



Criminal Justice Subcommittee

March 19, 2013

9:00 AM

404 HOB

Will W. Weatherford
Speaker

Matt Gaetz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Tuesday, March 19, 2013 09:00 am
End Date and Time: Tuesday, March 19, 2013 11:30 am
Location: 404 HOB
Duration: 2.50 hrs

Consideration of the following bill(s):

HB 49 Drug Paraphernalia by Rouson
HB 731 Pub. Rec./Spouses & Children of Law Enforcement Personnel by Kerner
HB 797 Search and Seizure of Portable Electronic Device by Trujillo
HB 875 Licensed Security Officers by Workman
HB 915 False Claims Against Real or Personal Property by Combee
HB 1173 Florida Communications Fraud Act by Spano
HB 1221 Murder of a Child 17 Years of Age or Younger by Artiles
HB 1325 Victims of Human Trafficking by Spano
HB 1327 Pub. Rec./Crim. Hist./Human Trafficking Victims by Spano
HB 1355 Purchase of Firearms by Mentally Ill Persons by Watson, B.

NOTICE FINALIZED on 03/15/2013 16:15 by hudson.jessica

HB 49

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 49 Drug Paraphernalia
SPONSOR(S): Rouson and others
TIED BILLS: IDEN./SIM. BILLS: SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>LJ</i>	Cunningham <i>SK</i>
2) Business & Professional Regulation Subcommittee			
3) Justice Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Section 893.147, F.S., establishes the following five drug paraphernalia crimes: use or possession of drug paraphernalia; manufacture or delivery of drug paraphernalia; delivery of drug paraphernalia to a minor; transportation of drug paraphernalia; and advertisement of drug paraphernalia.

Section 893.145, F.S., defines "drug paraphernalia" and includes an extensive list of items that are included in the term. It is important to note the items included as drug paraphernalia in s. 893.145, F.S., are not illegal to possess unless they are used, intended for use, or designed for use in a specified manner (e.g., intended to be used for growing a controlled substance).

Section 569.0073, F.S., specifically prohibits the retail sale of smoking pipes and devices listed in s. 569.0073, F.S. (these items are also included on the list of drug paraphernalia in s. 893.145, F.S.). The statute contains an exception that allows retail tobacco product dealers to sell the listed smoking pipes and devices if they:

- Derive at least 75 percent of its annual gross revenues from the retail sale of cigarettes, cigars, and other tobacco products; or
- Derive no more than 25 percent of its annual gross revenues from the retail of the certain drug paraphernalia.

The bill repeals s. 569.0073, F.S., relating to retail sale of smoking devices, in its entirety. The bill amends s. 893.147, F.S., to make it a first degree misdemeanor to sell or offer for sale at retail any of the drug paraphernalia listed in s. 893.145(12)(a)-(c) and (g)-(m), F.S. (these items include the smoking pipes and devices listed in s. 569.0073, F.S.). A second or subsequent violation is a third degree felony.

The bill also amends s. 569.006, F.S., to include a violation of s. 893.147, F.S., as cause for a retail tobacco product dealers' permit to be suspended or revoked.

On February 27, 2013, the Criminal Justice Impact Conference determined that the bill will have an indeterminate prison bed impact on the Department of Corrections. The bill may also have a negative jail bed impact on local governments.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Drug Paraphernalia

Drug paraphernalia is defined in s. 893.145, F.S., as:

All equipment, products, and materials of any kind which are used, intended for use, or designed for use in the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893 or s. 877.111, F.S.¹

The term includes, but is not limited to:

- (1) Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.
- (8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.
- (9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
- (10) Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.
- (11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
- (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:
 - (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (b) Water pipes;
 - (c) Carburetion tubes and devices;
 - (d) Smoking and carburetion masks;
 - (e) Roach clips: meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand;
 - (f) Miniature cocaine spoons, and cocaine vials;
 - (g) Chamber pipes;
 - (h) Carburetor pipes;
 - (i) Electric pipes;
 - (j) Air-driven pipes;

¹ Section 893.02(4), F.S., defines "controlled substance" as "any substance named or described in Schedules I-V of s. 893.03, F.S.

- (k) Chillums;
- (l) Bongs;
- (m) Ice pipes or chillers;
- (n) A cartridge or canister, which means a small metal device used to contain nitrous oxide;
- (o) A charger, sometimes referred to as a "cracker," which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container;
- (p) A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister;
- (q) A whip-it, which means a device that may be used to expel nitrous oxide;
- (r) A tank;
- (s) A balloon;
- (t) A hose or tube;
- (u) A 2-liter-type soda bottle; and
- (v) Duct tape.²

Section 893.147, F.S., establishes the following five drug paraphernalia crimes:

- Use or possession of drug paraphernalia;
- Manufacture or delivery of drug paraphernalia;
- Delivery of drug paraphernalia to a minor;
- Transportation of drug paraphernalia; and
- Advertisement of drug paraphernalia.

It is important to note that the items listed above are not illegal to possess, use, manufacture, deliver, transport or advertise unless used in the manner described in the above drug paraphernalia definition.³

Retail Sale of Smoking Devices

Section 569.0073, F.S., makes it a first degree misdemeanor⁴ for any person to offer for sale at retail the following smoking pipes and smoking devices:

- Metal wooden acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens or punctured metal bowls;
- Water pipes;
- Carburetion tubes and devices;
- Chamber pipes;
- Carburetor pipes;
- Electric pipes;
- Air-driven pipes;
- Chillums;
- Bongs; and
- Ice pipes or chillers.

