strategy and commitment to dismantling
- 570 the criminal gang via seizures of assets, significant money
- 571 laundering and organized crime investigations and prosecutions,
- 572 or similar efforts.

573  
 574 The council may require satisfaction of additional elements, to  
 575 include reporting criminal investigative and criminal  
 576 intelligence information related to criminal gang activity and  
 577 members in a manner required by the department, as a  
 578 prerequisite for receiving proactive criminal gang funding.

579 (6) DRUG CONTROL STRATEGY AND CRIMINAL GANG COMMITTEE.—

580 (b) Subject to funding provided to the department by the  
 581 Legislature, the committee shall review and approve all requests  
 582 for disbursement of funds from the Violent Crime Investigative  
 583 Emergency and Drug Control Strategy Implementation Account  
 584 within the Department of Law Enforcement Operating Trust Fund  
 585 and from other appropriations provided to the department by the  
 586 Legislature in the General Appropriations Act. An expedited  
 587 approval procedure shall be established for rapid disbursement  
 588 of funds in violent crime emergency situations. Committee



589 meetings may be conducted by conference call, teleconferencing,  
 590 or similar technology.

591 (c) Those receiving any proactive funding provided by the  
 592 council through the committee shall ~~be required to~~ report the  
 593 results of the investigations to the council once the  
 594 investigation has been completed. The committee shall also  
 595 require ongoing status reports on ongoing investigations using  
 596 such findings in its closed sessions and may require a recipient  
 597 to return all or any portion of unexpended proactive funds to  
 598 the council.

599 (8) VICTIM AND WITNESS PROTECTION REVIEW COMMITTEE.—

600 (a) The Victim and Witness Protection Review Committee is  
 601 created within the Florida Violent Crime and Drug Control  
 602 Council, consisting of the statewide prosecutor or a state  
 603 attorney, a sheriff, a chief of police, and the designee of the  
 604 executive director of the Department of Law Enforcement. The  
 605 committee shall be appointed from the membership of the council  
 606 by the chair of the council after the chair has consulted with  
 607 the executive director of the Department of Law Enforcement.  
 608 Committee members shall meet in conjunction with the meetings of  
 609 the council or at other times as required by the department and  
 610 the chair. The committee meetings may be conducted by conference  
 611 call, teleconferencing, or similar technology.

612 (b) Subject to funding provided to the department by the  
 613 Legislature, the committee shall:

- 614 1. Maintain and use criteria for disbursing funds to  
 615 reimburse law enforcement agencies for costs associated with  
 616 providing victim and witness temporary protective or temporary

617 relocation services.

618 2. Review and approve or deny, in whole or in part, all  
619 reimbursement requests submitted by law enforcement agencies.

620 ~~(e) The committee may conduct its meeting by~~  
621 ~~teleconference or conference phone calls when the chair of the~~  
622 ~~committee finds that the need for reimbursement is such that~~  
623 ~~delaying until the next scheduled council meeting will adversely~~  
624 ~~affect the requesting agency's ability to provide the protection~~  
625 ~~services.~~

626 Section 11. Paragraph (b) of subsection (2) and paragraph  
627 (d) of subsection (4) of section 943.0435, Florida Statutes, are  
628 amended to read:

629 943.0435 Sexual offenders required to register with the  
630 department; penalty.—

631 (2) A sexual offender shall:

632 (b) Provide his or her name; date of birth; social  
633 security number; race; sex; height; weight; hair and eye color;  
634 tattoos or other identifying marks; fingerprints; photograph;  
635 occupation and place of employment; address of permanent or  
636 legal residence or address of any current temporary residence,  
637 within the state or out of state, including a rural route  
638 address and a post office box; if no permanent or temporary  
639 address, any transient residence within the state, address,  
640 location or description, and dates of any current or known  
641 future temporary residence within the state or out of state;  
642 home telephone number and any cellular telephone number; any  
643 electronic mail address and any instant message name required to  
644 be provided pursuant to paragraph (4) (d); date and place of each

645 conviction; and a brief description of the crime or crimes  
 646 committed by the offender. A post office box shall not be  
 647 provided in lieu of a physical residential address.

648 1. If the sexual offender's place of residence is a motor  
 649 vehicle, trailer, mobile home, or manufactured home, as defined  
 650 in chapter 320, the sexual offender shall also provide to the  
 651 department through the sheriff's office written notice of the  
 652 vehicle identification number; the license tag number; the  
 653 registration number; and a description, including color scheme,  
 654 of the motor vehicle, trailer, mobile home, or manufactured  
 655 home. If the sexual offender's place of residence is a vessel,  
 656 live-aboard vessel, or houseboat, as defined in chapter 327, the  
 657 sexual offender shall also provide to the department written  
 658 notice of the hull identification number; the manufacturer's  
 659 serial number; the name of the vessel, live-aboard vessel, or  
 660 houseboat; the registration number; and a description, including  
 661 color scheme, of the vessel, live-aboard vessel, or houseboat.

662 2. If the sexual offender is enrolled, employed, or  
 663 carrying on a vocation at an institution of higher education in  
 664 this state, the sexual offender shall also provide to the  
 665 department through the sheriff's office the name, address, and  
 666 county of each institution, including each campus attended, and  
 667 the sexual offender's enrollment or employment status. Each  
 668 change in enrollment or employment status shall be reported in  
 669 person at the sheriff's office, within 48 hours after any change  
 670 in status. The sheriff shall promptly notify each institution of  
 671 the sexual offender's presence and any change in the sexual  
 672 offender's enrollment or employment status.

673  
 674 When a sexual offender reports at the sheriff's office, the  
 675 sheriff shall take a photograph and a set of fingerprints of the  
 676 offender and forward the photographs and fingerprints to the  
 677 department, along with the information provided by the sexual  
 678 offender. The sheriff shall promptly provide to the department  
 679 the information received from the sexual offender.

680 (4)

681 (d) A sexual offender must register any electronic mail  
 682 address or instant message name with the department before ~~prior~~  
 683 ~~to~~ using such electronic mail address or instant message name ~~or~~  
 684 ~~or after October 1, 2007~~. The department shall establish an  
 685 online system through which sexual offenders may securely access  
 686 and update all electronic mail address and instant message name  
 687 information.

688 Section 12. Section 943.04351, Florida Statutes, is  
 689 amended to read:

690 943.04351 Search of registration information regarding  
 691 sexual predators and sexual offenders required before ~~prior to~~  
 692 appointment or employment.—A state agency or governmental  
 693 subdivision, before ~~prior to~~ making any decision to appoint or  
 694 employ a person to work, whether for compensation or as a  
 695 volunteer, at any park, playground, day care center, or other  
 696 place where children regularly congregate, must conduct a search  
 697 of that person's name or other identifying information against  
 698 the registration information regarding sexual predators and  
 699 sexual offenders through the Dru Sjodin National Sexual Offender  
 700 Public Website maintained by the United States Department of

701 Justice. If for any reason that site is not available, a search  
 702 of the registration information regarding sexual predators and  
 703 sexual offenders maintained by the Department of Law Enforcement  
 704 under s. 943.043 shall be performed. ~~The agency or governmental~~  
 705 ~~subdivision may conduct the search using the Internet site~~  
 706 ~~maintained by the Department of Law Enforcement.~~ This section  
 707 does not apply to those positions or appointments within a state  
 708 agency or governmental subdivision for which a state and  
 709 national criminal history background check is conducted.

710 Section 13. Paragraph (a) of subsection (2) of section  
 711 943.0438, Florida Statutes, is amended to read:

712 943.0438 Athletic coaches for independent sanctioning  
 713 authorities.—

714 (2) An independent sanctioning authority shall:

715 (a)1. Conduct a background screening of each current and  
 716 prospective athletic coach. No person shall be authorized by the  
 717 independent sanctioning authority to act as an athletic coach  
 718 ~~after July 1, 2010,~~ unless a background screening has been  
 719 conducted and did not result in disqualification under paragraph  
 720 (b). Background screenings shall be conducted annually for each  
 721 athletic coach. For purposes of this section, a background  
 722 screening shall be conducted with a search of the athletic  
 723 coach's name or other identifying information against state and  
 724 federal registries of sexual predators and sexual offenders,  
 725 which are available to the public on Internet sites provided by:

- 726 a. The Department of Law Enforcement under s. 943.043; and
- 727 b. The Attorney General of the United States under 42
- 728 U.S.C. s. 16920.

729           2. For purposes of this section, a background screening  
 730 conducted by a commercial consumer reporting agency in  
 731 compliance with the federal Fair Credit Reporting Act using the  
 732 identifying information referenced in subparagraph 1. and that  
 733 includes searching that information against the sexual predator  
 734 and sexual offender Internet sites listed in sub-subparagraphs  
 735 1.a. and b. shall be deemed in compliance with the requirements  
 736 of this section.

737           Section 14. Section 943.045, Florida Statutes, is amended  
 738 to read:

739           943.045 Definitions; ss. 943.045-943.08.—The following  
 740 words and phrases as used in ss. 943.045-943.08 shall have the  
 741 following meanings:

742           ~~(1)-(15)~~ "Adjudicated guilty" means that a person has been  
 743 found guilty and that the court has not withheld an adjudication  
 744 of guilt.

745           (2) "Administration of criminal justice" means performing  
 746 functions of detection, apprehension, detention, pretrial  
 747 release, posttrial release, prosecution, adjudication,  
 748 correctional supervision, or rehabilitation of accused persons  
 749 or criminal offenders by governmental agencies. The  
 750 administration of criminal justice includes criminal  
 751 identification activities and the collection, processing,  
 752 storage, and dissemination of criminal justice information by  
 753 governmental agencies.

754           (3) "Biometric" refers to impressions, reproductions, or  
 755 representations of human physical characteristics, such as DNA,  
 756 fingerprints, palm prints, footprints, retina and iris images,

757 voice patterns, and facial images, such as booking and driver  
 758 license photographs, that, when measured and analyzed, can be  
 759 used for identification purposes.

760 (4)(8) "Comparable ordinance violation" means a violation  
 761 of an ordinance having all the essential elements of a statutory  
 762 misdemeanor or felony.

763 (5)(4) "Criminal history information" means information  
 764 collected by criminal justice agencies on persons, which  
 765 information consists of identifiable descriptions and notations  
 766 of arrests, detentions, indictments, informations, or other  
 767 formal criminal charges and the disposition thereof. The term  
 768 does not include identification information, such as biometric  
 769 ~~fingerprint~~ records, if the information does not indicate  
 770 involvement of the person in the criminal justice system.

771 (6)(18) "Criminal history record" means any nonjudicial  
 772 record maintained by a criminal justice agency containing  
 773 criminal history information.

774 (7)(5) "Criminal intelligence information" means  
 775 information collected by a criminal justice agency with respect  
 776 to an identifiable person or group in an effort to anticipate,  
 777 prevent, or monitor possible criminal activity.

778 (8)(16) "Criminal intelligence information system" means a  
 779 system, including the equipment, facilities, procedures,  
 780 agreements ~~agreement~~, and organizations thereof, for the  
 781 collection, processing, preservation, or dissemination of  
 782 criminal intelligence information.

783 (9)(6) "Criminal investigative information" means  
 784 information about an identifiable person or group, compiled by a

785 criminal justice agency in the course of conducting a criminal  
 786 investigation of a specific criminal act or omission, including,  
 787 but not limited to, information derived from laboratory tests,  
 788 reports of investigators, informants, or any type of  
 789 surveillance.

790 (10)~~(17)~~ "Criminal investigative information system" means  
 791 a system, including the equipment, facilities, procedures,  
 792 agreements, and organizations thereof, for the collection,  
 793 processing, preservation, or dissemination of criminal  
 794 investigative information.

795 (11)~~(10)~~ "Criminal justice agency" means:

796 (a) A court.

797 (b) The department.

798 (c) The Department of Juvenile Justice.

799 (d) The protective investigations component of the  
 800 Department of Children and Families ~~Family Services~~, which  
 801 investigates the crimes of abuse and neglect.

802 (e) Any other governmental agency or subunit thereof that  
 803 ~~which~~ performs the administration of criminal justice pursuant  
 804 to a statute or rule of court and that ~~which~~ allocates a  
 805 substantial part of its annual budget to the administration of  
 806 criminal justice.

807 (12)~~(3)~~ "Criminal justice information" means information  
 808 on individuals collected or disseminated as a result of arrest,  
 809 detention, or the initiation of a criminal proceeding by  
 810 criminal justice agencies, including arrest record information,  
 811 correctional and release information, criminal history record  
 812 information, conviction record information, offender



813 registration information, identification record information, and  
 814 wanted persons record information. The term does ~~shall~~ not  
 815 include statistical or analytical records or reports in which  
 816 individuals are not identified and from which their identities  
 817 are not ascertainable. The term does ~~shall~~ not include criminal  
 818 intelligence information or criminal investigative information.

819 (13)~~(1)~~ "Criminal justice information system" means a  
 820 system, including the equipment, facilities, procedures,  
 821 agreements, and organizations thereof, for the collection,  
 822 processing, preservation, or dissemination of criminal justice  
 823 information.

824 (14)~~(9)~~ "Disposition" means details relating to the  
 825 termination of an individual criminal defendant's relationship  
 826 with a criminal justice agency, including information disclosing  
 827 that the law enforcement agency has elected not to refer a  
 828 matter to a prosecutor or that a prosecutor has elected not to  
 829 commence criminal proceedings, that a court has dealt with the  
 830 individual, or that the individual has been incarcerated,  
 831 paroled, pardoned, released, or granted clemency. Dispositions  
 832 include, but are not limited to, acquittals, dismissals, pleas,  
 833 convictions, adjudications, youthful offender determinations,  
 834 determinations of mental capacity, placements in intervention  
 835 programs, pardons, probations, paroles, and releases from  
 836 correctional institutions.

837 (15)~~(11)~~ "Disseminate ~~Dissemination~~" means to transmit ~~the~~  
 838 ~~transmission of~~ information, whether orally or in writing.

839 (16)~~(13)~~ "Expunction of a criminal history record" means  
 840 the court-ordered physical destruction or obliteration of a

841 record or portion of a record by any criminal justice agency  
 842 having custody thereof, or as prescribed by the court issuing  
 843 the order, except that criminal history records in the custody  
 844 of the department must be retained in all cases for purposes of  
 845 evaluating subsequent requests by the subject of the record for  
 846 sealing or expunction, or for purposes of recreating the record  
 847 in the event an order to expunge is vacated by a court of  
 848 competent jurisdiction.

849 (17)~~(7)~~ "Record" means any and all documents, writings,  
 850 computer memory, and microfilm, and any other form in which  
 851 facts are memorialized, irrespective of whether such record is  
 852 an official record, public record, or admissible record or is  
 853 merely a copy thereof.

854 (18)~~(12)~~ "Research or statistical project" means any  
 855 program, project, or component the purpose of which is to  
 856 develop, measure, evaluate, or otherwise advance the state of  
 857 knowledge in a particular area. The term does not include  
 858 intelligence, investigative, or other information-gathering  
 859 activities in which information is obtained for purposes  
 860 directly related to enforcement of the criminal laws.

861 (19)~~(14)~~ "Sealing of a criminal history record" means the  
 862 preservation of a record under such circumstances that it is  
 863 secure and inaccessible to any person not having a legal right  
 864 of access to the record or the information contained and  
 865 preserved therein.

866 Section 15. Paragraphs (b), (c), (d), (e), (g), and (h) of  
 867 subsection (2) and subsection (3) of section 943.05, Florida  
 868 Statutes, are amended, and subsection (4) of that section is

869 reenacted, to read:

870 943.05 Criminal Justice Information Program; duties; crime  
871 reports.—

872 (2) The program shall:

873 (b) Establish, implement, and maintain a statewide  
874 automated biometric fingerprint identification system capable  
875 of, but not limited to, reading, classifying, matching, and  
876 storing fingerprints, rolled fingerprints, ~~and~~ latent  
877 fingerprints, palm prints, and facial images. Information  
878 contained within the system shall be available to every criminal  
879 justice agency that is responsible for the administration of  
880 criminal justice.

881 (c) Initiate a crime information system that shall be  
882 responsible for:

883 1. Preparing and disseminating semiannual reports to the  
884 Governor, the Legislature, all criminal justice agencies, and,  
885 upon request, the public. Each report shall include, but not be  
886 limited to, types of crime reported, offenders, arrests, and  
887 victims.

888 2. Upon request, providing other states and federal  
889 criminal justice agencies with Florida crime data. ~~Where~~  
890 ~~convenient, such data shall conform to definitions established~~  
891 ~~by the requesting agencies.~~

892 3. In cooperation with other criminal justice agencies,  
893 developing and maintaining an offender-based transaction system.

894 (d) Adopt rules to effectively and efficiently implement,  
895 administer, manage, maintain, and use the automated biometric  
896 ~~fingerprint~~ identification system and uniform offense reports

897 and arrest reports. The rules shall be considered minimum  
 898 requirements and shall not preclude a criminal justice agency  
 899 from implementing its own enhancements. However, rules and forms  
 900 prescribing uniform arrest or probable cause affidavits and  
 901 alcohol influence reports to be used by all law enforcement  
 902 agencies in making DUI arrests under s. 316.193 shall be  
 903 adopted, and ~~shall be~~ used by all law enforcement agencies in  
 904 this state. ~~The rules and forms prescribing such uniform~~  
 905 ~~affidavits and reports shall be adopted and implemented by July~~  
 906 ~~1, 2004.~~ Failure to use these uniform affidavits and reports,  
 907 however, shall not prohibit prosecution under s. 316.193.

908 (e) Establish, implement, and maintain a Domestic and  
 909 Repeat Violence Injunction Statewide Verification System capable  
 910 of electronically transmitting information to and between  
 911 criminal justice agencies relating to domestic violence  
 912 injunctions, injunctions to prevent child abuse issued under  
 913 chapter 39, and repeat violence injunctions issued by the courts  
 914 throughout the state. Such information must include, but is not  
 915 limited to, information as to the existence and status of any  
 916 such injunction for verification purposes.

917 (g) Upon official written request, and subject to the  
 918 department having sufficient funds and equipment to participate  
 919 in such a request, from the agency executive director or  
 920 secretary or from his or her designee, or from qualified  
 921 entities participating in the volunteer and employee criminal  
 922 history screening system under s. 943.0542, or as otherwise  
 923 required by law, retain fingerprints submitted by criminal and  
 924 noncriminal justice agencies to the department for a criminal

925 history background screening as provided by rule and enter the  
 926 fingerprints in the statewide automated biometric fingerprint  
 927 identification system authorized by paragraph (b). Such  
 928 fingerprints shall thereafter be available for all purposes and  
 929 uses authorized for arrest fingerprint submissions entered into  
 930 the statewide automated biometric fingerprint identification  
 931 system pursuant to s. 943.051.

932 (h) For each agency or qualified entity that officially  
 933 requests retention of fingerprints or for which retention is  
 934 otherwise required by law, search all arrest fingerprint  
 935 submissions received under s. 943.051 against the fingerprints  
 936 retained in the statewide automated biometric fingerprint  
 937 identification system under paragraph (g).

938 1. Any arrest record that is identified with the retained  
 939 fingerprints of a person subject to background screening as  
 940 provided in paragraph (g) shall be reported to the appropriate  
 941 agency or qualified entity.

942 2. To participate in this search process, agencies or  
 943 qualified entities must notify each person fingerprinted that  
 944 his or her fingerprints will be retained, pay an annual fee to  
 945 the department unless otherwise provided by law, and inform the  
 946 department of any change in the affiliation, employment, or  
 947 contractual status of each person whose fingerprints are  
 948 retained under paragraph (g) if such change removes or  
 949 eliminates the agency or qualified entity's basis or need for  
 950 receiving reports of any arrest of that person, so that the  
 951 agency or qualified entity is not obligated to pay the upcoming  
 952 annual fee for the retention and searching of that person's

953 fingerprints to the department. The department shall adopt a  
 954 rule setting the amount of the annual fee to be imposed upon  
 955 each participating agency or qualified entity for performing  
 956 these searches and establishing the procedures for the retention  
 957 of fingerprints and the dissemination of search results. The fee  
 958 may be borne by the agency, qualified entity, or person subject  
 959 to fingerprint retention or as otherwise provided by law.  
 960 Consistent with the recognition of criminal justice agencies  
 961 expressed in s. 943.053(3), these services shall be provided to  
 962 criminal justice agencies for criminal justice purposes free of  
 963 charge. Qualified entities that elect to participate in the  
 964 fingerprint retention and search process are required to timely  
 965 remit the fee to the department by a payment mechanism approved  
 966 by the department. If requested by the qualified entity, and  
 967 with the approval of the department, such fees may be timely  
 968 remitted to the department by a qualified entity upon receipt of  
 969 an invoice for such fees from the department. Failure of a  
 970 qualified entity to pay the amount due on a timely basis or as  
 971 invoiced by the department may result in the refusal by the  
 972 department to permit the qualified entity to continue to  
 973 participate in the fingerprint retention and search process  
 974 until all fees due and owing are paid.

975 3. Agencies that participate in the fingerprint retention  
 976 and search process may adopt rules pursuant to ss. 120.536(1)  
 977 and 120.54 to require employers to keep the agency informed of  
 978 any change in the affiliation, employment, or contractual status  
 979 of each person whose fingerprints are retained under paragraph  
 980 (g) if such change removes or eliminates the agency's basis or

981 need for receiving reports of any arrest of that person, so that  
 982 the agency is not obligated to pay the upcoming annual fee for  
 983 the retention and searching of that person's fingerprints to the  
 984 department.

985 (3) If fingerprints submitted to the department for  
 986 background screening, whether retained or not retained, are  
 987 identified with the fingerprints of a person having a criminal  
 988 history record, such fingerprints may thereafter be available  
 989 for all purposes and uses authorized for arrest fingerprints  
 990 ~~fingerprint cards~~, including, but not limited to, entry into the  
 991 statewide automated biometric fingerprint identification system  
 992 to augment or replace the fingerprints that identify the  
 993 criminal history record.

994 (4) Upon notification that a federal fingerprint retention  
 995 program is in effect, and subject to the department being funded  
 996 and equipped to participate in such a program, the department  
 997 shall, if state and national criminal history records checks and  
 998 retention of submitted prints are authorized or required by law,  
 999 retain the fingerprints as provided in paragraphs (2)(g) and (h)  
 1000 and advise the Federal Bureau of Investigation to retain the  
 1001 fingerprints at the national level for searching against arrest  
 1002 fingerprint submissions received at the national level.

1003 Section 16. Subsections (2) and (3) of section 943.051,  
 1004 Florida Statutes, are amended to read:

1005 943.051 Criminal justice information; collection and  
 1006 storage; fingerprinting.—

1007 (2) The fingerprints, palm prints, and facial images of  
 1008 each adult person charged with or convicted of a felony,

1009 misdemeanor, or violation of a comparable ordinance by a state,  
 1010 county, municipal, or other law enforcement agency shall be  
 1011 captured fingerprinted, and electronically ~~such fingerprints~~  
 1012 ~~shall be~~ submitted to the department in the manner prescribed by  
 1013 rule. Exceptions to this requirement for specified misdemeanors  
 1014 or comparable ordinance violations may be made by the department  
 1015 by rule.

1016 (3) (a) The fingerprints, palm prints, and facial images of  
 1017 a minor who is charged with or found to have committed an  
 1018 offense that would be a felony if committed by an adult shall be  
 1019 captured fingerprinted and ~~the fingerprints shall be~~  
 1020 electronically submitted to the department in the manner  
 1021 prescribed by rule.

1022 (b) A minor who is charged with or found to have committed  
 1023 the following offenses shall be fingerprinted and the  
 1024 fingerprints shall be submitted electronically to the  
 1025 department, unless the minor is issued a civil citation pursuant  
 1026 to s. 985.12:

- 1027 1. Assault, as defined in s. 784.011.
- 1028 2. Battery, as defined in s. 784.03.
- 1029 3. Carrying a concealed weapon, as defined in s.  
 1030 790.01(1).
- 1031 4. Unlawful use of destructive devices or bombs, as  
 1032 defined in s. 790.1615(1).
- 1033 5. Neglect ~~Negligent treatment~~ of a child ~~children~~, as  
 1034 defined in s. 827.03(1)(e) ~~former s. 827.05~~.
- 1035 6. Assault or battery on a law enforcement officer, a  
 1036 firefighter, or other specified officers, as defined in s.



1037 784.07(2)(a) and (b).

1038 7. Open carrying of a weapon, as defined in s. 790.053.

1039 8. Exposure of sexual organs, as defined in s. 800.03.

1040 9. Unlawful possession of a firearm, as defined in s.

1041 790.22(5).

1042 10. Petit theft, as defined in s. 812.014(3).

1043 11. Cruelty to animals, as defined in s. 828.12(1).

1044 12. Arson, as defined in s. 806.031(1).

1045 13. Unlawful possession or discharge of a weapon or  
 1046 firearm at a school-sponsored event or on school property, as  
 1047 provided ~~defined~~ in s. 790.115.

1048 Section 17. Section 943.052, Florida Statutes, is amended  
 1049 to read:

1050 943.052 Disposition reporting.—The Criminal Justice  
 1051 Information Program shall, by rule, establish procedures and a  
 1052 format for each criminal justice agency to monitor its records  
 1053 and submit reports, as provided by this section, to the program.  
 1054 The disposition report shall be developed by the program and  
 1055 shall include the offender-based transaction system number.

1056 (1) Each law enforcement officer or booking officer shall  
 1057 include with submitted arrest information and fingerprints ~~on~~  
 1058 ~~the arrest fingerprint card~~ the offender-based transaction  
 1059 system number.

1060 (2) Each clerk of the court shall submit the uniform  
 1061 dispositions to the program or in a manner acceptable to the  
 1062 program. The report must ~~shall~~ be submitted at least once a  
 1063 month ~~and, when acceptable by the program, may be submitted in~~  
 1064 an automated format acceptable to the program. The disposition

1065 report is mandatory for each disposition ~~dispositions~~ relating  
 1066 to an adult offender and, ~~offenders only.~~ beginning July 1,  
 1067 2008, ~~a disposition report~~ for dispositions ~~each disposition~~  
 1068 relating to a minor offenders ~~offender is mandatory.~~

1069 (3) (a) The Department of Corrections shall submit  
 1070 fingerprints, palm prints, and facial images ~~information~~ to the  
 1071 program relating to the receipt ~~or discharge~~ of any person who  
 1072 is sentenced to a state correctional institution.

1073 (b) The Department of Juvenile Justice shall submit  
 1074 fingerprints, palm prints, and facial images ~~information~~ to the  
 1075 program relating to the receipt ~~or discharge~~ of any minor who is  
 1076 found to have committed an offense that would be a felony if  
 1077 committed by an adult, or is found to have committed a  
 1078 misdemeanor specified in s. 943.051(3), and is committed to the  
 1079 custody of the Department of Juvenile Justice.

1080 Section 18. Subsection (2), paragraph (a) of subsection  
 1081 (3), subsection (11), and paragraphs (a) and (c) of subsection  
 1082 (13) of section 943.053, Florida Statutes, are amended to read:

1083 943.053 Dissemination of criminal justice information;  
 1084 fees.—

1085 (2) Criminal justice information derived from federal  
 1086 criminal justice information systems or criminal justice  
 1087 information systems of other states shall not be disseminated in  
 1088 a manner inconsistent with the rules instituted by the National  
 1089 Crime Prevention and Privacy Compact, as approved and ratified  
 1090 in s. 943.0543, or with other applicable laws, ~~regulations,~~ or  
 1091 rules ~~of the originating agency.~~

1092 (3) (a) Criminal history information, including information

1093 relating to minors, compiled by the Criminal Justice Information  
 1094 Program from intrastate sources shall be available on a priority  
 1095 basis to criminal justice agencies for criminal justice purposes  
 1096 free of charge. After providing the program with all known  
 1097 personal identifying information, persons in the private sector  
 1098 and noncriminal justice agencies may be provided criminal  
 1099 history information upon tender of fees as established in this  
 1100 subsection and in the manner prescribed by rule of the  
 1101 Department of Law Enforcement. Any access to criminal history  
 1102 information by the private sector or noncriminal justice  
 1103 agencies as provided in this subsection shall be assessed  
 1104 without regard to the quantity or category of criminal history  
 1105 record information requested.

1106 (11) A criminal justice agency that is authorized under  
 1107 federal rules or law to conduct a criminal history background  
 1108 check on an agency employee who is not certified by the Criminal  
 1109 Justice Standards and Training Commission under s. 943.12 may  
 1110 submit to the department the fingerprints of the noncertified  
 1111 employee to obtain state and national criminal history  
 1112 information. The fingerprints shall be retained and entered in  
 1113 the statewide automated biometric ~~fingerpr~~ identification  
 1114 system authorized by s. 943.05 and shall be available for all  
 1115 purposes and uses authorized for arrest fingerprint submissions  
 1116 entered in the statewide automated biometric ~~fingerpr~~  
 1117 identification system pursuant to s. 943.051. The department  
 1118 shall search all arrest fingerprint submissions received  
 1119 pursuant to s. 943.051 against the fingerprints retained in the  
 1120 statewide automated biometric ~~fingerpr~~ identification system

1121 pursuant to this section. In addition to all purposes and uses  
 1122 authorized for arrest fingerprint submissions for which  
 1123 submitted fingerprints may be used, any arrest record that is  
 1124 identified with the retained employee fingerprints must be  
 1125 reported to the submitting employing agency.

1126 (13)(a) For the department to accept an electronic  
 1127 fingerprint submission from:

1128 1. A private vendor engaged in the business of providing  
 1129 electronic fingerprint submission; or

1130 2. A private entity or public agency that submits the  
 1131 fingerprints of its own employees, volunteers, contractors,  
 1132 associates, or applicants for the purpose of conducting a  
 1133 required or permitted criminal history background check,

1134  
 1135 the vendor, entity, or agency submitting the fingerprints must  
 1136 enter into an agreement with the department that, at a minimum,  
 1137 obligates the vendor, entity, or agency to comply with certain  
 1138 specified standards to ensure that all persons having direct or  
 1139 indirect responsibility for verifying identification, taking  
 1140 fingerprints, identifying, and electronically submitting  
 1141 fingerprints are qualified to do so and will ensure the  
 1142 integrity and security of all personal information gathered from  
 1143 the persons whose fingerprints are submitted.

1144 (c) The requirement for entering into an agreement with  
 1145 the department for this purpose does not apply to criminal  
 1146 justice agencies ~~as defined at s. 943.045(10).~~

1147 Section 19. Paragraph (b) of subsection (1) of section  
 1148 943.054, Florida Statutes, is amended to read:

1149 943.054 Exchange of federal criminal history records and  
 1150 information.-

1151 (1) Criminal history information derived from any United  
 1152 States Department of Justice criminal justice information system  
 1153 is available:

1154 (b) Pursuant to applicable federal laws and regulations,  
 1155 including those instituted by the National Crime Prevention and  
 1156 Privacy Compact, for use in connection with licensing or local  
 1157 or state employment or for such other uses only as authorized by  
 1158 federal or state laws which have been approved by the United  
 1159 States Attorney General or the Attorney General's designee. ~~When~~  
 1160 ~~no active prosecution of the charge is known to be pending,~~  
 1161 ~~arrest data more than 1 year old is not disseminated unless~~  
 1162 ~~accompanied by information relating to the disposition of that~~  
 1163 ~~arrest.~~

1164 Section 20. Paragraphs (b) and (c) of subsection (2) of  
 1165 section 943.0542, Florida Statutes, are amended to read:

1166 943.0542 Access to criminal history information provided  
 1167 by the department to qualified entities.-

1168 (2)

1169 (b) A qualified entity shall submit to the department a  
 1170 request for screening an employee or volunteer or person  
 1171 applying to be an employee or volunteer by submitting  
 1172 fingerprints on a completed fingerprint card, or the request may  
 1173 be submitted electronically. The qualified entity must maintain  
 1174 a signed waiver allowing the release of the state and national  
 1175 criminal history record information to the qualified entity.

1176 (c) Each such request must be accompanied by payment of a

1177 fee for a statewide criminal history check by the department  
 1178 established by s. 943.053, plus the amount currently prescribed  
 1179 by the Federal Bureau of Investigation for the national criminal  
 1180 history check in compliance with the National Child Protection  
 1181 Act of 1993, as amended. Payments must be made in the manner  
 1182 prescribed by the department by rule.

1183 Section 21. Subsection (2) of section 943.0544, Florida  
 1184 Statutes, is amended to read:

1185 943.0544 Criminal justice information network and  
 1186 information management.—

1187 (2) The department may develop, implement, maintain,  
 1188 manage, and operate the Criminal Justice Network, which shall be  
 1189 an intrastate network for agency intraagency information and  
 1190 data sharing ~~data-sharing network~~ for use by the state's  
 1191 criminal justice agencies. The department, in consultation with  
 1192 the Criminal and Juvenile Justice Information Systems Council,  
 1193 shall determine and regulate access to the Criminal Justice  
 1194 Network by the state's criminal justice agencies.

1195 Section 22. Section 943.055, Florida Statutes, is amended  
 1196 to read:

1197 943.055 Records and audit.—

1198 (1) Criminal justice agencies disseminating criminal  
 1199 justice information derived from a Department of Law Enforcement  
 1200 criminal justice information system shall maintain a record of  
 1201 dissemination in accordance with the user agreements in s.  
 1202 943.0525 ~~rules adopted by the Department of Law Enforcement.~~

1203 (2) The Criminal Justice Information Program shall arrange  
 1204 for any audits of state and local criminal justice and

1205 noncriminal justice agencies necessary to ensure ~~assure~~  
 1206 compliance with federal laws and regulations, this chapter, and  
 1207 rules of the Department of Law Enforcement pertaining to the  
 1208 establishment, operation, security, and maintenance of criminal  
 1209 justice information systems.

1210 Section 23. Subsection (2) of section 943.056, Florida  
 1211 Statutes, is amended to read:

1212 943.056 ~~Access to, review and challenge of,~~ Criminal  
 1213 history records; access, review, and challenge.-

1214 (2) Criminal justice agencies subject to chapter 120 shall  
 1215 be subject to hearings regarding those portions of criminal  
 1216 history records for which the agency served as originator. When  
 1217 it is determined what the record should contain in order to be  
 1218 complete and accurate, the Criminal Justice Information Program  
 1219 shall be advised and shall conform state ~~and federal~~ records to  
 1220 the corrected criminal history record information and shall  
 1221 request that the federal records be corrected.

1222 Section 24. Paragraphs (b) and (c) of subsection (3) and  
 1223 subsections (5) and (6) of section 943.0582, Florida Statutes,  
 1224 are amended to read:

1225 943.0582 Prearrest, postarrest, or teen court diversion  
 1226 program expunction.-

1227 (3) The department shall expunge the nonjudicial arrest  
 1228 record of a minor who has successfully completed a prearrest or  
 1229 postarrest diversion program if that minor:

1230 (b) Submits the application for prearrest or postarrest  
 1231 diversion expunction no later than 12 ~~6~~ months after completion  
 1232 of the diversion program.

1233 (c) Submits to the department, with the application, an  
 1234 official written statement from the state attorney for the  
 1235 county in which the arrest occurred certifying that he or she  
 1236 has successfully completed that county's prearrest or postarrest  
 1237 diversion program, and that his or her participation in the  
 1238 program was based on an arrest is strictly limited to minors  
 1239 arrested for a nonviolent misdemeanor, and that he or she has  
 1240 who have not otherwise been charged with or found to have  
 1241 committed any criminal offense or comparable ordinance  
 1242 violation.

1243 ~~(5) This section operates retroactively to permit the~~  
 1244 ~~expunction of any nonjudicial record of the arrest of a minor~~  
 1245 ~~who has successfully completed a prearrest or postarrest~~  
 1246 ~~diversion program on or after July 1, 2000; however, in the case~~  
 1247 ~~of a minor whose completion of the program occurred before the~~  
 1248 ~~effective date of this section, the application for prearrest or~~  
 1249 ~~postarrest diversion expunction must be submitted within 6~~  
 1250 ~~months after the effective date of this section.~~

1251 (5)(6) Expunction or sealing granted under this section  
 1252 does not prevent the minor who receives such relief from  
 1253 petitioning for the expunction or sealing of a later criminal  
 1254 history record as provided for in ss. 943.0585 and 943.059, if  
 1255 the minor is otherwise eligible under those sections.

1256 Section 25. Paragraph (b) of subsection (1), paragraph (f)  
 1257 of subsection (2), and paragraph (a) of subsection (4) of  
 1258 section 943.0585, Florida Statutes, are amended to read:

1259 943.0585 Court-ordered expunction of criminal history  
 1260 records.—The courts of this state have jurisdiction over their



1261 own procedures, including the maintenance, expunction, and  
 1262 correction of judicial records containing criminal history  
 1263 information to the extent such procedures are not inconsistent  
 1264 with the conditions, responsibilities, and duties established by  
 1265 this section. Any court of competent jurisdiction may order a  
 1266 criminal justice agency to expunge the criminal history record  
 1267 of a minor or an adult who complies with the requirements of  
 1268 this section. The court shall not order a criminal justice  
 1269 agency to expunge a criminal history record until the person  
 1270 seeking to expunge a criminal history record has applied for and  
 1271 received a certificate of eligibility for expunction pursuant to  
 1272 subsection (2). A criminal history record that relates to a  
 1273 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,  
 1274 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.  
 1275 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.  
 1276 893.135, s. 916.1075, a violation enumerated in s. 907.041, or  
 1277 any violation specified as a predicate offense for registration  
 1278 as a sexual predator pursuant to s. 775.21, without regard to  
 1279 whether that offense alone is sufficient to require such  
 1280 registration, or for registration as a sexual offender pursuant  
 1281 to s. 943.0435, may not be expunged, without regard to whether  
 1282 adjudication was withheld, if the defendant was found guilty of  
 1283 or pled guilty or nolo contendere to the offense, or if the  
 1284 defendant, as a minor, was found to have committed, or pled  
 1285 guilty or nolo contendere to committing, the offense as a  
 1286 delinquent act. The court may only order expunction of a  
 1287 criminal history record pertaining to one arrest or one incident  
 1288 of alleged criminal activity, except as provided in this

1289 section. The court may, at its sole discretion, order the  
 1290 expunction of a criminal history record pertaining to more than  
 1291 one arrest if the additional arrests directly relate to the  
 1292 original arrest. If the court intends to order the expunction of  
 1293 records pertaining to such additional arrests, such intent must  
 1294 be specified in the order. A criminal justice agency may not  
 1295 expunge any record pertaining to such additional arrests if the  
 1296 order to expunge does not articulate the intention of the court  
 1297 to expunge a record pertaining to more than one arrest. This  
 1298 section does not prevent the court from ordering the expunction  
 1299 of only a portion of a criminal history record pertaining to one  
 1300 arrest or one incident of alleged criminal activity.  
 1301 Notwithstanding any law to the contrary, a criminal justice  
 1302 agency may comply with laws, court orders, and official requests  
 1303 of other jurisdictions relating to expunction, correction, or  
 1304 confidential handling of criminal history records or information  
 1305 derived therefrom. This section does not confer any right to the  
 1306 expunction of any criminal history record, and any request for  
 1307 expunction of a criminal history record may be denied at the  
 1308 sole discretion of the court.

1309 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each  
 1310 petition to a court to expunge a criminal history record is  
 1311 complete only when accompanied by:

1312 (b) The petitioner's sworn statement attesting that the  
 1313 petitioner:

1314 1. Has never, prior to the date on which the petition is  
 1315 filed, been adjudicated guilty of a criminal offense or  
 1316 comparable ordinance violation, or been adjudicated delinquent

1317 for committing any felony or a misdemeanor specified in s.  
 1318 943.051(3)(b).

1319 2. Has not been adjudicated guilty of, or adjudicated  
 1320 delinquent for committing, any of the acts stemming from the  
 1321 arrest or alleged criminal activity to which the petition  
 1322 pertains.

1323 3. Has never secured a prior sealing or expunction of a  
 1324 criminal history record under this section, s. 943.059, former  
 1325 s. 893.14, former s. 901.33, or former s. 943.058, ~~or from any~~  
 1326 ~~jurisdiction outside the state~~, unless expunction is sought of a  
 1327 criminal history record previously sealed for 10 years pursuant  
 1328 to paragraph (2)(h) and the record is otherwise eligible for  
 1329 expunction.

1330 4. Is eligible for such an expunction to the best of his  
 1331 or her knowledge or belief and does not have any other petition  
 1332 to expunge or any petition to seal pending before any court.

1333  
 1334 Any person who knowingly provides false information on such  
 1335 sworn statement to the court commits a felony of the third  
 1336 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 1337 775.084.

1338 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to  
 1339 petitioning the court to expunge a criminal history record, a  
 1340 person seeking to expunge a criminal history record shall apply  
 1341 to the department for a certificate of eligibility for  
 1342 expunction. The department shall, by rule adopted pursuant to  
 1343 chapter 120, establish procedures pertaining to the application  
 1344 for and issuance of certificates of eligibility for expunction.

1345 A certificate of eligibility for expunction is valid for 12  
 1346 months after the date stamped on the certificate when issued by  
 1347 the department. After that time, the petitioner must reapply to  
 1348 the department for a new certificate of eligibility. Eligibility  
 1349 for a renewed certification of eligibility must be based on the  
 1350 status of the applicant and the law in effect at the time of the  
 1351 renewal application. The department shall issue a certificate of  
 1352 eligibility for expunction to a person who is the subject of a  
 1353 criminal history record if that person:

1354 (f) Has never secured a prior sealing or expunction of a  
 1355 criminal history record under this section, s. 943.059, former  
 1356 s. 893.14, former s. 901.33, or former s. 943.058, unless  
 1357 expunction is sought of a criminal history record previously  
 1358 sealed for 10 years pursuant to paragraph (h) and the record is  
 1359 otherwise eligible for expunction.

1360 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any  
 1361 criminal history record of a minor or an adult which is ordered  
 1362 expunged by a court of competent jurisdiction pursuant to this  
 1363 section must be physically destroyed or obliterated by any  
 1364 criminal justice agency having custody of such record; except  
 1365 that any criminal history record in the custody of the  
 1366 department must be retained in all cases. A criminal history  
 1367 record ordered expunged that is retained by the department is  
 1368 confidential and exempt from the provisions of s. 119.07(1) and  
 1369 s. 24(a), Art. I of the State Constitution and not available to  
 1370 any person or entity except upon order of a court of competent  
 1371 jurisdiction. A criminal justice agency may retain a notation  
 1372 indicating compliance with an order to expunge.

1373 (a) The person who is the subject of a criminal history  
 1374 record that is expunged under this section or under other  
 1375 provisions of law, including former s. 893.14, former s. 901.33,  
 1376 and former s. 943.058, may lawfully deny or fail to acknowledge  
 1377 the arrests covered by the expunged record, except when the  
 1378 subject of the record:

- 1379 1. Is a candidate for employment with a criminal justice  
 1380 agency;
- 1381 2. Is a defendant in a criminal prosecution;
- 1382 3. Concurrently or subsequently petitions for relief under  
 1383 this section or s. 943.059;
- 1384 4. Is a candidate for admission to The Florida Bar;
- 1385 5. Is seeking to be employed or licensed by or to contract  
 1386 with the Department of Children and Families ~~Family Services~~,  
 1387 the Division of Vocational Rehabilitation within the Department  
 1388 of Education, the Agency for Health Care Administration, the  
 1389 Agency for Persons with Disabilities, the Department of Health,  
 1390 the Department of Elderly Affairs, or the Department of Juvenile  
 1391 Justice or to be employed or used by such contractor or licensee  
 1392 in a sensitive position having direct contact with children, the  
 1393 disabled, or the elderly; or
- 1394 6. Is seeking to be employed or licensed by the Department  
 1395 of Education, any district school board, any university  
 1396 laboratory school, any charter school, any private or parochial  
 1397 school, or any local governmental entity that licenses child  
 1398 care facilities; ~~or~~
- 1399 ~~7. Is seeking authorization from a seaport listed in s.~~  
 1400 ~~311.09 for employment within or access to one or more of such~~

1401 ~~seaports pursuant to s. 311.12.~~

1402 Section 26. Paragraph (b) of subsection (1), paragraph (e)  
 1403 of subsection (2), and paragraph (a) of subsection (4) of  
 1404 section 943.059, Florida Statutes, are amended to read:

1405 943.059 Court-ordered sealing of criminal history  
 1406 records.—The courts of this state shall continue to have  
 1407 jurisdiction over their own procedures, including the  
 1408 maintenance, sealing, and correction of judicial records  
 1409 containing criminal history information to the extent such  
 1410 procedures are not inconsistent with the conditions,  
 1411 responsibilities, and duties established by this section. Any  
 1412 court of competent jurisdiction may order a criminal justice  
 1413 agency to seal the criminal history record of a minor or an  
 1414 adult who complies with the requirements of this section. The  
 1415 court shall not order a criminal justice agency to seal a  
 1416 criminal history record until the person seeking to seal a  
 1417 criminal history record has applied for and received a  
 1418 certificate of eligibility for sealing pursuant to subsection  
 1419 (2). A criminal history record that relates to a violation of s.  
 1420 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.  
 1421 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter  
 1422 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.  
 1423 916.1075, a violation enumerated in s. 907.041, or any violation  
 1424 specified as a predicate offense for registration as a sexual  
 1425 predator pursuant to s. 775.21, without regard to whether that  
 1426 offense alone is sufficient to require such registration, or for  
 1427 registration as a sexual offender pursuant to s. 943.0435, may  
 1428 not be sealed, without regard to whether adjudication was

1429 withheld, if the defendant was found guilty of or pled guilty or  
 1430 nolo contendere to the offense, or if the defendant, as a minor,  
 1431 was found to have committed or pled guilty or nolo contendere to  
 1432 committing the offense as a delinquent act. The court may only  
 1433 order sealing of a criminal history record pertaining to one  
 1434 arrest or one incident of alleged criminal activity, except as  
 1435 provided in this section. The court may, at its sole discretion,  
 1436 order the sealing of a criminal history record pertaining to  
 1437 more than one arrest if the additional arrests directly relate  
 1438 to the original arrest. If the court intends to order the  
 1439 sealing of records pertaining to such additional arrests, such  
 1440 intent must be specified in the order. A criminal justice agency  
 1441 may not seal any record pertaining to such additional arrests if  
 1442 the order to seal does not articulate the intention of the court  
 1443 to seal records pertaining to more than one arrest. This section  
 1444 does not prevent the court from ordering the sealing of only a  
 1445 portion of a criminal history record pertaining to one arrest or  
 1446 one incident of alleged criminal activity. Notwithstanding any  
 1447 law to the contrary, a criminal justice agency may comply with  
 1448 laws, court orders, and official requests of other jurisdictions  
 1449 relating to sealing, correction, or confidential handling of  
 1450 criminal history records or information derived therefrom. This  
 1451 section does not confer any right to the sealing of any criminal  
 1452 history record, and any request for sealing a criminal history  
 1453 record may be denied at the sole discretion of the court.

1454 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each  
 1455 petition to a court to seal a criminal history record is  
 1456 complete only when accompanied by:

1457 (b) The petitioner's sworn statement attesting that the  
 1458 petitioner:

1459 1. Has never, prior to the date on which the petition is  
 1460 filed, been adjudicated guilty of a criminal offense or  
 1461 comparable ordinance violation, or been adjudicated delinquent  
 1462 for committing any felony or a misdemeanor specified in s.  
 1463 943.051(3)(b).

1464 2. Has not been adjudicated guilty of or adjudicated  
 1465 delinquent for committing any of the acts stemming from the  
 1466 arrest or alleged criminal activity to which the petition to  
 1467 seal pertains.

1468 3. Has never secured a prior sealing or expunction of a  
 1469 criminal history record under this section, s. 943.0585, former  
 1470 s. 893.14, former s. 901.33, or former s. 943.058, ~~or from any~~  
 1471 ~~jurisdiction outside the state.~~

1472 4. Is eligible for such a sealing to the best of his or  
 1473 her knowledge or belief and does not have any other petition to  
 1474 seal or any petition to expunge pending before any court.

1475  
 1476 Any person who knowingly provides false information on such  
 1477 sworn statement to the court commits a felony of the third  
 1478 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 1479 775.084.

1480 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to  
 1481 petitioning the court to seal a criminal history record, a  
 1482 person seeking to seal a criminal history record shall apply to  
 1483 the department for a certificate of eligibility for sealing. The  
 1484 department shall, by rule adopted pursuant to chapter 120,



1485 establish procedures pertaining to the application for and  
 1486 issuance of certificates of eligibility for sealing. A  
 1487 certificate of eligibility for sealing is valid for 12 months  
 1488 after the date stamped on the certificate when issued by the  
 1489 department. After that time, the petitioner must reapply to the  
 1490 department for a new certificate of eligibility. Eligibility for  
 1491 a renewed certification of eligibility must be based on the  
 1492 status of the applicant and the law in effect at the time of the  
 1493 renewal application. The department shall issue a certificate of  
 1494 eligibility for sealing to a person who is the subject of a  
 1495 criminal history record provided that such person:

1496 (e) Has never secured a prior sealing or expunction of a  
 1497 criminal history record under this section, s. 943.0585, former  
 1498 s. 893.14, former s. 901.33, or former s. 943.058.

1499 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal  
 1500 history record of a minor or an adult which is ordered sealed by  
 1501 a court of competent jurisdiction pursuant to this section is  
 1502 confidential and exempt from the provisions of s. 119.07(1) and  
 1503 s. 24(a), Art. I of the State Constitution and is available only  
 1504 to the person who is the subject of the record, to the subject's  
 1505 attorney, to criminal justice agencies for their respective  
 1506 criminal justice purposes, which include conducting a criminal  
 1507 history background check for approval of firearms purchases or  
 1508 transfers as authorized by state or federal law, to judges in  
 1509 the state courts system for the purpose of assisting them in  
 1510 their case-related decisionmaking responsibilities, as set forth  
 1511 in s. 943.053(5), or to those entities set forth in  
 1512 subparagraphs (a)1., 4., 5., 6., and 8. for their respective

1513 | licensing, access authorization, and employment purposes.  
 1514 |       (a) The subject of a criminal history record sealed under  
 1515 | this section or under other provisions of law, including former  
 1516 | s. 893.14, former s. 901.33, and former s. 943.058, may lawfully  
 1517 | deny or fail to acknowledge the arrests covered by the sealed  
 1518 | record, except when the subject of the record:  
 1519 |       1. Is a candidate for employment with a criminal justice  
 1520 | agency;  
 1521 |       2. Is a defendant in a criminal prosecution;  
 1522 |       3. Concurrently or subsequently petitions for relief under  
 1523 | this section or s. 943.0585;  
 1524 |       4. Is a candidate for admission to The Florida Bar;  
 1525 |       5. Is seeking to be employed or licensed by or to contract  
 1526 | with the Department of Children and Families ~~Family Services~~,  
 1527 | the Division of Vocational Rehabilitation within the Department  
 1528 | of Education, the Agency for Health Care Administration, the  
 1529 | Agency for Persons with Disabilities, the Department of Health,  
 1530 | the Department of Elderly Affairs, or the Department of Juvenile  
 1531 | Justice or to be employed or used by such contractor or licensee  
 1532 | in a sensitive position having direct contact with children, the  
 1533 | disabled, or the elderly;  
 1534 |       6. Is seeking to be employed or licensed by the Department  
 1535 | of Education, any district school board, any university  
 1536 | laboratory school, any charter school, any private or parochial  
 1537 | school, or any local governmental entity that licenses child  
 1538 | care facilities; or  
 1539 |       7. Is attempting to purchase a firearm from a licensed  
 1540 | importer, licensed manufacturer, or licensed dealer and is

1541 subject to a criminal history check under state or federal law  
 1542 ~~or~~

1543 ~~8. Is seeking authorization from a Florida seaport~~  
 1544 ~~identified in s. 311.09 for employment within or access to one~~  
 1545 ~~or more of such seaports pursuant to s. 311.12.~~

1546 Section 27. Section 943.125, Florida Statutes, is amended  
 1547 to read:

1548 943.125 Accreditation of state and local law enforcement  
 1549 agencies, correctional facilities, public agency offices of  
 1550 inspectors general, and certain pretrial diversion programs ~~law~~  
 1551 ~~enforcement agency accreditation; intent.-~~

1552 (1) It is the intent of the Legislature that law  
 1553 enforcement agencies, correctional facilities, public agency  
 1554 offices of inspectors general, and those agencies offering  
 1555 pretrial diversion programs within offices of the state  
 1556 attorneys, county government, or sheriff's offices in the state  
 1557 be upgraded and strengthened through the adoption of meaningful  
 1558 standards of operation for those agencies and their functions.

1559 (2) It is the further intent of the Legislature that these  
 1560 ~~law enforcement~~ agencies voluntarily adopt standards designed to  
 1561 promote enhanced professionalism:

1562 (a) For equal and fair law enforcement, to maximize the  
 1563 capability of law enforcement agencies to enforce the law and  
 1564 prevent and control criminal activities, ~~and to increase~~  
 1565 ~~interagency cooperation throughout the state.~~

1566 (b) For correctional facilities, to maintain best  
 1567 practices for the care, custody, and control of inmates.

1568 (c) Within public agency offices of inspector general, to

1569 promote more effective scrutiny of public agency operations and  
 1570 greater accountability of those serving in those agencies.

1571 (d) In the operation and management of pretrial diversion  
 1572 programs offered by and through the state attorney's offices,  
 1573 county government, or sheriff's offices.

1574 ~~(3) It is further the intent of The Legislature also~~  
 1575 ~~intends to encourage the continuation of a voluntary state~~  
 1576 ~~accreditation program to facilitate the enhanced professionalism~~  
 1577 ~~identified in subsection (2) Florida Sheriffs Association and~~  
 1578 ~~the Florida Police Chiefs Association to develop, either jointly~~  
 1579 ~~or separately, a law enforcement agency accreditation program.~~  
 1580 Other than the staff support by the department as authorized in  
 1581 subsection (5), the accreditation program must be independent of  
 1582 any law enforcement agency, the Department of Corrections, the  
 1583 Florida Sheriffs Association, or the Florida Police Chiefs  
 1584 Association.

1585 (4) The law enforcement accreditation program must  
 1586 address, at a minimum, the following aspects of law enforcement:

- 1587 (a) Vehicle pursuits.
- 1588 (b) Seizure and forfeiture of contraband articles.
- 1589 (c) Recording and processing citizens' complaints.
- 1590 (d) Use of force.
- 1591 (e) Traffic stops.
- 1592 (f) Handling natural and manmade disasters.
- 1593 (g) Special operations.
- 1594 (h) Prisoner transfer.
- 1595 (i) Collection and preservation of evidence.
- 1596 (j) Recruitment and selection.

1597 (k) Officer training.  
 1598 (l) Performance evaluations.  
 1599 (m) Law enforcement disciplinary procedures and rights.  
 1600 (n) Use of criminal investigative funds.  
 1601 (5) Subject to available funding, the department shall  
 1602 employ and assign adequate support staff to the Commission for  
 1603 Florida Law Enforcement Accreditation, Inc., and the Florida  
 1604 Corrections Accreditation Commission, Inc., in support of the  
 1605 accreditation programs established in this section.  
 1606 (6) Accreditation standards related to law enforcement and  
 1607 inspectors general used by the accreditation programs  
 1608 established in this section shall be determined by the  
 1609 Commission for Florida Law Enforcement Accreditation, Inc.  
 1610 Accreditation standards related to corrections functions and  
 1611 pretrial diversion programs shall be determined by the Florida  
 1612 Corrections Accreditation Commission, Inc.  
 1613 Section 28. Subsection (5) of section 943.13, Florida  
 1614 Statutes, is amended to read:  
 1615 943.13 Officers' minimum qualifications for employment or  
 1616 appointment.—On or after October 1, 1984, any person employed or  
 1617 appointed as a full-time, part-time, or auxiliary law  
 1618 enforcement officer or correctional officer; on or after October  
 1619 1, 1986, any person employed as a full-time, part-time, or  
 1620 auxiliary correctional probation officer; and on or after  
 1621 October 1, 1986, any person employed as a full-time, part-time,  
 1622 or auxiliary correctional officer by a private entity under  
 1623 contract to the Department of Corrections, to a county  
 1624 commission, or to the Department of Management Services shall:

1625 (5) Have documentation of his or her processed  
 1626 fingerprints on file with the employing agency or, if a private  
 1627 correctional officer, have documentation of his or her processed  
 1628 fingerprints on file with the Department of Corrections or the  
 1629 Criminal Justice Standards and Training Commission. ~~If~~  
 1630 ~~administrative delays are caused by the department or the~~  
 1631 ~~Federal Bureau of Investigation and the person has complied with~~  
 1632 ~~subsections (1)-(4) and (6)-(9), he or she may be employed or~~  
 1633 ~~appointed for a period not to exceed 1 calendar year from the~~  
 1634 ~~date he or she was employed or appointed or until return of the~~  
 1635 ~~processed fingerprints documenting noncompliance with~~  
 1636 ~~subsections (1)-(4) or subsection (7), whichever occurs first.~~  
 1637 ~~Beginning January 15, 2007, The department shall retain and~~  
 1638 enter into the statewide automated biometric fingerprint  
 1639 identification system authorized by s. 943.05 all fingerprints  
 1640 submitted to the department as required by this section.  
 1641 Thereafter, the fingerprints shall be available for all purposes  
 1642 and uses authorized for arrest fingerprints ~~fingerprint cards~~  
 1643 entered in the statewide automated biometric fingerprint  
 1644 identification system pursuant to s. 943.051. The department  
 1645 shall search all arrest fingerprints ~~fingerprint cards~~ received  
 1646 pursuant to s. 943.051 against the fingerprints retained in the  
 1647 statewide automated biometric fingerprint identification system  
 1648 pursuant to this section and report to the employing agency any  
 1649 arrest records that are identified with the retained employee's  
 1650 fingerprints. ~~By January 1, 2008, a person who must meet minimum~~  
 1651 ~~qualifications as provided in this section and whose~~  
 1652 ~~fingerprints are not retained by the department pursuant to this~~

1653 ~~section must be refingerprinted.~~ These fingerprints must be  
 1654 forwarded to the department for processing and retention.

1655 Section 29. Subsection (1) of section 943.132, Florida  
 1656 Statutes, is amended to read:

1657 943.132 Implementation of federal qualified active or  
 1658 qualified retired law enforcement concealed firearms provisions  
 1659 ~~Law Enforcement Officers Safety Act of 2004.~~-

1660 (1) The commission shall by rule establish the manner in  
 1661 which Title 18, 44 U.S.C. ss. 926B and 926C, ~~the federal Law~~  
 1662 ~~Enforcement Officers Safety Act of 2004,~~ relating to the  
 1663 carrying of concealed firearms by qualified law enforcement  
 1664 officers and qualified retired law enforcement officers, as  
 1665 defined in the act, shall be implemented in the state. In order  
 1666 to facilitate the implementation within the state of Title 18,  
 1667 44 U.S.C. ss. 926B and 926C, the commission shall ~~develop and~~  
 1668 authorize a uniform firearms proficiency verification card to be  
 1669 issued to persons who achieve a passing score on the firing  
 1670 range testing component as used ~~utilized~~ in the minimum firearms  
 1671 proficiency course applicable to active law enforcement  
 1672 officers, indicating the person's name and the date upon which  
 1673 he or she achieved the passing score. Each such card shall be  
 1674 issued only by firearms instructors with current certifications  
 1675 ~~from certified by~~ the commission.

1676 Section 30. Paragraph (a) of subsection (6) of section  
 1677 943.1395, Florida Statutes, is amended to read:

1678 943.1395 Certification for employment or appointment;  
 1679 concurrent certification; reemployment or reappointment;  
 1680 inactive status; revocation; suspension; investigation.-

1681 (6) The commission shall revoke the certification of any  
 1682 officer who is not in compliance with the provisions of s.  
 1683 943.13(4) or who intentionally executes a false affidavit  
 1684 established in s. 943.13(8), s. 943.133(2), or s. 943.139(2).

1685 (a) The commission shall cause to be investigated any  
 1686 ground for revocation from the employing agency pursuant to s.  
 1687 943.139 or from the Governor, and the commission may cause  
 1688 ~~investigate~~ verifiable complaints to be investigated. Any  
 1689 investigation initiated by the commission pursuant to this  
 1690 section must be completed within 6 months after receipt of the  
 1691 completed report of the disciplinary or internal affairs  
 1692 investigation from the employing agency or Governor's office. A  
 1693 verifiable complaint shall be completed within 1 year after  
 1694 receipt of the complaint. An investigation shall be considered  
 1695 completed upon a finding by a probable cause panel of the  
 1696 commission. These time periods shall be tolled during the appeal  
 1697 of a termination or other disciplinary action through the  
 1698 administrative or judicial process or during the period of any  
 1699 criminal prosecution of the officer.

1700 Section 31. Subsection (2), paragraph (a) of subsection  
 1701 (3), and subsection (6) of section 943.1755, Florida Statutes,  
 1702 are amended to read:

1703 943.1755 Florida Criminal Justice Executive Institute.—

1704 (2) The institute is established within the Department of  
 1705 Law Enforcement and affiliated with the State University System.  
 1706 The Board of Governors of the State University System shall, in  
 1707 cooperation with the Department of Law Enforcement, determine  
 1708 the specific placement of the institute within the system. The



1709 Department of Law Enforcement maintains responsibility for  
 1710 delivering and facilitating all Florida Criminal Justice  
 1711 Executive Institute training.

1712 (3) The institute shall cooperate with the Criminal  
 1713 Justice Standards and Training Commission, and shall be guided  
 1714 and directed by a policy board composed of the following  
 1715 members:

1716 (a) The following persons shall serve on the policy board:

- 1717 1. The executive director of the Department of Law  
 1718 Enforcement or a designee.
- 1719 2. The Secretary of Corrections or a designee.
- 1720 3. The Commissioner of Education or a designee ~~an employee~~  
 1721 ~~of the Department of Education designated by the Commissioner.~~
- 1722 4. The Secretary of Juvenile Justice or a designee.

1723 (6) Seven ~~Six~~ members constitute a quorum of the board.

1724 Section 32. Subsection (2) of section 943.1757, Florida  
 1725 Statutes, is amended to read:

1726 943.1757 Criminal justice executives; training; policy  
 1727 report.—

1728 (2) The policy board of the Criminal Justice Executive  
 1729 Institute shall identify the needs of criminal justice  
 1730 executives regarding issues related to diverse populations, and  
 1731 ensure that such needs are met through appropriate training.  
 1732 ~~Beginning January 1, 1995, and every 5 years thereafter, the~~  
 1733 ~~policy board shall provide to the appropriate substantive~~  
 1734 ~~committees of each house a report describing executive training~~  
 1735 ~~needs. In addition,~~ The policy board shall prepare a biennial  
 1736 report to the appropriate substantive committees of each house

1737 describing how these needs are being met through training by the  
 1738 Criminal Justice Executive Institute.

1739 Section 33. Paragraph (a) of subsection (4) and subsection  
 1740 (9) of section 943.25, Florida Statutes, are amended to read:  
 1741 943.25 Criminal justice trust funds; source of funds; use  
 1742 of funds.-

1743 (4) The commission shall authorize the establishment of  
 1744 regional training councils to advise and assist the commission  
 1745 in developing and maintaining a plan assessing regional criminal  
 1746 justice training needs and to act as an extension of the  
 1747 commission in the planning, programming, and budgeting for  
 1748 expenditures of the moneys in the Criminal Justice Standards and  
 1749 Training Trust Fund.

1750 (a) The commission may ~~shall~~ annually forward to each  
 1751 regional training council a list of its specific recommended  
 1752 priority issues or items to be funded. Each regional training  
 1753 council shall consider the recommendations of the commission in  
 1754 relation to the needs of the region and either include the  
 1755 recommendations in the region's budget plan or satisfactorily  
 1756 justify their exclusion.

1757 (9) Up to \$250,000 per annum from the Criminal Justice  
 1758 Standards and Training Trust Fund may be used to develop,  
 1759 validate, update, and maintain test or assessment instruments,  
 1760 including computer-based testing, relating to selection,  
 1761 employment, training, or evaluation of officers, instructors, or  
 1762 courses. Pursuant to s. 943.12(4), (5), and (8), the commission  
 1763 shall adopt those test or assessment instruments which are  
 1764 appropriate and job-related as minimum requirements.

1765 Section 34. Subsection (14) of section 943.325, Florida  
 1766 Statutes, is amended to read:

1767 943.325 DNA database.—

1768 (14) RESULTS.—The results of a DNA analysis and the  
 1769 comparison of analytic results shall be released only to  
 1770 criminal justice agencies as defined in s. 943.045 ~~943.045(10)~~,  
 1771 at the request of the agency. Otherwise, such information is  
 1772 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and  
 1773 s. 24(a), Art. I of the State Constitution.

1774 Section 35. Section 943.33, Florida Statutes, is amended  
 1775 to read:

1776 943.33 State-operated criminal analysis laboratories.—

1777 (1) The state-operated laboratories shall furnish  
 1778 laboratory service upon request to law enforcement officials in  
 1779 the state. The testing services of such laboratories by persons  
 1780 employed by or acting on behalf of the department shall also be  
 1781 available to any defendant in a criminal case upon showing of  
 1782 good cause and upon order of the court with jurisdiction in the  
 1783 case. When such service is to be made available to the  
 1784 defendant, the order shall be issued only after motion by the  
 1785 defendant and hearing held after notice with a copy of the  
 1786 motion being served upon the prosecutor and the state-operated  
 1787 laboratory from which the service is being sought.

1788 (2) For purposes of this section, "good cause" means a  
 1789 finding by the court that the laboratory testing service being  
 1790 sought by the defendant is anticipated to produce evidence that  
 1791 is relevant and material to the defense; ~~;~~ that the service  
 1792 sought is one which is reasonably within the capacity of the

1793 state-operated laboratory, ~~and~~ will not be unduly burdensome  
 1794 upon the laboratory, will not impede normal daily laboratory  
 1795 operations, will not negatively impact laboratory certifications  
 1796 or equipment calibration, and does not violate the laboratory's  
 1797 national certification or accreditation standards; and that the  
 1798 service cannot be obtained from any qualified private or  
 1799 nonstate operated laboratory within the state or otherwise  
 1800 reasonably available to the defense.

1801 (3) This section does not authorize the presence of  
 1802 defense experts or others representing the defense inside a  
 1803 state-operated laboratory facility where actual testing or  
 1804 analysis is occurring and does not authorize the use of state-  
 1805 operated laboratory equipment or facilities by defense experts  
 1806 or other persons not employed by or acting on the behalf of the  
 1807 department.

1808 (4) The court shall assess the costs of all testing,  
 1809 equipment operation, and personnel and any other costs directly  
 1810 attributable to the court-ordered testing ~~such service ordered~~  
 1811 by the court to the defendant or the defendant's counsel,  
 1812 whether public, private, or pro bono, who obtained the testing  
 1813 order ~~local public defender's office.~~ The laboratory providing  
 1814 the service ordered shall include with the report of the  
 1815 analysis, comparison, or identification a statement of the costs  
 1816 of the service provided and shall provide a copy of all reports  
 1817 and analysis performed and cost statement being provided to the  
 1818 prosecutor in the case and the court.

1819 Section 36. Subsection (9) of section 943.68, Florida  
 1820 Statutes, is amended to read:

1821 943.68 Transportation and protective services.—  
 1822 (9) The department shall submit a report each August ~~July~~  
 1823 15 to the Governor, the Legislature, and the Cabinet, detailing  
 1824 all transportation and protective services provided under  
 1825 subsections (1), (5), and (6) within the preceding fiscal year.  
 1826 Each report shall include a detailed accounting of the cost of  
 1827 such transportation and protective services, including the names  
 1828 of persons provided such services and the nature of state  
 1829 business performed.

1830 Section 37. Subsection (3) of section 285.18, Florida  
 1831 Statutes, is amended to read:

1832 285.18 Tribal council as governing body; powers and  
 1833 duties.—

1834 (3) The law enforcement agencies of the Seminole Tribe of  
 1835 Florida and the Miccosukee Tribe of Indians of Florida shall  
 1836 have the authority of "criminal justice agencies" as defined in  
 1837 s. 945.045(11)(e) ~~943.045(10)(e)~~ and shall have the specific  
 1838 authority to negotiate agreements with the ~~Florida~~ Department of  
 1839 Law Enforcement, the United States Department of Justice, and  
 1840 other federal law enforcement agencies for access to criminal  
 1841 history records for the purpose of conducting ongoing criminal  
 1842 investigations and for the following governmental purposes:

1843 (a) Background investigations, which are required for  
 1844 employment by a tribal education program, tribal Head Start  
 1845 program, or tribal day care program as may be required by state  
 1846 or federal law.

1847 (b) Background investigations, which are required for  
 1848 employment by tribal law enforcement agencies.

1849 (c) Background investigations, which are required for  
 1850 employment by a tribal government.

1851 (d) Background investigations with respect to all  
 1852 employees, primary management officials, and all persons having  
 1853 a financial interest in a class II Indian tribal gaming  
 1854 enterprise to ensure eligibility as provided in the Indian  
 1855 Gaming Regulatory Act, 25 U.S.C. ss. 2701 et al.

1856  
 1857 With regard to those investigations authorized in paragraphs  
 1858 (a), (c), and (d), each such individual shall file a complete  
 1859 set of his or her fingerprints that have been taken by an  
 1860 authorized law enforcement officer, which set of fingerprints  
 1861 shall be submitted to the Department of Law Enforcement for  
 1862 state processing and to the Federal Bureau of Investigation for  
 1863 federal processing. The cost of processing shall be borne by the  
 1864 applicant.

1865 Section 38. Paragraph (b) of subsection (2) of section  
 1866 414.40, Florida Statutes, is amended to read:

1867 414.40 Stop Inmate Fraud Program established; guidelines.—

1868 (2) The Department of Financial Services is directed to  
 1869 implement the Stop Inmate Fraud Program in accordance with the  
 1870 following guidelines:

1871 (b) Pursuant to these procedures, the program shall have  
 1872 access to records containing correctional information not exempt  
 1873 from the public records law on incarcerated persons which have  
 1874 been generated as criminal justice information. As used in this  
 1875 paragraph, the terms ~~term~~ "record" ~~is defined as provided in s.~~  
 1876 ~~943.045(7),~~ and ~~the term~~ "criminal justice information" have the

CS/HB 585

2013

1877 same meanings ~~is defined~~ as provided in s. 943.045 ~~943.045(3)~~.

1878 Section 39. Section 447.045, Florida Statutes, is amended  
1879 to read:

1880 447.045 Information confidential.—Neither the department  
1881 nor any investigator or employee of the department shall divulge  
1882 in any manner the information obtained pursuant to the  
1883 processing of applicant fingerprints ~~fingerprints cards~~, and such  
1884 information is confidential and exempt from ~~the provisions of~~ s.  
1885 119.07(1).

1886 Section 40. Subsection (10) of section 455.213, Florida  
1887 Statutes, is amended to read:

1888 455.213 General licensing provisions.—

1889 (10) For any profession requiring fingerprints as part of  
1890 the registration, certification, or licensure process or for any  
1891 profession requiring a criminal history record check to  
1892 determine good moral character, ~~a fingerprint card containing~~  
1893 the fingerprints of the applicant must accompany all  
1894 applications for registration, certification, or licensure. The  
1895 fingerprints ~~fingerprints card~~ shall be forwarded to the Division  
1896 of Criminal Justice Information Systems within the Department of  
1897 Law Enforcement for ~~purposes of processing the fingerprint card~~  
1898 to determine whether ~~if~~ the applicant has a criminal history  
1899 record. The fingerprints ~~fingerprints card~~ shall also be  
1900 forwarded to the Federal Bureau of Investigation ~~for purposes of~~  
1901 ~~processing the fingerprint card~~ to determine whether ~~if~~ the  
1902 applicant has a criminal history record. The information  
1903 obtained by the processing of the fingerprints ~~fingerprints card~~  
1904 by the ~~Florida~~ Department of Law Enforcement and the Federal

CS/HB 585

2013

1905 Bureau of Investigation shall be sent to the department to  
 1906 determine whether ~~for the purpose of determining if~~ the  
 1907 applicant is statutorily qualified for registration,  
 1908 certification, or licensure.

1909 Section 41. Paragraph (d) of subsection (2) of section  
 1910 468.453, Florida Statutes, is amended to read:

1911 468.453 Licensure required; qualifications; license  
 1912 nontransferable; service of process; temporary license; license  
 1913 or application from another state.-

1914 (2) A person shall be licensed as an athlete agent if the  
 1915 applicant:

1916 (d) Has submitted to the department fingerprints a  
 1917 ~~fingerprint card~~ for a criminal history records check. The  
 1918 fingerprints ~~fingerprint card~~ shall be forwarded to the Division  
 1919 of Criminal Justice Information Systems within the Department of  
 1920 Law Enforcement for ~~purposes of processing the fingerprint card~~  
 1921 to determine whether ~~if~~ the applicant has a criminal history  
 1922 record. The fingerprints ~~fingerprint card~~ shall also be  
 1923 forwarded to the Federal Bureau of Investigation ~~for purposes of~~  
 1924 ~~processing the fingerprint card~~ to determine whether ~~if~~ the  
 1925 applicant has a criminal history record. The information  
 1926 obtained by the processing of the fingerprints ~~fingerprint card~~  
 1927 by the ~~Florida~~ Department of Law Enforcement and the Federal  
 1928 Bureau of Investigation shall be sent to the department to  
 1929 determine whether ~~for the purpose of determining if~~ the  
 1930 applicant is statutorily qualified for licensure.

1931 Section 42. Subsection (3) of section 475.615, Florida  
 1932 Statutes, is amended to read:



1933 475.615 Qualifications for registration or certification.—  
 1934 (3) Appropriate fees, as set forth in the rules of the  
 1935 board pursuant to s. 475.6147, and a set of fingerprints  
 1936 ~~fingerprint card~~ must accompany all applications for  
 1937 registration or certification. The fingerprints ~~fingerprint card~~  
 1938 shall be forwarded to the Division of Criminal Justice  
 1939 Information Systems within the Department of Law Enforcement for  
 1940 ~~purposes of processing the fingerprint card~~ to determine whether  
 1941 ~~if~~ the applicant has a criminal history record. The fingerprints  
 1942 ~~fingerprint card~~ shall also be forwarded to the Federal Bureau  
 1943 of Investigation ~~for purposes of processing the fingerprint card~~  
 1944 to determine whether if the applicant has a criminal history  
 1945 record. The information obtained by the processing of the  
 1946 fingerprints ~~fingerprint card~~ by the Department of Law  
 1947 Enforcement and the Federal Bureau of Investigation shall be  
 1948 sent to the department to determine whether ~~for the purpose of~~  
 1949 ~~determining if~~ the applicant is statutorily qualified for  
 1950 registration or certification. ~~Effective July 1, 2006, an~~  
 1951 ~~applicant must provide fingerprints in electronic format.~~

1952 Section 43. Paragraph (j) of subsection (3) of section  
 1953 493.6105, Florida Statutes, is amended to read:

1954 493.6105 Initial application for license.—

1955 (3) The application must contain the following information  
 1956 concerning the individual signing the application:

1957 (j) A full set of fingerprints ~~on a card provided by the~~  
 1958 ~~department~~ and a fingerprint fee to be established by rule of  
 1959 the department based upon costs determined by state and federal  
 1960 agency charges and department processing costs. An applicant who

1961 has, within the immediately preceding 6 months, submitted such  
 1962 fingerprints ~~a fingerprint card~~ and fee for licensing purposes  
 1963 under this chapter is not required to submit another set of  
 1964 fingerprints ~~fingerprint card~~ or fee.