The statute provides an exception that allows retail tobacco products dealers⁵ to sell the above listed items if they:

- Derive at least 75 percent of their annual gross revenues from the retail sale of cigarettes, cigars, and other tobacco products; or
- Derive no more than 25 percent of their annual gross revenues from the retail of the certain drug paraphernalia.⁶

² Section 893.145(1)-(12), F.S.

³ Section 893.145, F.S.

⁴ 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.

⁵ Section 569.002, F.S., defines "retail tobacco products dealer" as the holder of a retail tobacco products dealer permit.

⁶ Section 569.0073(b)(1)(2), F.S.

Retail tobacco product dealers are governed by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation (Division).⁷ The Division is currently able to suspend or revoke the permit of a dealer if they violate any of the provisions in ch. 569, F.S.⁸

Effect of the Bill

The bill repeals s. 569.0073, F.S., relating to retail sale of smoking devices, in its entirety.

The bill amends s. 893.147, F.S., to make the retail sale of drug paraphernalia a crime. The bill makes it a first degree misdemeanor to sell or offer for sale at retail any of the drug paraphernalia listed in s. 893.145(12)(a)-(c) and (g)-(m), F.S., and any second or subsequent violation a third degree felony.⁹

The bill also amends s. 569.006, F.S., to include a violation of s. 893.0147, F.S., as cause for a retail tobacco product dealers' permit to be suspended or revoked.

B. SECTION DIRECTORY:

Section 1. Amends s. 893.147, F.S., relating to use, possession, manufacture, delivery, transportation, or advertisement, of drug paraphernalia.

Section 2. Amends s. 569.006, F.S., relating to retail tobacco dealers; administrative penalties.

Section 3. Repeals s. 569.0073, F.S., relating to the retail sale of certain smoking pipes and smoking devices.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

On February 27, 2013, the Criminal Justice Impact Conference determined that the bill will have an indeterminate 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 amends s. 893.147, F.S., to make the retail sale of drug paraphernalia a first degree misdemeanor for first time offenders. This may have a negative jail bed impact on local governments.

⁷ Section 569.006, F.S.

⁸ *Id.*

⁹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private retailers who were legally selling the items under s. 569.0073, F.S., may see a loss of income since the bill repeals s. 569.0073, F.S.

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:

The bill makes it a first degree misdemeanor to sell or offer for sale at retail any of the drug paraphernalia listed in s. 893.145(12)(a)-(c) and (g)-(m), F.S. Because the bill uses the term "drug paraphernalia" to describe the prohibited items, it could be argued that such items could be sold or offered for sale at retail so long as they are not used in the manner described in the definition of drug paraphernalia in s. 893.145, F.S. If the intent is to prohibit the sale of such items altogether, the reference to "drug paraphernalia" to describe such items should be removed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to drug paraphernalia; amending s.
 893.147, F.S.; prohibiting the retail sale of certain
 drug paraphernalia; providing penalties; amending s.
 569.006, F.S.; authorizing the imposition of
 administrative penalties upon retail tobacco products
 dealers who commit certain offenses related to drug
 paraphernalia; repealing s. 569.0073, F.S., relating
 to the retail sale of certain smoking pipes and
 smoking devices; providing an effective date.

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

Section 1. Subsection (6) is added to section 893.147,
 Florida Statutes, to read:

893.147 Use, possession, manufacture, delivery,
 transportation, ~~or~~ advertisement, or retail sale of drug
 paraphernalia.-

(6) RETAIL SALE OF DRUG PARAPHERNALIA.-

(a) It is unlawful for any person to sell or offer for
 sale at retail any drug paraphernalia described in s.
 893.145(12)(a)-(c) or (g)-(m).

(b) Any person who violates this subsection commits a
 misdemeanor of the first degree, punishable as provided in s.
 775.082 or s. 775.083, and, upon a second or subsequent
 violation, commits a felony of the third degree, punishable as
 provided in s. 775.082, s. 775.083, or s. 775.084.

28 Section 2. Section 569.006, Florida Statutes, is amended
 29 to read:

30 569.006 Retail tobacco products dealers; administrative
 31 penalties.—The division may suspend or revoke the permit of the
 32 dealer upon sufficient cause appearing of the violation of any
 33 of the provisions of this chapter or s. 893.147, by a dealer or
 34 by a dealer's agent or employee. The division may also assess
 35 and accept administrative fines of up to \$1,000 against a dealer
 36 for each violation. The division shall deposit all fines
 37 collected into the General Revenue Fund as collected. An order
 38 imposing an administrative fine becomes effective 15 days after
 39 the date of the order. The division may suspend the imposition
 40 of a penalty against a dealer, conditioned upon the dealer's
 41 compliance with terms the division considers appropriate.

42 Section 3. Section 569.0073, Florida Statutes, is
 43 repealed.

44 Section 4. This act shall take effect October 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice

2 Subcommittee

3 Representative Rouson offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 569.0073, Florida Statutes, is amended
8 to read:

9 569.0073 Retail Sale of ~~Special provisions;~~ smoking pipes
10 and smoking devices; penalties.-

11 (1) It is unlawful for any person to offer for sale at
12 retail any of the following items: ~~listed in subsection (2)~~
13 ~~unless such person:~~

14 ~~(a) Has a retail tobacco products dealer permit under s.~~
15 ~~569.003. The provisions of this chapter apply to any person that~~
16 ~~offers for retail sale any of the items listed in subsection~~
17 ~~(2); and~~

18 ~~(b)1. Derives at least 75 percent of its annual gross~~
19 ~~revenues from the retail sale of cigarettes, cigars, and other~~
20 ~~tobacco products; or~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 49 (2013)

Amendment No. 1

21 ~~2. Derives no more than 25 percent of its annual gross~~
22 ~~revenues from the retail sale of the items listed in subsection~~
23 ~~(2).~~

24 ~~(2) The following smoking pipes and smoking devices are~~
25 ~~subject to the provisions of this section:~~

26 (a) Metal, wooden, acrylic, glass, stone, plastic, or
27 ceramic smoking pipes, with or without screens, permanent
28 screens, or punctured metal bowls.