1965 Section 44. Paragraph (a) of subsection (1) of section  
 1966 493.6108, Florida Statutes, is amended to read:

1967 493.6108 Investigation of applicants by Department of  
 1968 Agriculture and Consumer Services.—

1969 (1) Except as otherwise provided, the department must  
 1970 investigate an applicant for a license under this chapter before  
 1971 it may issue the license. The investigation must include:

1972 (a)1. An examination of fingerprint records and police  
 1973 records. If a criminal history record check of any applicant  
 1974 under this chapter is performed by means of fingerprint ~~card~~  
 1975 identification, the time limitations prescribed by s. 120.60(1)  
 1976 shall be tolled during the time the applicant's fingerprints are  
 1977 ~~fingerprint card is~~ under review by the Department of Law  
 1978 Enforcement or the United States Department of Justice, Federal  
 1979 Bureau of Investigation.

1980 2. If a legible set of fingerprints, as determined by the  
 1981 Department of Law Enforcement or the Federal Bureau of  
 1982 Investigation, cannot be obtained after two attempts, the  
 1983 Department of Agriculture and Consumer Services may determine  
 1984 the applicant's eligibility based upon a criminal history record  
 1985 check under the applicant's name conducted by the Department of  
 1986 Law Enforcement if the fingerprints are taken by a law  
 1987 enforcement agency or the department and the applicant submits a  
 1988 written statement signed by the fingerprint technician or a

1989 licensed physician stating that there is a physical condition  
 1990 that precludes obtaining a legible set of fingerprints or that  
 1991 the fingerprints taken are the best that can be obtained.

1992 Section 45. Paragraph (f) of subsection (2) of section  
 1993 494.00312, Florida Statutes, is amended to read:

1994 494.00312 Loan originator license.-

1995 (2) In order to apply for a loan originator license, an  
 1996 applicant must:

1997 (f) Submit fingerprints in accordance with rules adopted  
 1998 by the commission:

1999 1. The fingerprints may be submitted to the registry, the  
 2000 office, or a vendor acting on behalf of the registry or the  
 2001 office.

2002 2. The office may contract with a third-party vendor to  
 2003 provide live-scan fingerprinting ~~in lieu of a paper fingerprint~~  
 2004 ~~card.~~

2005 3. A state criminal history background check must be  
 2006 conducted through the Department of Law Enforcement, and a  
 2007 federal criminal history background check must be conducted  
 2008 through the Federal Bureau of Investigation.

2009 4. All fingerprints submitted to the Department of Law  
 2010 Enforcement must be submitted electronically and entered into  
 2011 the statewide automated biometric ~~fingerprint~~ identification  
 2012 system established in s. 943.05(2)(b) and available for use in  
 2013 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
 2014 annual fee to the department to participate in the system and  
 2015 inform the department of any person whose fingerprints are no  
 2016 longer required to be retained.

2017 5. The costs of fingerprint processing, including the cost  
 2018 of retaining the fingerprints, shall be borne by the person  
 2019 subject to the background check.

2020 6. The office is responsible for reviewing the results of  
 2021 the state and federal criminal history checks and determining  
 2022 whether the applicant meets licensure requirements.

2023 Section 46. Paragraph (d) of subsection (2) of section  
 2024 494.00321, Florida Statutes, is amended to read:

2025 494.00321 Mortgage broker license.—

2026 (2) In order to apply for a mortgage broker license, an  
 2027 applicant must:

2028 (d) Submit fingerprints for each of the applicant's  
 2029 control persons in accordance with rules adopted by the  
 2030 commission:

2031 1. The fingerprints may be submitted to the registry, the  
 2032 office, or a vendor acting on behalf of the registry or the  
 2033 office.

2034 2. The office may contract with a third-party vendor to  
 2035 provide live-scan fingerprinting ~~in lieu of a paper fingerprint~~  
 2036 ~~card.~~

2037 3. A state criminal history background check must be  
 2038 conducted through the Department of Law Enforcement, and a  
 2039 federal criminal history background check must be conducted  
 2040 through the Federal Bureau of Investigation.

2041 4. All fingerprints submitted to the Department of Law  
 2042 Enforcement must be submitted electronically and entered into  
 2043 the statewide automated biometric fingerprint identification  
 2044 system established in s. 943.05(2)(b) and available for use in

2045 | accordance with s. 943.05(2)(g) and (h). The office shall pay an  
 2046 | annual fee to the department to participate in the system and  
 2047 | inform the department of any person whose fingerprints are no  
 2048 | longer required to be retained.

2049 |         5. The costs of fingerprint processing, including the cost  
 2050 | of retaining the fingerprints, shall be borne by the person  
 2051 | subject to the background check.

2052 |         6. The office is responsible for reviewing the results of  
 2053 | the state and federal criminal history checks and determining  
 2054 | whether the applicant meets licensure requirements.

2055 |         Section 47. Paragraph (d) of subsection (2) of section  
 2056 | 494.00611, Florida Statutes, is amended to read:

2057 |             494.00611 Mortgage lender license.—

2058 |             (2) In order to apply for a mortgage lender license, an  
 2059 | applicant must:

2060 |             (d) Submit fingerprints for each of the applicant's  
 2061 | control persons in accordance with rules adopted by the  
 2062 | commission:

2063 |             1. The fingerprints may be submitted to the registry, the  
 2064 | office, or a vendor acting on behalf of the registry or the  
 2065 | office.

2066 |             2. The office may contract with a third-party vendor to  
 2067 | provide live-scan fingerprinting ~~in lieu of a paper fingerprint~~  
 2068 | ~~card.~~

2069 |             3. A state criminal history background check must be  
 2070 | conducted through the Department of Law Enforcement, and a  
 2071 | federal criminal history background check must be conducted  
 2072 | through the Federal Bureau of Investigation.

2073 4. All fingerprints submitted to the Department of Law  
 2074 Enforcement must be submitted electronically and entered into  
 2075 the statewide automated biometric ~~finger~~print identification  
 2076 system established in s. 943.05(2)(b) and available for use in  
 2077 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
 2078 annual fee to the department to participate in the system and  
 2079 inform the department of any person whose fingerprints are no  
 2080 longer required to be retained.

2081 5. The costs of fingerprint processing, including the cost  
 2082 of retaining the fingerprints, shall be borne by the person  
 2083 subject to the background check.

2084 6. The office is responsible for reviewing the results of  
 2085 the state and federal criminal history checks and determining  
 2086 whether the applicant meets licensure requirements.

2087 Section 48. Subsections (7) and (10) of section 517.12,  
 2088 Florida Statutes, are amended to read:

2089 517.12 Registration of dealers, associated persons,  
 2090 investment advisers, and branch offices.—

2091 (7) The application shall also contain such information as  
 2092 the commission or office may require about the applicant; any  
 2093 member, principal, or director of the applicant or any person  
 2094 having a similar status or performing similar functions; any  
 2095 person directly or indirectly controlling the applicant; or any  
 2096 employee of a dealer or of an investment adviser rendering  
 2097 investment advisory services. Each applicant and any direct  
 2098 owners, principals, or indirect owners that are required to be  
 2099 reported on Form BD or Form ADV pursuant to subsection (15)  
 2100 shall file a complete set of fingerprints. Fingerprints A

2101 | ~~fingerprint card~~ submitted to the office must be taken by an  
 2102 | authorized law enforcement agency or in a manner approved by the  
 2103 | commission by rule. The office shall submit the fingerprints to  
 2104 | the Department of Law Enforcement for state processing, and the  
 2105 | Department of Law Enforcement shall forward the fingerprints to  
 2106 | the Federal Bureau of Investigation for federal processing. The  
 2107 | cost of the fingerprint processing may be borne by the office,  
 2108 | the employer, or the person subject to the background check. The  
 2109 | Department of Law Enforcement shall submit an invoice to the  
 2110 | office for the fingerprints received each month. The office  
 2111 | shall screen the background results to determine whether ~~if~~ the  
 2112 | applicant meets licensure requirements. The commission may  
 2113 | waive, by rule, the requirement that applicants, including any  
 2114 | direct owners, principals, or indirect owners that are required  
 2115 | to be reported on Form BD or Form ADV pursuant to subsection  
 2116 | (15), file a set of fingerprints or the requirement that such  
 2117 | fingerprints be processed by the Department of Law Enforcement  
 2118 | or the Federal Bureau of Investigation. The commission or office  
 2119 | may require information about any such applicant or person  
 2120 | concerning such matters as:

2121 |       (a) His or her full name, and any other names by which he  
 2122 | or she may have been known, and his or her age, social security  
 2123 | number, photograph, qualifications, and educational and business  
 2124 | history.

2125 |       (b) Any injunction or administrative order by a state or  
 2126 | federal agency, national securities exchange, or national  
 2127 | securities association involving a security or any aspect of the  
 2128 | securities business and any injunction or administrative order

2129 by a state or federal agency regulating banking, insurance,  
 2130 finance, or small loan companies, real estate, mortgage brokers,  
 2131 or other related or similar industries, which injunctions or  
 2132 administrative orders relate to such person.

2133 (c) His or her conviction of, or plea of nolo contendere  
 2134 to, a criminal offense or his or her commission of any acts  
 2135 which would be grounds for refusal of an application under s.  
 2136 517.161.

2137 (d) The names and addresses of other persons of whom the  
 2138 office may inquire as to his or her character, reputation, and  
 2139 financial responsibility.

2140 (10) An applicant for registration shall pay an assessment  
 2141 fee of \$200, in the case of a dealer or investment adviser, or  
 2142 \$50, in the case of an associated person. An associated person  
 2143 may be assessed an additional fee to cover the cost for the  
 2144 fingerprints ~~fingerprint cards~~ to be processed by the office.  
 2145 Such fee shall be determined by rule of the commission. Each  
 2146 dealer and each investment adviser shall pay an assessment fee  
 2147 of \$100 for each office in this state. Such fees become the  
 2148 revenue of the state, except for those assessments provided for  
 2149 under s. 517.131(1) until such time as the Securities Guaranty  
 2150 Fund satisfies the statutory limits, and are not returnable in  
 2151 the event that registration is withdrawn or not granted.

2152 Section 49. Subsection (2) of section 538.09, Florida  
 2153 Statutes, is amended to read:

2154 538.09 Registration.—

2155 (2) The secondhand dealer shall furnish with her or his  
 2156 registration a complete set of her or his fingerprints,



2157 certified by an authorized law enforcement officer, and a recent  
 2158 fullface photographic identification card of herself or himself.  
 2159 The Department of Law Enforcement shall report its findings to  
 2160 the Department of Revenue within 30 days after the date the  
 2161 fingerprints ~~fingerprint cards~~ are submitted for criminal  
 2162 justice information.

2163 Section 50. Paragraph (b) of subsection (1) of section  
 2164 538.25, Florida Statutes, is amended to read:

2165 538.25 Registration.—

2166 (1) A person may not engage in business as a secondary  
 2167 metals recycler at any location without registering with the  
 2168 department. The department shall accept applications only from a  
 2169 fixed business address. The department may not accept an  
 2170 application that provides an address of a hotel room or motel  
 2171 room, a vehicle, or a post office box.

2172 (b) The department shall forward the full set of  
 2173 fingerprints to the Department of Law Enforcement for state and  
 2174 federal processing, provided the federal service is available,  
 2175 to be processed for any criminal justice information as defined  
 2176 in s. 943.045. The cost of processing such fingerprints shall be  
 2177 payable to the Department of Law Enforcement by the department.  
 2178 The department may issue a temporary registration to each  
 2179 location pending completion of the background check by state and  
 2180 federal law enforcement agencies, but shall revoke such  
 2181 temporary registration if the completed background check reveals  
 2182 a prohibited criminal background. The Department of Law  
 2183 Enforcement shall report its findings to the Department of  
 2184 Revenue within 30 days after the date the fingerprints

CS/HB 585

2013

2185 ~~fingerprint cards~~ are submitted for criminal justice  
 2186 information.

2187 Section 51. Subsection (2) of section 548.024, Florida  
 2188 Statutes, is amended to read:

2189 548.024 Background investigation of applicants for  
 2190 licensure.—

2191 (2) If the commission requires a background criminal  
 2192 history investigation of any applicant, it shall require the  
 2193 applicant to submit to the department fingerprints ~~a fingerprint~~  
 2194 ~~card~~ for this purpose. The fingerprints ~~fingerprint card~~ shall  
 2195 be forwarded to the Division of Criminal Justice Information  
 2196 Systems within the Department of Law Enforcement and the Federal  
 2197 Bureau of Investigation for ~~purposes of processing the~~  
 2198 ~~fingerprint card~~ to determine whether if the applicant has a  
 2199 criminal history record. The information obtained by the  
 2200 processing of the fingerprints ~~fingerprint card~~ by the  
 2201 Department of Law Enforcement and the Federal Bureau of  
 2202 Investigation shall be sent to the department to determine  
 2203 whether ~~for the purpose of determining if~~ the applicant is  
 2204 statutorily qualified for licensure.

2205 Section 52. Paragraphs (b) and (c) of subsection (10) of  
 2206 section 550.105, Florida Statutes, are amended to read:

2207 550.105 Occupational licenses of racetrack employees;  
 2208 fees; denial, suspension, and revocation of license; penalties  
 2209 and fines.—

2210 (10)

2211 (b) All fingerprints required by this section that are  
 2212 submitted to the Department of Law Enforcement shall be retained

2213 | by the Department of Law Enforcement and entered into the  
 2214 | statewide automated biometric ~~fingerpr~~nt identification system  
 2215 | as authorized by s. 943.05(2)(b) and shall be available for all  
 2216 | purposes and uses authorized for arrest fingerprints ~~fingerpr~~nt  
 2217 | ~~cards~~ entered into the statewide automated biometric ~~fingerpr~~nt  
 2218 | identification system pursuant to s. 943.051.

2219 |       (c) The Department of Law Enforcement shall search all  
 2220 | arrest fingerprints received pursuant to s. 943.051 against the  
 2221 | fingerprints retained in the statewide automated biometric  
 2222 | ~~fingerpr~~nt identification system under paragraph (b). Any  
 2223 | arrest record that is identified with the retained fingerprints  
 2224 | of a person subject to the criminal history screening  
 2225 | requirements of this section shall be reported to the division.  
 2226 | Each licensee shall pay a fee to the division for the cost of  
 2227 | retention of the fingerprints and the ongoing searches under  
 2228 | this paragraph. The division shall forward the payment to the  
 2229 | Department of Law Enforcement. The amount of the fee to be  
 2230 | imposed for performing these searches and the procedures for the  
 2231 | retention of licensee fingerprints shall be as established by  
 2232 | rule of the Department of Law Enforcement. The division shall  
 2233 | inform the Department of Law Enforcement of any change in the  
 2234 | license status of licensees whose fingerprints are retained  
 2235 | under paragraph (b).

2236 |       Section 53. Subsection (2) of section 550.908, Florida  
 2237 | Statutes, is amended to read:

2238 |       550.908 Powers and duties of compact committee.—In order  
 2239 | to carry out the purposes of this compact, the compact committee  
 2240 | has the power and duty to:

2241 (2) Investigate applicants for licensure by the compact  
 2242 committee and, as permitted by federal and state law, gather  
 2243 information on such applicants, including criminal history  
 2244 record information from the Federal Bureau of Investigation and  
 2245 relevant state and local law enforcement agencies, and, where  
 2246 appropriate, from the Royal Canadian Mounted Police and law  
 2247 enforcement agencies of other countries, which is necessary to  
 2248 determine whether a license should be issued under the licensure  
 2249 requirements established by the committee under subsection (1).  
 2250 The fingerprints of each applicant for licensure by the compact  
 2251 committee shall be taken by the compact committee, its  
 2252 employees, or its designee, and, pursuant to Pub. L. No. 92-544  
 2253 or Pub. L. No. 100-413, shall be forwarded to a state  
 2254 identification bureau or to the Association of Racing  
 2255 Commissioners International, Inc., for submission to the Federal  
 2256 Bureau of Investigation for a criminal history record check.  
 2257 Such fingerprints may be submitted ~~on a fingerprint card or~~ by  
 2258 electronic or other means authorized by the Federal Bureau of  
 2259 Investigation or other receiving law enforcement agency.

2260 Section 54. Paragraphs (c) and (d) of subsection (7) of  
 2261 section 551.107, Florida Statutes, are amended to read:

2262 551.107 Slot machine occupational license; findings;  
 2263 application; fee.—

2264 (7) Fingerprints for all slot machine occupational license  
 2265 applications shall be taken in a manner approved by the division  
 2266 and shall be submitted electronically to the Department of Law  
 2267 Enforcement for state processing and the Federal Bureau of  
 2268 Investigation for national processing for a criminal history

2269 record check. All persons as specified in s. 550.1815(1)(a)  
 2270 employed by or working within a licensed premises shall submit  
 2271 fingerprints for a criminal history record check and may not  
 2272 have been convicted of any disqualifying criminal offenses  
 2273 specified in subsection (6). Division employees and law  
 2274 enforcement officers assigned by their employing agencies to  
 2275 work within the premises as part of their official duties are  
 2276 excluded from the criminal history record check requirements  
 2277 under this subsection. For purposes of this subsection, the term  
 2278 "convicted" means having been found guilty, with or without  
 2279 adjudication of guilt, as a result of a jury verdict, nonjury  
 2280 trial, or entry of a plea of guilty or nolo contendere.

2281 (c) All fingerprints submitted to the Department of Law  
 2282 Enforcement and required by this section shall be retained by  
 2283 the Department of Law Enforcement and entered into the statewide  
 2284 automated biometric fingerprint identification system as  
 2285 authorized by s. 943.05(2)(b) and shall be available for all  
 2286 purposes and uses authorized for arrest fingerprints ~~fingerprint~~  
 2287 ~~cards~~ entered into the statewide automated biometric fingerprint  
 2288 identification system pursuant to s. 943.051.

2289 (d) The Department of Law Enforcement shall search all  
 2290 arrest fingerprints received pursuant to s. 943.051 against the  
 2291 fingerprints retained in the statewide automated biometric  
 2292 ~~fingerprint~~ identification system under paragraph (c). Any  
 2293 arrest record that is identified with the retained fingerprints  
 2294 of a person subject to the criminal history screening  
 2295 requirements of this section shall be reported to the division.  
 2296 Each licensed facility shall pay a fee to the division for the

2297 cost of retention of the fingerprints and the ongoing searches  
 2298 under this paragraph. The division shall forward the payment to  
 2299 the Department of Law Enforcement. The amount of the fee to be  
 2300 imposed for performing these searches and the procedures for the  
 2301 retention of licensee fingerprints shall be as established by  
 2302 rule of the Department of Law Enforcement. The division shall  
 2303 inform the Department of Law Enforcement of any change in the  
 2304 license status of licensees whose fingerprints are retained  
 2305 under paragraph (c).

2306 Section 55. Paragraph (b) of subsection (1) of section  
 2307 560.141, Florida Statutes, is amended to read:

2308 560.141 License application.—

2309 (1) To apply for a license as a money services business  
 2310 under this chapter the applicant must:

2311 (b) In addition to the application form, submit:

2312 1. A nonrefundable application fee as provided in s.  
 2313 560.143.

2314 2. A set of fingerprints ~~fingerp~~~~rint~~ ~~card~~ for each of the  
 2315 persons listed in subparagraph (a)3. unless the applicant is a  
 2316 publicly traded corporation, or is exempted from this chapter  
 2317 under s. 560.104(1). The fingerprints must be taken by an  
 2318 authorized law enforcement agency. The office shall submit the  
 2319 fingerprints to the Department of Law Enforcement for state  
 2320 processing, and the Department of Law Enforcement shall forward  
 2321 the fingerprints to the Federal Bureau of Investigation for  
 2322 federal processing. The cost of the fingerprint processing may  
 2323 be borne by the office, the employer, or the person subject to  
 2324 the criminal records background check. The office shall screen

2325 the background results to determine whether ~~if~~ the applicant  
 2326 meets licensure requirements. As used in this section, the term  
 2327 "publicly traded" means a stock is currently traded on a  
 2328 national securities exchange registered with the federal  
 2329 Securities and Exchange Commission or traded on an exchange in a  
 2330 country other than the United States regulated by a regulator  
 2331 equivalent to the Securities and Exchange Commission and the  
 2332 disclosure and reporting requirements of such regulator are  
 2333 substantially similar to those of the commission.

2334 3. A copy of the applicant's written anti-money laundering  
 2335 program required under 31 C.F.R. s. 103.125.

2336 4. Within the time allotted by rule, any information  
 2337 needed to resolve any deficiencies found in the application.

2338 Section 56. Subsection (1) of section 628.906, Florida  
 2339 Statutes, is amended to read:

2340 628.906 Application requirements; restrictions on  
 2341 eligibility of officers and directors.—

2342 (1) To evidence competence and trustworthiness of its  
 2343 officers and directors, the application for a license to act as  
 2344 a captive insurance company or captive reinsurance company shall  
 2345 include, but not be limited to, background investigations,  
 2346 biographical affidavits, and fingerprints ~~fingerprints~~ ~~cards~~ for  
 2347 all officers and directors. Fingerprints must be taken by a law  
 2348 enforcement agency or other entity approved by the office, be  
 2349 accompanied by the fingerprint processing fee specified in s.  
 2350 624.501, and processed in accordance with s. 624.34.

2351 Section 57. Subsection (3) of section 633.34, Florida  
 2352 Statutes, is amended to read:

CS/HB 585

2013

2353 633.34 Firefighters; qualifications for employment.—Any  
 2354 person applying for employment as a firefighter must:

2355 (3) Submit a set of fingerprints ~~fingerpr~~~~int card~~ to the  
 2356 division with a current processing fee. The fingerprints  
 2357 ~~fingerpr~~~~int card~~ will be forwarded to the Department of Law  
 2358 Enforcement and/or the Federal Bureau of Investigation.

2359 Section 58. Subsections (2) and (3) and paragraphs (b) and  
 2360 (c) of subsection (4) of section 744.3135, Florida Statutes, are  
 2361 amended to read:

2362 744.3135 Credit and criminal investigation.—

2363 (2) For nonprofessional guardians, the court shall accept  
 2364 the satisfactory completion of a criminal history record check  
 2365 as described in this subsection. A nonprofessional guardian  
 2366 satisfies the requirements of this section by undergoing a state  
 2367 and national criminal history record check using fingerprints ~~a~~  
 2368 ~~fingerpr~~~~int card~~. ~~The clerk of the court shall obtain~~  
 2369 ~~fingerpr~~~~int cards from the Federal Bureau of Investigation and~~  
 2370 ~~make them available to nonprofessional guardians.~~ Any  
 2371 nonprofessional guardian who is so required shall have his or  
 2372 her fingerprints taken and forward them ~~the completed~~  
 2373 ~~fingerpr~~~~int card~~ along with the necessary fee to the Department  
 2374 of Law Enforcement for processing. The results of the  
 2375 fingerprint ~~card~~ criminal history record check shall be  
 2376 forwarded to the clerk of the court, who shall maintain the  
 2377 results in the nonprofessional guardian's file and make the  
 2378 results available to the court.

2379 (3) For professional guardians, the court and the  
 2380 Statewide Public Guardianship Office shall accept the



2381 | satisfactory completion of a criminal history record check by  
 2382 | any method described in this subsection. A professional guardian  
 2383 | satisfies the requirements of this section by undergoing+  
 2384 |        ~~(a)~~ an electronic fingerprint criminal history record  
 2385 | check. A professional guardian may use any electronic  
 2386 | fingerprinting equipment used for criminal history record  
 2387 | checks. The Statewide Public Guardianship Office shall adopt a  
 2388 | rule detailing the acceptable methods for completing an  
 2389 | electronic fingerprint criminal history record check under this  
 2390 | section. The professional guardian shall pay the actual costs  
 2391 | incurred by the Federal Bureau of Investigation and the  
 2392 | Department of Law Enforcement for the criminal history record  
 2393 | check. The entity completing the record check must immediately  
 2394 | send the results of the criminal history record check to the  
 2395 | clerk of the court and the Statewide Public Guardianship Office.  
 2396 | The clerk of the court shall maintain the results in the  
 2397 | professional guardian's file and shall make the results  
 2398 | available to the court, ~~or~~

2399 |        ~~(b) A criminal history record check using a fingerprint~~  
 2400 | ~~card. The clerk of the court shall obtain fingerprint cards from~~  
 2401 | ~~the Federal Bureau of Investigation and make them available to~~  
 2402 | ~~guardians. Any guardian who is so required shall have his or her~~  
 2403 | ~~fingerprints taken and forward the proper fingerprint card along~~  
 2404 | ~~with the necessary fee to the Department of Law Enforcement for~~  
 2405 | ~~processing. The results of the fingerprint card criminal history~~  
 2406 | ~~record checks shall be forwarded to the clerk of the court, who~~  
 2407 | ~~shall maintain the results in the guardian's file and make the~~  
 2408 | ~~results available to the court and the Statewide Public~~

2409 ~~Guardianship Office.~~

2410 (4)

2411 (b) All fingerprints electronically submitted to the  
 2412 Department of Law Enforcement under this section shall be  
 2413 retained by the Department of Law Enforcement in a manner  
 2414 provided by rule and entered in the statewide automated  
 2415 biometric fingerprint identification system authorized by s.  
 2416 943.05(2)(b). The fingerprints shall thereafter be available for  
 2417 all purposes and uses authorized for arrest fingerprints  
 2418 ~~fingerprint cards~~ entered in the Criminal Justice Information  
 2419 Program under s. 943.051.

2420 (c) The Department of Law Enforcement shall search all  
 2421 arrest fingerprints ~~fingerprint cards~~ received under s. 943.051  
 2422 against the fingerprints retained in the statewide automated  
 2423 biometric fingerprint identification system under paragraph (b).  
 2424 Any arrest record that is identified with the fingerprints of a  
 2425 person described in this paragraph must be reported to the clerk  
 2426 of court. The clerk of court must forward any arrest record  
 2427 received for a professional guardian to the Statewide Public  
 2428 Guardianship Office within 5 days. Each professional guardian  
 2429 who elects to submit fingerprint information electronically  
 2430 shall participate in this search process by paying an annual fee  
 2431 to the Statewide Public Guardianship Office of the Department of  
 2432 Elderly Affairs and by informing the clerk of court and the  
 2433 Statewide Public Guardianship Office of any change in the status  
 2434 of his or her guardianship appointment. The amount of the annual  
 2435 fee to be imposed for performing these searches and the  
 2436 procedures for the retention of professional guardian

CS/HB 585

2013

2437 fingerprints and the dissemination of search results shall be  
 2438 established by rule of the Department of Law Enforcement. At  
 2439 least once every 5 years, the Statewide Public Guardianship  
 2440 Office must request that the Department of Law Enforcement  
 2441 forward the fingerprints maintained under this section to the  
 2442 Federal Bureau of Investigation.

2443 Section 59. Paragraph (b) of subsection (5) of section  
 2444 775.21, Florida Statutes, is amended to read:

2445 775.21 The Florida Sexual Predators Act.—

2446 (5) SEXUAL PREDATOR DESIGNATION.—An offender is designated  
 2447 as a sexual predator as follows:

2448 (b) If a sexual predator is not sentenced to a term of  
 2449 imprisonment, the clerk of the court shall ensure that the  
 2450 sexual predator's fingerprints are taken and forwarded to the  
 2451 department within 48 hours after the court renders its written  
 2452 sexual predator finding. The fingerprints ~~fingerprint card~~ shall  
 2453 be clearly marked, "Sexual Predator Registration ~~Card~~." The  
 2454 clerk of the court that convicts and sentences the sexual  
 2455 predator for the offense or offenses described in subsection (4)  
 2456 shall forward to the department and to the Department of  
 2457 Corrections a certified copy of any order entered by the court  
 2458 imposing any special condition or restriction on the sexual  
 2459 predator that ~~which~~ restricts or prohibits access to the victim,  
 2460 if the victim is a minor, or to other minors.

2461 Section 60. Paragraph (d) of subsection (3) of section  
 2462 775.261, Florida Statutes, is amended to read:

2463 775.261 The Florida Career Offender Registration Act.—

2464 (3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—

2465 (d) If a career offender is not sentenced to a term of  
 2466 imprisonment, the clerk of the court shall ensure that the  
 2467 career offender's fingerprints are taken and forwarded to the  
 2468 department within 48 hours after the court renders its finding  
 2469 that an offender is a career offender. The fingerprints  
 2470 ~~fingerprint card~~ shall be clearly marked, "Career Offender  
 2471 Registration ~~Card~~."

2472 Section 61. Paragraph (a) of subsection (11) of section  
 2473 790.06, Florida Statutes, is amended to read:

2474 790.06 License to carry concealed weapon or firearm.—

2475 (11)(a) No less than 90 days before the expiration date of  
 2476 the license, the Department of Agriculture and Consumer Services  
 2477 shall mail to each licensee a written notice of the expiration  
 2478 and a renewal form prescribed by the Department of Agriculture  
 2479 and Consumer Services. The licensee must renew his or her  
 2480 license on or before the expiration date by filing with the  
 2481 Department of Agriculture and Consumer Services the renewal form  
 2482 containing a notarized affidavit stating that the licensee  
 2483 remains qualified pursuant to the criteria specified in  
 2484 subsections (2) and (3), a color photograph as specified in  
 2485 paragraph (5)(e), and the required renewal fee. Out-of-state  
 2486 residents must also submit a complete set of fingerprints  
 2487 ~~completed fingerprint card~~ and fingerprint processing fee. The  
 2488 license shall be renewed upon receipt of the completed renewal  
 2489 form, color photograph, appropriate payment of fees, and, if  
 2490 applicable, fingerprints ~~a completed fingerprint card~~.  
 2491 Additionally, a licensee who fails to file a renewal application  
 2492 on or before its expiration date must renew his or her license

2493 | by paying a late fee of \$15. A license may not be renewed 180  
 2494 | days or more after its expiration date, and such a license is  
 2495 | deemed to be permanently expired. A person whose license has  
 2496 | been permanently expired may reapply for licensure; however, an  
 2497 | application for licensure and fees under subsection (5) must be  
 2498 | submitted, and a background investigation shall be conducted  
 2499 | pursuant to this section. A person who knowingly files false  
 2500 | information under this subsection is subject to criminal  
 2501 | prosecution under s. 837.06.

2502 |         Section 62. Subsection (3) of section 944.607, Florida  
 2503 | Statutes, is amended to read:

2504 |             944.607 Notification to Department of Law Enforcement of  
 2505 | information on sexual offenders.—

2506 |             (3) If a sexual offender is not sentenced to a term of  
 2507 | imprisonment, the clerk of the court shall ensure that the  
 2508 | sexual offender's fingerprints are taken and forwarded to the  
 2509 | Department of Law Enforcement within 48 hours after the court  
 2510 | sentences the offender. The fingerprints ~~fingerprint card~~ shall  
 2511 | be clearly marked "Sexual Offender Registration ~~Card~~."

2512 |         Section 63. Subsection (2) of section 944.608, Florida  
 2513 | Statutes, is amended to read:

2514 |             944.608 Notification to Department of Law Enforcement of  
 2515 | information on career offenders.—

2516 |             (2) If a career offender is not sentenced to a term of  
 2517 | imprisonment, the clerk of the court shall ensure that the  
 2518 | career offender's fingerprints are taken and forwarded to the  
 2519 | Department of Law Enforcement within 48 hours after the court  
 2520 | sentences the career offender. The fingerprints ~~fingerprint card~~

CS/HB 585

2013

2521 shall be clearly marked "Career Offender Registration ~~Card.~~"  
 2522 Section 64. Paragraph (b) of subsection (1) of section  
 2523 985.11, Florida Statutes, is amended to read:  
 2524 985.11 Fingerprinting and photographing.-  
 2525 (1)  
 2526 (b) A child who is charged with or found to have committed  
 2527 one of the following offenses shall be fingerprinted, and the  
 2528 fingerprints shall be submitted to the Department of Law  
 2529 Enforcement as provided in s. 943.051(3)(b):  
 2530 1. Assault, as defined in s. 784.011.  
 2531 2. Battery, as defined in s. 784.03.  
 2532 3. Carrying a concealed weapon, as defined in s.  
 2533 790.01(1).  
 2534 4. Unlawful use of destructive devices or bombs, as  
 2535 defined in s. 790.1615(1).  
 2536 5. Neglect ~~Negligent treatment~~ of a child ~~children~~, as  
 2537 defined in s. 827.03(1)(e) ~~former s. 827.05~~.  
 2538 6. Assault on a law enforcement officer, a firefighter, or  
 2539 other specified officers, as defined in s. 784.07(2)(a).  
 2540 7. Open carrying of a weapon, as defined in s. 790.053.  
 2541 8. Exposure of sexual organs, as defined in s. 800.03.  
 2542 9. Unlawful possession of a firearm, as defined in s.  
 2543 790.22(5).  
 2544 10. Petit theft, as defined in s. 812.014.  
 2545 11. Cruelty to animals, as defined in s. 828.12(1).  
 2546 12. Arson, resulting in bodily harm to a firefighter, as  
 2547 defined in s. 806.031(1).  
 2548 13. Unlawful possession or discharge of a weapon or

2549 | firearm at a school-sponsored event or on school property as  
 2550 | defined in s. 790.115.

2551

2552 | A law enforcement agency may fingerprint and photograph a child  
 2553 | taken into custody upon probable cause that such child has  
 2554 | committed any other violation of law, as the agency deems  
 2555 | appropriate. Such fingerprint records and photographs shall be  
 2556 | retained by the law enforcement agency in a separate file, and  
 2557 | these records and all copies thereof must be marked "Juvenile  
 2558 | Confidential." These records are not available for public  
 2559 | disclosure and inspection under s. 119.07(1) except as provided  
 2560 | in ss. 943.053 and 985.04(2), but shall be available to other  
 2561 | law enforcement agencies, criminal justice agencies, state  
 2562 | attorneys, the courts, the child, the parents or legal  
 2563 | custodians of the child, their attorneys, and any other person  
 2564 | authorized by the court to have access to such records. In  
 2565 | addition, such records may be submitted to the Department of Law  
 2566 | Enforcement for inclusion in the state criminal history records  
 2567 | and used by criminal justice agencies for criminal justice  
 2568 | purposes. These records may, in the discretion of the court, be  
 2569 | open to inspection by anyone upon a showing of cause. The  
 2570 | fingerprint and photograph records shall be produced in the  
 2571 | court whenever directed by the court. Any photograph taken  
 2572 | pursuant to this section may be shown by a law enforcement  
 2573 | officer to any victim or witness of a crime for the purpose of  
 2574 | identifying the person who committed such crime.

2575 |       Section 65. Paragraphs (c) and (e) of subsection (3) of  
 2576 | section 985.644, Florida Statutes, are amended to read:

2577 985.644 Departmental contracting powers; personnel  
 2578 standards and screening.—  
 2579 (3)  
 2580 (c) All fingerprint information electronically submitted  
 2581 to the Department of Law Enforcement under paragraph (b) shall  
 2582 be retained by the Department of Law Enforcement and entered  
 2583 into the statewide automated biometric fingerprint  
 2584 identification system authorized by s. 943.05(2)(b). Thereafter,  
 2585 such fingerprint information shall be available for all purposes  
 2586 and uses authorized for arrest fingerprint information entered  
 2587 into the statewide automated biometric fingerprint  
 2588 identification system pursuant to s. 943.051 until the  
 2589 fingerprint information is removed pursuant to paragraph (e).  
 2590 The Department of Law Enforcement shall search all arrest  
 2591 fingerprint information received pursuant to s. 943.051 against  
 2592 the fingerprint information entered into the statewide automated  
 2593 biometric identification fingerprint system pursuant to this  
 2594 subsection. Any arrest records identified as a result of the  
 2595 search shall be reported to the department in the manner and  
 2596 timeframe established by the Department of Law Enforcement by  
 2597 rule.  
 2598 (e) The department shall notify the Department of Law  
 2599 Enforcement when a person whose fingerprint information is  
 2600 retained by the Department of Law Enforcement under this  
 2601 subsection is no longer employed by the department, or by a  
 2602 provider under contract with the department, in a delinquency  
 2603 facility, service, or program. This notice shall be provided by  
 2604 the department to the Department of Law Enforcement within 6



CS/HB 585

2013

2605 months after the date of the change in the person's employment  
 2606 status. Fingerprint information for persons identified by the  
 2607 department in the notice shall be removed from the statewide  
 2608 automated biometric identification ~~fingerprint~~ system.

2609 Section 66. Subsection (3) of section 985.4815, Florida  
 2610 Statutes, is amended to read:

2611 985.4815 Notification to Department of Law Enforcement of  
 2612 information on juvenile sexual offenders.—

2613 (3) If a sexual offender is not sentenced to a term of  
 2614 residential commitment, the clerk of the court shall ensure that  
 2615 the sexual offender's fingerprints are taken and forwarded to  
 2616 the Department of Law Enforcement within 48 hours after the  
 2617 court sentences the offender. The fingerprints ~~fingerprint card~~  
 2618 shall be clearly marked "Sexual Offender Registration ~~Card~~."

2619 Section 67. Paragraph (b) of subsection (6) of section  
 2620 1002.395, Florida Statutes, is amended to read:

2621 1002.395 Florida Tax Credit Scholarship Program.—

2622 (6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING  
 2623 ORGANIZATIONS.—An eligible nonprofit scholarship-funding  
 2624 organization:

2625 (b) Must comply with the following background check  
 2626 requirements:

2627 1. All owners and operators as defined in subparagraph  
 2628 (2) (h) 1. are, upon employment or engagement to provide services,  
 2629 subject to level 2 background screening as provided under  
 2630 chapter 435. The fingerprints for the background screening must  
 2631 be electronically submitted to the Department of Law Enforcement  
 2632 and can be taken by an authorized law enforcement agency or by

2633 | an employee of the eligible nonprofit scholarship-funding  
 2634 | organization or a private company who is trained to take  
 2635 | fingerprints. However, the complete set of fingerprints of an  
 2636 | owner or operator may not be taken by the owner or operator. The  
 2637 | results of the state and national criminal history check shall  
 2638 | be provided to the Department of Education for screening under  
 2639 | chapter 435. The cost of the background screening may be borne  
 2640 | by the eligible nonprofit scholarship-funding organization or  
 2641 | the owner or operator.