29 (b) Water pipes.

30 (c) Carburetion tubes and devices.

31 (d) Chamber pipes.

32 (e) Carburetor pipes.

33 (f) Electric pipes.

34 (g) Air-driven pipes.

35 (h) Chillums.

36 (i) Bonges.

37 (j) Ice pipes or chillers.

38 ~~(3)~~(2) Any person who violates this section commits a
39 misdemeanor of the first degree, punishable as provided in s.
40 775.082 or s. 775.083, and upon a second or subsequent
41 violation, commits a felony of the third degree, punishable as
42 provided in s. 775.082, s. 775.083, or s. 775.084.

43 Section 2. Section 569.006, Florida Statutes, is amended
44 to read:

45 569.006 Retail tobacco products dealers; administrative
46 penalties.—The division may suspend or revoke the permit of the
47 dealer upon sufficient cause appearing of the violation of any
48 of the provisions of this chapter or s. 893.147, by a dealer or

Amendment No. 1

49 by a dealer's agent or employee. The division may also assess
50 and accept administrative fines of up to \$1,000 against a dealer
51 for each violation. The division shall deposit all fines
52 collected into the General Revenue Fund as collected. An order
53 imposing an administrative fine becomes effective 15 days after
54 the date of the order. The division may suspend the imposition
55 of a penalty against a dealer, conditioned upon the dealer's
56 compliance with terms the division considers appropriate.

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

58 -----

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

60 Remove everything before the enacting clause and insert:

61 An act relating to the retail sale of smoking devices; amending
62 s. 569.0073, F.S.; prohibiting the retail sale of certain
63 smoking pipes and devices; providing penalties; amending s.
64 569.006, F.S.; authorizing the imposition of administrative
65 penalties upon retail tobacco products dealers who commit
66 certain offenses related to drug paraphernalia; providing an
67 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 731 Pub. Rec./Spouses & Children of Law Enforcement Personnel
SPONSOR(S): Kerner
TIED BILLS: IDEN./SIM. **BILLS:** SB 376

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox <i>TC</i>	Cunningham <i>SC</i>
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes guarantee every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Currently, s. 119.071(4)(d)2.a., F.S., provides a public records exemption relating to various types of personal information of active or former sworn or civilian law enforcement personnel (law enforcement personnel) and for certain personal information of such personnel's spouses and children. Notably, the *names* of spouses and children of law enforcement personnel are not exempted.

The bill amends s. 119.071(4)(d)2.a., F.S., to create a public records exemption for the names of spouses and children of active or former sworn or civilian law enforcement personnel.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Florida Constitution

Article I, section 24(a), of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹

The Legislature, however, may provide by general law passed by two-thirds vote of each chamber for the exemption of records from the requirements of Article I, section 24 of the Florida Constitution, provided the exemption:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁵

Currently, s. 119.071(4)(d)2.a., F.S., provides a public records exemption relating to various types of personal information of active or former sworn or civilian law enforcement personnel (law enforcement personnel).⁶ This information includes their home addresses; telephone numbers;⁷ social security number; date of birth; and photographs.

¹ Article 1, Sec. 24(a), FLA. CONST.

² Article 1, Sec. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 119.071(4)(d)2.a., F.S., specifies that active or former sworn or civilian law enforcement personnel includes correctional and correctional probation officers; personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect; and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement.

⁷ Section 119.071(4)(d)1., F.S., states the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

Section 119.071(4)(d)2.a., F.S., also provides a public records exemption for the personal information of the spouses and children of law enforcement personnel, including their home addresses; telephone numbers; social security numbers; dates of birth; photographs; places of employment; and the name and location of school or day care facility attended.

Notably, the *names* of spouses and children of law enforcement personnel are not exempted. This is in contrast to the names of spouses and children of former or current:

- Human resource or labor relations agency personnel;⁸
- Code enforcement officers;⁹
- Guardians ad litem;¹⁰
- Juvenile justice officers;¹¹
- Investigators or inspectors of the Department of Business and Professional Regulation;¹² or
- County tax collectors.¹³

Effect of the Bill

The bill amends s. 119.071(4)(d)2.a., F.S., to exempt the names of spouses and children of active or former sworn or civilian law enforcement personnel from the public records provisions of ch. 119, F.S., and Article I, section 24(a), of the Florida Constitution.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹⁴

B. SECTION DIRECTORY:

Section 1. Amends 119.071, F.S., relating to general exemption from inspection or copying of public records.

Section 2. Provides a public necessity statement.

Section 3. 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 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.

⁸ Section 119.071(4)(d)2.f., F.S.

⁹ Section 119.071(4)(d)2.g., F.S.

¹⁰ Section 119.071(4)(d)2.h., F.S.

¹¹ Section 119.071(4)(d)2.i., F.S.

¹² Section 119.071(4)(d)2.k., F.S.

¹³ Section 119.071(4)(d)2.l., F.S.

¹⁴ Article I, Sec. 24(c), FLA. CONST.

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

HB 731

2013

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; creating an exemption from public
 4 records requirements for the names of the spouses and
 5 children of active or former sworn or civilian law
 6 enforcement personnel, including children and spouses
 7 of correctional and correctional probation officers,
 8 personnel of the Department of Children and Families
 9 whose duties include the investigation of abuse,
 10 neglect, exploitation, fraud, theft, or other criminal
 11 activities, personnel of the Department of Health
 12 whose duties are to support the investigation of child
 13 abuse or neglect, and personnel of the Department of
 14 Revenue or local governments whose responsibilities
 15 include revenue collection and enforcement or child
 16 support enforcement; providing for future review and
 17 repeal of the exemption under the Open Government
 18 Sunset Review Act; providing a statement of public
 19 necessity; providing an effective date.

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

22
 23 Section 1. Paragraph (d) of subsection (4) of section
 24 119.071, Florida Statutes, is amended to read:

25 119.071 General exemptions from inspection or copying of
 26 public records.—

27 (4) AGENCY PERSONNEL INFORMATION.—

28 (d)1. For purposes of this paragraph, the term "telephone

29 numbers" includes home telephone numbers, personal cellular
 30 telephone numbers, personal pager telephone numbers, and
 31 telephone numbers associated with personal communications
 32 devices.

33 2.a.(I) The home addresses, telephone numbers, social
 34 security numbers, dates of birth, and photographs of active or
 35 former sworn or civilian law enforcement personnel, including
 36 correctional and correctional probation officers, personnel of
 37 the Department of Children and Families ~~Family Services~~ whose
 38 duties include the investigation of abuse, neglect,
 39 exploitation, fraud, theft, or other criminal activities,
 40 personnel of the Department of Health whose duties are to
 41 support the investigation of child abuse or neglect, and
 42 personnel of the Department of Revenue or local governments
 43 whose responsibilities include revenue collection and
 44 enforcement or child support enforcement; the home addresses,
 45 telephone numbers, social security numbers, photographs, dates
 46 of birth, and places of employment of the spouses and children
 47 of such personnel; and the names and locations of schools and
 48 day care facilities attended by the children of such personnel
 49 are exempt from s. 119.07(1).

50 (II) The names of the spouses and children of active or
 51 former sworn or civilian law enforcement personnel identified in
 52 sub-sub-subparagraph a.(I) are exempt from s. 119.07(1) and s.
 53 24(a), Art. I of the State Constitution.

54 (III) Sub-sub-subparagraph a.(II) is subject to the Open
 55 Government Sunset Review Act in accordance with s. 119.15, and
 56 shall stand repealed on October 2, 2018, unless reviewed and

57 | saved from repeal through reenactment by the Legislature.

58 | b. The home addresses, telephone numbers, dates of birth,
59 | and photographs of firefighters certified in compliance with s.
60 | 633.35; the home addresses, telephone numbers, photographs,
61 | dates of birth, and places of employment of the spouses and
62 | children of such firefighters; and the names and locations of
63 | schools and day care facilities attended by the children of such
64 | firefighters are exempt from s. 119.07(1).

65 | c. The home addresses, dates of birth, and telephone
66 | numbers of current or former justices of the Supreme Court,
67 | district court of appeal judges, circuit court judges, and
68 | county court judges; the home addresses, telephone numbers,
69 | dates of birth, and places of employment of the spouses and
70 | children of current or former justices and judges; and the names
71 | and locations of schools and day care facilities attended by the
72 | children of current or former justices and judges are exempt
73 | from s. 119.07(1).

74 | d. The home addresses, telephone numbers, social security
75 | numbers, dates of birth, and photographs of current or former
76 | state attorneys, assistant state attorneys, statewide
77 | prosecutors, or assistant statewide prosecutors; the home
78 | addresses, telephone numbers, social security numbers,
79 | photographs, dates of birth, and places of employment of the
80 | spouses and children of current or former state attorneys,
81 | assistant state attorneys, statewide prosecutors, or assistant
82 | statewide prosecutors; and the names and locations of schools
83 | and day care facilities attended by the children of current or
84 | former state attorneys, assistant state attorneys, statewide

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85 prosecutors, or assistant statewide prosecutors are exempt from
 86 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

87 e. The home addresses, dates of birth, and telephone
 88 numbers of general magistrates, special magistrates, judges of
 89 compensation claims, administrative law judges of the Division
 90 of Administrative Hearings, and child support enforcement
 91 hearing officers; the home addresses, telephone numbers, dates
 92 of birth, and places of employment of the spouses and children
 93 of general magistrates, special magistrates, judges of
 94 compensation claims, administrative law judges of the Division
 95 of Administrative Hearings, and child support enforcement
 96 hearing officers; and the names and locations of schools and day
 97 care facilities attended by the children of general magistrates,
 98 special magistrates, judges of compensation claims,
 99 administrative law judges of the Division of Administrative
 100 Hearings, and child support enforcement hearing officers are
 101 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 102 Constitution if the general magistrate, special magistrate,
 103 judge of compensation claims, administrative law judge of the
 104 Division of Administrative Hearings, or child support hearing
 105 officer provides a written statement that the general
 106 magistrate, special magistrate, judge of compensation claims,
 107 administrative law judge of the Division of Administrative
 108 Hearings, or child support hearing officer has made reasonable
 109 efforts to protect such information from being accessible
 110 through other means available to the public.

111 f. The home addresses, telephone numbers, dates of birth,
 112 and photographs of current or former human resource, labor

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113 relations, or employee relations directors, assistant directors,
 114 managers, or assistant managers of any local government agency
 115 or water management district whose duties include hiring and
 116 firing employees, labor contract negotiation, administration, or
 117 other personnel-related duties; the names, home addresses,
 118 telephone numbers, dates of birth, and places of employment of
 119 the spouses and children of such personnel; and the names and
 120 locations of schools and day care facilities attended by the
 121 children of such personnel are exempt from s. 119.07(1) and s.
 122 24(a), Art. I of the State Constitution.