2642 |         2. Every 5 years following employment or engagement to  
 2643 | provide services or association with an eligible nonprofit  
 2644 | scholarship-funding organization, each owner or operator must  
 2645 | meet level 2 screening standards as described in s. 435.04, at  
 2646 | which time the nonprofit scholarship-funding organization shall  
 2647 | request the Department of Law Enforcement to forward the  
 2648 | fingerprints to the Federal Bureau of Investigation for level 2  
 2649 | screening. If the fingerprints of an owner or operator are not  
 2650 | retained by the Department of Law Enforcement under subparagraph  
 2651 | 3., the owner or operator must electronically file a complete  
 2652 | set of fingerprints with the Department of Law Enforcement. Upon  
 2653 | submission of fingerprints for this purpose, the eligible  
 2654 | nonprofit scholarship-funding organization shall request that  
 2655 | the Department of Law Enforcement forward the fingerprints to  
 2656 | the Federal Bureau of Investigation for level 2 screening, and  
 2657 | the fingerprints shall be retained by the Department of Law  
 2658 | Enforcement under subparagraph 3.

2659 |         3. ~~Beginning July 1, 2007,~~ All fingerprints submitted to  
 2660 | the Department of Law Enforcement as required by this paragraph

2661 must be retained by the Department of Law Enforcement in a  
 2662 manner approved by rule and entered in the statewide automated  
 2663 biometric fingerprint identification system authorized by s.  
 2664 943.05(2)(b). The fingerprints must thereafter be available for  
 2665 all purposes and uses authorized for arrest fingerprints  
 2666 ~~fingerprint cards~~ entered in the statewide automated biometric  
 2667 ~~fingerprint~~ identification system pursuant to s. 943.051.

2668 4. ~~Beginning July 1, 2007,~~ The Department of Law  
 2669 Enforcement shall search all arrest fingerprints ~~fingerprint~~  
 2670 ~~cards~~ received under s. 943.051 against the fingerprints  
 2671 retained in the statewide automated biometric fingerprint  
 2672 identification system under subparagraph 3. Any arrest record  
 2673 that is identified with an owner's or operator's fingerprints  
 2674 must be reported to the Department of Education. The Department  
 2675 of Education shall participate in this search process by paying  
 2676 an annual fee to the Department of Law Enforcement and by  
 2677 informing the Department of Law Enforcement of any change in the  
 2678 employment, engagement, or association status of the owners or  
 2679 operators whose fingerprints are retained under subparagraph 3.  
 2680 The Department of Law Enforcement shall adopt a rule setting the  
 2681 amount of the annual fee to be imposed upon the Department of  
 2682 Education for performing these services and establishing the  
 2683 procedures for the retention of owner and operator fingerprints  
 2684 and the dissemination of search results. The fee may be borne by  
 2685 the owner or operator of the nonprofit scholarship-funding  
 2686 organization.

2687 5. A nonprofit scholarship-funding organization whose  
 2688 owner or operator fails the level 2 background screening shall

2689 not be eligible to provide scholarships under this section.

2690 6. A nonprofit scholarship-funding organization whose  
 2691 owner or operator in the last 7 years has filed for personal  
 2692 bankruptcy or corporate bankruptcy in a corporation of which he  
 2693 or she owned more than 20 percent shall not be eligible to  
 2694 provide scholarships under this section.

2695  
 2696 Any and all information and documentation provided to the  
 2697 Department of Education and the Auditor General relating to the  
 2698 identity of a taxpayer that provides an eligible contribution  
 2699 under this section shall remain confidential at all times in  
 2700 accordance with s. 213.053.

2701 Section 68. Paragraphs (a) and (b) of subsection (3) of  
 2702 section 1002.421, Florida Statutes, are amended to read:

2703 1002.421 Accountability of private schools participating  
 2704 in state school choice scholarship programs.—

2705 (3)(a) ~~Beginning July 1, 2007,~~ All fingerprints submitted  
 2706 to the Department of Law Enforcement as required by this section  
 2707 shall be retained by the Department of Law Enforcement in a  
 2708 manner provided by rule and entered in the statewide automated  
 2709 biometric fingerprint identification system authorized by s.  
 2710 943.05(2)(b). Such fingerprints shall thereafter be available  
 2711 for all purposes and uses authorized for arrest fingerprints  
 2712 ~~fingerprint cards~~ entered in the statewide automated biometric  
 2713 ~~fingerprint~~ identification system pursuant to s. 943.051.

2714 (b) ~~Beginning July 1, 2007,~~ The Department of Law  
 2715 Enforcement shall search all arrest fingerprints ~~fingerprint~~  
 2716 ~~cards~~ received under s. 943.051 against the fingerprints

2717 retained in the statewide automated biometric fingerprint  
 2718 identification system under paragraph (a). Any arrest record  
 2719 that is identified with the retained fingerprints of a person  
 2720 subject to the background screening under this section shall be  
 2721 reported to the employing school with which the person is  
 2722 affiliated. Each private school participating in a scholarship  
 2723 program is required to participate in this search process by  
 2724 informing the Department of Law Enforcement of any change in the  
 2725 employment or contractual status of its personnel whose  
 2726 fingerprints are retained under paragraph (a). The Department of  
 2727 Law Enforcement shall adopt a rule setting the amount of the  
 2728 annual fee to be imposed upon each private school for performing  
 2729 these searches and establishing the procedures for the retention  
 2730 of private school employee and contracted personnel fingerprints  
 2731 and the dissemination of search results. The fee may be borne by  
 2732 the private school or the person fingerprinted.

2733 Section 69. Paragraphs (a) and (b) of subsection (3) of  
 2734 section 1012.32, Florida Statutes, are amended to read:

2735 1012.32 Qualifications of personnel.—

2736 (3) (a) ~~Beginning July 1, 2004,~~ All fingerprints submitted  
 2737 to the Department of Law Enforcement as required by subsection  
 2738 (2) shall be retained by the Department of Law Enforcement in a  
 2739 manner provided by rule and entered in the statewide automated  
 2740 biometric fingerprint identification system authorized by s.  
 2741 943.05(2) (b). Such fingerprints shall thereafter be available  
 2742 for all purposes and uses authorized for arrest fingerprints  
 2743 ~~fingerprint cards~~ entered in the statewide automated biometric  
 2744 ~~fingerprint~~ identification system pursuant to s. 943.051.

2745 (b) ~~Beginning December 15, 2004,~~ The Department of Law  
 2746 Enforcement shall search all arrest fingerprints ~~fingerpr~~  
 2747 ~~cards~~ received under s. 943.051 against the fingerprints  
 2748 retained in the statewide automated biometric ~~fingerpr~~  
 2749 identification system under paragraph (a). Any arrest record  
 2750 that is identified with the retained fingerprints of a person  
 2751 subject to the background screening under this section shall be  
 2752 reported to the employing or contracting school district or the  
 2753 school district with which the person is affiliated. Each school  
 2754 district is required to participate in this search process by  
 2755 payment of an annual fee to the Department of Law Enforcement  
 2756 and by informing the Department of Law Enforcement of any change  
 2757 in the affiliation, employment, or contractual status or place  
 2758 of affiliation, employment, or contracting of its instructional  
 2759 and noninstructional personnel whose fingerprints are retained  
 2760 under paragraph (a). The Department of Law Enforcement shall  
 2761 adopt a rule setting the amount of the annual fee to be imposed  
 2762 upon each school district for performing these searches and  
 2763 establishing the procedures for the retention of instructional  
 2764 and noninstructional personnel fingerprints and the  
 2765 dissemination of search results. The fee may be borne by the  
 2766 district school board, the contractor, or the person  
 2767 fingerprinted.

2768 Section 70. Paragraphs (b), (c), and (e) of subsection (2)  
 2769 of section 1012.467, Florida Statutes, are amended to read:

2770 1012.467 Noninstructional contractors who are permitted  
 2771 access to school grounds when students are present; background  
 2772 screening requirements.—

2773 (2)

2774 (b) As authorized by law, the Department of Law

2775 Enforcement shall retain the fingerprints submitted by the

2776 school districts pursuant to this subsection to the Department

2777 of Law Enforcement for a criminal history background screening

2778 in a manner provided by rule and enter the fingerprints in the

2779 statewide automated biometric fingerprint identification system

2780 authorized by s. 943.05(2)(b). The fingerprints shall thereafter

2781 be available for all purposes and uses authorized for arrest

2782 fingerprints ~~fingerprints cards~~ entered into the statewide

2783 automated biometric fingerprint identification system under s.

2784 943.051.

2785 (c) As authorized by law, the Department of Law

2786 Enforcement shall search all arrest fingerprints ~~fingerprints~~

2787 ~~cards~~ received under s. 943.051 against the fingerprints

2788 retained in the statewide automated biometric fingerprint

2789 identification system under paragraph (b).

2790 (e) A fingerprint retained pursuant to this subsection

2791 shall be purged from the automated biometric fingerprint

2792 identification system 5 years following the date the fingerprint

2793 was initially submitted. The Department of Law Enforcement shall

2794 set the amount of the annual fee to be imposed upon each

2795 participating agency for performing these searches and

2796 establishing the procedures for retaining fingerprints and

2797 disseminating search results. The fee may be borne as provided

2798 by law. Fees may be waived or reduced by the executive director

2799 of the Department of Law Enforcement for good cause shown.

2800 Section 71. This act shall take effect July 1, 2013.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 611 False Reports to Law Enforcement Officers  
**SPONSOR(S):** Criminal Justice Subcommittee; Watson, C. and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 400

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	13 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee		Jones LIS	Havlicak RH

### SUMMARY ANALYSIS

Section 837.05(1), F.S., makes it a first degree misdemeanor, which is punishable by up to one year in county jail and a \$1,000 fine, for a person to knowingly give false information to a law enforcement officer concerning the alleged commission of any crime.

The bill amends s. 837.05(1), F.S., to make a second or subsequent violation a third degree felony if one of the following conditions is met:

- The information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by:
  - An audio recording or audio recording in a video of that information;
  - A written or recorded statement made by the person who gave that information; or
  - Another person who was present when that person gave that information to the officer and heard that information.
- The information the person gave to the law enforcement officer was communicated in writing.

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds. Because the bill makes second or subsequent violations of s. 837.05, F.S., a third degree felony if certain conditions are met, (currently a misdemeanor) it may have an insignificant positive local jail bed impact.

The bill is effective on October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 837.05(1), F.S., makes it a first degree misdemeanor, which is punishable by up to one year in county jail and a \$1,000 fine,<sup>1</sup> for a person to knowingly give false information to any law enforcement concerning the alleged commission of any crime.<sup>2</sup>

##### **Effect of the Bill**

The bill amends s. 837.05(1), F.S., to make a second or subsequent violation a third degree felony<sup>3</sup> if one of the following conditions is met:

- The information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by:
  - An audio recording or audio recording in a video of that information;
  - A written or recorded statement made by the person who gave that information; or
  - Another person who was present when that person gave that information to the officer and heard that information.
- The information the person gave to the law enforcement officer was communicated in writing.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 837.05, F.S., relating to false reports to law enforcement authorities.

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 not appear to have any impact on state revenues.

##### 2. Expenditures:

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

#### 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 makes second or subsequent violations of s. 837.05, F.S., if certain conditions are met, a third degree felony rather than a first degree misdemeanor. This may have an insignificant positive jail bed impact on local governments.

<sup>1</sup> Sections 775.082 and 775.083, F.S.

<sup>2</sup> Section 837.05(2), F.S., makes it a third degree felony for anyone to give false information to a law enforcement officer concerning the alleged commission of a capital felony.

<sup>3</sup> 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.

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 5, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment makes second or subsequent violations of s. 837.05(1), F.S., a third degree felony if certain conditions are met.

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

1                                   A bill to be entitled  
 2           An act relating to false reports to law enforcement  
 3           officers; amending s. 837.05, F.S.; providing that it  
 4           is a third degree felony to knowingly give false  
 5           information to a law enforcement officer concerning  
 6           the alleged commission of a crime if the defendant has  
 7           previously been convicted of this offense and the  
 8           information, if communicated orally, is corroborated  
 9           in a specified manner, or was communicated in writing;  
 10          providing an effective date.

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

13  
 14           Section 1.   Section 837.05, Florida Statutes, is amended to  
 15   read:

16           837.05   False reports to law enforcement authorities.—

17           (1) (a)   Except as provided in paragraph (b) or subsection  
 18           (2), a person who ~~whoever~~ knowingly gives false information to a  
 19           ~~any~~ law enforcement officer concerning the alleged commission of  
 20           any crime, commits a misdemeanor of the first degree, punishable  
 21           as provided in s. 775.082 or s. 775.083.

22           (b)   A person who commits a violation of paragraph (a)  
 23           commits a felony of the third degree, punishable as provided in  
 24           s. 775.082, s. 775.083, or s. 775.084, if the person has  
 25           previously been convicted of a violation of paragraph (a) and  
 26           subparagraph 1. or 2. applies:

27           1.   The information the person gave to the law enforcement  
 28           officer was communicated orally and the officer's account of

29 that information is corroborated by:

30 a. An audio recording or audio recording in a video of  
 31 that information;

32 b. A written or recorded statement made by the person who  
 33 gave that information; or

34 c. Another person who was present when that person gave  
 35 that information to the officer and heard that information.

36 2. The information the person gave to the law enforcement  
 37 officer was communicated in writing.

38 (2) A person who ~~Whoever~~ knowingly gives false information  
 39 to a law enforcement officer concerning the alleged commission  
 40 of a capital felony, commits a felony of the third degree,  
 41 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 619 Controlled Substances  
**SPONSOR(S):** Ingram and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 294

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Jones	Cunningham
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee		Jones <i>LTD</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

In recent years, synthetic drugs have become a problem in Florida. Synthetic drugs, such as cannabinoids, cathinones, and phenethylamines, are industrial grade chemicals mixed to produce a "high" similar to what would be experienced when using illegal drugs such as marijuana, cocaine or methamphetamine.

In 2011 and 2012, several synthetic cannabinoids and cathinones were added to Schedule I of Florida's controlled substances schedules. Since the 2012 Legislative Session, new formulas of synthetic cannabinoids, cathinones, and phenethylamines have been developed that are made up of chemicals not covered by current law.

On December 11, 2012, Attorney General Pam Bondi filed an emergency rule that temporarily scheduled several synthetic cannabinoids, cathinones, and phenethylamines in s. 893.03(1)(c), F.S. The emergency rule expires on June 30, 2013, unless the Legislature adopts the provisions of the rule as an amendment to chapter 893, F.S.

The bill amends s. 893.03(1)(c), F.S., to add numerous synthetic cannabinoids, cathinones and phenethylamines to Schedule I of Florida controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances.

According to the Florida Department of Law Enforcement (FDLE), state and local law enforcement crime labs may see an increase in evidence submissions. However FDLE states the impact should be minimal and absorbed within their current budget.

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

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”<sup>1</sup> of the substance listed therein and whether there is a currently accepted medical use for the substance. Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.<sup>2</sup> Cannabis and heroin are examples of Schedule I drugs.<sup>3</sup>

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on what schedule the substance is listed in. Other factors, such as the quantity of controlled substance involved, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

In recent years synthetic drugs have emerged in Florida. Synthetic drugs, such as cannabinoids, cathinones, and phenethylamines, are industrial grade chemicals mixed to produce a “high” similar to what would be experienced when using illegal drugs such as marijuana, cocaine or methamphetamine.<sup>4</sup> According to the Florida Department of Law Enforcement (FDLE), synthetic drugs “have no legitimate medical use and have a high potential for abuse.”<sup>5</sup>

##### Synthetic Cannabinoids

Synthetic cannabinoids (also known as “K2” or “Spice”) are chemically engineered substances that, when smoked or ingested, can produce a high similar to marijuana, without the delta-tetrahydrocannabinol (THC).<sup>6</sup> The chemicals are a white powder that is often applied to a plant material to mimic marijuana.<sup>7</sup> Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.<sup>8</sup> No legitimate non-research uses have been identified for synthetic cannabinoids and they have not been approved by the U.S. Food and Drug Administration for human consumption.<sup>9</sup>

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<sup>1</sup> Section 893.035(3)(a), F.S., defines “potential for abuse” as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

<sup>2</sup> See, s. 893.03, F.S.

<sup>3</sup> *Id.*

<sup>4</sup> *Synthetic Narcotics*, FDLE Powerpoint Presentation before the House Criminal Justice Subcommittee, David Gross, January, 16, 2013 (on file with the Criminal Justice Subcommittee).

<sup>5</sup> FDLE Memo Relating to Controlled Substances, February 13, 2013 (on file with the Criminal Justice Subcommittee).

<sup>6</sup> *Supra* note 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I*, Federal Register, The Daily Journal of the United States Government, November 24, 2010, <http://www.federalregister.gov/articles/2010/11/24/2010-29600/schedules-of-controlled-substances-temporary-placement-of-five-synthetic-cannabinoids-into-schedule> (last visited on February 13, 2013).

<sup>9</sup> *Id.*



### Synthetic Cathinones

Synthetic cathinones (also known as “bath salts”) are substances that are chemically similar to amphetamines and other substances.<sup>10</sup> Synthetic cathinones gained popularity in late 2010 and early 2011 due to being widely available online and in smoke shops.<sup>11</sup>

### Synthetic Phenethylamines

Phenethylamines are synthetic substances invented by Dr. Alexander Shulgin.<sup>12</sup> Phenethylamines are known for their intense hallucinogenic effects.<sup>13</sup> The use of synthetic phenethylamines is highly dose sensitive and directly affects the human body’s nervous system.<sup>14</sup> There has been a recent increase of synthetic phenethylamines production and use because of the recent regulation of cannabinoids and cathinones.<sup>15</sup>

### Synthetic Drug Abuse

Despite being labeled “not for human consumption,” synthetic cannabinoids, cathinones and phenethylamines are used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of getting “high.”<sup>16</sup> They can be found on the Internet, specialty smoke shops, and convenience stores.<sup>17</sup> These substances are predominately being used by individuals between the ages of 16 and 30. There have been cases in Florida where these substances have caused individuals to behave inappropriately, and in some instances die.<sup>18</sup>

### Recent Legislation

In 2011 and 2012, several synthetic cannabinoids and cathinones were added to Schedule I of Florida’s controlled substances schedules.<sup>19</sup> As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances. For example:

- Possessing three grams or less of listed synthetic cannabinoids and cathinones (not in powdered form) is a first degree misdemeanor<sup>20,21</sup>
- It is a third degree felony<sup>22</sup> for a person to knowingly sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, listed synthetic cannabinoids and cathinones,<sup>23</sup> and
- It is a third degree felony for a person to purchase, or possess with intent to purchase listed synthetic cannabinoids and cathinones.<sup>24</sup>

### Recent Issues

Since the 2012 Legislative Session, new formulas of synthetic cannabinoids, cathinones, and phenethylamines have been developed that are made up of chemicals not covered by current law.<sup>25</sup>

<sup>10</sup> *Consideration of the Cathinones*, Advisory Council on the Misuse of Drugs, United Kingdom, March 2010, <http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-cathinodes-report-2010?view=Binary> (last visited on February 12, 2013).

<sup>11</sup> *Supra* note 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Bath Salts” Receive Emergency Drug Scheduling*, Brief # 10-194, Public Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence, January 26, 2011, [http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10\\_194BathSaltsPublic.pdf](http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf) (last visited on February 13, 2013). *See also*, *Supra* note 10.

<sup>17</sup> *Bath Salts” Receive Emergency Drug Scheduling*, Brief # 10-194, Public Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence, January 26, 2011, [http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10\\_194BathSaltsPublic.pdf](http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf) (last visited on February 13, 2013).

<sup>18</sup> *Supra* note 4.

<sup>19</sup> Chapters 2012-23, 2011-73, and 2011-90, L.O.F.

<sup>20</sup> A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

<sup>21</sup> Section 893.13(6)(b), F.S.

<sup>22</sup> 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.

<sup>23</sup> Section 893.13(1)(a)2., F.S.

<sup>24</sup> Section 893.13(2)(a)2., F.S.

According to FDLE, state and local law enforcement agencies are currently limited in their ability to intercede in cases involving any of these chemical substances, thus creating an environment where individuals are able to possess, distribute, and/or use these harmful substances without fear of prosecution by state and local law enforcement.<sup>26</sup>

On December 11, 2012, Attorney General Pam Bondi filed an emergency rule<sup>27</sup> that temporarily scheduled several synthetic cannabinoids, cathinones, and phenethylamines in s. 893.03(1)(c), F.S.<sup>28</sup> The emergency rule expires on June 30, 2013, unless the Legislature adopts the provisions of the rule as an amendment to chapter 893, F.S.

### **Effect of the Bill**

The bill amends s. 893.03(1)(c), F.S., to add numerous synthetic cannabinoids, cathinones and phenethylamines to Schedule I of Florida controlled substance schedules. As a result, the criminal penalties relating to the possession, sale, manufacture, delivery, etc. of controlled substances now apply to these synthetic substances.

The bill moves the current listing of 3, 4-Methylenedioxyamphetamine (MDMA) from s. 893.03(1)(a), F.S., to s. 893.03(1)(c), F.S. FDLE states that “[t]his re-designation is in keeping with the nature of MDMA’s effects on the abuser and consistent with the Drug Enforcement Administration’s scheduling of MDMA as a hallucinogenic substance in 21 C.F.R. §1308.11.”<sup>29</sup> The bill also specifies that isomers of substances listed in s. 893.03(1)(c), F.S., include optical, positional, or geometric isomers.<sup>30</sup>

The bill reenacts ss. 893.13(1)-(6) and 921.0022(3)(b)-(e), F.S., to incorporate the amendments of s. 893.03, F.S.

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

Section 1. Amends s. 893.03, F.S., relating to standards and schedules.

Section 2. Amends s. 893.13, F.S., relating to prohibited acts; penalties.

Section 3. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 4. Reenacts s.893.13, F.S., relating to prohibited acts; penalties.

Section 5. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 6. The bill is effective upon becoming law.

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<sup>25</sup> *Supra* note 5.

<sup>26</sup> *Id.*

<sup>27</sup> 2ER 12-1, Office of the Attorney General,

[http://myfloridalegal.com/webfiles.nsf/WF/MMFD-92VKZ8/\\$file/ER+RuleOAGRuleCertification12-11-2012.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MMFD-92VKZ8/$file/ER+RuleOAGRuleCertification12-11-2012.pdf) (last visited on February 12, 2013).

<sup>28</sup> Pursuant to s. 893.035, F.S., if the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03, F.S., on a temporary basis is necessary to avoid an imminent hazard to the public safety, she or he may by rule, and without regard to requirements in s. 893.035(5), F.S., regarding medical and scientific evaluation, schedule the substance in Schedule I if it is not listed in any other schedule in s. 893.03, F.S.

<sup>29</sup> *Supra* note 5.

<sup>30</sup> The FDLE states that “the current language in F.S. 893.03(1)(c) does not specifically include optical, positional, or geometric isomers of the listed chemical substances.” *Id.*

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have an impact on state revenues

#### 2. Expenditures:

The bill adds additional chemical substances to Schedule I of Florida's controlled substance schedules. According to FDLE, this could potentially increase the number of evidence submissions into FDLE's Crime Laboratory System.<sup>31</sup> The lab system will need to acquire all of the required standards necessary to test the proposed chemical substances.<sup>32</sup> However, FDLE's fiscal analysis states that the bill will have a minimal fiscal impact and can be absorbed within their current budget.<sup>33</sup>

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

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

Because the bill adds certain synthetic substances to s. 893.03, F.S., local agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a rise in evidence submissions associated with the additions of the proposed chemical substances.<sup>34</sup> This may also have a negative jail bed impact because possession of three grams or less of the newly added substances is a first degree misdemeanor.

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

According to FDLE, the bill "should have little impact on the private sector and would only affect those retailers who are currently profiting on the sale of chemical substances known to be abused by those seeking an altered mental state or 'high.'"<sup>35</sup>

### 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.

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

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**

N/A

1                                   A bill to be entitled  
 2           An act relating to controlled substances; amending s.  
 3           893.03, F.S.; adding to the list of Schedule I  
 4           controlled substances certain specified materials,  
 5           compounds, mixtures, or preparations that contain  
 6           hallucinogenic substances, or any of their salts,  
 7           isomers, and salts of isomers, if the existence of  
 8           such salts, isomers, and salts of isomers is possible  
 9           within the specific chemical designation; amending s.  
 10          893.13, F.S.; providing reduced penalties for  
 11          possession of 3 grams or less of specified controlled  
 12          substances; amending s. 893.135, F.S.; providing  
 13          criminal penalties for a person who knowingly sells,  
 14          purchases, manufactures, delivers, or brings into this  
 15          state, or who is knowingly in actual or constructive  
 16          possession of, a specified quantity of specified  
 17          controlled substances; reenacting ss. 893.13(1)-(6)  
 18          and 921.0022(3)(b)-(e), F.S., relating to prohibited  
 19          acts involving controlled substances and the Criminal  
 20          Punishment Code, respectively, to incorporate the  
 21          amendments made to s. 893.03, F.S., in references  
 22          thereto; providing an effective date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:  
 25

26           Section 1. Paragraphs (a) and (c) of subsection (1) of  
 27   section 893.03, Florida Statutes, are amended to read:  
 28           893.03 Standards and schedules.—The substances enumerated

29 | in this section are controlled by this chapter. The controlled  
 30 | substances listed or to be listed in Schedules I, II, III, IV,  
 31 | and V are included by whatever official, common, usual,  
 32 | chemical, or trade name designated. The provisions of this  
 33 | section shall not be construed to include within any of the  
 34 | schedules contained in this section any excluded drugs listed  
 35 | within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
 36 | Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
 37 | Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
 38 | Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
 39 | Anabolic Steroid Products."

40 |       (1) SCHEDULE I.—A substance in Schedule I has a high  
 41 | potential for abuse and has no currently accepted medical use in  
 42 | treatment in the United States and in its use under medical  
 43 | supervision does not meet accepted safety standards. The  
 44 | following substances are controlled in Schedule I:

45 |       (a) Unless specifically excepted or unless listed in  
 46 | another schedule, any of the following substances, including  
 47 | their isomers, esters, ethers, salts, and salts of isomers,  
 48 | esters, and ethers, whenever the existence of such isomers,  
 49 | esters, ethers, and salts is possible within the specific  
 50 | chemical designation:

- 51 |           1. Acetyl-alpha-methylfentanyl.
- 52 |           2. Acetylmethadol.
- 53 |           3. Allylprodine.
- 54 |           4. Alphacetylmethadol (except levo-alpha-acetylmethadol,  
 55 | also known as levo-alpha-acetylmethadol, levomethadyl acetate,  
 56 | or LAAM).

HB 619

2013

- 57 |           5. Alphamethadol.
- 58 |           6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
- 59 | ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
- 60 | (N-propanilido) piperidine).
- 61 |           7. Alpha-methylthiofentanyl.
- 62 |           8. Alphameprodine.
- 63 |           9. Benzethidine.
- 64 |           10. Benzylfentanyl.
- 65 |           11. Betacetylmethadol.
- 66 |           12. Beta-hydroxyfentanyl.
- 67 |           13. Beta-hydroxy-3-methylfentanyl.
- 68 |           14. Betameprodine.
- 69 |           15. Betamethadol.
- 70 |           16. Betaprodine.
- 71 |           17. Clonitazene.
- 72 |           18. Dextromoramide.
- 73 |           19. Diampromide.
- 74 |           20. Diethylthiambutene.
- 75 |           21. Difeno~~xin~~.
- 76 |           22. Dimenoxadol.
- 77 |           23. Dimepheptanol.
- 78 |           24. Dimethylthiambutene.
- 79 |           25. Dioxaphetyl butyrate.
- 80 |           26. Dipipanone.
- 81 |           27. Ethylmethylthiambutene.
- 82 |           28. Etonitazene.
- 83 |           29. Eto~~xeridine~~.
- 84 |           30. Flunitrazepam.

- 85 |       31. Furethidine.
- 86 |       32. Hydroxypethidine.
- 87 |       33. Ketobemidone.
- 88 |       34. Levomoramide.
- 89 |       35. Levophenacylmorphan.
- 90 |       36. 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
- 91 |       37. 3-Methylfentanyl (N-
- 92 |       [3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
- 93 |       38. 3-Methylthiofentanyl.
- 94 |       ~~39. 3, 4-Methylenedioxymethamphetamine~~
- 95 |       ~~(MDMA).~~
- 96 |       39.40. Morpheridine.
- 97 |       40.41. Noracymethadol.
- 98 |       41.42. Norlevorphanol.
- 99 |       42.43. Normethadone.
- 100 |       43.44. Norpipanone.
- 101 |       44.45. Para-Fluorofentanyl.
- 102 |       45.46. Phenadoxone.
- 103 |       46.47. Phenampromide.
- 104 |       47.48. Phenomorphan.
- 105 |       48.49. Phenoperidine.
- 106 |       49.50. 1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine
- 107 |       (PEPAP).
- 108 |       50.51. Piritramide.
- 109 |       51.52. Proheptazine.
- 110 |       52.53. Properidine.
- 111 |       53.54. Propiram.
- 112 |       54.55. Racemoramide.



113 |       ~~55.56.~~ Thenylfentanyl.

114 |       ~~56.57.~~ Thiofentanyl.

115 |       ~~57.58.~~ Tilidine.

116 |       ~~58.59.~~ Trimeperidine.

117 |       (c) Unless specifically excepted or unless listed in  
 118 | another schedule, any material, compound, mixture, or  
 119 | preparation that contains any quantity of the following  
 120 | hallucinogenic substances or that contains any of their salts,  
 121 | isomers, including optical, positional, or geometric isomers,  
 122 | and salts of isomers, if the existence of such salts, isomers,  
 123 | and salts of isomers is possible within the specific chemical  
 124 | designation:

- 125 |       1. Alpha-ethyltryptamine.
- 126 |       2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
- 127 | methylaminorex).
- 128 |       3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
- 129 |       4. 4-Bromo-2,5-dimethoxyamphetamine.
- 130 |       5. 4-Bromo-2,5-dimethoxyphenethylamine.
- 131 |       6. Bufotenine.
- 132 |       7. Cannabis.
- 133 |       8. Cathinone.
- 134 |       9. Diethyltryptamine.
- 135 |       10. 2,5-Dimethoxyamphetamine.
- 136 |       11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
- 137 |       12. Dimethyltryptamine.
- 138 |       13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
- 139 | analog of phencyclidine).
- 140 |       14. N-Ethyl-3-piperidyl benzilate.

HB 619

2013

- 141 | 15. N-ethylamphetamine.
- 142 | 16. Fenethylamine.
- 143 | 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
- 144 | 18. Ibogaine.
- 145 | 19. Lysergic acid diethylamide (LSD).
- 146 | 20. Mescaline.
- 147 | 21. Methcathinone.
- 148 | 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
- 149 | 23. 4-methoxyamphetamine.
- 150 | 24. 4-methoxymethamphetamine.
- 151 | 25. 4-Methyl-2,5-dimethoxyamphetamine.
- 152 | 26. 3,4-Methylenedioxy-N-ethylamphetamine.
- 153 | 27. 3,4-Methylenedioxyamphetamine.
- 154 | 28. N-Methyl-3-piperidyl benzilate.
- 155 | 29. N,N-dimethylamphetamine.
- 156 | 30. Parahexyl.
- 157 | 31. Peyote.
- 158 | 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine
- 159 | analog of phencyclidine).
- 160 | 33. Psilocybin.
- 161 | 34. Psilocyn.
- 162 | 35. *Salvia divinorum*, except for any drug product approved
- 163 | by the United States Food and Drug Administration which contains
- 164 | *Salvia divinorum* or its isomers, esters, ethers, salts, and
- 165 | salts of isomers, esters, and ethers, if the existence of such
- 166 | isomers, esters, ethers, and salts is possible within the
- 167 | specific chemical designation.
- 168 | 36. Salvinorin A, except for any drug product approved by

169 the United States Food and Drug Administration which contains  
 170 Salvinorin A or its isomers, esters, ethers, salts, and salts of  
 171 isomers, esters, and ethers, if the existence of such isomers,  
 172 esters, ethers, and salts is possible within the specific  
 173 chemical designation.

- 174 37. Tetrahydrocannabinols.
- 175 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
- 176 (Thiophene analog of phencyclidine).
- 177 39. 3,4,5-Trimethoxyamphetamine.
- 178 40. 3,4-Methylenedioxymethcathinone.
- 179 41. 3,4-Methylenedioxypyrovalerone (MDPV).
- 180 42. Methylnmethcathinone.
- 181 43. Methoxymethcathinone.
- 182 44. Fluoromethcathinone.
- 183 45. Methylethcathinone.
- 184 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
- 185 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
- 186 homologue.
- 187 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
- 188 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
- 189 also known as HU-210.
- 190 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
- 191 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
- 192 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole,
- 193 also known as JWH-200.
- 194 51. BZP (Benzylpiperazine).
- 195 52. Fluorophenylpiperazine.
- 196 53. Methylphenylpiperazine.

- 197 | 54. Chlorophenylpiperazine.
- 198 | 55. Methoxyphenylpiperazine.
- 199 | 56. DBZP (1,4-dibenzylpiperazine).
- 200 | 57. TFMPP (3-Trifluoromethylphenylpiperazine).
- 201 | 58. MBDB (Methylbenzodioxolylbutanamine).
- 202 | 59. 5-Hydroxy-alpha-methyltryptamine.
- 203 | 60. 5-Hydroxy-N-methyltryptamine.
- 204 | 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
- 205 | 62. 5-Methoxy-alpha-methyltryptamine.
- 206 | 63. Methyltryptamine.
- 207 | 64. 5-Methoxy-N,N-dimethyltryptamine.
- 208 | 65. 5-Methyl-N,N-dimethyltryptamine.
- 209 | 66. Tyramine (4-Hydroxyphenethylamine).
- 210 | 67. 5-Methoxy-N,N-Diisopropyltryptamine.
- 211 | 68. DiPT (N,N-Diisopropyltryptamine).
- 212 | 69. DPT (N,N-Dipropyltryptamine).
- 213 | 70. 4-Hydroxy-N,N-diisopropyltryptamine.
- 214 | 71. N,N-Diallyl-5-Methoxytryptamine.
- 215 | 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
- 216 | 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
- 217 | 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
- 218 | 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
- 219 | 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
- 220 | 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
- 221 | 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
- 222 | 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).
- 223 | 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
- 224 | 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).

- 225 | 82. Ethcathinone.
- 226 | 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
- 227 | 84. Naphyrone (naphthylpyrovalerone).
- 228 | 85. N-N-Dimethyl-3,4-methylenedioxycathinone.
- 229 | 86. N-N-Diethyl-3,4-methylenedioxycathinone.
- 230 | 87. 3,4-methylenedioxy-propiofenone.
- 231 | 88. 2-Bromo-3,4-Methylenedioxypropiofenone.
- 232 | 89. 3,4-methylenedioxy-propiofenone-2-oxime.
- 233 | 90. N-Acetyl-3,4-methylenedioxycathinone.
- 234 | 91. N-Acetyl-N-Methyl-3,4-Methylenedioxycathinone.
- 235 | 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxycathinone.
- 236 | 93. Bromomethcathinone.
- 237 | 94. Buphedrone (alpha-methylamino-butyrophenone).
- 238 | 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
- 239 | 96. Dimethylcathinone.
- 240 | 97. Dimethylmethcathinone.
- 241 | 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
- 242 | 99. (MDPPP) 3,4-Methylenedioxy-alpha-
- 243 | pyrrolidinopropiofenone.
- 244 | 100. (MDPBP) 3,4-Methylenedioxy-alpha-
- 245 | pyrrolidinobutiophenone.
- 246 | 101. Methoxy-alpha-pyrrolidinopropiofenone (MOPPP).
- 247 | 102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).
- 248 | 103. Benocyclidine (BCP) or
- 249 | benzothiophenylcyclohexylpiperidine (BTCP).
- 250 | 104. Fluoromethylaminobutyrophenone (F-MABP).
- 251 | 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
- 252 | 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).

HB 619

2013

- 253 | 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
- 254 | 108. Methylethylaminobutyrophenone (Me-EABP).
- 255 | 109. Methylamino-butyrophenone (MABP).
- 256 | 110. Pyrrolidinopropiophenone (PPP).
- 257 | 111. Pyrrolidinobutiophenone (PBP).
- 258 | 112. Pyrrolidinovalerophenone (PVP).
- 259 | 113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).
- 260 | 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).
- 261 | 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
- 262 | naphthalenylmethanone).
- 263 | 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-
- 264 | yl)methanone).
- 265 | 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
- 266 | 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-
- 267 | yl)methanone).
- 268 | 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
- 269 | yl)methanone).
- 270 | 120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).
- 271 | 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-
- 272 | 6a,7,10,10a-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
- 273 | 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-
- 274 | indole).
- 275 | 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
- 276 | 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
- 277 | yl)ethanone).
- 278 | 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
- 279 | yl)methanone).
- 280 | 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-

- 281 yl)ethanone).
- 282 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-
- 283 yl)ethanone).
- 284 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
- 285 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
- 286 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
- 287 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
- 288 ol).
- 289 131. HU-308 ([ (1R,2R,5R)-2-[2,6-dimethoxy-4-(2-
- 290 methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-
- 291 enyl] methanol).
- 292 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-
- 293 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
- 294 1,4-dione).
- 295 133. CB-13 (Naphthalen-1-yl-(4-pentyloxynaphthalen-1-
- 296 yl)methanone).
- 297 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
- 298 undecanamide).
- 299 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
- 300 undecanamide).
- 301 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-
- 302 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).
- 303 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-
- 304 iodophenyl)methanone).
- 305 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-
- 306 (naphthalen-1-yl)methanone).
- 307 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-
- 308 yl)methanone).

- 309 | 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-  
 310 | methoxyphenylethanone).
- 311 | 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-  
 312 | morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-  
 313 | naphthalenylmethanone).
- 314 | 142. WIN55,212-3 ([3S)-2,3-Dihydro-5-methyl-3-(4-  
 315 | morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-  
 316 | naphthalenylmethanone).
- 317 | 143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).
- 318 | 144. Fluoroamphetamine.
- 319 | 145. Fluoromethamphetamine.
- 320 | 146. Methoxetamine.
- 321 | 147. Methiopropamine.
- 322 | 148. 4-Methylbuphedrone (2-Methylamino-1-(4-  
 323 | methylphenyl)butan-1-one).
- 324 | 149. APB ((2-aminopropyl)benzofuran).
- 325 | 150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).
- 326 | 151. UR-144 ((1-pentyl-1H-indol-3-yl)(2,2,3,3-  
 327 | tetramethylcyclopropyl)methanone).
- 328 | 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-  
 329 | tetramethylcyclopropyl)methanone).
- 330 | 153. (1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-  
 331 | tetramethylcyclopropyl)methanone.
- 332 | 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.1<sup>3,7</sup>]dec-1-yl-1H-  
 333 | indazole-3-carboxamide).
- 334 | 155. AM-2233((2-iodophenyl)[1-[(1-methyl-2-  
 335 | piperidinyl)methyl]-1H-indol-3-yl]-methanone).
- 336 | 156. STS-135 (1-(5-fluoropentyl)-N-



- 337 tricyclo[3.3.1.1<sup>3</sup>,7]dec-1-yl-1H-indole-3-carboxamide).  
 338 157. URB-597 ((3'-(aminocarbonyl)[1,1'-biphenyl]-3-yl)-  
 339 cyclohexylcarbamate).  
 340 158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,  
 341 cyclohexyl ester).  
 342 159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-  
 343 benzoxazin-4-one).  
 344 160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).  
 345 161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).  
 346 162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).  
 347 163. 2C-P (2-(2,5-Dimethoxy-4-(n)-  
 348 propylphenyl)ethanamine).  
 349 164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-  
 350 methoxyphenyl)methyl]-benzeneethanamine).  
 351 165. 3,4-Methylenedioxymethamphetamine (MDMA).

352 Section 2. Paragraph (b) of subsection (6) of section  
 353 893.13, Florida Statutes, is amended to read:

354 893.13 Prohibited acts; penalties.—

355 (6)

356 (b) If the offense is the possession of not more than 20  
 357 grams of cannabis, as defined in this chapter, or 3 grams or  
 358 less of a controlled substance described in s. 893.03(1)(c)46.—  
 359 50., ~~and~~ 114.-142., or 151.-159., the person commits a  
 360 misdemeanor of the first degree, punishable as provided in s.  
 361 775.082 or s. 775.083. For the purposes of this subsection,  
 362 "cannabis" does not include the resin extracted from the plants  
 363 of the genus *Cannabis*, or any compound manufacture, salt,  
 364 derivative, mixture, or preparation of such resin, and a

365 controlled substance described in s. 893.03(1)(c)46.-50., ~~and~~  
 366 114.-142., or 151.-159., does not include the substance in a  
 367 powdered form.

368 Section 3. Paragraph (k) of subsection (1) of section  
 369 893.135, Florida Statutes, is amended to read:

370 893.135 Trafficking; mandatory sentences; suspension or  
 371 reduction of sentences; conspiracy to engage in trafficking.—

372 (1) Except as authorized in this chapter or in chapter 499  
 373 and notwithstanding the provisions of s. 893.13:

374 (k)1. Any person who knowingly sells, purchases,  
 375 manufactures, delivers, or brings into this state, or who is  
 376 knowingly in actual or constructive possession of, 10 grams or  
 377 more of any of the following substances described in s.

378 893.03(1)(c) ~~s. 893.03(1)(a) or (e):~~

- 379 a. 3,4-Methylenedioxymethamphetamine (MDMA);
- 380 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 381 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 382 d. 2,5-Dimethoxyamphetamine;
- 383 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 384 f. N-ethylamphetamine;
- 385 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 386 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 387 i. 4-methoxyamphetamine;
- 388 j. 4-methoxymethamphetamine;
- 389 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 390 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 391 m. 3,4-Methylenedioxyamphetamine;
- 392 n. N,N-dimethylamphetamine; or

393           o. 3,4,5-Trimethoxyamphetamine,  
 394  
 395 individually or in any combination of or any mixture containing  
 396 any substance listed in sub-subparagraphs a.-o., commits a  
 397 felony of the first degree, which felony shall be known as  
 398 "trafficking in Phenethylamines," punishable as provided in s.  
 399 775.082, s. 775.083, or s. 775.084.

400           2. If the quantity involved:

401           a. Is 10 grams or more but less than 200 grams, such  
 402 person shall be sentenced to a mandatory minimum term of  
 403 imprisonment of 3 years, and the defendant shall be ordered to  
 404 pay a fine of \$50,000.

405           b. Is 200 grams or more, but less than 400 grams, such  
 406 person shall be sentenced to a mandatory minimum term of  
 407 imprisonment of 7 years, and the defendant shall be ordered to  
 408 pay a fine of \$100,000.

409           c. Is 400 grams or more, such person shall be sentenced to  
 410 a mandatory minimum term of imprisonment of 15 calendar years  
 411 and pay a fine of \$250,000.

412           3. Any person who knowingly manufactures or brings into  
 413 this state 30 kilograms or more of any of the following  
 414 substances described in s. 893.03(1)(c) ~~s. 893.03(1)(a) or (e)~~:

- 415           a. 3,4-Methylenedioxymethamphetamine (MDMA);
- 416           b. 4-Bromo-2,5-dimethoxyamphetamine;
- 417           c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 418           d. 2,5-Dimethoxyamphetamine;
- 419           e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 420           f. N-ethylamphetamine;

- 421 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 422 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 423 i. 4-methoxyamphetamine;
- 424 j. 4-methoxymethamphetamine;
- 425 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 426 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 427 m. 3,4-Methylenedioxyamphetamine;
- 428 n. N,N-dimethylamphetamine; or
- 429 o. 3,4,5-Trimethoxyamphetamine,

430

431 individually or in any combination of or any mixture containing  
 432 any substance listed in sub-subparagraphs a.-o., and who knows  
 433 that the probable result of such manufacture or importation  
 434 would be the death of any person commits capital manufacture or  
 435 importation of Phenethylamines, a capital felony punishable as  
 436 provided in ss. 775.082 and 921.142. Any person sentenced for a  
 437 capital felony under this paragraph shall also be sentenced to  
 438 pay the maximum fine provided under subparagraph 1.

439 Section 4. For the purpose of incorporating the amendment  
 440 made by this act to section 893.03, Florida Statutes, in a  
 441 reference thereto, subsections (1) through (6) of section  
 442 893.13, Florida Statutes, are reenacted to read:

443 893.13 Prohibited acts; penalties.—

444 (1) (a) Except as authorized by this chapter and chapter  
 445 499, it is unlawful for any person to sell, manufacture, or  
 446 deliver, or possess with intent to sell, manufacture, or  
 447 deliver, a controlled substance. Any person who violates this  
 448 provision with respect to:

449 1. A controlled substance named or described in s.  
 450 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 451 commits a felony of the second degree, punishable as provided in  
 452 s. 775.082, s. 775.083, or s. 775.084.

453 2. A controlled substance named or described in s.  
 454 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 455 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 456 the third degree, punishable as provided in s. 775.082, s.  
 457 775.083, or s. 775.084.

458 3. A controlled substance named or described in s.  
 459 893.03(5) commits a misdemeanor of the first degree, punishable  
 460 as provided in s. 775.082 or s. 775.083.

461 (b) Except as provided in this chapter, it is unlawful to  
 462 sell or deliver in excess of 10 grams of any substance named or  
 463 described in s. 893.03(1)(a) or (1)(b), or any combination  
 464 thereof, or any mixture containing any such substance. Any  
 465 person who violates this paragraph commits a felony of the first  
 466 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 467 775.084.

468 (c) Except as authorized by this chapter, it is unlawful  
 469 for any person to sell, manufacture, or deliver, or possess with  
 470 intent to sell, manufacture, or deliver, a controlled substance  
 471 in, on, or within 1,000 feet of the real property comprising a  
 472 child care facility as defined in s. 402.302 or a public or  
 473 private elementary, middle, or secondary school between the  
 474 hours of 6 a.m. and 12 midnight, or at any time in, on, or  
 475 within 1,000 feet of real property comprising a state, county,  
 476 or municipal park, a community center, or a publicly owned

477 recreational facility. For the purposes of this paragraph, the  
 478 term "community center" means a facility operated by a nonprofit  
 479 community-based organization for the provision of recreational,  
 480 social, or educational services to the public. Any person who  
 481 violates this paragraph with respect to:

482 1. A controlled substance named or described in s.  
 483 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 484 commits a felony of the first degree, punishable as provided in  
 485 s. 775.082, s. 775.083, or s. 775.084. The defendant must be  
 486 sentenced to a minimum term of imprisonment of 3 calendar years  
 487 unless the offense was committed within 1,000 feet of the real  
 488 property comprising a child care facility as defined in s.  
 489 402.302.

490 2. A controlled substance named or described in s.  
 491 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 492 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 493 the second degree, punishable as provided in s. 775.082, s.  
 494 775.083, or s. 775.084.

495 3. Any other controlled substance, except as lawfully  
 496 sold, manufactured, or delivered, must be sentenced to pay a  
 497 \$500 fine and to serve 100 hours of public service in addition  
 498 to any other penalty prescribed by law.

499  
 500 This paragraph does not apply to a child care facility unless  
 501 the owner or operator of the facility posts a sign that is not  
 502 less than 2 square feet in size with a word legend identifying  
 503 the facility as a licensed child care facility and that is  
 504 posted on the property of the child care facility in a

505 conspicuous place where the sign is reasonably visible to the  
 506 public.

507 (d) Except as authorized by this chapter, it is unlawful  
 508 for any person to sell, manufacture, or deliver, or possess with  
 509 intent to sell, manufacture, or deliver, a controlled substance  
 510 in, on, or within 1,000 feet of the real property comprising a  
 511 public or private college, university, or other postsecondary  
 512 educational institution. Any person who violates this paragraph  
 513 with respect to:

514 1. A controlled substance named or described in s.  
 515 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 516 commits a felony of the first degree, punishable as provided in  
 517 s. 775.082, s. 775.083, or s. 775.084.

518 2. A controlled substance named or described in s.  
 519 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 520 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 521 the second degree, punishable as provided in s. 775.082, s.  
 522 775.083, or s. 775.084.

523 3. Any other controlled substance, except as lawfully  
 524 sold, manufactured, or delivered, must be sentenced to pay a  
 525 \$500 fine and to serve 100 hours of public service in addition  
 526 to any other penalty prescribed by law.

527 (e) Except as authorized by this chapter, it is unlawful  
 528 for any person to sell, manufacture, or deliver, or possess with  
 529 intent to sell, manufacture, or deliver, a controlled substance  
 530 not authorized by law in, on, or within 1,000 feet of a physical  
 531 place for worship at which a church or religious organization  
 532 regularly conducts religious services or within 1,000 feet of a

533 convenience business as defined in s. 812.171. Any person who  
 534 violates this paragraph with respect to:

535 1. A controlled substance named or described in s.  
 536 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 537 commits a felony of the first degree, punishable as provided in  
 538 s. 775.082, s. 775.083, or s. 775.084.

539 2. A controlled substance named or described in s.  
 540 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 541 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 542 the second degree, punishable as provided in s. 775.082, s.  
 543 775.083, or s. 775.084.

544 3. Any other controlled substance, except as lawfully  
 545 sold, manufactured, or delivered, must be sentenced to pay a  
 546 \$500 fine and to serve 100 hours of public service in addition  
 547 to any other penalty prescribed by law.

548 (f) Except as authorized by this chapter, it is unlawful  
 549 for any person to sell, manufacture, or deliver, or possess with  
 550 intent to sell, manufacture, or deliver, a controlled substance  
 551 in, on, or within 1,000 feet of the real property comprising a  
 552 public housing facility at any time. For purposes of this  
 553 section, the term "real property comprising a public housing  
 554 facility" means real property, as defined in s. 421.03(12), of a  
 555 public corporation created as a housing authority pursuant to  
 556 part I of chapter 421. Any person who violates this paragraph  
 557 with respect to:

558 1. A controlled substance named or described in s.  
 559 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 560 commits a felony of the first degree, punishable as provided in



561 | s. 775.082, s. 775.083, or s. 775.084.

562 |         2. A controlled substance named or described in s.  
563 | 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
564 | (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
565 | the second degree, punishable as provided in s. 775.082, s.  
566 | 775.083, or s. 775.084.

567 |         3. Any other controlled substance, except as lawfully  
568 | sold, manufactured, or delivered, must be sentenced to pay a  
569 | \$500 fine and to serve 100 hours of public service in addition  
570 | to any other penalty prescribed by law.

571 |         (g) Except as authorized by this chapter, it is unlawful  
572 | for any person to manufacture methamphetamine or phencyclidine,  
573 | or possess any listed chemical as defined in s. 893.033 in  
574 | violation of s. 893.149 and with intent to manufacture  
575 | methamphetamine or phencyclidine. If any person violates this  
576 | paragraph and:

577 |         1. The commission or attempted commission of the crime  
578 | occurs in a structure or conveyance where any child under 16  
579 | years of age is present, the person commits a felony of the  
580 | first degree, punishable as provided in s. 775.082, s. 775.083,  
581 | or s. 775.084. In addition, the defendant must be sentenced to a  
582 | minimum term of imprisonment of 5 calendar years.

583 |         2. The commission of the crime causes any child under 16  
584 | years of age to suffer great bodily harm, the person commits a  
585 | felony of the first degree, punishable as provided in s.  
586 | 775.082, s. 775.083, or s. 775.084. In addition, the defendant  
587 | must be sentenced to a minimum term of imprisonment of 10  
588 | calendar years.

589 (h) Except as authorized by this chapter, it is unlawful  
 590 for any person to sell, manufacture, or deliver, or possess with  
 591 intent to sell, manufacture, or deliver, a controlled substance  
 592 in, on, or within 1,000 feet of the real property comprising an  
 593 assisted living facility, as that term is used in chapter 429.  
 594 Any person who violates this paragraph with respect to:

595 1. A controlled substance named or described in s.  
 596 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.  
 597 commits a felony of the first degree, punishable as provided in  
 598 s. 775.082, s. 775.083, or s. 775.084.

599 2. A controlled substance named or described in s.  
 600 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 601 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 602 the second degree, punishable as provided in s. 775.082, s.  
 603 775.083, or s. 775.084.

604 (2)(a) Except as authorized by this chapter and chapter  
 605 499, it is unlawful for any person to purchase, or possess with  
 606 intent to purchase, a controlled substance. Any person who  
 607 violates this provision with respect to:

608 1. A controlled substance named or described in s.  
 609 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 610 commits a felony of the second degree, punishable as provided in  
 611 s. 775.082, s. 775.083, or s. 775.084.

612 2. A controlled substance named or described in s.  
 613 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 614 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 615 the third degree, punishable as provided in s. 775.082, s.  
 616 775.083, or s. 775.084.

617 3. A controlled substance named or described in s.  
 618 893.03(5) commits a misdemeanor of the first degree, punishable  
 619 as provided in s. 775.082 or s. 775.083.

620 (b) Except as provided in this chapter, it is unlawful to  
 621 purchase in excess of 10 grams of any substance named or  
 622 described in s. 893.03(1)(a) or (1)(b), or any combination  
 623 thereof, or any mixture containing any such substance. Any  
 624 person who violates this paragraph commits a felony of the first  
 625 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 626 775.084.

627 (3) Any person who delivers, without consideration, not  
 628 more than 20 grams of cannabis, as defined in this chapter,  
 629 commits a misdemeanor of the first degree, punishable as  
 630 provided in s. 775.082 or s. 775.083. For the purposes of this  
 631 paragraph, "cannabis" does not include the resin extracted from  
 632 the plants of the genus *Cannabis* or any compound manufacture,  
 633 salt, derivative, mixture, or preparation of such resin.

634 (4) Except as authorized by this chapter, it is unlawful  
 635 for any person 18 years of age or older to deliver any  
 636 controlled substance to a person under the age of 18 years, or  
 637 to use or hire a person under the age of 18 years as an agent or  
 638 employee in the sale or delivery of such a substance, or to use  
 639 such person to assist in avoiding detection or apprehension for  
 640 a violation of this chapter. Any person who violates this  
 641 provision with respect to:

642 (a) A controlled substance named or described in s.  
 643 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 644 commits a felony of the first degree, punishable as provided in

645 s. 775.082, s. 775.083, or s. 775.084.

646 (b) A controlled substance named or described in s.  
 647 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 648 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 649 the second degree, punishable as provided in s. 775.082, s.  
 650 775.083, or s. 775.084.

651  
 652 Imposition of sentence may not be suspended or deferred, nor  
 653 shall the person so convicted be placed on probation.

654 (5) It is unlawful for any person to bring into this state  
 655 any controlled substance unless the possession of such  
 656 controlled substance is authorized by this chapter or unless  
 657 such person is licensed to do so by the appropriate federal  
 658 agency. Any person who violates this provision with respect to:

659 (a) A controlled substance named or described in s.  
 660 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,  
 661 commits a felony of the second degree, punishable as provided in  
 662 s. 775.082, s. 775.083, or s. 775.084.

663 (b) A controlled substance named or described in s.  
 664 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,  
 665 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of  
 666 the third degree, punishable as provided in s. 775.082, s.  
 667 775.083, or s. 775.084.

668 (c) A controlled substance named or described in s.  
 669 893.03(5) commits a misdemeanor of the first degree, punishable  
 670 as provided in s. 775.082 or s. 775.083.

671 (6)(a) It is unlawful for any person to be in actual or  
 672 constructive possession of a controlled substance unless such

HB 619

2013

673 controlled substance was lawfully obtained from a practitioner  
674 or pursuant to a valid prescription or order of a practitioner  
675 while acting in the course of his or her professional practice  
676 or to be in actual or constructive possession of a controlled  
677 substance except as otherwise authorized by this chapter. Any  
678 person who violates this provision commits a felony of the third  
679 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
680 775.084.

681 (b) If the offense is the possession of not more than 20  
682 grams of cannabis, as defined in this chapter, or 3 grams or  
683 less of a controlled substance described in s. 893.03(1)(c)46.-  
684 50. and 114.-142., the person commits a misdemeanor of the first  
685 degree, punishable as provided in s. 775.082 or s. 775.083. For  
686 the purposes of this subsection, "cannabis" does not include the  
687 resin extracted from the plants of the genus *Cannabis*, or any  
688 compound manufacture, salt, derivative, mixture, or preparation  
689 of such resin, and a controlled substance described in s.  
690 893.03(1)(c)46.-50. and 114.-142. does not include the substance  
691 in a powdered form.

692 (c) Except as provided in this chapter, it is unlawful to  
693 possess in excess of 10 grams of any substance named or  
694 described in s. 893.03(1)(a) or (1)(b), or any combination  
695 thereof, or any mixture containing any such substance. Any  
696 person who violates this paragraph commits a felony of the first  
697 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
698 775.084.

699 (d) Notwithstanding any provision to the contrary of the  
700 laws of this state relating to arrest, a law enforcement officer

701 | may arrest without warrant any person who the officer has  
 702 | probable cause to believe is violating the provisions of this  
 703 | chapter relating to possession of cannabis.

704 | Section 5. For the purpose of incorporating the amendment  
 705 | made by this act to section 893.03, Florida Statutes, in a  
 706 | reference thereto, paragraphs (b), (c), (d), and (e) of  
 707 | subsection (3) of section 921.0022, Florida Statutes, are  
 708 | reenacted to read:

709 | 921.0022 Criminal Punishment Code; offense severity  
 710 | ranking chart.—

711 | (3) OFFENSE SEVERITY RANKING CHART

712 | (b) LEVEL 2

713 |

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.

714 |

715 |

716 |

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

HB 619

2013

717	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
718	590.28(1)	3rd	Intentional burning of lands.
719	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
720	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
721	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
722	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
723	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
724	812.014(2)(c)1.	3rd	Grand theft, 3rd degree; \$300 or more but less than \$5,000.
725	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more

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

HB 619

2013

			but less than \$300, taken from unenclosed curtilage of dwelling.
726	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
727	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
728	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
729	817.52(3)	3rd	Failure to redeliver hired vehicle.
730	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
731	817.60(5)	3rd	Dealing in credit cards of another.
732	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
733	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
734	826.04	3rd	Knowingly marries or has sexual



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

HB 619

2013

			intercourse with person to whom related.
735			
	831.01	3rd	Forgery.
736			
	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
737			
	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
738			
	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
739			
	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
740			
	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
741			
	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
742			
	843.08	3rd	Falsely impersonating an officer.
743			
	893.13 (2) (a) 2.	3rd	Purchase of any s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9.,

HB 619

2013

744			(3), or (4) drugs other than cannabis.
	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
745			
746	(c)	LEVEL 3	
747			
	Florida	Felony	
	Statute	Degree	Description
748			
	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
749			
	316.066	3rd	Unlawfully obtaining or using confidential crash reports.
	(3)(b)-(d)		
750			
	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
751			
	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
752			
	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
753			
	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.

HB 619

2013

754	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
755	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
756	327.35(2)(b)	3rd	Felony BUI.
757	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
758	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
759	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
760	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
761			

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

HB 619

2013

762	379.2431 (1) (e) 6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
763	400.9935 (4)	3rd	Operating a clinic without a license or filing false license application or other required information.
764	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
765	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
766	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.
767	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
768	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
769	697.08	3rd	Equity skimming.

HB 619

2013

770	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
771	796.05(1)	3rd	Live on earnings of a prostitute.
772	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
773	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
774	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
775	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
776	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
777	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property

HB 619

2013

			valued at less than \$20,000.
778			
	817.233	3rd	Burning to defraud insurer.
779			
	817.234	3rd	Unlawful solicitation of persons
	(8) (b) - (c)		involved in motor vehicle accidents.
780			
	817.234(11) (a)	3rd	Insurance fraud; property value less
			than \$20,000.
781			
	817.236	3rd	Filing a false motor vehicle insurance
			application.
782			
	817.2361	3rd	Creating, marketing, or presenting a
			false or fraudulent motor vehicle
			insurance card.
783			
	817.413(2)	3rd	Sale of used goods as new.
784			
	817.505(4)	3rd	Patient brokering.
785			
	828.12(2)	3rd	Tortures any animal with intent to
			inflict intense pain, serious physical
			injury, or death.
786			
	831.28(2) (a)	3rd	Counterfeiting a payment instrument with
			intent to defraud or possessing a
			counterfeit payment instrument.

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

HB 619

2013

787	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
788	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
789	843.19	3rd	Injure, disable, or kill police dog or horse.
790	860.15(3)	3rd	Overcharging for repairs and parts.
791	870.01(2)	3rd	Riot; inciting or encouraging.
792	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
793	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
794	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s.

			893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
795	893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
796	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
797	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
798	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
799	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
800	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through



801	893.13(8)(a)2.	3rd	deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
802	893.13(8)(a)3.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
803	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
804	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
805	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
806	944.47 (1)(a)1.-2.	3rd	Introduce contraband to correctional facility.
	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.

HB 619

2013

807

985.721                    3rd    Escapes from a juvenile facility (secure  
detention or residential commitment  
facility).

808

809

(d)    LEVEL 4

810

Florida	Felony	
Statute	Degree	Description

811

316.1935(3)(a)	2nd	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.
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812

499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
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813

499.0051(2)	3rd	Failure to authenticate pedigree papers.
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814

499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
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815

517.07(1)	3rd	Failure to register securities.
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816

517.12(1)	3rd	Failure of dealer, associated person, or
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HB 619

2013

817			issuer of securities to register.
818	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
819	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
820	784.075	3rd	Battery on detention or commitment facility staff.
821	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
822	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
823	784.081(3)	3rd	Battery on specified official or employee.
824	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
825	784.083(3)	3rd	Battery on code inspector.
	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids

HB 619

2013

			or materials.
826	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
827	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
828	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
829	787.07	3rd	Human smuggling.
830	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
831	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
832	790.115(2)(c)	3rd	Possessing firearm on school property.
833	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
834			

HB 619

2013

835	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
836	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
837	810.06	3rd	Burglary; possession of tools.
838	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
839	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
840	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
841	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
842	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.

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

HB 619

2013

843

817.625(2)(a) 3rd Fraudulent use of scanning device or reencoder.

844

828.125(1) 2nd Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.

845

837.02(1) 3rd Perjury in official proceedings.

846

837.021(1) 3rd Make contradictory statements in official proceedings.

847

838.022 3rd Official misconduct.

848

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

849

839.13(2)(c) 3rd Falsifying records of the Department of Children and Family Services.

850

843.021 3rd Possession of a concealed handcuff key by a person in custody.

851

843.025 3rd Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.

852

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

HB 619

2013

853	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
854	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
855	874.05(1)	3rd	Encouraging or recruiting another to join a criminal gang.
856	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
857	914.14(2)	3rd	Witnesses accepting bribes.
858	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
859	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
860	918.12	3rd	Tampering with jurors.
861	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
862	(e)	LEVEL 5	

HB 619

2013

863

Florida	Felony	
Statute	Degree	Description

864

316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
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865

316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
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866

322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
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867

327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
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868

379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
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869

379.3671(2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
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870

381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
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871



HB 619

2013

872	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
873	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
874	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
875	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
876	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
877	790.01(2)	3rd	Carrying a concealed firearm.
878	790.162	2nd	Threat to throw or discharge destructive device.
879	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
	790.221(1)	2nd	Possession of short-barreled shotgun or

HB 619

2013

			machine gun.
880	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
881	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
882	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
883	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
884	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
885	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
886	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
887	812.131(2)(b)	3rd	Robbery by sudden snatching.

HB 619

2013

888	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
889	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
890	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
891	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
892	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more individuals.
893	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
894	825.1025(4)	3rd	Lewd or lascivious exhibition in the

HB 619

2013

			presence of an elderly person or disabled adult.
895	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
896	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
897	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
898	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
899	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
900	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
901	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device

HB 619

2013

902			or equipment.
903	874.05(2)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
904	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
905	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
906	893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
906	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s.

HB 619

2013

893.03(1)(c), (2)(c)1., (2)(c)2.,  
 (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,  
 (2)(c)8., (2)(c)9., (3), or (4) within  
 1,000 feet of property used for  
 religious services or a specified  
 business site.

907

893.13(1)(f)1.      1st      Sell, manufacture, or deliver cocaine  
 (or other s. 893.03(1)(a), (1)(b),  
 (1)(d), or (2)(a), (2)(b), or (2)(c)4.  
 drugs) within 1,000 feet of public  
 housing facility.

908

893.13(4)(b)      2nd      Deliver to minor cannabis (or other s.  
 893.03(1)(c), (2)(c)1., (2)(c)2.,  
 (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,  
 (2)(c)8., (2)(c)9., (3), or (4) drugs).

909

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

910

911      Section 6. 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: Judiciary Committee  
Representative Ingram offered the following:

**Amendment**

Remove lines 352-366 and insert:

166. PB-22 (1-pentyl-8-quinolinyl ester-1H-indole-3-carboxylic acid).

167. 5-Fluoro PB-22 (8-quinolinyl ester-1-(5-fluoropentyl)-1H-indole-3-carboxylic acid).

168. BB-22 (1-(cyclohexylmethyl)-8-quinolinyl ester-1H-indole-3-carboxylic acid).

169. 5-Fluoro AKB48 (N-((3s,5s,7s)-adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide).

Section 2. Paragraph (b) of subsection (6) of section 893.13, Florida Statutes, is amended to read:

893.13 Prohibited acts; penalties.—

(6)

(b) If the offense is the possession of not more than 20 grams of cannabis, as defined in this chapter, or 3 grams or less of a controlled substance described in s. 893.03(1)(c)46.—



Amendment No. 1

21 | 50., ~~and~~ 114.-142., 151.-159., or 166.-169., the person commits  
22 | a misdemeanor of the first degree, punishable as provided in s.  
23 | 775.082 or s. 775.083. For the purposes of this subsection,  
24 | "cannabis" does not include the resin extracted from the plants  
25 | of the genus *Cannabis*, or any compound manufacture, salt,  
26 | derivative, mixture, or preparation of such resin, and a  
27 | controlled substance described in s. 893.03(1)(c)46.-50., ~~and~~  
28 | 114.-142., 151.-159., or 166.-169., does not include the  
29 | substance in a  
30 |





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		

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Ingram offered the following:

**Amendment (with title amendment)**

Between lines 910 and 911, insert:

6 Section 6. Subsection (4) of section 893.0355, Florida  
 7 Statutes, is amended to read:

8 893.0355 Control of scheduled substances; delegation of  
 9 authority to Attorney General to reschedule substance, or delete  
 10 substance, by rule.-

11 (4) Rulemaking under this section shall be in accordance  
 12 with the procedural requirements of chapter 120, including the  
 13 emergency rule provisions found in s. 120.54, except that s.  
 14 120.54(7) does not apply. ~~The Attorney General may initiate~~  
 15 ~~proceedings for adoption, amendment, or repeal of any rule on~~  
 16 ~~his or her own motion or upon the petition of any interested~~  
 17 ~~party.~~

-----



Amendment No. 2

20  
21  
22  
23  
24

**T I T L E   A M E N D M E N T**

Remove line 22 and insert:  
thereto; amending s. 893.0355, F.S.; revising  
provisions relating to rulemaking; providing an  
effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 685 Parole Interview Dates for Certain Inmates  
**SPONSOR(S):** McBurney and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 742

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Jones	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee		Jones <i>LTS</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Currently, the Florida Parole Commission re-interviews parole eligible inmates to review the inmate's presumptive parole release date (PPRD). Generally, inmates are re-interviewed every two years. However, the statute provides for re-interviews every seven years if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate is serving a 25-year minimum mandatory sentence previously provided under s. 775.082, F.S., or the inmate was convicted of:

- Murder;
- Attempted murder;
- Sexual battery; or
- Attempted sexual battery.

This bill increases the intervals between parole interview dates from two to seven years for inmates convicted of:

- Kidnapping or attempted kidnapping; or
- Robbery, burglary of dwelling, burglary of a structure or conveyance, or breaking and entering, or an attempt thereof of any of these crimes, in which a human being is present and a sexual act is completed or attempted.

This bill will not have a fiscal impact on the commission in Fiscal Year 2013-2014; however the bill will have a minimal positive fiscal impact in subsequent years. See Fiscal Section. Additionally, on February 27, 2013, the Criminal Justice Impact Conference determined that this bill would not have a prison bed impact.

The bill is effective on July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission.<sup>1</sup> Parolees are supervised by Correctional Probation Officers employed by the Department of Corrections (DOC). Parole is not available for most crimes that were committed on or after October 1, 1983.<sup>2</sup> There is no parole eligibility for any crime committed on or after October 1, 1995.

The parole process begins with setting a presumptive parole release date (PPRD) by the commission after a hearing examiner reviews the inmate's file, conducts an initial interview with the inmate, and makes an initial recommendation to a panel of commissioners.<sup>3</sup> The PPRD is the tentative parole release date as determined by objective parole guidelines.<sup>4</sup> An inmate may request one review of the initial PPRD within 60 days after notification.<sup>5</sup> Otherwise, the PPRD is not reviewed until a hearing examiner holds subsequent interviews with the inmate.<sup>6</sup>

Subsequent interviews for review of the PPRD may be held every two or seven years depending on the offense the inmate was convicted of.<sup>7</sup> Generally, inmates are re-interviewed every two years.<sup>8</sup> However, s. 947.174(1)(b), F.S., provides for less frequent reviews if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate was convicted of: murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence previously provided under s. 775.082, F.S. In such cases, the subsequent interviews may be conducted every seven years if the commission makes a written finding that it is not reasonable to expect that parole will be granted.<sup>9,10</sup>

Subsequent interviews are limited to determining whether or not information has been gathered that might affect the PPRD.<sup>11</sup> DOC is responsible for bringing to the attention of the commission any information that may be pertinent for review, such as an inmate's current progress reports, psychological reports, and disciplinary reports.<sup>12</sup>

After an interview is conducted the hearing examiner sends his or her report and recommendation to a panel of commissioners.<sup>13</sup> The inmate's case is then added to the docket of the next available parole

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<sup>1</sup> *Extended Interviews Detailed Analysis*, Florida Parole Commission, provided to House Committee Staff on February 18, 2013 (on file with the Criminal Justice Subcommittee).

<sup>2</sup> The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995.

<sup>3</sup> Section 947.172, F.S.

<sup>4</sup> Section 947.005(8), F.S.

<sup>5</sup> Section 947.173(1), F.S.

<sup>6</sup> Section 947.174, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> In addition, s. 947.16(4), F.S., provides that at the time of sentencing, a judge may enter an order to retain jurisdiction over an offender for review of a commission release order to grant parole. If the judge vacates the parole release order and denies the parole, the offender shall be re-interviewed by the commission every two or seven years as determined by the same criteria described in this cited paragraph.

<sup>11</sup> Section 947.174(1)(c), F.S.

<sup>12</sup> Section 947.174(3), F.S.

<sup>13</sup> Rule 23-21.0052, F.A.C.

hearing where the commission will hear public testimony and make a final decision regarding the PPRD recommendation. Inmates are not permitted to attend parole hearings.<sup>14</sup> At parole hearings, victims and their families, inmates' families, attorneys, law enforcement, and other interested parties may address the commission.<sup>15</sup>

The hearing examiner conducts a final interview of the inmate within 90 days of the PPRD in order to set an effective parole release date and to establish a parole release plan.<sup>16</sup> The commission is required to give notice to the sentencing court prior to this final interview.<sup>17</sup> If the court objects to the offender's release, the objection can be an exceptional circumstance under s. 947.173, F.S., which authorizes the commission to cancel the final interview and reset the case for future review.<sup>18</sup> If the court does not object and the final interview is held, the commission then holds a final public hearing at which it decides whether the inmate's parole release plan is satisfactory and whether to authorize the effective parole release date and enter a release order.<sup>19</sup>

### **Effect of the Bill**

As noted above, the commission re-interviews parole eligible inmates to review the inmate's PPRD. Generally, inmates are re-interviewed every two years. However, s. 947.174(1)(b), F.S., provides for re-interviews every seven years if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate is serving a 25-year minimum mandatory sentence under s. 775.082, F.S., or the inmate was convicted of:

- Murder;
- Attempted murder;
- Sexual battery; or
- Attempted sexual battery.

The bill amends ss. 947.16, 947.174, and 947.1745, F.S., to increase the intervals between parole interview dates from two to seven years for inmates convicted of:

- Kidnapping or attempted kidnapping; or
- Robbery, burglary of dwelling, burglary of a structure or conveyance, or breaking and entering, or an attempt thereof of any of these crimes, in which a human being is present and a sexual act is completed or attempted.

The bill reenacts s. 947.165, F.S., to incorporate the amendments to s. 947.1745, F.S.

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

Section 1. Amends s. 947.16, F.S., relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 2. Amends s. 947.174, F.S., relating to subsequent interviews.

Section 3. Amends s. 947.1745, F.S., relating to establishment of effective parole release date.

Section 4. Reenacts s. 947.165, F.S., relating to objective parole guidelines.

Section 5. Provides an effective date of July 1, 2013.

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<sup>14</sup> Rule 23-21.004, F.A.C.

<sup>15</sup> The commission's Victims' Services unit provides advance notice to victims of upcoming parole proceedings. Section 947.06, F.S.

<sup>16</sup> Section 947.1745(1), F.S.

<sup>17</sup> Section 947.1745(6), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Rule 23-21.015, F.A.C.

## 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:

This bill will not have a fiscal impact on the commission in Fiscal Year 2013-2014; however the bill will have a minimal positive fiscal impact in subsequent years. According to the commission, inmates would be informed of any changes to the law regarding subsequent interview dates at their next scheduled interview. They would be informed that, upon passage of this bill, the commission may set a subsequent interview within seven years rather than within two. The bill does not remove the inmate's limited due process rights or the mechanism for the inmate to request the commission to consider setting an earlier interview date which is currently in place.

This bill will have no effect on the current review dates that are presently set for parole eligible inmates. This bill would only affect those inmates whose review dates occur after the effective date of the bill. Therefore, the inmates' interview dates that fall between July 1, 2013 and June 30, 2015, would not be affected by the bill until after that interview when they are informed their next interview would be in seven years instead of two.

Last year, the commission staff reviewed extensively the 842 initial, extraordinary, and subsequent interviews from commission dockets from July 1, 2010 through June 30, 2011. Of the total cases docketed, 534 cases had already been given a seven year subsequent interview date; 264 cases were not affected because their review date was not addressed by the bill and remained within two years; and 44 cases could have been affected and could have had their next interview date set for seven years after being informed of the law change at their next two year review. According to the commission, this eligible pool of inmates has not changed significantly since last year's analysis.

Therefore, based on that analysis, 44 cases may be affected by the bill in Fiscal Year 2015-2016 and could have their next interview date set within seven years instead of within two years. This equated to a total savings to the Commission of 166 hours annually (44 x 3.78 hours per case) or approximately 1/12 of an FTE for the FY 2011-2012 eligible pool of inmates.