123 g. The home addresses, telephone numbers, dates of birth,
 124 and photographs of current or former code enforcement officers;
 125 the names, home addresses, telephone numbers, dates of birth,
 126 and places of employment of the spouses and children of such
 127 personnel; and the names and locations of schools and day care
 128 facilities attended by the children of such personnel are exempt
 129 from s. 119.07(1) and s. 24(a), Art. I of the State
 130 Constitution.

131 h. The home addresses, telephone numbers, places of
 132 employment, dates of birth, and photographs of current or former
 133 guardians ad litem, as defined in s. 39.820; the names, home
 134 addresses, telephone numbers, dates of birth, and places of
 135 employment of the spouses and children of such persons; and the
 136 names and locations of schools and day care facilities attended
 137 by the children of such persons are exempt from s. 119.07(1) and
 138 s. 24(a), Art. I of the State Constitution, if the guardian ad
 139 litem provides a written statement that the guardian ad litem
 140 has made reasonable efforts to protect such information from

141 | being accessible through other means available to the public.

142 | i. The home addresses, telephone numbers, dates of birth,
 143 | and photographs of current or former juvenile probation
 144 | officers, juvenile probation supervisors, detention
 145 | superintendents, assistant detention superintendents, juvenile
 146 | justice detention officers I and II, juvenile justice detention
 147 | officer supervisors, juvenile justice residential officers,
 148 | juvenile justice residential officer supervisors I and II,
 149 | juvenile justice counselors, juvenile justice counselor
 150 | supervisors, human services counselor administrators, senior
 151 | human services counselor administrators, rehabilitation
 152 | therapists, and social services counselors of the Department of
 153 | Juvenile Justice; the names, home addresses, telephone numbers,
 154 | dates of birth, and places of employment of spouses and children
 155 | of such personnel; and the names and locations of schools and
 156 | day care facilities attended by the children of such personnel
 157 | are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 158 | Constitution.

159 | j. The home addresses, telephone numbers, dates of birth,
 160 | and photographs of current or former public defenders, assistant
 161 | public defenders, criminal conflict and civil regional counsel,
 162 | and assistant criminal conflict and civil regional counsel; the
 163 | home addresses, telephone numbers, dates of birth, and places of
 164 | employment of the spouses and children of such defenders or
 165 | counsel; and the names and locations of schools and day care
 166 | facilities attended by the children of such defenders or counsel
 167 | are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 168 | Constitution.

169 k. The home addresses, telephone numbers, and photographs
170 of current or former investigators or inspectors of the
171 Department of Business and Professional Regulation; the names,
172 home addresses, telephone numbers, and places of employment of
173 the spouses and children of such current or former investigators
174 and inspectors; and the names and locations of schools and day
175 care facilities attended by the children of such current or
176 former investigators and inspectors are exempt from s. 119.07(1)
177 and s. 24(a), Art. I of the State Constitution if the
178 investigator or inspector has made reasonable efforts to protect
179 such information from being accessible through other means
180 available to the public. This sub-subparagraph is subject to the
181 Open Government Sunset Review Act in accordance with s. 119.15
182 and shall stand repealed on October 2, 2017, unless reviewed and
183 saved from repeal through reenactment by the Legislature.

184 l. The home addresses and telephone numbers of county tax
185 collectors; the names, home addresses, telephone numbers, and
186 places of employment of the spouses and children of such tax
187 collectors; and the names and locations of schools and day care
188 facilities attended by the children of such tax collectors are
189 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
190 Constitution if the county tax collector has made reasonable
191 efforts to protect such information from being accessible
192 through other means available to the public. This sub-
193 subparagraph is subject to the Open Government Sunset Review Act
194 in accordance with s. 119.15 and shall stand repealed on October
195 2, 2017, unless reviewed and saved from repeal through
196 reenactment by the Legislature.

197 3. An agency that is the custodian of the information
 198 specified in subparagraph 2. and that is not the employer of the
 199 officer, employee, justice, judge, or other person specified in
 200 subparagraph 2. shall maintain the exempt status of that
 201 information only if the officer, employee, justice, judge, other
 202 person, or employing agency of the designated employee submits a
 203 written request for maintenance of the exemption to the
 204 custodial agency.

205 4. The exemptions in this paragraph apply to information
 206 held by an agency before, on, or after the effective date of the
 207 exemption.

208 5. This paragraph is subject to the Open Government Sunset
 209 Review Act in accordance with s. 119.15, and shall stand
 210 repealed on October 2, 2017, unless reviewed and saved from
 211 repeal through reenactment by the Legislature.

212 Section 2. The Legislature finds that it is a public
 213 necessity that the names of the spouses and children of active
 214 or former sworn or civilian law enforcement personnel be exempt
 215 from s. 119.07(1) and s. 24(a), Art. I of the State
 216 Constitution. Sworn and civilian law enforcement personnel in
 217 this state perform a variety of important duties that ensure
 218 public safety and welfare and encourage safe and civil
 219 communities. Correctional and correctional probation officers
 220 work with felons, many of whom have committed violent crimes.
 221 Personnel of the Department of Children and Families whose
 222 duties include the investigation of abuse, neglect,
 223 exploitation, fraud, theft, or other criminal activities, and
 224 personnel of the Department of Health, work with individuals who

225 may be a danger to their own children and families, as well as
 226 the children of others. Personnel of the Department of Revenue
 227 or local governments whose responsibilities include revenue
 228 collection and enforcement or child support enforcement
 229 investigate and bring enforcement actions against individuals
 230 who have failed to pay their lawful taxes or failed to pay to
 231 support their children. As a result of their duties, these sworn
 232 and civilian law enforcement personnel often come in close
 233 contact with individuals who not only may be a threat to these
 234 personnel, but who might seek to take revenge against them by
 235 harming their spouses and children. Permitting access to the
 236 names of spouses and children of active or former sworn or
 237 civilian law enforcement personnel provides a means by which
 238 individuals who have been investigated, arrested, interrogated,
 239 or incarcerated can identify and cause physical or emotional
 240 harm to these spouses and children. The Legislature therefore
 241 finds that the harm that may result from the release of the
 242 names of spouses and children of such law enforcement personnel
 243 outweighs any public benefit that may be derived from the
 244 disclosure of the information.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 731 (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 _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee
3 Representative Kerner offered the following:

4
5
6
7
8
9

Amendment



Remove line 51 and insert:
former sworn or civilian law enforcement personnel and the other
specified agency personnel identified in

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 797 Search and Seizure of Portable Electronic Device

SPONSOR(S): Trujillo

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 846

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Keegan 	Cunningham 
2) Civil Justice Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current Florida and Federal law provide protections against unreasonable search and seizure under the Fourth Amendment to the United States Constitution. A lawful search of an individual's person or property can only be conducted either after a search warrant is issued by a magistrate based on probable cause, or when a lawful exception to the search warrant requirement exists.

The bill sets forth specific requirements and restrictions for searches and seizures related to portable electronic devices and the tracking or location information for electronic devices. The bill creates a general prohibition against searches of a portable electronic device or obtaining tracking or location information for an electronic device without first securing a valid search warrant.

The bill provides a number of exceptions to the general prohibition against searching portable electronic devices without a warrant, including:

- Circumstances that present a lawful exception to the warrant requirement;
- Searches made incident to national security;
- Searches for a missing child less than 18 years of age;
- Searches of transponders used to assess or collect tolls; and
- Searches incident to an emergency involving the immediate threat of serious bodily harm or death.

The bill provides a number of exceptions to the general prohibition against obtaining tracking or location information without a warrant, including:

- Where a lawful exception to the warrant requirement exists;
- Searches made incident to national security;
- Searches for a missing child less than 18 years of age;
- Transponders used to assess or collect tolls;
- Where a response to the user's call for emergency services is required;
- Where the owner or user of the electronic device provides informed consent, as long as the device is not known to be used by, or in the possession of, a third party;
- Where the legal guardian or next of kin of the electronic device's user provides informed consent when the user is reported missing or believed to be deceased; and
- Searches incident to an emergency involving the immediate threat of serious bodily harm or death.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Federal Search and Seizure

The Fourth Amendment to the United States Constitution (“Fourth Amendment”) protects individuals from unreasonable search and seizure.¹ The text of the Fourth Amendment 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.”²

A “search” generally occurs when a state actor infringes on an expectation of privacy that society considers to be reasonable.³ The language of the Fourth Amendment exhibits a strong preference for conducting searches after securing a valid warrant,⁴ however, a number of exceptions to the warrant requirement exist.⁵ These exceptions are usually hallmarked by circumstances which make a warrant impractical, impossible, or unreasonable to obtain prior to conducting a search or seizure.

A common exception to the warrant requirement is the exigent circumstances exception, which allows a warrantless search under circumstances where the safety or property of officers or the public is threatened.⁶ “An entry may be justified by hot pursuit of a fleeing felon, the imminent destruction of evidence, the need to prevent a suspect’s escape, or the risk of danger to the police or others.”⁷

The search incident to arrest is an exception to the warrant requirement that arises out of the same safety-oriented logic that forms the basis for the exigent circumstances exception.⁸ The United States Supreme Court has long recognized the exception to the warrant requirement for searches incident to arrest.⁹ However, the Court has broadened this exception over time from the narrowly-tailored exception described in *Trupiano v. United States*,¹⁰ to the broader exception described in *Chimel v. California*.¹¹ The Court in *Chimel* held that regardless of whether any additional exigency exists, “[w]hen an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons... [and] to search for and seize any evidence.” The Court continued to say a search incident to arrest may include searching the arrestee’s person as well as any nearby area where the arrestee could have grabbed a weapon or evidence.¹²

Currently, two separate lines of constitutional analysis may permit warrantless searches of cell phones and other portable electronic devices (“PEDs”) incident to arrest. Some courts evaluate PEDs as a type of container, that in many circumstances may be searched incident to arrest, along with other

¹ *Arizona v. Hicks*, 480 U.S. 321 (1987); *U.S. v. Jacobsen*, 466 U.S. 109 (1983).

² U.S. CONST. amend. IV.

³ *U.S. v. Jacobsen*, 466 U.S. 109 (1983); *U.S. v. Maple*, 348 F.3d 260 (D.C. Cir. 2003); *Fraternal Order of Police Montgomery County Lodge 35, Inc. v. Manger*, 929 A.2d 958 (Ct. Spec. App. M.D. 2007).

⁴ *Ornelas v. U.S.*, 517 U.S. 690 (1996).

⁵ *Donovan v. Dewey*, 452 U.S. 594 (1981).

⁶ *Minnesota v. Olson*, 495 U.S. 91 (1990).

⁷ *Id.* at 91.

⁸ *Arizona v. Gant*, 556 U.S. 332 (2009).

⁹ *Trupiano v. United States*, 334 U.S. 699 (1948).

¹⁰ The Court described the exception as “a strictly limited right” of law enforcement officers, and further explained that the exception does not exist simply on the basis that an arrest has been affected. *Trupiano* at 708.

¹¹ *Chimel v. California*, 395 U.S. 752, 763 (1969).