It is reasonable to assume that in the subsequent years, the savings should compound as other eligible inmates review dates are changed from two to seven years, but the savings associated with the remaining eligible pool is also expected to be minimal.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

None.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

On June 1, 1997, the Legislature changed the frequency of subsequent parole interviews for certain prisoners from every two years to every five years.<sup>20</sup> According to the Third District Court of Appeal, the ex post facto clause was not violated by the retroactive application of this law as it applied to a limited number of inmates and was narrowly constructed.<sup>21</sup>

#### B. RULE-MAKING AUTHORITY:

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

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>20</sup> Chapter 97-289, L.O.F.

<sup>21</sup> *Tuff v. State*, 732 So.2d 461 (Fla. 3d DCA 1999).



1 A bill to be entitled  
 2 An act relating to parole interview dates for certain  
 3 inmates; amending ss. 947.16, 947.174, and 947.1745,  
 4 F.S.; extending from 2 years to 7 years the period  
 5 between parole interview dates for inmates convicted  
 6 of committing specified crimes; requiring a periodic  
 7 parole interview for an inmate convicted of kidnapping  
 8 or attempted kidnapping or robbery, burglary of a  
 9 dwelling, burglary of a structure or conveyance, or  
 10 breaking and entering, or the attempt thereof of any  
 11 of these crimes, in which a human being is present and  
 12 a sexual act is attempted or completed; reenacting s.  
 13 947.165(1), F.S., relating to objective parole  
 14 guidelines, to incorporate the amendment made by this  
 15 act to s. 947.1745, F.S., in a reference thereto;  
 16 providing an effective date.

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

19  
 20 Section 1. Paragraph (g) of subsection (4) of section  
 21 947.16, Florida Statutes, is amended to read:

22 947.16 Eligibility for parole; initial parole interviews;  
 23 powers and duties of commission.—

24 (4) A person who has become eligible for an initial parole  
 25 interview and who may, according to the objective parole  
 26 guidelines of the commission, be granted parole shall be placed  
 27 on parole in accordance with the provisions of this law; except  
 28 that, in any case of a person convicted of murder, robbery,

HB 685

2013

29 burglary of a dwelling or burglary of a structure or conveyance  
30 in which a human being is present, aggravated assault,  
31 aggravated battery, kidnapping, sexual battery or attempted  
32 sexual battery, incest or attempted incest, an unnatural and  
33 lascivious act or an attempted unnatural and lascivious act,  
34 lewd and lascivious behavior, assault or aggravated assault when  
35 a sexual act is completed or attempted, battery or aggravated  
36 battery when a sexual act is completed or attempted, arson, or  
37 any felony involving the use of a firearm or other deadly weapon  
38 or the use of intentional violence, at the time of sentencing  
39 the judge may enter an order retaining jurisdiction over the  
40 offender for review of a commission release order. This  
41 jurisdiction of the trial court judge is limited to the first  
42 one-third of the maximum sentence imposed. When any person is  
43 convicted of two or more felonies and concurrent sentences are  
44 imposed, then the jurisdiction of the trial court judge as  
45 provided herein applies to the first one-third of the maximum  
46 sentence imposed for the highest felony of which the person was  
47 convicted. When any person is convicted of two or more felonies  
48 and consecutive sentences are imposed, then the jurisdiction of  
49 the trial court judge as provided herein applies to one-third of  
50 the total consecutive sentences imposed.

51 (g) The decision of the original sentencing judge or, in  
52 her or his absence, the chief judge of the circuit to vacate any  
53 parole release order as provided in this section is not  
54 appealable. Each inmate whose parole release order has been  
55 vacated by the court shall be reinterviewed within 2 years after  
56 the date of receipt of the vacated release order and every 2

57 years thereafter, or earlier by order of the court retaining  
 58 jurisdiction. However, each inmate whose parole release order  
 59 has been vacated by the court and who has been:

- 60 1. Convicted of murder or attempted murder;
- 61 2. Convicted of sexual battery or attempted sexual  
 62 battery; ~~or~~
- 63 3. Convicted of kidnapping or attempted kidnapping;
- 64 4. Convicted of robbery, burglary of a dwelling, burglary  
 65 of a structure or conveyance, or breaking and entering, or the  
 66 attempt thereof of any of these crimes, in which a human being  
 67 is present and a sexual act is attempted or completed; or

68 5.3. Sentenced to a 25-year minimum mandatory sentence  
 69 previously provided in s. 775.082,

70  
 71 shall be reinterviewed once within 7 years after the date of  
 72 receipt of the vacated release order and once every 7 years  
 73 thereafter, if the commission finds that it is not reasonable to  
 74 expect that parole would be granted during the following years  
 75 and states the bases for the finding in writing. For an ~~any~~  
 76 inmate who is within 7 years of his or her tentative release  
 77 date, the commission may establish a reinterview date before  
 78 ~~prior to~~ the 7-year schedule.

79 Section 2. Paragraph (b) of subsection (1) of section  
 80 947.174, Florida Statutes, is amended to read:

81 947.174 Subsequent interviews.—

82 (1)

83 (b) For any inmate convicted of murder or ~~or~~ attempted  
 84 murder; ~~sexual battery~~ sexual battery; ~~or attempted sexual battery~~; kidnapping

85 or attempted kidnapping; or robbery, burglary of a dwelling,  
 86 burglary of a structure or conveyance, or breaking and entering,  
 87 or the attempt thereof of any of these crimes, in which a human  
 88 being is present and a sexual act is attempted or completed, or  
 89 any inmate who has been sentenced to a 25-year minimum mandatory  
 90 sentence previously provided in s. 775.082, and whose  
 91 presumptive parole release date is more than 7 years after the  
 92 date of the initial interview, a hearing examiner shall schedule  
 93 an interview for review of the presumptive parole release date.  
 94 The interview shall take place once within 7 years after the  
 95 initial interview and once every 7 years thereafter if the  
 96 commission finds that it is not reasonable to expect that parole  
 97 will be granted at a hearing during the following years and  
 98 states the bases for the finding in writing. For an ~~any~~ inmate  
 99 who is within 7 years of his or her tentative release date, the  
 100 commission may establish an interview date before the 7-year  
 101 schedule.

102 Section 3. Subsection (6) of section 947.1745, Florida  
 103 Statutes, is amended to read:

104 947.1745 Establishment of effective parole release date.—  
 105 If the inmate's institutional conduct has been satisfactory, the  
 106 presumptive parole release date shall become the effective  
 107 parole release date as follows:

108 (6) Within 90 days before the effective parole release  
 109 date interview, the commission shall send written notice to the  
 110 sentencing judge of any inmate who has been scheduled for an  
 111 effective parole release date interview. If the sentencing judge  
 112 is no longer serving, the notice must be sent to the chief judge

113 of the circuit in which the offender was sentenced. The chief  
 114 judge may designate any circuit judge within the circuit to act  
 115 in the place of the sentencing judge. Within 30 days after  
 116 receipt of the commission's notice, the sentencing judge, or the  
 117 designee, shall send to the commission notice of objection to  
 118 parole release, if the judge objects to such release. If there  
 119 is objection by the judge, such objection may constitute good  
 120 cause in exceptional circumstances as described in s. 947.173,  
 121 and the commission may schedule a subsequent review within 2  
 122 years, extending the presumptive parole release date beyond that  
 123 time. However, for an inmate who has been:

- 124 (a) Convicted of murder or attempted murder;
- 125 (b) Convicted of sexual battery or attempted sexual  
 126 battery; ~~or~~
- 127 (c) Convicted of kidnapping or attempted kidnapping;
- 128 (d) Convicted of robbery, burglary of a dwelling, burglary  
 129 of a structure or conveyance, or breaking and entering, or the  
 130 attempt thereof of any of these crimes, in which a human being  
 131 is present and a sexual act is attempted or completed; or
- 132 (e) ~~(e)~~ Sentenced to a 25-year minimum mandatory sentence  
 133 previously provided in s. 775.082,

134  
 135 the commission may schedule a subsequent review under this  
 136 subsection once every 7 years, extending the presumptive parole  
 137 release date beyond that time if the commission finds that it is  
 138 not reasonable to expect that parole would be granted at a  
 139 review during the following years and states the bases for the  
 140 finding in writing. For an ~~any~~ inmate who is within 7 years of

141 his or her release date, the commission may schedule a  
 142 subsequent review before ~~prior to~~ the 7-year schedule. With any  
 143 subsequent review the same procedure outlined above will be  
 144 followed. If the judge remains silent with respect to parole  
 145 release, the commission may authorize an effective parole  
 146 release date. This subsection applies if the commission desires  
 147 to consider the establishment of an effective release date  
 148 without delivery of the effective parole release date interview.  
 149 Notice of the effective release date must be sent to the  
 150 sentencing judge, and either the judge's response to the notice  
 151 must be received or the time period allowed for such response  
 152 must elapse before the commission may authorize an effective  
 153 release date.

154 Section 4. For the purpose of incorporating the amendment  
 155 made by this act to section 947.1745, Florida Statutes, in a  
 156 reference thereto, subsection (1) of section 947.165, Florida  
 157 Statutes, is reenacted to read:

158 947.165 Objective parole guidelines.—

159 (1) The commission shall develop and implement objective  
 160 parole guidelines which shall be the criteria upon which parole  
 161 decisions are made. The objective parole guidelines shall be  
 162 developed according to an acceptable research method and shall  
 163 be based on the seriousness of offense and the likelihood of  
 164 favorable parole outcome. The guidelines shall require the  
 165 commission to aggravate or aggregate each consecutive sentence  
 166 in establishing the presumptive parole release date. Factors  
 167 used in arriving at the salient factor score and the severity of  
 168 offense behavior category shall not be applied as aggravating

HB 685

2013

169 | circumstances. If the sentencing judge files a written objection  
170 | to the parole release of an inmate as provided for in s.  
171 | 947.1745(6), such objection may be used by the commission as a  
172 | basis to extend the presumptive parole release date.

173 |       Section 5. This act shall take effect July 1, 2013.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 841 Powers of Attorney  
**SPONSOR(S):** Powell and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) Judiciary Committee		Ward <i>AW</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

A power of attorney is a legal document in which the client (the principal) authorizes a person or entity (the agent or attorney-in-fact) to act on his or her behalf. What authority is granted depends on the specific language of the power of attorney. A person giving a power of attorney may provide very broad authority or may limit the authority to certain specific acts.

The Florida Power of Attorney Act (the "Act"), was enacted effective October 1, 2011, to conform to the Uniform Power of Attorney Act. This bill addresses some additional changes to facilitate the proper functioning of the Act. The bill:

- Adds definitions for terms used in the Act;
- Identifies additional exceptions to the application of the Act;
- Authorizes a notary to sign a power of attorney on behalf of a disabled principal;
- Specifies when a third party may reject an out-of-state power of attorney;
- Provides an exception for title agents because they require an original powers of attorney for recording;
- Broadens the agent's ability to delegate certain ministerial tasks;
- Provides a standard for a court to award fees and costs in a judicial proceeding;
- Specifies the content and form of the affidavit to be provided by an agent;
- Provides that an English translation must be certified rather than verified;
- Provides when written notice of a third party's rejection of a power of attorney is required; and
- Specifies the application of numerous sections to financial institutions and broker-dealers.

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

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Powers of Attorney Generally

A power of attorney is a legal document in which the client (the principal) authorizes a person or entity (the agent or attorney-in-fact)<sup>1</sup> to act on his or her behalf. What authority is granted depends on the specific language of the power of attorney. A person giving a power of attorney may provide very broad authority (a general power of attorney) or may limit the authority to certain specific acts (a limited power of attorney).

A power of attorney expires automatically upon the principal becoming mentally ill or otherwise incapacitated.<sup>2</sup> However, a durable power of attorney remains in effect if the principal subsequently becomes incapacitated, but expires immediately if the principal is adjudicated legally incapacitated.<sup>3</sup> Any power of attorney expires upon death of the principal or revocation by the principal.<sup>4</sup>

##### Uniform Power of Attorney Act

In 2006, the Uniform Law Commission of the National Conference of Commissioners on Uniform Laws completed a Uniform Power of Attorney Act (UPOAA). The catalyst for UPOAA was a national study which revealed a growing divergence in state power of attorney legislation. Since its completion thirteen states and one territory have adopted the UPOAA.<sup>5</sup> The goal of the UPOAA is to promote uniformity and portability of powers of attorney across state lines.

The Florida Power of Attorney Act (the "Act"), was enacted effective October 1, 2011, and substantially re-wrote ch. 709, F.S., to conform to the Uniform Power of Attorney Act, with modifications. This bill addresses some additional changes to facilitate the functioning of the Act.

##### Section by Section Analysis

#### 1. Definitions – Section 709.2102, F.S.

The bill adds a definition for "broker-dealer." The purpose of the addition is to clarify that broker-dealers should be treated similar to financial institutions in the application of the Act. The bill also makes conforming amendments to ss. 709.2120, 709.2121, 709.2207 and 709.2208, F.S., to clarify that the Act applies to both broker-dealers and financial institutions in almost all instances.

The definition of "sign" is modified to clarify that the principal may use either a signature or a simple mark as evidence of execution.

A definition of "state" has also been included as it relates to acceptance of powers of attorney executed in compliance with the laws of another state, territory, or insular possession of the United States.<sup>6</sup>

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<sup>1</sup> Chapter 709, F.S., uses the term "attorney-in-fact" to describe a person granted authority pursuant to a power of attorney. This bill uses the term "agent" to describe a person granted authority pursuant to a power of attorney.

<sup>2</sup> A general power of attorney is the default power of attorney in this state.

<sup>3</sup> See s. 709.2121, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> See [http://www.uniformlaws.org/Act.aspx?title=Power of Attorney](http://www.uniformlaws.org/Act.aspx?title=Power%20of%20Attorney) for information regarding the UPOAA. Thirteen states are recognized as having adopted the Act and one state has proposed legislation to adopt the act this year. (Last visited March 9, 2013).

<sup>6</sup> "Insular is defined as "of islands." <http://www.merriam-webster.com/dictionary/insular>. (Last visited March 9, 2013). Currently, the insular possessions of the United States are the U.S. Virgin Islands, American Samoa, and Guam.

## **2. Powers to which the Act does not apply – Section 709.2103, F.S.**

Section 709.2103, F.S., provides that the Act does not apply to specialized powers of attorney encountered in common agency relationships and commercial contexts. The Act currently excludes:

- A power created by an entity, such as a corporation;
- A proxy or other delegation to exercise voting or management rights;
- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose; or
- Powers coupled with an interest (such as powers given to a creditor to perfect or protect title in or to sell, pledged collateral).

The bill adds the following exceptions to transactions covered by the Act:

- Financial interest transfer powers.<sup>7</sup>
- Agent for trades and transfers.<sup>8</sup>
- Agent for a trustee to whom authority is delegated under s. 736.0807, F.S.<sup>9</sup>

## **3. Execution requirements – Sections 709.2105 and 709.2202, F.S.**

A power of attorney must be signed by the principal. A reasonable accommodation is needed to facilitate the “signing” of a power of attorney by a principal who is physically unable to sign his or her name but otherwise has the capacity to enter into a power of attorney.

The bill adopts the procedure in ch. 117, F.S., to authorize a notary to sign the name of the disabled principal. The notary is authorized to execute the power of attorney at the direction of the principal by the amendment of s. 709.2105, F.S. In addition, the principal may also direct the notary to provide the required separate powers that require additional signatures or initials under s. 709.2202, F.S. The separate powers in this provision relate to special authority to effect the disposition of the principal’s assets by trust, gift or beneficiary designation. Due to the nature of this authority, the Act requires a separate acknowledgment by the principal that such authority has been granted to the agent. The amendment of s. 709.2202, F.S., specifies the requirements for the notary to provide the acknowledgment on behalf of the principal. These include:

- The principal must direct the notary to sign or initial the specifically enumerated authority;
- The notary must do so in the presence of the principal and two disinterested witnesses, and
- The notary must include a reference to s. 117.05(14), F.S., in each instance where the acknowledgment is made by the notary.

## **4. Validity of Power of Attorney – Section 709.2106, F.S.**

One of the key provisions of the Act was to provide a mechanism for a power of attorney executed pursuant to the laws of another state to be recognized in Florida, even if its execution did not comply

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<sup>7</sup> The Depository Trust Company and other transfer agents rely on these stock powers to facilitate transfers of certificates. They frequently are provided on pre-printed forms and do not meet the execution requirements of the Act. The provisions of the Act are not applicable to this type of agency appointment.

<sup>8</sup> Most investment management agreements authorize the broker-dealer or financial institution to execute trades and transfers on a client’s behalf by appointing the broker-dealer or financial institution (or an employee) as an agent of the client. This appointment is necessary to facilitate the sale and purchase of investments and transfers in a timely manner in response to market changes. The provisions of the Act are not applicable to this type of agency appointment.

<sup>9</sup> A trustee is authorized in ch. 736, F.S., to appoint agents to assist the trustee in fulfilling its responsibilities. The provisions of the Act are not applicable to this type of agency appointment as the fulfillment of a trustee’s responsibilities and those of his agent are adequately governed by ch. 736, F.S.

with the requirements of the Act. The current language is unclear regarding the third person's right to refuse to accept the power of attorney.

The mechanism allows third parties to request an opinion of counsel that the power of attorney was properly executed under the laws of the other state. The bill modifies the Act to specify that if a third person requests such an opinion of counsel and it is not provided, that is sufficient grounds for the third person to refuse to accept the power of attorney.

Another key provision of the Act is to allow third parties to accept a copy of a power of attorney rather than requiring the agent to produce an original each time it is used. Title insurance agents expressed concern that an original must be recorded in the public records for purposes of real estate title transfers using a power of attorney. The bill amends the Act to provide that a third party such as a title agent may require an original power of attorney if the original must be recorded in the public records as part of the transaction. Additionally, a new provision is included to authorize the recording of an original power of attorney in the public records upon payment of the prescribed fee.<sup>10</sup>

#### **5. Agent's duties – Section 709.2114, F.S.**

A principal delegates authority to an agent to act for the principal by execution of the power of attorney. There are limited circumstances in which the agent is allowed to further delegate his or her authority to another person. The Act currently limits this to delegation of investment authority pursuant to s. 518.112, F.S., to enable an agent to obtain qualified investment management on the principal's behalf.

The bill allows the agent to also delegate his or her authority in situations using a prescribed governmental form, such as a power of attorney to a car dealer to facilitate the transfer of title for the sale of a vehicle, or the appointment of an agent for communication with the Internal Revenue Service using IRS Form 2848.

#### **6. Judicial relief; conflicts of interest – Section 709.2116, F.S.**

The Act allows a court to award attorney's fees and costs in any proceeding involving a power of attorney but it does not provide a standard for the court to apply in making the award. The bill includes the standard "as in chancery actions" to allow the court full discretion in whether or not to make an award and against whom.

#### **7. Acceptance of and reliance upon power of attorney – Section 709.2119, F.S.**

A component of the Act is the ability of a third party to request that the agent provide an affidavit as to the validity of the power of attorney. The bill specifies the contents of the affidavit and provides a suggested form, including statements regarding the marital status of the principal and agent, if appropriate.

A statutory reference in subsection (3) is corrected from 709.2103 to 709.2105.

The bill also changes the requirement that an English translation be "verified," to simply "certified." Verification of a translation requires the certification by the translator that it is an accurate translation as well as a certification by a court that the translator has been approved to provide translation services.

#### **8. Liability for refusal to accept power of attorney - Section 709.2120, F.S.**

Section 709.2120, F.S. currently identifies situations where it is appropriate for a third party to reject a power of attorney. It also includes a requirement that the third party notify the agent in writing of the reason for the rejection. The bill adds that the written notice of rejection is not required when the third

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<sup>10</sup> See also, s. 28.222, F.S.  
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person is not otherwise required to engage in the same transaction with the principal. Conversely, notice is required in all other situations.

References to financial institutions in this section are amended to include broker-dealers, and "security transactions" is changed to "investment transactions" to conform to the terminology in s. 709.2208, F.S.

**9. Notice – Section 709.2121, F.S.**

References to financial institutions in subsections (3) and (4) are changed to specifically include broker-dealers.

**10. Authority to make gifts – Section 709.2202, F.S.**

The agent's ability to make a gift of the principal's property is limited by a default "cap" equal to the annual exclusion amount for federal gift tax purposes. This amount is \$14,000 per donee in 2013. The bill provides that this cap is measured on a calendar year basis, the same as it is measured for federal gift tax purposes.

**11. Banks and other financial institutions – Section 709.2208, F.S.**

A reference to banks and other financial institutions is changed by the bill to specifically include broker-dealers.

**12. Effective Date.**

The bill is effective upon becoming law.

**B. SECTION DIRECTORY:**

Section 1 amends s. 709.2102, F.S., regarding definitions.

Section 2 amends s. 709.2103, F.S., regarding applicability.

Section 3 amends s. 709.2105, F.S., regarding qualifications of agents.

Section 4 amends s. 709.2106, F.S., regarding validity of powers of attorney.

Section 5 amends s. 709.2114, F.S., regarding agent's duties.

Section 6 amends s. 709.2116, F.S., regarding judicial relief.

Section 7 amends s. 709.2119, F.S., regarding acceptance of and reliance upon power of attorney.

Section 8 amends s. 709.2120, F.S., regarding refusal to accept power of attorney.

Section 9 amends s. 709.2121, F.S., regarding notice.

Section 10 amends s. 709.2202, F.S., regarding authority that requires separate signed enumeration.

Section 11 amends s. 709.2208, F.S., regarding banks and other financial institutions.

Section 12 provides that the bill is effective upon becoming a 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:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

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

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled  
 2 An act relating to powers of attorney; amending s.  
 3 709.2102, F.S.; revising and providing definitions;  
 4 amending s. 709.2103, F.S.; providing additional  
 5 exceptions to the applicability of specified power of  
 6 attorney provisions; amending s. 709.2105, F.S.;  
 7 authorizing a notary public to sign a principal's name  
 8 on a power of attorney in accordance with specified  
 9 provisions if the principal is physically unable to  
 10 sign; amending s. 709.2106, F.S.; authorizing a third  
 11 person to refuse to accept a power of attorney  
 12 executed in another state in certain circumstances;  
 13 requiring an original of a power of attorney that is  
 14 relied upon to affect the title to real property to be  
 15 recorded; providing that the original of a properly  
 16 executed power of attorney may be presented for  
 17 recording in the official records as provided by law;  
 18 amending s. 709.2114, F.S.; providing additional  
 19 circumstances in which an agent may delegate authority  
 20 to a third person; amending s. 709.2116, F.S.;  
 21 limiting awards of attorney fees and costs for certain  
 22 actions related to powers of attorney to those awarded  
 23 in actions in chancery; amending s. 709.2119, F.S.;  
 24 authorizing a third person to require an agent to  
 25 execute an affidavit stating that the agent's  
 26 authority has not been terminated by the filing of an  
 27 action for dissolution or annulment of marriage or  
 28 legal separation of the agent and principal; revising

29 a form for affidavits; revising cross-references;  
 30 revising terminology relating to English translations  
 31 of powers of attorney; amending s. 709.2120, F.S.;  
 32 conforming provisions to changes made by the act;  
 33 requiring a third person who rejects a power of  
 34 attorney for certain reasons to state the reasons for  
 35 the rejection in writing; amending s. 709.2121, F.S.;  
 36 requiring certain notices to broker-dealers to contain  
 37 specified information; amending s. 709.2202, F.S.;  
 38 authorizing a notary public to sign or initial a power  
 39 of attorney for the principal in certain  
 40 circumstances; revising language concerning a general  
 41 power of attorney with respect to gifts; providing  
 42 that broker-dealers do not have a duty to inquire as  
 43 to the appropriateness of the agent's exercise of  
 44 authority and are not liable for certain actions in  
 45 certain circumstances; amending s. 709.2208, F.S.;  
 46 providing that broker-dealers have authority to take  
 47 certain actions if a power of attorney contains  
 48 specific language concerning the agent's authority;  
 49 providing an effective date.

50

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

52

53 Section 1. Subsections (2) through (12) and (13) of  
 54 section 709.2102, Florida Statutes, are renumbered as  
 55 subsections (3) through (13) and (15), respectively, new  
 56 subsections (2) and (14) are added to that section, and present



57 subsection (12) of that section is amended, to read:

58 709.2102 Definitions.—As used in this part, the term:

59 (2) "Broker-dealer" means a broker-dealer registered with  
 60 the United States Securities and Exchange Commission or the  
 61 Commodity Futures Trading Commission if the broker-dealer is  
 62 acting in that capacity.

63 (13)~~(12)~~ "Sign" means having present intent to  
 64 authenticate or adopt a record to:

65 (a) Execute by signature or mark ~~or adopt a tangible~~  
 66 ~~symbol~~; or

67 (b) Attach to, or logically associate with the record an  
 68 electronic sound, symbol, or process.

69 (14) "State" means a state of the United States, the  
 70 District of Columbia, Puerto Rico, the United States Virgin  
 71 Islands, or any territory or insular possession subject to the  
 72 jurisdiction of the United States.

73 Section 2. Section 709.2103, Florida Statutes, is amended  
 74 to read:

75 709.2103 Applicability.—This part applies to all powers of  
 76 attorney except:

77 (1) A proxy or other delegation to exercise voting rights  
 78 or management rights with respect to an entity;

79 (2) A power created on a form prescribed by a government  
 80 or governmental subdivision, agency, or instrumentality for a  
 81 governmental purpose;

82 (3) A power to the extent it is coupled with an interest  
 83 in the subject of the power, including a power given to or for  
 84 the benefit of a creditor in connection with a credit

85 transaction; ~~and~~

86 (4) A power created by a person other than an individual;

87 (5) A power given to a transfer agent to facilitate a  
 88 specific transfer or disposition of one or more identified  
 89 stocks, bonds, or other financial instruments;

90 (6) A power authorizing a financial institution or broker-  
 91 dealer, or an employee of the financial institution or broker-  
 92 dealer, to act as agent for the account owner in executing  
 93 trades or transfers of cash, securities, commodities, or other  
 94 financial assets on behalf of the account owner in the regular  
 95 course of business; and

96 (7) A delegation of powers by a trustee in accordance with  
 97 s. 736.0807.

98 Section 3. Subsection (3) is added to section 709.2105,  
 99 Florida Statutes, to read:

100 709.2105 Qualifications of agent; execution of power of  
 101 attorney.-

102 (3) If the principal is physically unable to sign the  
 103 power of attorney, the notary public before whom the principal's  
 104 oath or acknowledgment is made may sign the principal's name on  
 105 the power of attorney in accordance with chapter 117.

106 Section 4. Subsections (3) and (5) of section 709.2106,  
 107 Florida Statutes, are amended, and subsection (6) is added to  
 108 that section, to read:

109 709.2106 Validity of power of attorney.-

110 (3) A power of attorney executed in another state which  
 111 does not comply with the execution requirements of this part is  
 112 valid in this state if, when the power of attorney was executed,

113 the power of attorney and its execution complied with the law of  
 114 the state of execution. A third person who is requested to  
 115 accept a power of attorney that is valid in this state solely  
 116 because of this subsection may in good faith request, and rely  
 117 upon, without further investigation, an opinion of counsel as to  
 118 any matter of law concerning the power of attorney, including  
 119 the due execution and validity of the power of attorney. An  
 120 opinion of counsel requested under this subsection must be  
 121 provided at the principal's expense. A third person may refuse  
 122 to accept a power of attorney that is valid in this state solely  
 123 because of this subsection if the agent does not provide the  
 124 requested opinion of counsel, and in such case, a third person  
 125 has no liability for refusing to accept the power of attorney.  
 126 This subsection does not affect any other rights of a third  
 127 person who is requested to accept the power of attorney under  
 128 this part, or any other provisions of applicable law.

129 (5) Except as otherwise provided in the power of attorney,  
 130 a photocopy or electronically transmitted copy of an original  
 131 power of attorney has the same effect as the original, except  
 132 that an original of a power of attorney that is relied upon to  
 133 affect the title to real property must be recorded in the  
 134 official records.

135 (6) The original of a properly executed power of attorney  
 136 may be presented for recording in the official records as  
 137 provided for in s. 28.222 upon payment of the service charge as  
 138 provided by law for the recording of documents in the public  
 139 records.

140 Section 5. Paragraph (b) of subsection (1) of section

141 | 709.2114, Florida Statutes, is amended to read:

142 |       709.2114 Agent's duties.—

143 |       (1) An agent is a fiduciary. Notwithstanding the  
144 | provisions in the power of attorney, an agent who has accepted  
145 | appointment:

146 |       (b) May not delegate authority to a third person except:

147 |       1. As provided in s. 518.112;

148 |       2. As provided in this part; or

149 |       3. By execution of a power of attorney on a form

150 | prescribed by a government or governmental subdivision, agency,  
151 | or instrumentality for a governmental purpose;

152 |       Section 6. Subsection (3) of section 709.2116, Florida  
153 | Statutes, is amended to read:

154 |       709.2116 Judicial relief; conflicts of interests.—

155 |       (3) In any proceeding commenced by filing a petition under  
156 | this section, including, but not limited to, the unreasonable  
157 | refusal of a third person to allow an agent to act pursuant to  
158 | the power of attorney, and in challenges to the proper exercise  
159 | of authority by the agent, the court shall award reasonable  
160 | attorney ~~attorney's~~ fees and costs as in chancery actions.

161 |       Section 7. Subsections (2), (3), and (4) of section  
162 | 709.2119, Florida Statutes, are amended to read:

163 |       709.2119 Acceptance of and reliance upon power of  
164 | attorney.—

165 |       (2) A third person may require:

166 |       (a) An agent to execute an affidavit stating where the  
167 | principal is domiciled; that the principal is not deceased; that  
168 | there has been no revocation, or partial or complete termination

169 by adjudication of incapacity or by the occurrence of an event  
 170 referenced in the power of attorney; that there has been no  
 171 suspension by initiation of proceedings to determine incapacity,  
 172 or to appoint a guardian, of the principal; that the agent's  
 173 authority has not been terminated by the filing of an action for  
 174 dissolution or annulment of marriage or by the legal separation  
 175 of the agent and the principal; and, if the affiant is a  
 176 successor agent, the reasons for the unavailability of the  
 177 predecessor agents, if any, at the time the authority is  
 178 exercised.

179 (b) An officer of a financial institution acting as agent  
 180 to execute a separate affidavit, or include in the form of the  
 181 affidavit, the officer's title and a statement that the officer  
 182 has full authority to perform all acts and enter into all  
 183 transactions authorized by the power of attorney for and on  
 184 behalf of the financial institution in its capacity as agent.

185 (c) A written affidavit executed by the agent under this  
 186 subsection may, but need not, be in the following form:

187 STATE OF.....

188 COUNTY OF.....

189 Before me, the undersigned authority, personally appeared  
 190 ...(agent)~~(attorney in fact)~~... ("Affiant"), who swore or  
 191 affirmed that:

192 1. Affiant is the agent ~~attorney in fact~~ named in the  
 193 Durable Power of Attorney executed by ...(principal)...  
 194 ("Principal") on ...(date)....

195 2. This Power of Attorney is currently exercisable by  
 196 Affiant. The principal is domiciled in ...(insert name of state,

197 territory, or foreign country)....

198 3. To the best of Affiant's knowledge after diligent  
199 search and inquiry:

200 a. The Principal is not deceased;

201 b. Affiant's authority has not been suspended by  
202 initiation of proceedings to determine incapacity or to appoint  
203 a guardian or a guardian advocate; ~~and~~

204 c. Affiant's authority has not been terminated by the  
205 filing of an action for dissolution or annulment of Affiant's  
206 marriage to the principal, or their legal separation; and

207 ~~d.e.~~ There has been no revocation, or partial or complete  
208 termination, of the power of attorney or of Affiant's authority.

209 4. Affiant is acting within the scope of authority granted  
210 in the power of attorney.

211 5. Affiant is the successor to ...(insert name of  
212 predecessor agent)..., who has resigned, died, become  
213 incapacitated, is no longer qualified to serve, has declined to  
214 serve as agent, or is otherwise unable to act, if applicable.

215 6. Affiant agrees not to exercise any powers granted by  
216 the Durable Power of Attorney if Affiant attains knowledge that  
217 it has been revoked, has been partially or completely terminated  
218 or suspended, or is no longer valid because of the death or  
219 adjudication of incapacity of the Principal.

220 .....  
221 ... (Affiant)...

222 Sworn to (or affirmed) and subscribed before me this ....  
223 day of ...(month)..., ...(year)..., by ...(name of person making  
224 statement)...

225 ... (Signature of Notary Public-State of Florida)...

226 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

227 Personally Known OR Produced Identification

228 ... (Type of Identification Produced)...

229 (3) A third person who is asked to accept a power of

230 attorney that appears to be executed in accordance with s.

231 709.2105 ~~709.2103~~ may in good faith request, and rely upon,

232 without further investigation:

233 (a) A certified ~~verified~~ English translation of the power

234 of attorney if the power of attorney contains, in whole or in

235 part, language other than English;

236 (b) An opinion of counsel as to any matter of law

237 concerning the power of attorney if the third person making the

238 request provides in a writing or other record the reason for the

239 request; or

240 (c) The affidavit described in subsection (2).

241 (4) An English translation or an opinion of counsel

242 requested under this section must be provided at the principal's

243 expense unless the request is made after the time specified in

244 s. 709.2120 ~~709.2120(1)~~ for acceptance or rejection of the power

245 of attorney.

246 Section 8. Section 709.2120, Florida Statutes, is amended

247 to read:

248 709.2120 Refusal to accept power of attorney.—

249 ~~(1) Except as provided in subsection (2):~~

250 (1)(a) A third person must accept or reject a power of

251 attorney within a reasonable time. A third person who rejects a

252 power of attorney must state in writing the reason for the

253 rejection.

254 (2)~~(b)~~ Four days, excluding Saturdays, Sundays, and legal  
 255 holidays, are presumed to be a reasonable time for a financial  
 256 institution or broker-dealer to accept or reject a power of  
 257 attorney with respect to:

258 (a)~~1.~~ A banking transaction, if the power of attorney  
 259 expressly contains authority to conduct banking transactions  
 260 pursuant to s. 709.2208(1); or

261 (b)~~2.~~ An investment ~~A security~~ transaction, if the power  
 262 of attorney expressly contains authority to conduct investment  
 263 ~~security~~ transactions pursuant to s. 709.2208(2).

264 (3)~~(c)~~ A third person may not require an additional or  
 265 different form of power of attorney for authority granted in the  
 266 power of attorney presented.

267 (4) A third person who rejects a power of attorney for any  
 268 reason other than as provided in paragraph (5)(a) must state in  
 269 writing the reasons for the rejection.

270 (5)~~(2)~~ A third person is not required to accept a power of  
 271 attorney if:

272 (a) The third person is not otherwise required to engage  
 273 in a transaction with the principal in the same circumstances;

274 (b) The third person has knowledge of the termination or  
 275 suspension of the agent's authority or of the power of attorney  
 276 before exercising the power;

277 (c) A timely request by the third person for an affidavit,  
 278 English translation, or opinion of counsel under s. 709.2119(4)  
 279 is refused by the agent;

280 (d) Except as provided in paragraph (b), the third person



281 believes in good faith that the power is not valid or that the  
 282 agent does not have authority to perform the act requested; or

283 (e) The third person makes, or has knowledge that another  
 284 person has made, a report to the local adult protective services  
 285 office stating a good faith belief that the principal may be  
 286 subject to physical or financial abuse, neglect, exploitation,  
 287 or abandonment by the agent or a person acting for or with the  
 288 agent.

289 ~~(6)~~~~(3)~~ A third person who, in violation of this section,  
 290 refuses to accept a power of attorney is subject to:

291 (a) A court order mandating acceptance of the power of  
 292 attorney; and

293 (b) Liability for damages, including reasonable attorney  
 294 ~~attorney's~~ fees and costs, incurred in any action or proceeding  
 295 that confirms, for the purpose tendered, the validity of the  
 296 power of attorney or mandates acceptance of the power of  
 297 attorney.

298 Section 9. Subsection (3) of section 709.2121, Florida  
 299 Statutes, is amended to read:

300 709.2121 Notice.—

301 (3) Notice to a financial institution or broker-dealer  
 302 must contain the principal's name and, address, and the last  
 303 four digits of the principal's taxpayer identification number  
 304 and be directed to an officer or a manager of the financial  
 305 institution or broker-dealer in this state.

306 Section 10. Section 709.2202, Florida Statutes, is amended  
 307 to read:

308 709.2202 Authority that requires separate signed

309 enumeration.—

310 (1) Notwithstanding s. 709.2201, an agent may exercise the  
 311 following authority only if the principal signed or initialed  
 312 next to each specific enumeration of the authority, the exercise  
 313 of the authority is consistent with the agent's duties under s.  
 314 709.2114, and the exercise is not otherwise prohibited by  
 315 another agreement or instrument:

- 316 (a) Create an inter vivos trust;
- 317 (b) With respect to a trust created by or on behalf of the  
 318 principal, amend, modify, revoke, or terminate the trust, but  
 319 only if the trust instrument explicitly provides for amendment,  
 320 modification, revocation, or termination by the settlor's agent;
- 321 (c) Make a gift, subject to subsection (4) ~~(3)~~;
- 322 (d) Create or change rights of survivorship;
- 323 (e) Create or change a beneficiary designation;
- 324 (f) Waive the principal's right to be a beneficiary of a  
 325 joint and survivor annuity, including a survivor benefit under a  
 326 retirement plan; or
- 327 (g) Disclaim property and powers of appointment.