¹² *Id.*

containers found on the arrestee's person or in the arrestee's car.¹³ The second line of analysis evaluates searches of PEDs based on whether they contain evidence of the crime for which the person is being arrested. *Chimel* established the rule that a search incident to arrest may be made for the purpose of collecting evidence of the crime for which the person is being arrested, and that a search that reasonably will reveal evidence of the crime is permissible under this doctrine.¹⁴ Some years later, in *United States v. Robinson*, the Court clarified its holding in *Chimel*, explaining that while safety and preserving evidence are the rationales underlying the search incident to arrest, once a lawful arrest is affected, no additional justification is needed to perform a search of the arrestee's person.¹⁵

Florida Search and Seizure

Article I, Section 12 of the Florida Constitution provides protection against unreasonable search and seizure in a manner similar to the Fourth Amendment; however Section 12 provides additional protection for private communications. Section 12 specifically provides, "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated."¹⁶ Section 12 also specifies that "Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution." Florida courts consistently hold that Section 12 binds these courts to render decisions in accordance with United States Supreme Court Precedent on the Fourth Amendment.¹⁷

Current law allows law enforcement officers to conduct a search of a PED, such as a cell phone, after securing a valid search warrant or when an exception to the search warrant requirement exists.¹⁸ The Florida Supreme Court recently heard oral arguments in *Smallwood v. State*¹⁹ to decide whether the United Supreme Court holding in *United States v. Robinson* will allow a police officer to search an arrestee's cell phone found on the arrestee's person, regardless of whether the cell phone is likely to contain evidence of any crime.²⁰ The Florida Supreme Court has not yet rendered an opinion in this case.

Florida Security of Communications

Currently, Chapter 934, F.S., governs the security of electronic and telephonic communications. The law covers a number of different investigative and monitoring procedures, including wiretapping, obtaining service provider records, and mobile tracking devices, among others.

Law enforcement officers are currently authorized to acquire service providers' records for PEDs on the provider's network after securing a court order issued under s. 934.23(5), F.S.²¹ In order to obtain this court order, the law enforcement officer is required to offer "specific and articulable facts showing that there are reasonable grounds to believe the contents of a wire or electronic communication or the records of other information sought are relevant and material to an ongoing criminal investigation."²² The showing of "specific and articulable facts" required in s. 934.23(5), F.S., is a lower standard than the probable cause standard²³ required for obtaining a lawful warrant.

Law enforcement officers are also authorized to install mobile tracking devices for the purpose of collecting tracking and location information after a court order is issued under s. 934.42(2), F.S. In

¹³ *Chimel v. California*, 395 U.S. 752, 763 (1969); *Davis v. United States*, 131 S.Ct. 2419 (2011).

¹⁴ *Chimel* at 763.

¹⁵ *United States v. Robinson*, 414 U.S. 218, 235-36 (1973).

¹⁶ FLA. CONST. art. I, § 12.

¹⁷ *State v. Lavazzoli*, 434 So.2d 321 (Fla.1983); *Smallwood v. State*, 61 So.3d 448 (Fla. 2011).

¹⁸ *Smallwood v. State*, 61 So.3d 448 (Fla. 1st DCA 2011); *State v. Glasco*, 90 So.3d 905 (Fla. 5th DCA 2012).

¹⁹ *Smallwood v. State*, 68 So.3d 235 (Fla. 2011).

²⁰ Brief for Petitioner-Appellant, *Smallwood v. State*, 68 So.3d 235 (Fla. 2011).

²¹ *Mitchell v. State*, 25 So.3d 632 (Fla. 4th DCA 2009).

²² Section 934.23(5), F.S.

²³ *Tracey v. State*, 69 So.3d 992, 998 (Fla. 4th DCA 2011).

order to obtain this court order, the law enforcement officer is required to provide a statement to the court "that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency."²⁴ A certification of relevance is a lower standard than the probable cause standard required for obtaining a lawful warrant.

Effect of the Bill

Searches of Portable Electronic Devices

The bill creates a new section of statute that prohibits a governmental entity from searching a PED without first securing a valid search warrant. The bill defines a PED as "an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and that communicates with, by any means, another entity or individual," and provides the following legislative findings and intent:

- The number of residents of this state using and carrying portable electronic devices is growing at a rapidly increasing rate. These devices can store, and do encourage the storing of, an almost limitless amount of personal and private information. Commonly linked to the Internet, these devices are used to access personal and business information and databases in computers and servers that are located anywhere in the world. A user of a portable electronic device has a reasonable and justifiable expectation of privacy in the information that these devices contain and can access through the Internet.
- The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated.
- No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained.
- The intrusion on the privacy of information and the freedom of communication of any person who is arrested is of such enormity that the officer who makes the arrest must obtain a warrant to search the information contained in, or accessed through, the arrested person's portable electronic device, such as a cellular telephone.
- It is the intent of the Legislature that this section prohibit the search of information contained in a portable electronic device, as defined in this section, by a law enforcement agency or other governmental entity at any time except pursuant to a warrant issued by a duly authorized judicial officer using established procedures.

The bill specifies that the contents and communications of a PED, including but not limited to, data or information contained in or transmitted from the PED, are not subject to a search or seizure by a law enforcement agency or other governmental entity except pursuant to a warrant issued by a duly authorized judicial officer. The bill creates exceptions to the warrant requirement that include:

- Circumstances that present a lawful exception to the warrant requirement;
- Searches made incident to national security;
- Searches for a missing child less than 18 years of age;
- Searches of transponders used to assess or collect tolls; and
- Searches when the governmental entity reasonably believes that an emergency involving immediate danger of death or serious bodily harm requires the search or seizure, without delay, of the contents of the PED concerning a specified person or persons, and when a warrant cannot be obtained in time to prevent the danger, or when the possessor of the PED believes that an emergency involves the danger of death.

The bill requires the governmental entity seeking the contents of a PED to file a written statement with the court setting forth the facts giving rise to the emergency and the facts as to why the person or persons whose PED contents were sought are believed to be important in addressing the emergency. This statement must be filed within 48 hours after seeking the disclosure.