328 (2) In addition to signing the power of attorney on behalf  
 329 of the principal pursuant to s. 709.2105(3) and chapter 117, if  
 330 the principal is physically unable to sign or initial next to  
 331 any enumerated authority for which subsection (1) requires the  
 332 principal to sign or initial, the notary public before whom the  
 333 principal's oath or acknowledgment is made may sign the  
 334 principal's name or initials on the power of attorney if:

- 335 (a) The principal directs the notary public to sign the  
 336 principal's name or write the principal's initials on the power

337 of attorney next to any enumerated authority for which  
 338 subsection (1) requires the principal to sign or initial;  
 339 (b) The signing or initialling of the power of attorney by  
 340 the notary public is done in the presence of the principal and  
 341 witnessed by two disinterested subscribing witnesses; and  
 342 (c) The notary public writes, "Signature or initials  
 343 affixed by the notary pursuant to s. 117.05(14), Florida  
 344 Statutes," below each and every signature or initial the notary  
 345 writes.  
 346  
 347 Only one notarial certificate in substantially the same form as  
 348 those described in s. 117.05(14), which states the circumstances  
 349 of all signatures and initials written by the notary public, is  
 350 required to be completed by the notary public.  
 351 (3)(2) Notwithstanding a grant of authority to do an act  
 352 described in subsection (1), unless the power of attorney  
 353 otherwise provides, an agent who is not an ancestor, spouse, or  
 354 descendant of the principal may not exercise authority to create  
 355 in the agent, or in an individual to whom the agent owes a legal  
 356 obligation of support, an interest in the principal's property,  
 357 whether by gift, right of survivorship, beneficiary designation,  
 358 disclaimer, or otherwise.  
 359 (4)(3) Unless the power of attorney otherwise provides, a  
 360 provision in a power of attorney granting general authority with  
 361 respect to gifts authorizes the agent to only:  
 362 (a) Make outright to, or for the benefit of, a person a  
 363 gift of any of the principal's property, including by the  
 364 exercise of a presently exercisable general power of appointment

365 held by the principal, in an amount per donee per calendar year  
 366 not to exceed the annual dollar limits of the federal gift tax  
 367 exclusion under 26 U.S.C. s. 2503(b), as amended, without regard  
 368 to whether the federal gift tax exclusion applies to the gift,  
 369 or if the principal's spouse agrees to consent to a split gift  
 370 pursuant to 26 U.S.C. s. 2513, as amended, in an amount per  
 371 donee per calendar year not to exceed twice the annual federal  
 372 gift tax exclusion limit; and

373 (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to  
 374 the splitting of a gift made by the principal's spouse in an  
 375 amount per donee per calendar year not to exceed the aggregate  
 376 annual gift tax exclusions for both spouses.

377 (5)~~(4)~~ Notwithstanding subsection (1), if a power of  
 378 attorney is otherwise sufficient to grant an agent authority to  
 379 conduct banking transactions, as provided in s. 709.2208(1),  
 380 conduct investment transactions as provided in s. 709.2208(2),  
 381 or otherwise make additions to or withdrawals from an account of  
 382 the principal, making a deposit to or withdrawal from an  
 383 insurance policy, retirement account, individual retirement  
 384 account, benefit plan, bank account, or any other account held  
 385 jointly or otherwise held in survivorship or payable on death,  
 386 is not considered to be a change to the survivorship feature or  
 387 beneficiary designation, and no further specific authority is  
 388 required for the agent to exercise such authority. A ~~bank or~~  
 389 ~~other~~ financial institution or broker-dealer does not have a  
 390 duty to inquire as to the appropriateness of the agent's  
 391 exercise of that authority and is not liable to the principal or  
 392 any other person for actions taken in good faith reliance on the

393 | appropriateness of the agent's actions. This subsection does not  
 394 | eliminate the agent's fiduciary duties to the principal with  
 395 | respect to any exercise of the power of attorney.

396 |       ~~(6)~~<sup>(5)</sup> This section does not apply to a power of attorney  
 397 | executed before October 1, 2011.

398 |       Section 11. Subsection (2) of section 709.2208, Florida  
 399 | Statutes, is amended to read:

400 |       709.2208 Banks and other financial institutions.—

401 |       (2) A power of attorney that specifically includes the  
 402 | statement that the agent has "authority to conduct investment  
 403 | transactions as provided in section 709.2208(2), Florida  
 404 | Statutes" grants general authority to the agent with respect to  
 405 | securities held by financial institutions or broker-dealers to  
 406 | take the following actions without additional specific  
 407 | enumeration in the power of attorney:

408 |       (a) Buy, sell, and exchange investment instruments.

409 |       (b) Establish, continue, modify, or terminate an account  
 410 | with respect to investment instruments.

411 |       (c) Pledge investment instruments as security to borrow,  
 412 | pay, renew, or extend the time of payment of a debt of the  
 413 | principal.

414 |       (d) Receive certificates and other evidences of ownership  
 415 | with respect to investment instruments.

416 |       (e) Exercise voting rights with respect to investment  
 417 | instruments in person or by proxy, enter into voting trusts, and  
 418 | consent to limitations on the right to vote.

419 |       (f) Sell commodity futures contracts and call and put  
 420 | options on stocks and stock indexes.

421  
 422 For purposes of this subsection, the term "investment  
 423 instruments" means stocks, bonds, mutual funds, and all other  
 424 types of securities and financial instruments, whether held  
 425 directly, indirectly, or in any other manner, including shares  
 426 or interests in a private investment fund, including, but not  
 427 limited to, a private investment fund organized as a limited  
 428 partnership, a limited liability company, a statutory or common  
 429 law business trust, a statutory trust, or a real estate  
 430 investment trust, joint venture, or any other general or limited  
 431 partnership; derivatives or other interests of any nature in  
 432 securities such as options, options on futures, and variable  
 433 forward contracts; mutual funds; common trust funds; money  
 434 market funds; hedge funds; private equity or venture capital  
 435 funds; insurance contracts; and other entities or vehicles  
 436 investing in securities or interests in securities whether  
 437 registered or otherwise, except commodity futures contracts and  
 438 call and put options on stocks and stock indexes.

439 Section 12. This act shall take effect upon becoming a  
 440 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 \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Powell offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Present subsections (2) through (12) of section  
 7 709.2102, Florida Statutes, are redesignated as subsections (3)  
 8 through (13), respectively, present subsection (13) of that  
 9 section is redesignated as subsection (15), a new subsection (2)  
 10 and a new subsection (14) are added to that section, and present  
 11 subsection (12) of that section is amended to read:

12 709.2102 Definitions.—As used in this part, the term:

13 (2) "Broker-dealer" means a broker-dealer registered with  
 14 the United States Securities and Exchange Commission or the  
 15 Commodity Futures Trading Commission if the broker-dealer is  
 16 acting in that capacity.

17 ~~(13)-(12)~~ "Sign" means having present intent to  
 18 authenticate or adopt a record to:



Amendment No. 1

19 (a) Execute by signature or mark ~~adopt a tangible symbol~~;  
20 or

21 (b) Attach to, or logically associate with the record an  
22 electronic sound, symbol, or process.

23 (14) "Another state" means a state of the United States,  
24 the District of Columbia, Puerto Rico, the United States Virgin  
25 Islands, or any territory or insular possession subject to the  
26 jurisdiction of the United States.

27 Section 2. Section 709.2103, Florida Statutes, is amended  
28 to read:

29 709.2103 Applicability.—This part applies to all powers of  
30 attorney except:

31 (1) A proxy or other delegation to exercise voting rights  
32 or management rights with respect to an entity;

33 (2) A power created on a form prescribed by a government  
34 or governmental subdivision, agency, or instrumentality for a  
35 governmental purpose;

36 (3) A power to the extent it is coupled with an interest  
37 in the subject of the power, including a power given to or for  
38 the benefit of a creditor in connection with a credit  
39 transaction; ~~and~~

40 (4) A power created by a person other than an individual;

41 (5) A power given to a transfer agent to facilitate a  
42 specific transfer or disposition of one or more identified  
43 stocks, bonds, or other financial instruments;

44 (6) A power authorizing a financial institution or broker-  
45 dealer, or an employee of the financial institution or broker-  
46 dealer, to act as agent for the account owner in executing





Amendment No. 1

47 trades or transfers of cash, securities, commodities, or other  
48 financial assets in the regular course of business; and

49 (7) A delegation of powers by a trustee in accordance with  
50 s. 736.0807.

51 Section 3. Subsection (3) is added to section 709.2105,  
52 Florida Statutes, to read:

53 709.2105 Qualifications of agent; execution of power of  
54 attorney.—

55 (3) If the principal is physically unable to sign the  
56 power of attorney, the notary public before whom the principal's  
57 oath or acknowledgment is made may sign the principal's name on  
58 the power of attorney pursuant to s. 117.05(14).

59 Section 4. Subsections (3) and (5) of section 709.2106,  
60 Florida Statutes, are amended, and subsection (6) is added to  
61 that section, to read:

62 709.2106 Validity of power of attorney.—

63 (3) A power of attorney executed in another state which  
64 does not comply with the execution requirements of this part is  
65 valid in this state if, when the power of attorney was executed,  
66 the power of attorney and its execution complied with the law of  
67 the state of execution. A third person who is requested to  
68 accept a power of attorney that is valid in this state solely  
69 because of this subsection may in good faith request, and rely  
70 upon, without further investigation, an opinion of counsel as to  
71 any matter of law concerning the power of attorney, including  
72 the due execution and validity of the power of attorney. An  
73 opinion of counsel requested under this subsection must be  
74 provided at the principal's expense. A third person may reject



Amendment No. 1

75 ~~accept~~ a power of attorney that is valid in this state solely  
76 because of this subsection if the agent does not provide the  
77 requested opinion of counsel, and in such case, a third person  
78 has no liability for rejecting ~~refusing to accept~~ the power of  
79 attorney. This subsection does not affect any other rights of a  
80 third person who is requested to accept the power of attorney  
81 under this part, or any other provisions of applicable law.

82 (5) Except as otherwise provided in the power of attorney,  
83 a photocopy or electronically transmitted copy of an original  
84 power of attorney has the same effect as the original.

85 Notwithstanding the provisions of this subsection, an original  
86 power of attorney that is relied upon to affect the title to  
87 real property may be required for recording in the official  
88 records.

89 (6) An original of a properly executed power of attorney  
90 may be presented to the clerk of the circuit court for recording  
91 in the official records, as provided under s. 28.222, upon  
92 payment of a service charge, as provided under s. 28.24.

93 Section 5. Subsection (1) of section 709.2114, Florida  
94 Statutes, is amended to read:

95 709.2114 Agent's duties.—

96 (1) An agent is a fiduciary. Notwithstanding the  
97 provisions in the power of attorney, an agent who has accepted  
98 appointment:

99 (a) Must act only within the scope of authority granted in  
100 the power of attorney. In exercising that authority, the agent:

101 1. May not act contrary to the principal's reasonable  
102 expectations actually known by the agent;



Amendment No. 1

- 103           2. Must act in good faith;
- 104           3. May not act in a manner that is contrary to the  
105 principal's best interest, except as provided in paragraph  
106 (2)(d) and s. 709.2202; and
- 107           4. Must attempt to preserve the principal's estate plan,  
108 to the extent actually known by the agent, if preserving the  
109 plan is consistent with the principal's best interest based on  
110 all relevant factors, including:
- 111           a. The value and nature of the principal's property;
- 112           b. The principal's foreseeable obligations and need for  
113 maintenance;
- 114           c. Minimization of taxes, including income, estate,  
115 inheritance, generation-skipping transfer, and gift taxes;
- 116           d. Eligibility for a benefit, a program, or assistance  
117 under a statute or rule; and
- 118           e. The principal's personal history of making or joining  
119 in making gifts;
- 120           (b) May not delegate authority to a third person except as  
121 authorized under ~~provided in~~ s. 518.112 or this part, or by  
122 executing a power of attorney on a form prescribed by a  
123 government or governmental subdivision, agency, or  
124 instrumentality for a governmental purpose;
- 125           (c) Must keep a record of all receipts, disbursements, and  
126 transactions made on behalf of the principal; and
- 127           (d) Must create and maintain an accurate inventory each  
128 time the agent accesses the principal's safe-deposit box, if the  
129 power of attorney authorizes the agent to access the box.



Amendment No. 1

130 Section 6. Subsection (3) of section 709.2116, Florida  
131 Statutes, is amended to read:

132 709.2116 Judicial relief; conflicts of interests.-

133 (3) In any proceeding commenced by filing a petition under  
134 this section, including, but not limited to, the unreasonable  
135 refusal of a third person to allow an agent to act pursuant to  
136 the power of attorney, and in challenges to the proper exercise  
137 of authority by the agent, the court shall award reasonable  
138 attorney attorney's fees and costs as in chancery actions.

139 Section 7. Subsections (2) and (3) of section 709.2119,  
140 Florida Statutes, are amended to read:

141 709.2119 Acceptance of and reliance upon power of  
142 attorney.-

143 (2) A third person may require:

144 (a) An agent to execute an affidavit stating where the  
145 principal is domiciled; that the principal is not deceased; that  
146 there has been no revocation, or partial or complete termination  
147 by adjudication of incapacity or by the occurrence of an event  
148 referenced in the power of attorney; that there has been no  
149 suspension by initiation of proceedings to determine incapacity,  
150 or to appoint a guardian, of the principal; that the agent's  
151 authority has not been terminated by the filing of an action for  
152 dissolution or annulment of marriage, or legal separation of the  
153 agent and principal; and, if the affiant is a successor agent,  
154 the reasons for the unavailability of the predecessor agents, if  
155 any, at the time the authority is exercised.

156 (b) An officer of a financial institution acting as agent  
157 to execute a separate affidavit, or include in the form of the



Amendment No. 1

158 affidavit, the officer's title and a statement that the officer  
159 has full authority to perform all acts and enter into all  
160 transactions authorized by the power of attorney for and on  
161 behalf of the financial institution in its capacity as agent.

162 (c) A written affidavit executed by the agent under this  
163 subsection may, but need not, be in the following form:

164  
165 STATE OF.....

166 COUNTY OF.....

167

168 Before me, the undersigned authority, personally appeared  
169 ...(agent)~~(attorney in fact)~~... ("Affiant"), who swore or  
170 affirmed that:

171 1. Affiant is the agent ~~attorney in fact~~ named in the  
172 ~~Durable~~ Power of Attorney executed by ...(principal)...  
173 ("Principal") on ...(date)....

174 2. This Power of Attorney is currently exercisable by  
175 Affiant. The principal is domiciled in ...(insert name of state,  
176 territory, or foreign country)....

177 3. To the best of Affiant's knowledge after diligent  
178 search and inquiry:

179 a. The Principal is not deceased;

180 b. Affiant's authority has not been suspended by  
181 initiation of proceedings to determine incapacity or to appoint  
182 a guardian or a guardian advocate;

183 c. Affiant's authority has not been terminated by the  
184 filing of an action for dissolution or annulment of Affiant's  
185 marriage to the principal, or their legal separation; and



Amendment No. 1

186 ~~d.e.~~ There has been no revocation, or partial or complete  
187 termination, of the power of attorney or of Affiant's authority.

188 4. Affiant is acting within the scope of authority granted  
189 in the power of attorney.

190 5. Affiant is the successor to ...(insert name of  
191 predecessor agent)..., who has resigned, died, become  
192 incapacitated, is no longer qualified to serve, has declined to  
193 serve as agent, or is otherwise unable to act, if applicable.

194 6. Affiant agrees not to exercise any powers granted by  
195 the ~~Durable~~ Power of Attorney if Affiant attains knowledge that  
196 the power of attorney ~~it~~ has been revoked, has been partially or  
197 completely terminated or suspended, or is no longer valid  
198 because of the death or adjudication of incapacity of the  
199 Principal.

200  
201 .....  
202 ...(Affiant)...

203  
204 Sworn to (or affirmed) and subscribed before me this ....  
205 day of ...(month)..., ...(year)..., by ...(name of person making  
206 statement)...

207  
208 ...(Signature of Notary Public-State of Florida)...

209  
210 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

211  
212 Personally Known OR Produced Identification

213 ...(Type of Identification Produced)...



Amendment No. 1

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(3) A third person who is asked to accept a power of attorney that appears to be executed in accordance with s. 709.2105 ~~s. 709.2103~~ may in good faith request, and rely upon, without further investigation:

(a) A certified ~~verified~~ English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English;

(b) An opinion of counsel as to any matter of law concerning the power of attorney if the third person making the request provides in a writing or other record the reason for the request; or

(c) The affidavit described in subsection (2).

Section 8. Section 709.2120, Florida Statutes, is amended to read:

709.2120 Rejecting a Refusal to accept power of attorney.-

(1) ~~Except as provided in subsection (2):~~

~~(a) A third person must accept or reject a power of attorney within a reasonable time. A third person who rejects a power of attorney must state in writing the reason for the rejection.~~

~~(b) Four days, excluding Saturdays, Sundays, and legal holidays, are presumed to be a reasonable time for a financial institution or broker-dealer to accept or reject a power of attorney with respect to:~~

~~(a) 1. A banking transaction, if the power of attorney expressly contains authority to conduct banking transactions pursuant to s. 709.2208(1); or~~



Amendment No. 1

242        ~~(b)2-~~ An investment A security transaction, if the power  
243 of attorney expressly contains authority to conduct investment  
244 security transactions pursuant to s. 709.2208(2).

245        ~~(2)(e)~~ A third person may not require an additional or  
246 different form of power of attorney for authority granted in the  
247 power of attorney presented.

248        (3) A third person who rejects a power of attorney for any  
249 reason other than as provided in paragraph (4) (a) must state in  
250 writing the reason for the rejection.

251        ~~(4)(2)~~ A third person is not required to accept a power of  
252 attorney if:

253        (a) The third person is not otherwise required to engage  
254 in a transaction with the principal in the same circumstances;

255        (b) The third person has knowledge of the termination or  
256 suspension of the agent's authority or of the power of attorney  
257 before exercising the power;

258        (c) A timely request by the third person for an affidavit,  
259 English translation, or opinion of counsel under s. 709.2119(4)  
260 is refused by the agent;

261        (d) Except as provided in paragraph (b), the third person  
262 believes in good faith that the power is not valid or that the  
263 agent does not have authority to perform the act requested; or

264        (e) The third person makes, or has knowledge that another  
265 person has made, a report to the local adult protective services  
266 office stating a good faith belief that the principal may be  
267 subject to physical or financial abuse, neglect, exploitation,  
268 or abandonment by the agent or a person acting for or with the  
269 agent.





Amendment No. 1

270        ~~(5)(3)~~ A third person who, in violation of this section,  
271 rejects ~~refuses to accept~~ a power of attorney is subject to:

272            (a) A court order mandating acceptance of the power of  
273 attorney; and

274            (b) Liability for damages, including reasonable attorney's  
275 fees and costs, incurred in any action or proceeding that  
276 confirms, for the purpose tendered, the validity of the power of  
277 attorney or mandates acceptance of the power of attorney.

278            Section 9. Subsection (3) of section 709.2121, Florida  
279 Statutes, is amended to read:

280            709.2121 Notice.—

281            (3) Notice to a financial institution or broker-dealer  
282 must contain the name, address, and the last four digits of the  
283 principal's taxpayer identification number and be directed to an  
284 officer or a manager of the financial institution or broker-  
285 dealer in this state.

286            Section 10. Present subsections (2) through (5) of section  
287 709.2202, Florida Statutes, are redesignated as subsections (3)  
288 through (6), respectively, a new subsection (2) is added to that  
289 section, and present subsections (1), (3), and (4) of that  
290 section are amended to read:

291            709.2202 Authority that requires separate signed  
292 enumeration.—

293            (1) Notwithstanding s. 709.2201, an agent may exercise the  
294 following authority only if the principal signed or initialed  
295 next to each specific enumeration of the authority, the exercise  
296 of the authority is consistent with the agent's duties under s.



Amendment No. 1

297 709.2114, and the exercise is not otherwise prohibited by  
298 another agreement or instrument:

299 (a) Create an inter vivos trust;

300 (b) With respect to a trust created by or on behalf of the  
301 principal, amend, modify, revoke, or terminate the trust, but  
302 only if the trust instrument explicitly provides for amendment,  
303 modification, revocation, or termination by the settlor's agent;

304 (c) Make a gift, subject to subsection (4)~~(3)~~;

305 (d) Create or change rights of survivorship;

306 (e) Create or change a beneficiary designation;

307 (f) Waive the principal's right to be a beneficiary of a  
308 joint and survivor annuity, including a survivor benefit under a  
309 retirement plan; or

310 (g) Disclaim property and powers of appointment.

311 (2) In addition to signing the power of attorney on behalf  
312 of the principal pursuant to s. 709.2105(3), if the principal is  
313 physically unable to sign or initial next to any enumerated  
314 authority for which subsection (1) requires the principal to  
315 sign or initial, the notary public before whom the principal's  
316 oath or acknowledgment is made may sign the principal's name or  
317 initials if:

318 (a) The principal directs the notary to sign the  
319 principal's name or initials on the power of attorney next to  
320 any enumerated authority for which subsection (1) requires the  
321 principal to sign or initial;

322 (b) The signing or initialing by the notary is done in the  
323 presence of the principal and witnessed by two disinterested  
324 subscribing witnesses; and



Amendment No. 1

325       (c) The notary writes the statement "Signature or initials  
326 affixed by notary, pursuant to s. 709.2202(2), Florida Statutes"  
327 below each signature or initial that the notary writes on behalf  
328 of the principal. Only one notarial certificate, in  
329 substantially the same form as provided in s. 117.05(14), which  
330 states the circumstances of all signatures and initials written  
331 by the notary public, is required to be completed by the notary  
332 public.

333       ~~(4)-(3)~~ Unless the power of attorney otherwise provides, a  
334 provision in a power of attorney granting general authority with  
335 respect to gifts authorizes the agent to only:

336       (a) Make outright to, or for the benefit of, a person a  
337 gift of any of the principal's property, including by the  
338 exercise of a presently exercisable general power of appointment  
339 held by the principal, in an amount per donee per calendar year,  
340 not to exceed the annual dollar limits of the federal gift tax  
341 exclusion under 26 U.S.C. s. 2503(b), as amended, without regard  
342 to whether the federal gift tax exclusion applies to the gift,  
343 or if the principal's spouse agrees to consent to a split gift  
344 pursuant to 26 U.S.C. s. 2513, as amended, in an amount per  
345 donee per calendar year, not to exceed twice the annual federal  
346 gift tax exclusion limit; and

347       (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to  
348 the splitting of a gift made by the principal's spouse in an  
349 amount per donee per calendar year, not to exceed the aggregate  
350 annual gift tax exclusions for both spouses.

351       ~~(5)-(4)~~ Notwithstanding subsection (1), if a power of  
352 attorney is otherwise sufficient to grant an agent authority to



Amendment No. 1

353 conduct banking transactions, as provided in s. 709.2208(1),  
354 conduct investment transactions as provided in s. 709.2208(2),  
355 or otherwise make additions to or withdrawals from an account of  
356 the principal, making a deposit to or withdrawal from an  
357 insurance policy, retirement account, individual retirement  
358 account, benefit plan, bank account, or any other account held  
359 jointly or otherwise held in survivorship or payable on death,  
360 is not considered to be a change to the survivorship feature or  
361 beneficiary designation, and no further specific authority is  
362 required for the agent to exercise such authority. A ~~bank or~~  
363 ~~other~~ financial institution or broker-dealer does not have a  
364 duty to inquire as to the appropriateness of the agent's  
365 exercise of that authority and is not liable to the principal or  
366 any other person for actions taken in good faith reliance on the  
367 appropriateness of the agent's actions. This subsection does not  
368 eliminate the agent's fiduciary duties to the principal with  
369 respect to any exercise of the power of attorney.

370 Section 11. Subsection (2) of section 709.2208, Florida  
371 Statutes, is amended to read:

372 709.2208 Banks and other financial institutions.—

373 (2) A power of attorney that specifically includes the  
374 statement that the agent has "authority to conduct investment  
375 transactions as provided in section 709.2208(2), Florida  
376 Statutes" grants general authority to the agent with respect to  
377 securities held by financial institutions or broker-dealers to  
378 take the following actions without additional specific  
379 enumeration in the power of attorney:

380 (a) Buy, sell, and exchange investment instruments.



## Amendment No. 1

381 (b) Establish, continue, modify, or terminate an account  
382 with respect to investment instruments.

383 (c) Pledge investment instruments as security to borrow,  
384 pay, renew, or extend the time of payment of a debt of the  
385 principal.

386 (d) Receive certificates and other evidences of ownership  
387 with respect to investment instruments.

388 (e) Exercise voting rights with respect to investment  
389 instruments in person or by proxy, enter into voting trusts, and  
390 consent to limitations on the right to vote.

391 (f) Sell commodity futures contracts and call and put  
392 options on stocks and stock indexes.

393

394 For purposes of this subsection, the term "investment  
395 instruments" means stocks, bonds, mutual funds, and all other  
396 types of securities and financial instruments, whether held  
397 directly, indirectly, or in any other manner, including shares  
398 or interests in a private investment fund, including, but not  
399 limited to, a private investment fund organized as a limited  
400 partnership, a limited liability company, a statutory or common  
401 law business trust, a statutory trust, or a real estate  
402 investment trust, joint venture, or any other general or limited  
403 partnership; derivatives or other interests of any nature in  
404 securities such as options, options on futures, and variable  
405 forward contracts; mutual funds; common trust funds; money  
406 market funds; hedge funds; private equity or venture capital  
407 funds; insurance contracts; and other entities or vehicles  
408 investing in securities or interests in securities whether



Amendment No. 1

409 registered or otherwise, except commodity futures contracts and  
410 call and put options on stocks and stock indexes.

411 Section 12. This act shall take effect upon becoming a  
412 law.

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**T I T L E   A M E N D M E N T**

415 Remove everything before the enacting clause and insert:

416 A bill to be entitled

417 An act relating to powers of attorney; amending s.

418 709.2102, F.S.; adding definitions; revising the

419 definition of "sign"; amending s. 709.2103, F.S.;

420 adding certain powers of attorney to which this part

421 does not apply; amending s. 709.2105, F.S.;

422 authorizing a notary public to sign the principal's

423 name to the power of attorney under certain

424 circumstances; amending s. 709.2106, F.S.; clarifying

425 and revising language; providing that an original

426 power of attorney, rather than a photocopy or

427 electronic copy, may be required under certain

428 circumstances; providing that an original power of

429 attorney may be presented for recording in the

430 official records for a fee; amending s. 709.2114,

431 F.S.; adding exceptions to a provision that prohibits

432 an agent who has accepted appointment from delegating

433 authority to a third person; amending s. 709.2116,

434 F.S.; providing for attorney fees and costs as in

435 chancery actions; amending s. 709.2119, F.S.;

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## Amendment No. 1

437 authorizing a third person to require an agent to  
438 execute an affidavit stating that the agent's  
439 authority was not terminated because of certain  
440 circumstances; revising a sample form of an affidavit;  
441 revising a cross-reference; amending s. 709.2120,  
442 F.S.; revising language; providing a presumption of  
443 reasonable time to accept or reject a power of  
444 attorney for a broker-dealer; requiring a third person  
445 who rejects a power of attorney to state the reason in  
446 writing unless a certain circumstance applies;  
447 amending s. 709.2121, F.S.; providing for notice to a  
448 broker-dealer; amending s. 709.2202, F.S.; conforming  
449 a cross-reference; authorizing a notary public to sign  
450 the principal's name to documents, other than the  
451 power of attorney, under certain circumstances;  
452 clarifying that certain gift amounts are based on the  
453 calendar year; specifying that a broker-dealer does  
454 not have a duty to inquire into certain actions by an  
455 agent and is not liable for relying in good faith on  
456 an agent's actions; amending s. 709.2208, F.S.;  
457 providing that an agent acquires general authority  
458 regarding securities held by a broker-dealer under  
459 certain circumstances; providing an effective date.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 953 Warrants  
**SPONSOR(S):** Criminal Justice Subcommittee; Nuñez and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 962

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

### SUMMARY ANALYSIS

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and *no warrants* shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

To protect against official abuses and unfettered police discretion, most searches of private property require a warrant. And while police generally do not need a warrant to make an arrest in a public place, the process of obtaining an arrest warrant protects an individual from an unreasonable seizure. Both search and arrest warrants require an officer to demonstrate probable cause.

Section 933.07, F.S., sets forth the requirements for the issuance of a search warrant. It provides that a judge must review the warrant application and all proofs submitted to determine if probable cause exists. If probable cause is found, the judge must sign the search warrant with his or her name of office.

Section 901.02, F.S., provides that an arrest warrant may be issued when the judge reasonably believes the suspect has committed the offense. The statute also states that a warrant is issued at the time it is signed by the judge. Section 902.01, F.S., is silent on the requirement of probable cause for an arrest warrant.

The bill amends the requirements for the issuance of an arrest warrant in s. 901.02(1), F.S., to provide that a judge must review the complaint and all proofs submitted to determine if probable cause exists for any crime committed within the judge's jurisdiction. If probable cause is found, the judge must sign the arrest warrant with his or her name of office.

The bill amends ss. 933.07 and 901.02, F.S., authorizing judges to electronically sign a search or arrest warrant upon examination of an application or complaint and proof that it:

- Bears the affiant's signature or electronic signature;
- Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths; and
- If submitted electronically, is submitted by reliable electronic means.

The bill also provides that the warrant is deemed issued when a judge signs or electronically signs the warrant.

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

The bill is effective on July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Fourth Amendment of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article 1, Section 12 of the Florida Constitution makes the same guarantee. In *Steagald v. U.S.*,<sup>1</sup> the U.S. Supreme Court explained that the purpose of the Fourth Amendment warrant requirement “. . . is to allow a neutral judicial officer to assess whether the police have probable cause to make an arrest or conduct a search.” The probable cause standard is incapable of precise definition; however, generally, probable cause exists when a reasonable inquiry would cause a reasonable person to believe in the truth of a particular set of facts.<sup>2</sup>

##### **Search Warrant**

A search occurs when “an expectation of privacy that society is prepared to consider reasonable is infringed.”<sup>3</sup> To protect against official abuses and unfettered police discretion, most searches of private property require a warrant.<sup>4</sup> Before a judge can issue a warrant, the police must provide information that establishes probable cause to believe that the item of interest in the search is in a particular place.<sup>5</sup> Despite the general rule that a search warrant is required, case law has set forth numerous exceptions to the search warrant requirement.<sup>6</sup>

Section 933.07, F.S., sets forth the requirements for the issuance of a search warrant. The statute provides that a judge must review the warrant application and all proofs submitted to determine if probable cause exists.<sup>7</sup> If probable cause is found, the judge must sign the search warrant with his or her name of office.<sup>8</sup> The search warrant may then be executed by any law enforcement officer or other person authorized by law to execute process.<sup>9</sup>

##### **Arrest Warrants**

An arrest is a seizure of a person, which occurs when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.<sup>10</sup> To make a valid arrest, an officer must have probable cause. An officer has probable cause to make an arrest if, at that moment, the facts and circumstances within their knowledge and of which they have reasonably trustworthy information are sufficient to warrant a prudent man in believing that a person had committed or was committing an offense.<sup>11</sup>

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<sup>1</sup> 451 U.S. 204, 212 (1981).

<sup>2</sup> *Maryland v. Pringle*, 540 U.S. 366 (2003).

<sup>3</sup> *United States v. Jacobsen*, 446 U.S. 109 (1984).

<sup>4</sup> See e.g., *Minnesota v. Dickerson*, 508 U.S. 366 (1993) and *Arizona v. Hicks*, 480 U.S. 321 (1987).

<sup>5</sup> *Steagald*, 451 U.S. at 213.

<sup>6</sup> Generally the exceptions to the search warrant requirement are: search incident to arrest, automobile searches, plain view, consent, investigatory stops, exigent circumstances, inventory searches, national security, searches of probationers and parolees, case worker visits to welfare recipients, border searches, searches of school students, unreliable ear, administrative searches, and drug testing.

<sup>7</sup> Section 933.07, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> The test for determining whether a person has been seized within the meaning of the Fourth Amendment is whether, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave. See *United States v. Mendenhall*, 446 U.S. 544 (1980); *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>11</sup> *Beck v. Ohio* 379 U.S. 89 (1964).

An arrest warrant may be issued when there is probable cause to believe that a person committed an offense and its purpose is to protect an individual from an unreasonable seizure.<sup>12</sup> There are also exceptions to the arrest warrant requirement. For example, police generally do not need a warrant to make an arrest in a public place and can arrest a felony suspect when they have reasonable grounds to believe that a felony was committed and the arrestee is the suspect.<sup>13</sup> Florida allows police to make a warrantless arrest for misdemeanor offenses if the offense was committed in the officer's presence.<sup>14</sup>

Section 901.02(1), F.S., provides that an arrest warrant may be issued when the judge, after examining the complaint and other witnesses, reasonably believes the suspect has committed the offense. The statute also states that a warrant is issued at the time it is signed by the judge. Section 902.01, F.S., is silent on the requirement of probable cause for an arrest warrant.

Section 901.02(2), F.S., authorizes a court to issue an arrest warrant when all of the following apply:

- A complaint has been filed charging the commission of a misdemeanor only;
- The summons issued to the defendant has been returned unserved; and
- The conditions of subsection (1) are met.

Section 901.02, F.S., is silent on the requirement of probable cause for an arrest warrant.

### **Effect of the Bill**

The bill amends the requirements for the issuance of an arrest warrant in s. 901.02(1), F.S., to provide that a judge must review the complaint and all proofs submitted to determine if probable cause exists for any crime committed within the judge's jurisdiction. If probable cause is found, the judge must sign the arrest warrant with his or her name of office.

The bill amends ss. 933.07 and 901.02, F.S., authorizing judges to electronically sign a search or arrest warrant upon examination of an application or complaint and proof that it:

- Bears the affiant's signature or electronic signature;
- Is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths; and
- If submitted electronically, is submitted by reliable electronic means.

The bill also provides that the warrant is deemed issued when a judge signs or electronically signs the warrant. The bill references s. 933.40, F.S., for the meaning of "electronic signature."<sup>15</sup>

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 901.02, F.S., relating to when warrant of arrest to be issued.

Section 2. Amends s. 933.07, F.S., relating to issuance of search warrants.

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.

<sup>12</sup> *Steagald*, 445 U.S. at 213.

<sup>13</sup> *U.S. v. Watson*, 423 U.S. 411 (1976).

<sup>14</sup> *T.L.M. v. State*, 371 So.2d. 688 (Fla. 1st DCA 1979).

<sup>15</sup> Section 933.40, F.S., defines electronic signature as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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 12, 2013, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The strike all amendment clarifies the requirements for an electronically signed warrant and amends the arrest warrant requirements in s. 901.02(1), F.S.

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

1                                   A bill to be entitled  
 2           An act relating to warrants; amending s. 901.02, F.S.;  
 3           specifying when an arrest warrant may be issued;  
 4           authorizing a judge to electronically sign an arrest  
 5           warrant if certain conditions are met; providing that  
 6           an arrest warrant is signed by a judge at the time the  
 7           judge affixes his or her signature or electronic  
 8           signature to the warrant; defining the term  
 9           "electronic signature"; amending s. 933.07, F.S.;  
 10          authorizing a judge to electronically sign a search  
 11          warrant if certain conditions are met; providing that  
 12          a search warrant is signed by a judge at the time the  
 13          judge affixes his or her signature or electronic  
 14          signature to the warrant; defining the term  
 15          "electronic signature"; providing an effective date.

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

18  
 19           Section 1. Section 901.02, Florida Statutes, is amended to  
 20           read:

21           901.02 Issuance of arrest warrants ~~When warrant of arrest~~  
 22           ~~to be issued.~~-

23           (1) A judge, upon examination of the complaint and proofs  
 24           submitted, if satisfied that probable cause exists for the  
 25           issuance of an arrest warrant for any crime committed within the  
 26           judge's jurisdiction, shall thereupon issue an arrest warrant  
 27           signed by the judge with the judge's name of office ~~warrant may~~  
 28           ~~be issued for the arrest of the person complained against if the~~

29 ~~trial court judge, from the examination of the complainant and~~  
 30 ~~other witnesses, reasonably believes that the person complained~~  
 31 ~~against has committed an offense within the trial court judge's~~  
 32 ~~jurisdiction. A warrant is issued at the time it is signed by~~  
 33 ~~the trial court judge.~~

34 (2) The court may issue a warrant for the defendant's  
 35 arrest when all of the following circumstances apply:

36 (a) A complaint has been filed charging the commission of  
 37 a misdemeanor only.;

38 (b) The summons issued to the defendant has been returned  
 39 unserved.;

40 (c) The conditions of subsection (1) are met.

41 (3) A judge may electronically sign an arrest warrant if  
 42 the requirements of subsection (1) or subsection (2) are met and  
 43 the judge, based on an examination of the complaint and proofs  
 44 submitted, determines that the complaint:

45 (a) Bears the affiant's signature, or electronic signature  
 46 if the complaint was submitted electronically.

47 (b) Is supported by an oath or affirmation administered by  
 48 the judge or other person authorized by law to administer oaths.

49 (c) If submitted electronically, is submitted by reliable  
 50 electronic means.

51 (4) An arrest warrant shall be deemed to be issued by a  
 52 judge at the time the judge affixes the judge's signature or  
 53 electronic signature to the warrant. As used in this section,  
 54 the term "electronic signature" has the same meaning as provided  
 55 in s. 933.40.

56 Section 2. Subsection (3) is added to section 933.07,

57 Florida Statutes, to read:

58 933.07 Issuance of search warrants.—

59 (3) A judge may electronically sign a search warrant if  
 60 the requirements of subsection (1) or subsection (2) are met and  
 61 the judge, based on an examination of the application and proofs  
 62 submitted, determines that the application:

63 (a) Bears the affiant's signature, or electronic signature  
 64 if the application was submitted electronically.

65 (b) Is supported by an oath or affirmation administered by  
 66 the judge or other person authorized by law to administer oaths.

67 (c) If submitted electronically, is submitted by reliable  
 68 electronic means.

69 (4) A search warrant shall be deemed to be issued by a  
 70 judge at the time the judge affixes the judge's signature or  
 71 electronic signature to the warrant. As used in this section,  
 72 the term "electronic signature" has the same meaning as provided  
 73 in s. 933.40.

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





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JDC 13-01 Inmate Reentry
SPONSOR(S): Judiciary Committee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Judiciary Committee, [Signature], Keegan, Havlicak [Signature]

SUMMARY ANALYSIS

The Department of Corrections (DOC) reports that 88% of all inmates incarcerated in Florida will eventually be released from prison. In FY 2011-12, 32,279 inmates were released. Florida's most recent recidivism rates show that 27.6% of inmates released will return to prison within three years. Inmate reentry efforts are designed to reduce recidivism rates, which in turn will result in fewer new crime victims.

A common problem inmates face upon leaving prison and returning to society is a lack of any state-issued identification card. Without an ID card, one has difficulty finding employment or housing and opening a bank account. This bill requires DOC, working in conjunction with the Department of Health (DOH) and Department of Highway Safety and Motor Vehicles (DHSMV), to assist Florida-born inmates in acquiring a state ID card prior to release. To accomplish this, the bill waives the \$9 fee DOH charges for a copy of a Florida birth certificate and the \$25 fee DHSMV charges to issue a state ID card.

Faith- and character-based institutions and programs have been effectively used in preparing inmates for their transition to society. This bill provides DOC with policy direction to expand its faith- and character-based institutions to serve both male and female inmates at their respective institutions.

The bill also directs DOC to establish and administer a reentry program for nonviolent, drug offenders who are sentenced to the program by a court. An offender must meet certain criteria to be eligible. The sentence to the program is a conditional split sentence; containing both a term of incarceration that includes substance abuse treatment followed by a period of drug offender probation. Once sentenced to the program by a judge, DOC will place the inmate into a substance abuse treatment program towards the end of the incarceration portion of the inmate's sentence. If the inmate successfully completes the substance abuse program, he or she then serves the drug offender probation component of the sentence per the court's order. If the inmate fails to complete the in-prison treatment program, his or her probation sentence becomes a term of incarceration. The bill requires the inmate, under either scenario, to serve at least 85% of his or her incarceration portion of the sentence.

The bill directs DOC to remove an inmate from the reentry program if the inmate commits a violent act; cannot complete the program for medical reasons; the sentence is modified or expired; the inmate is reclassified; or removal is in the best interest of the inmate or the security of the institution.

The bill will have a negative fiscal impact on the DOH's trust fund as well as the General Revenue Fund due to waiving fees for birth certificates and issuing ID cards. See fiscal section of analysis for more details.

The bill will take effect on July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background:

The Department of Corrections reports that 88% of all inmates incarcerated in Florida will eventually be released from prison.<sup>1</sup> In FY 2011-12, DOC released 32,279 inmates.<sup>2</sup> Florida's most recent recidivism rates show that 27.6% of inmates released will return to prison within three years.<sup>3</sup> Inmate reentry efforts are designed to reduce recidivism rates, which in turn mean fewer new crime victims.

##### State-Issued ID Cards for Prisoners

The Real ID Act of 2005<sup>4</sup> (the "Act") took effect on May 11, 2008.<sup>5</sup> The Act is an extensive federal law that addresses a number of issues ranging from state-issued identification cards to asylum provisions. Title II of the Act creates national standards for issuing driver licenses and identification cards ("state-issued ID"), as well as detailed specifications for verifying the identity of those who apply for state-issued ID.<sup>6</sup> The federal Department of Homeland Security is vested with the authority to govern these requirements and determine which states are in compliance with the Act.<sup>7</sup>

In order for a state-issued ID card to be compliant with the Act, applicants must present a number of identifying documents when applying for the ID card.<sup>8</sup> Specifically, the applicant's documentation must include a photo identity document, or a non-photo identity document that includes the applicant's full name and date of birth, as well as independent documentation of the applicant's date of birth, social security number, and principal residence.<sup>9</sup> Once the Act is fully implemented on a national level, an individual must have a photo ID issued in compliance with the Act in order to prove identity for any federal purpose, including boarding airplanes and accessing federal buildings.<sup>10</sup>

According to the Florida Department of Highway Safety and Motor Vehicles (DHSMV), a U.S. citizen must provide one piece of primary identification, proof of the individual's social security number, and two documents proving residence in order to acquire a state-issued ID.<sup>11</sup> Primary identification can be an original U.S. birth certificate, valid U.S. Passport, consular report of birth abroad, certificate of naturalization, or other similar listed documents.<sup>12</sup> Proof of social security number can be satisfied with a U.S. social security card, tax forms, paycheck stubs, or other similar documents.<sup>13</sup> Proof of residence can include deeds, utility bills, a Certification of Address Form from a homeless shelter or halfway house, as well as other similar documents.<sup>14</sup> The DHSMV charges a \$25 fee for issuing or renewing a state ID card.<sup>15</sup>

<sup>1</sup> See, "Recidivism Reduction Strategic Plan." Fiscal Year 2009-2014. Department of Corrections. <http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last visited March 18, 2013).

<sup>2</sup> See, <http://www.dc.state.fl.us/pub/recidivism/2013.html> (last visited March 18, 2013).

<sup>3</sup> *Id.* These numbers are for inmates released in 2008.

<sup>4</sup> Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005).

<sup>5</sup> 12 Mass. Prac. Series, Motor Vehicle Law and Practice, § 21:2 (4th ed.).

<sup>6</sup> Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005).

<sup>7</sup> 1 IMMIGRATION LAW SERVICE 2d § 1:88 (2013).

<sup>8</sup> § 202(c), 119 Stat. at 312-14.

<sup>9</sup> *Id.* at 312-13.

<sup>10</sup> 1 IMMIGRATION LAW SERVICE 2d § 1:88 (2013).

<sup>11</sup> Florida Driver License Identification Requirements, FLORIDA DEPARTMENT OF MOTOR VEHICLES, <http://www.dmvflorida.org/drivers-license-identification.shtml> (last visited March 18, 2013).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See, s. 322.21(f), F.S.

Currently, a birth certificate is an essential part of acquiring state-issued ID for a Florida-born applicant.<sup>16</sup> A Floridian may request a copy of his or her birth certificate from the Department of Health (DOH) after paying \$9.00, providing valid photo identification, and submitting a written request.<sup>17</sup> Florida law also permits any Florida or Federal agency to acquire a copy of a birth certificate upon request and payment of the \$9.00 fee.<sup>18</sup> There is no statutory fee waiver for Florida prisoners applying for a copy of his or her Florida birth certificate.<sup>19</sup>

In December 2009, Office of Program Policy Analysis & Government Accountability (OPPAGA) issued a report based on their study of the Department of Corrections' (DOC or department) rehabilitation efforts.<sup>20</sup> The report identified the importance of an inmate acquiring an identification card upon release from prison. The report found:

Proper identification generally is required to find employment, obtain housing, or apply for public benefits that may be necessary to obtain medication or other treatment services that can help reduce inmates' risks of reoffending.<sup>21</sup>

Similarly, the lack of a state ID card makes it difficult to cash paychecks or open a bank account. Barriers such as lack of ID increase the likelihood of an inmate failing to successfully reenter society.

Over the last few years, DOC, partnering with DHSMV and DOH, has worked to get inmates identification cards prior to release using DHSMV's mobile units that travel to the prison facilities and issue ID cards to those inmates with the proper identification documents and upon payment of the \$25 fee. The DHSMV reports that in 2011 they conducted 17 prison visits and issued 642 ID cards; in 2012 those numbers were 13 visits and 458 cards.<sup>22</sup>

### **Proposed Changes:**

**Section 1:** The bill amends s. 322.051, F.S., to provide statutory authorization for DHSMV to waive the fee charged for issuing or renewing a state identification card. This waiver will be for Florida-born inmates.

**Section 2:** The bill amends s. 382.0255, F.S., to provide a similar waiver of the fee the DOH charges one requesting a certified copy of a Florida birth certificate.

**Section 3:** The bill amends s. 944.605, F.S., to direct DOC to work with DOH and DHSMV to provide every Florida-born inmate a certified copy of their birth certificate to be used in acquiring a state ID card prior to release. This ID card requirement is not applicable to inmates who currently have a valid driver's license or state ID card or who have an active detainer. If DOC determines that the detainer is likely to be cancelled or if issued will result in incarceration less than 12 months, DOC will work to issue those inmates state ID cards.

### **Background: Faith- and Character-Based Institutions**

The Legislature set forth policy direction for DOC in 1997 when it first addressed faith- and character-based (FCB) programming by enacting s. 944.803, F.S.<sup>23</sup> Over the years this section has been amended, most recently in 2011 when the Legislature directed DOC to focus its FCB programs more at full institutions

<sup>16</sup> *Id.*

<sup>17</sup> Fla. Admin. Code Ann. R. 64V-1.0131.

<sup>18</sup> Section 382.025, F.S.

<sup>19</sup> A number of states have various fee waivers for vital records. See N.C. Gen. Stat. Ann. § 130A-93.1 (2013); Md. Code Ann., Health-Gen. § 4-217 (2013).

<sup>20</sup> See, OPPAGA, Report No. 09-44, "Department of Corrections Should Maximize Use of Best Practices in Inmate Rehabilitation Efforts. See <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=09-44> (last visited March 18, 2013).

<sup>21</sup> *Id.* at 5.

<sup>22</sup> The departments currently have over 60 prison visits planned for March through December 2013. See, e-mail from DHSMV dated March 11, 2013 (on file with Judiciary staff).

<sup>23</sup> See, s. 19, ch. 97-78, L.O.F.

rather than dormitories within institutions. The statute was also amended in 2011 to provide for peer-to-peer programming such as Alcoholic Anonymous within FCB institutions.<sup>24</sup>

DOC currently has only two male FCB institutions at Wakulla and Lawtey Correctional Institutions. They also have 11 FCB programs located in dormitories at 8 institutions. The department has plans to open 6 more dorms in 2013.

### **Proposed Changes:**

**Section 4:** The bill amends s. 944.803, F.S., to give DOC policy direction to expand its FCB programs into both male institutions to serve their male inmate population. The bill also gives DOC direction to serve its female inmates FCB programs at female institutions.

### **Background: The Department of Corrections Reentry Programming**

Currently, DOC, subject to available funding, provides the following reentry programming to inmates:

- Substance abuse treatment;
- Educational and academic programs;
- Career and technical education; and
- Faith and character-based programs.<sup>25</sup>

Additionally, DOC is statutorily mandated<sup>26</sup> to provide inmates who are within 12 months of their release with the 100-Hour Transition Training Program. This program offers inmates training in the following:

- Job readiness and life management skills, including goal setting;
- Problem solving and decision making;
- Communication;
- Values clarification;
- Living a healthy lifestyle;
- Family issues;
- Seeking and keeping a job;
- Continuing education;
- Community reentry; and
- Legal responsibilities.<sup>27</sup>

### **Drug Offender Probation**

The department is required to develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which provides for supervision of offenders in accordance with a specific treatment plan.<sup>28</sup> To be eligible, a defendant must:

- Be a chronic substance abuser;
- Have committed a violation of s. 893.13(2)(a)<sup>29</sup> or (6)(a),<sup>30</sup> F.S., or other nonviolent felony;<sup>31,32</sup> and

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<sup>24</sup> See, s. 1, ch. 2011-185, L.O.F.

<sup>25</sup> "Recidivism Reduction Strategic Plan." Fiscal Year 2009-2014. Department of Corrections.  
<http://www.dc.state.fl.us/orginfo/FinalRecidivismReductionPlan.pdf> (last visited March 18, 2013).

<sup>26</sup> Section 944.7065, F.S.

<sup>27</sup> *Supra* "Recidivism Reduction Strategic Plan."

<sup>28</sup> Section 948.20(2), F.S.

<sup>29</sup> Section 893.13(2)(a), F.S., states that it is unlawful for any person to purchase, possess with intent to purchase, a controlled substance and provides varying penalties based on the type and quantity of such controlled substance.

<sup>30</sup> Section 893.13(6)(a), F.S., states that it is unlawful for any person to be in actual or constructive possession of a controlled substance if such controlled substance was unlawfully obtained from a practitioner or pursuant to an invalid prescription or order of a practitioner. Any person who violates this provision commits a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

- Have a Criminal Punishment Code score sheet total of 60 sentence points or fewer.<sup>33</sup>

The program may include the use of graduated sanctions consistent with the conditions imposed by the court, such as random drug testing.<sup>34</sup> Probationers in this program are subject to probation revocation if they violate any conditions of their probation.<sup>35</sup> This can result in an imposition of any sentence that may have originally been imposed before the offender was placed on probation.<sup>36</sup> In Fiscal Year 2010-11, 10,099 offenders were on drug offender probation.<sup>37</sup>

### ***Criminal Sentences***

Chapter 921, F.S., is Florida's Criminal Punishment Code that applies to all felony offenses, except capital felonies, committed on or after October 1, 1998. Current law authorizes a judge to impose a split sentence.<sup>38</sup> A split sentence is a sentence issued by the court that includes an incarceration and a probation portion of the sentence.

In 1995, the Legislature passed into law the requirement that inmates must serve a minimum of 85% of their court-imposed sentence. The Criminal Punishment Code provides:

The sentence imposed by the sentencing judge reflects the length of actual time to be served, shortened only by the application of incentive and meritorious gain-time as provided by law, and may not be shortened if the defendant would consequently serve less than 85 percent of his or her term of imprisonment as provided in s. 944.275(4)(b)3.<sup>39</sup>

### **Proposed Changes:**

**Section 5:** The bill directs DOC to establish and administer a reentry program for non-violent drug offenders sentenced to the reentry program by a judge.

### **Eligibility for program:**

The bill sets forth eligibility requirements a judge must find an offender meets before the offender may be sentenced to the reentry program. In order to be eligible, the offender has to have been identified as having a substance abuse problem by the court;<sup>40</sup> the offender's primary offense must be a 3<sup>rd</sup> degree felony; and the offender must have never been convicted of any:

- Forcible felony as defined in s. 776.08;
- Offense that requires a person to register as a sexual offender;<sup>41</sup>
- Offense listed in s. 775.082(9)(a)1.r., F.S.;<sup>42</sup>
- Obscenity offense involving a minor or depiction of a minor;<sup>43</sup>
- Child abuse or neglect offense in ch. 827, F.S.;

<sup>31</sup> As used in this section, the term "nonviolent felony" means a third degree felony violation under ch. 810, F.S., or any other felony offense that is not a forcible felony as defined in s. 776.08, F.S.

<sup>32</sup> If such nonviolent felony is committed on or after July 1, 2009.

<sup>33</sup> Section 948.20(1), F.S.

<sup>34</sup> Section 948.20(2), F.S.

<sup>35</sup> Section 948.06(2)(a), F.S.

<sup>36</sup> Section 948.06(2)(e), F.S.

<sup>37</sup> Department of Corrections, Community Supervision Admissions, 2010-2011 Agency Statistics, [http://www.dc.state.fl.us/pub/annual/1011/stats/csa\\_prior.html](http://www.dc.state.fl.us/pub/annual/1011/stats/csa_prior.html) (last visited March 18, 2013).

<sup>38</sup> See, s. 944.012, F.S.

<sup>39</sup> See, s. 921.002(1)(e), F.S.

<sup>40</sup> This court determination must be based in part on the judge requesting and reviewing a presentence investigation report prepared pursuant to s. 921.231, F.S.

<sup>41</sup> Pursuant to s. 943.0435, F.S.

<sup>42</sup> These include any violation of s. 790.07, F.S. (criminal offenses involving possession of weapons), s. 800.04, F.S. (lewd and lascivious offenses against children under 16), s. 827.03, F.S. (child abuse and neglect), s. 827.071, F.S. (sexual performance by a child), or s. 847.0135(5), F.S. (exposing minors to lewd and lascivious conduct online).

<sup>43</sup> Specifically, offenses in chapter 847, F.S.

- Assault or battery offense described in ss. 784.07, 784.074, 784.075, 784.076, 784.08, 784.083 or 784.085;
- Offense involving the possession or use of a firearm;
- Capital, first or second degree felony; or
- Any of the above offenses committed in another jurisdiction.

**Reentry Program — In-Prison Component:**

The bill requires DOC to place an inmate sentenced to a reentry program split sentence into their substance abuse treatment program not more than nine months prior to the end of the inmate's incarceration period of the split sentence. The substance abuse treatment program will last for a minimum of 180 days.

**Reentry Program — Drug Offender Probation Component:**

The out-of-prison component of the reentry program split sentence includes a one-year drug offender probation sanction. The judge, at the time of sentencing the offender to the reentry program, will impose a sentence that includes drug offender probation. An inmate transitioning into drug offender probation must have first successfully completed the in-prison substance abuse treatment program. If the inmate fails to successfully complete that component of the reentry program, the probation portion of his or her sentence becomes a term of incarceration.

The bill provides that when an inmate is released into drug offender probation all of the standard terms and conditions of regular probation under s. 948.20, F.S., and drug offender probation conditions under s. 948.20, F.S., apply. Additionally, if there is a postadjudicatory drug court in the county to which the offender returns, the inmate may have his or her case transferred to that drug court subject to the drug court judge accepting the case. In such instance, the probation portion of the sentence is transferred to the local drug court. The drug court judge will then maintain jurisdiction over the offender for purposes of compliance with the reentry program.

**DOC — Administration:**

Although an inmate may meet the eligibility requirements for a judge to sentence him or her to the reentry program, the bill expressly provides an inmate has no right to be so sentenced. The bill provides that no rights are created or conferred upon an inmate by means of DOC administering the reentry program. Similarly, the bill provides that an inmate sentenced to the reentry program, will be removed from the program by DOC under the following circumstances:

- If the inmate commits a violent act;
- If the department determines medical conditions will keep the inmate from participating in the program;
- The inmates sentence is modified or expires;
- DOC reassigns the offender's classification status; or
- DOC determines that removing the inmate from the program is in the best interest of the inmate or for the security of the institution.

Because an inmate has no right to participate in a reentry program, the bill expressly provides that an inmate does not have a cause of action against DOC, a court, state attorney or a victim relating to placement or participation in the reentry program.

The bill requires that an inmate sentenced to the reentry program must comply with Florida's 85% law. This would preclude an inmate from being released from the incarceration portion of his or her sentence prior to meeting the 85% threshold of his prison sanction. Additionally, the bill specifically requires in cases where the inmate fails to complete the in-prison component of the reentry program, and the probation portion of the sentence is changed to a term of incarceration, the inmate must serve 85% of the total incarceration time.

The bill provides DOC authorization to contract out any portion of the reentry program to qualified individuals, agencies or corporations. They are also authorized to establish incentives for the reentry program to promote participation by private-sector employers within the program.

The department, as part of its annual report, must include information on the implementation of the reentry program; the number of offenders sentenced to the program; number of inmates that successfully complete the in-prison and out-of-prison portions of the program; and the recidivism numbers on participating offenders.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 322.051, F.S., relating to identification cards.

**Section 2:** Amends s. 382.0255, F.S., relating to fees.

**Section 3:** Amends s. 944.605, F.S., relating to inmate release; notification.

**Section 4:** Amends s. 944.803, F.S., relating to faith- and character-based programs.

**Section 5:** Creates s. 948.0125, F.S., relating to reentry program sentence.

**Section 6:** Provides an effective date of July 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The bill will have a negative fiscal impact on state revenues due to the waiver of the fee for a state ID card and the waiver of the charge for a certified copy of a Florida birth certificate. DOC estimates the following numbers for Florida-born inmates expected to be released in the next few years:

Fiscal Year	Florida Born Calculation of Releases (Based on CJEC Projections)	Estimate to Calculate Costs
FY 12 – 13	14,962	15,500
FY 13 – 14	14,821	15,500
FY 14 – 15	14,604	15,000
FY 15 – 16	14,646	15,000
FY 16 – 17	14,754	15,000
FY 17 – 18	14,945	15,500

Based on these numbers, if certified copies of birth certificates were issued to every Florida-born inmate in the transition process the lost revenue to DOH will be:

- FY 12-13: 14,962 x \$9 = \$134,658
- FY 13-14: 14,821 x \$9 = \$133,389
- FY 14-15: 14,604 x \$9 = \$131,436
- FY 15-16: 14,646 x \$9 = \$131,814
- FY 16-17: 14,754 x \$9 = \$132,786
- FY 17-18: 14,945 x \$9 = \$134,586<sup>44</sup>

<sup>44</sup> Fees charged for issuing a copy of a birth certificate are deposited into a DOH trust fund. Section 382.0255(4), F.S.  
**STORAGE NAME:** pcb01.JDC.DOCX  
**DATE:** 3/18/2013

Similarly, the lost revenues to General Revenue for waiving the \$25 fee for issuing a state ID card to every Florida-born inmate upon release would be:

- FY 12-13: 14,962 x \$25 = \$374,050
- FY 13-14: 14,821 x \$25 = \$370,525
- FY 14-15: 14,604 x \$25 = \$365,100
- FY 15-16: 14,646 x \$25 = \$366,150
- FY 16-17: 14,754 x \$25 = \$368,850
- FY 17-18: 14,945 x \$25 = \$373,625<sup>45</sup>

2. Expenditures:

Anticipated increase in DOC, DOH and DHSMV's workload will be subsumed within existing agency resources.

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

1. Revenues:

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

2. Expenditures:

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

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill 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 implementation and administration of the reentry program may require DOC to promulgate rules. The bill provides DOC with adequate authority to do so.

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

None.

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<sup>45</sup> Section 322.21(f), F.S. directs the \$25 fee for issuing a state ID card to the General Revenue Fund. For renewals, \$6 of the \$25 fee goes to the Highway Safety Operating Trust Fund with the remaining \$19 to the General Revenue Fund.



#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

PCB JDC 13-01

ORIGINAL

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A bill to be entitled  
 An act relating to inmate reentry; amending s.  
 322.051, F.S.; waiving the fee for identification  
 cards issued to certain inmates; amending s. 382.0255,  
 F.S.; requiring a waiver of fees for certain inmates  
 receiving a copy of a birth certificate; amending s.  
 944.605 F.S.; requiring the department to work with  
 other agencies in acquiring necessary documents for  
 certain inmates to acquire an identification card  
 prior to release; amending s. 944.803, F.S.;  
 authorizing the department to operate male and female  
 faith- and character-based institutions; creating s.  
 948.0125, F.S.; directing the department to establish  
 a reentry program for nonviolent offenders; providing  
 eligibility and participation requirements; providing  
 guidelines where the department may terminate inmate's  
 participation in program; providing for inmate to  
 participate in drug offender probation upon completion  
 of in-prison reentry program; authorizing use of  
 postadjudicatory drug court for program participant;  
 authorizes department to contract for services;  
 providing that no rights are conferred upon inmates to  
 participate in reentry program; providing for reports  
 and rulemaking authority; providing an effective date.

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

Section 1. Subsection (9) of section 322.051, Florida  
 Statutes, is amended to read:

PCB JDC 13-01

Page 1 of 11

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PCB JDC 13-01

ORIGINAL

2013

30 322.051 Identification cards.—

31 (9) Notwithstanding any other provision of this section or  
 32 s. 322.21 to the contrary, the department shall issue or renew a  
 33 card at no charge to a person who presents evidence satisfactory  
 34 to the department that he or she is homeless as defined in s.  
 35 414.0252(7) or to an inmate receiving a card issued pursuant to  
 36 s. 944.605(7).

37 Section 2. Subsection (3) of section 382.0255, Florida  
 38 Statutes, is amended to read:

39 382.0255 Fees.—

40 (3) Fees shall be established by rule. However, until  
 41 rules are adopted, the fees assessed pursuant to this section  
 42 shall be the minimum fees cited. The fees established by rule  
 43 must be sufficient to meet the cost of providing the service.  
 44 All fees shall be paid by the person requesting the record, are  
 45 due and payable at the time services are requested, and are  
 46 nonrefundable, except that, when a search is conducted and no  
 47 vital record is found, any fees paid for additional certified  
 48 copies shall be refunded. The department may waive all or part  
 49 of the fees required under this section for any government  
 50 entity. The department shall waive all fees required under this  
 51 section for a certified copy of a birth certificate issued for  
 52 purposes of an inmate acquiring a state identification card  
 53 prior to release pursuant to s. 944.605(7).

54 Section 3. Subsection (7) is added to section 944.605,  
 55 Florida Statutes, to read:

56 944.605 Inmate release; notification; identification  
 57 card.—

58 (7)(a) The department, working in conjunction with the

PCB JDC 13-01

ORIGINAL

2013

59 Department of Health and the Department of Highway Safety and  
 60 Motor Vehicles, shall provide every Florida-born inmate with a  
 61 certified copy of their birth certificate and a state  
 62 identification card prior to their release upon expiration of  
 63 the inmate's sentence.

64 (b) Paragraph (a) does not apply for the following  
 65 inmates:

66 1. Those inmates that the department determines have a  
 67 valid driver's license or state identification card.

68 2. Those inmates that have any active detainer unless the  
 69 department determines that cancellation of the detainer is  
 70 likely or that the incarceration for which the detainer was  
 71 issued will be of duration less than 12 months.

72 Section 4. Section 944.803, Florida Statutes, is amended  
 73 to read:

74 944.803 Faith- and character-based programs.—

75 (1) The Legislature finds and declares that faith- and  
 76 character-based programs offered in state and private  
 77 correctional institutions and facilities have the potential to  
 78 facilitate inmate institutional adjustment, help inmates assume  
 79 personal responsibility, and reduce recidivism.

80 (2) It is the intent of the Legislature that the  
 81 department expand the faith- and character-based initiative  
 82 through the use of faith- and character-based institutions. The  
 83 department is encouraged to phase out the faith-based and self  
 84 improvement dormitory programs and move toward the goal of only  
 85 implementing faith- and character-based institutions. The  
 86 department is also encouraged to dedicate and maintain faith-  
 87 and character-based institutions that serve both male and female

PCB JDC 13-01

Page 3 of 11

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88 inmates at their respective institutions.

89 (3) It is the intent of the Legislature that the  
90 department and the private vendors operating private  
91 correctional facilities continuously:

92 (a) Measure recidivism rates for inmates who have  
93 participated in faith- and character-based programs.

94 (b) Increase the number of volunteers who minister to  
95 inmates from various faith-based and secular institutions in the  
96 community.

97 (c) Develop community linkages with secular institutions  
98 as well as churches, synagogues, mosques, and other faith-based  
99 institutions to assist inmates in their release back into the  
100 community.

101 (4)(a) The department shall ensure that an inmate's faith  
102 orientation, or lack thereof, will not be considered in  
103 determining admission to a faith- and character-based program  
104 and that the program does not attempt to convert an inmate  
105 toward a particular faith or religious preference.

106 (b) The programs shall operate 24 hours a day within the  
107 existing correctional facilities and must emphasize the  
108 importance of personal responsibility, meaningful work,  
109 education, substance abuse treatment, and peer support.

110 (c) Participation in a program shall be voluntary.  
111 Assignment to a program shall be based on evaluation and the  
112 length of time the inmate is projected to be assigned to that  
113 particular institution. The department may not remove an inmate  
114 once assigned to a program except for the purposes of population  
115 management, for inmate conduct that may subject the inmate to  
116 disciplinary confinement or loss of gain-time, for physical or

PCB JDC 13-01

ORIGINAL

2013

117 mental health concerns, or for security or safety concerns.

118 (5) The department shall ensure that any faith component  
 119 of any program authorized in this chapter is offered on a  
 120 voluntary basis and an offender's faith orientation, or lack  
 121 thereof, will not be considered in determining admission to such  
 122 a program and that the program does not attempt to convert an  
 123 offender toward a particular faith or religious preference.

124 (6) Within faith- and character-based institutions of the  
 125 state correctional system, peer-to-peer programming shall be  
 126 offered ~~allowed~~, such as Alcoholics Anonymous, literacy  
 127 instruction, and other activities, ~~when appropriate~~.

128 (7) The department shall ensure that state funds are not  
 129 expended for the purpose of furthering religious indoctrination,  
 130 but rather, that state funds are expended for purposes of  
 131 furthering the secular goals of criminal rehabilitation, the  
 132 successful reintegration of offenders into the community, and  
 133 the reduction of recidivism.

134 Section 5. Section 948.0125, Florida Statutes, is created  
 135 to read:

136 948.0125 Reentry Program Sentence.-

137 (1) PROGRAM DEVELOPMENT. The department shall develop and  
 138 implement a reentry program for nonviolent drug offenders. The  
 139 program shall provide a mechanism by which an eligible,  
 140 nonviolent offender for whom the reentry program has been  
 141 ordered as part of his or her conditional split sentence by the  
 142 court may be transitioned into the community during the last  
 143 year of the sentence. The reentry program shall consist of a  
 144 prison-based substance abuse treatment program for a minimum of  
 145 180 days and a community-based aftercare treatment program. The

PCB JDC 13-01

Page 5 of 11

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V

146 reentry program may include a work-release component.

147 (2) ELIGIBILITY. For an offender to participate in the  
 148 reentry program, the court at the time of ordering a state  
 149 prison sentence must have imposed a conditional split sentence  
 150 whereby the offender is ordered into the department's reentry  
 151 program that consists of an in-prison treatment component, and  
 152 upon successful completion of that in-prison treatment, followed  
 153 by drug offender probation. Entry into the department's reentry  
 154 program is subject to available funding and resources of the  
 155 department.

156 (a) The sentencing court may order the offender into the  
 157 department's reentry program if the offender meets the following  
 158 criteria:

- 159 1. The primary offense is a felony of the third degree;
- 160 2. The sentencing court has found that the offender has a  
 161 substance abuse problem after the court has requested and  
 162 reviewed a presentence investigation report prepared pursuant to  
 163 s. 921.231; and
- 164 3. The offender has never been convicted of:
  - 165 a. A forcible felony as defined in s. 776.08;
  - 166 b. An offense listed in s. 775.082(9)(a)1.r. without  
 167 regard to prior incarceration or release;
  - 168 c. An offense described in chapter 847 involving a minor  
 169 or a depiction of a minor;
  - 170 d. An offense described in chapter 827;
  - 171 e. Any offense described in s. 784.07, s.784.074, s.  
 172 784.075, s. 784.076, s. 784.08, s. 784.083, or s. 784.085;
  - 173 f. Any offense involving the possession or use of a  
 174 firearm;

175 g. A capital felony or a felony of the first or second  
 176 degree;

177 h. Any offense that requires a person to register as a  
 178 sexual offender pursuant to s. 943.0435, F.S.; and

179 i. Any offense in another jurisdiction that would be an  
 180 offense described in this subparagraph if that offense had been  
 181 committed in this state.

182 (b) Placement on drug offender probation shall be  
 183 conditioned upon the offender's successful completion of the in-  
 184 prison treatment component of the program.

185 (3) ADMISSION AND PARTICIPATION IN THE REENTRY PROGRAM.

186 (a) If an offender meets the eligibility criteria under  
 187 subsection (2), the sentencing court may order the reentry  
 188 program at the time of sentencing. Admission into the reentry  
 189 program, and an offender's continued participation in the  
 190 program, is not a right. Accordingly, a sentencing court is not  
 191 required to sentence an offender to the reentry program, and an  
 192 offender, based upon conduct in prison may lose eligibility to  
 193 continue participating in the reentry program.

194 (4) PROCEDURE UPON ADMISSION TO PROGRAM; IN-PRISON  
 195 TREATMENT. If the sentencing court orders the offender into the  
 196 reentry program, the department shall, subject to available  
 197 funding and resources, place the offender into the in-prison  
 198 treatment component not more than nine months prior to the end  
 199 of the inmate's incarceration portion of the split sentence  
 200 including any gain time accrued.

201 (a) Before the offender completes the in-prison treatment  
 202 component, the department shall evaluate the offender's needs  
 203 for community placement and develop a post-release treatment



PCB JDC 13-01

ORIGINAL

2013

204 plan that includes substance abuse aftercare services.

205 (b) An offender in the in-prison component of the reentry  
 206 program is subject to the rules of conduct established by the  
 207 department and may have sanctions imposed, including loss of  
 208 privileges, restrictions, disciplinary confinement, forfeiture  
 209 of gain-time or the right to earn gain-time in the future,  
 210 alteration of release plans, termination from the reentry  
 211 program, or other program modifications in keeping with the  
 212 nature and gravity of the program violation. The department may  
 213 place an offender in the reentry program in an administrative or  
 214 protective confinement, as necessary. Except as provided in  
 215 paragraph (c), the offender shall be readmitted to the reentry  
 216 program after completing the ordered discipline.

217 (c) The department shall terminate an offender from the  
 218 reentry program if:

- 219 1. The offender commits a violent act;
- 220 2. The department determines that the offender is unable  
 221 to participate in the reentry program due to the offender's  
 222 medical condition;
- 223 3. The offender's sentence is modified or expires;
- 224 4. The department reassigns the offender's classification  
 225 status; or
- 226 5. The department determines that removing the offender  
 227 from the reentry program is in the best interest of the offender  
 228 or the security of the institution.

229 (d) An offender must serve at least 85 percent of the  
 230 incarceration portion of the conditional split sentence before  
 231 being released to drug offender probation. If the offender does  
 232 not successfully complete the in-prison treatment component of

PCB JDC 13-01

Page 8 of 11

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PCB JDC 13-01

ORIGINAL

2013

233 reentry program, the drug offender probation portion of the  
234 conditional split sentence becomes a term of imprisonment to be  
235 served while incarcerated. The offender must then serve at  
236 least 85 percent of the total term of imprisonment.

237 (5) PROCEDURE UPON COMPLETION OF IN-PRISON TREATMENT.

238 Following successful completion of the in-prison treatment  
239 component, the offender shall be transitioned into the community  
240 to serve the drug offender probation portion of the offender's  
241 conditional split sentence.

242 (a) While in the community, the offender shall be subject  
243 to all standard terms of probation under s. 948.03, and of drug  
244 offender probation under s. 948.20, any special conditions of  
245 supervision ordered by the sentencing court, including  
246 participation in an aftercare substance abuse program, residence  
247 in a post-release transitional residential halfway house, or any  
248 other appropriate form of supervision or treatment.

249 (b) Violation of any condition or order may result in  
250 revocation of supervision by the court and imposition of any  
251 sentence that is authorized by law, subject to time served in  
252 prison.

253 (c) If there is a postadjudicatory drug court program as  
254 described in s. 397.334 in the county of the sentencing court,  
255 or the county to which the offender returns, and the drug court  
256 is willing to accept the case, the offender's case shall be  
257 transferred to the drug court for supervision for the probation  
258 portion of the offender's split sentence. The drug court judge  
259 shall be deemed the sentencing judge for purposes of ensuring  
260 compliance with this section.

261 (d) While on drug offender probation, the department shall

PCB JDC 13-01

Page 9 of 11

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262 collect from the offender the cost of supervision as provided  
 263 for in s. 948.09. An offender who is financially able shall  
 264 also pay all costs of his or her drug rehabilitation including  
 265 drug testing fees. The sentencing judge may impose on the  
 266 offender additional conditions requiring payment of court costs  
 267 and fines, public service and compliance with other court-  
 268 ordered special conditions.

269 (6) CONTRACTORS. The department may develop and enter  
 270 into performance-based contracts with qualified individuals,  
 271 agencies, or corporations to supply any or all services provided  
 272 in the reentry program. The department may establish incentives  
 273 within the reentry program to promote participation by private-  
 274 sector employers in the rehabilitative reentry programs and the  
 275 orderly operation of institutions and facilities.

276 (7) NO RIGHTS CONFERRED UPON OFFENDERS. This section does  
 277 not create or confer any right to any offender to placement in  
 278 the reentry program or any right to placement or early-release  
 279 under supervision of any type. An offender does not have a  
 280 cause of action against the department, a court, the state  
 281 attorney, or a victim related to placement in or continued  
 282 participation in the reentry program.

283 (8) REPORTING. The department shall, as part of its  
 284 annual report, provide a detailed account of the department's  
 285 implementation of the reentry program; the number of offenders  
 286 sentenced to the program; the number of inmates that  
 287 successfully complete the in-prison portion of the program; the  
 288 number of inmates that successfully complete the drug offender  
 289 probation; and recidivism numbers for inmates that have  
 290 participated in the reentry program.

PCB JDC 13-01

ORIGINAL

2013

291 |       (9) RULEMAKING. The department may adopt rules pursuant  
292 | to ss. 120.536(1) and 120.54, to implement the provisions of  
293 | this section.

294 |       Section 6. This act shall take effect July 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 PCB: Judiciary Committee  
Representative Baxley offered the following:

**Amendment**

Between lines 71 and 72, insert:

3. Inmates released due to an emergency release or a conditional medical release under s. 947.149.

4. Those inmates not in the physical custody of the department at or 180 days prior to release.

5. Those inmates subject to sex offender residency restrictions, which, upon release under such restrictions, do not have a qualifying address.

(c) The department shall assist each inmate in applying for and obtaining a social security card prior to release if the inmate needs a social security card.

(d) The department, for purposes of assisting the inmate in obtaining a birth certificate, shall submit to the Department of Health on all Florida-born inmates in its custody, the department's inmate photo or digitized photo, and as provided by the inmate his or her date of birth, full name at birth and any



Amendment No. 1

21 subsequent legal name changes, city or county of birth, mother's  
22 full name including her maiden surname, and father's full name.

23 Failure of the inmate to cooperate with the department in  
24 providing this information may result in disciplinary action.

25 (e) For inmates born outside of Florida, the department  
26 shall assist the inmate in completing the necessary forms or  
27 applications to obtain a social security card, driver's license,  
28 or state identification card. The department shall also provide  
29 the inmate with the location and address of the appropriate  
30 licensing authority the inmate will need to obtain a valid  
31 identification card in proximity to the inmate's release  
32 address.

33 (f) By February 1, 2014, and every year thereafter, the  
34 department, in consultation with the Department of Highway  
35 Safety and Motor Vehicle and the Department of Health, shall  
36 provide a report to the Governor, the President of the Senate,  
37 and the Speaker of the House of Representatives that identifies  
38 the number of inmates released with and without identification  
39 cards, identifies any impediments in the implementation of this  
40 subsection, and provides recommendations to improve obtaining  
41 release documents and identification cards for all inmates.

42