²⁴ Section 934.42(2)(b).

The bill specifies that private entities providing electronic communications services are not responsible for ensuring that governmental entities comply with the above requirements.

Location Informational Tracking

The bill also creates a new section of statute that prohibits a governmental entity from obtaining location information of an electronic device without first securing a valid warrant. The bill provides the following legislative findings and intent:

- The Legislature finds that existing law authorizes a court to issue a warrant for the search of a place and the seizure of property or things identified in the warrant when there is probable cause to believe that specified grounds exist. The Legislature also finds that existing law provides for a warrant procedure for the acquisition of stored communications in the possession of a provider of electronic communication service or a remote computing service.
- It is the intent of the Legislature to prohibit a government entity from obtaining the location information of an electronic device without a valid search warrant issued by a duly authorized judicial officer unless certain exceptions apply, including in an emergency or when requested by the owner of the device. However, it is also the intent of the Legislature that this bill, with certain exceptions, prohibits the use of information obtained in violation of this section in a civil or administrative hearing.

The bill provides the following definitions:

- "Electronic communication service" means a service that provides to its users the ability to send or receive wire or electronic communications;
- "Government entity" means a state or local agency, including, but not limited to, a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency;
- "Location information" means information, concerning the location of an electronic device, including both the current location and any previous location of the device, that, in whole or in part, is generated, derived from, or obtained by the operation of an electronic device;
- "Location information service" means the provision of a global positioning service or other mapping, locational, or directional information service;
- "Owner" means the person or entity recognized by the law as having the legal title, claim, or right to an electronic device;
- "Portable electronic device" means an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and that communicates with, by any means, another entity or individual;
- "Remote computing service" means the provision of computer storage or processing services by means of an electronic communications system; and
- "User" means a person or entity that uses an electronic device.

The bill prohibits a law enforcement agency or other governmental entity from obtaining the location information of an electronic device without a valid search warrant issued by a duly authorized judicial officer. Such warrant may not be issued for a period of time longer than is necessary to achieve the objective of the authorization, and in no instance for longer than 30 days.²⁵ Extensions of the warrant may be granted, but only upon a judge finding continuing probable cause and that the extension is necessary to achieve the objective of the authorization. An warrant cannot be extended any longer than the judge deems necessary to achieve the purposes for which the warrant was originally granted, and in no instance for longer than 30 days.

The bill allows a governmental entity to obtain location information without a warrant if disclosure of such information is not prohibited by federal law and in the following circumstances:

- Where a lawful exception to the warrant requirement exists;

²⁵ Commencing on the day the location information is initially obtained, or 10 days after the issuance of the warrant, whichever comes first.

- Searches made incident to national security;
- Searches for a missing child less than 18 years of age;
- Transponders used to assess or collect tolls;
- In order to respond to the user's call for emergency services;
- With the informed consent of the owner or user of the electronic device, provided that the owner or user may not consent to the disclosure of location information if the device is known or believed to be in the possession of, or attached to a possession of, a third party known to the owner or user, unless that third party is less than 18 years of age;²⁶
- With the informed, affirmative consent of the legal guardian or next of kin of the electronic device's user, if the user is believed to be deceased or has been reported missing and unable to be contacted; and
- If the governmental entity reasonably believes that an emergency involving immediate danger of death or serious physical injury to a person requires the disclosure, without delay, of location information concerning a specific person or persons and that a warrant cannot be obtained in time to prevent the identified danger and the possessor of the location information, in good faith, believes that an emergency involving danger of death or serious physical injury to a person requires the disclosure without delay.

The governmental entity seeking the location information must file with the appropriate court a written statement setting forth the facts giving rise to the emergency and the facts as to why the person or persons whose location information was sought are believed to be important in addressing the emergency, no later than 48 hours after seeking disclosure.

The bill specifies that private entities providing electronic communications services are not responsible for ensuring that government entities comply with the above requirements. Additionally, the prohibitions relating to location information do not create a cause of action against any foreign or Florida private entity, its officers, employees, agents, or other specified persons, for providing location information.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of statute relating to portable electronic device; prohibited search and seizure.

Section 2. Creates an unnumbered section of statute relating to location informational tracking; prohibited search and seizure.

Section 3. Provides an effective date of July 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.

²⁶ The informed, affirmative consent of the owner or user of the electronic device concerned may not be used as consent to disclose the location information of another portable electronic device that may be remotely linked or connected to the owner or user of the portable electronic device concerned.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

This bill does not appear to have an 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 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The legislative findings in Section 1 of the bill indicate that the legislature intends for an officer to obtain a warrant prior to searching the contents of an arrestee's PED. Thereafter, the bill authorizes an officer to search a PED pursuant to a lawful exception to the warrant requirements (e.g., search incident to arrest). These two provisions appear inconsistent.

2. The term "governmental entity" is not defined in Section 1. Section 2 provides a definition for "governmental entity" as "a state or local agency, including, but not limited to, a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission, or an individual acting or purporting to act for or on behalf of a state or local agency."

3. The term "electronic device" is not defined in Section 1 or Section 2. The term is used frequently in Section 2, and a definition is provided for a "portable electronic device," however, no indication is given whether the two terms are to be used interchangeably.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled

An act relating to search and seizure of a portable electronic device; providing legislative findings and intent; defining the term "portable electronic device"; providing that information contained in a portable electronic device is not subject to a search by a law enforcement officer incident to an arrest except pursuant to a warrant issued by a duly authorized judicial officer using procedures established by law; providing exceptions; prohibiting location informational tracking; providing legislative findings and intent; defining terms; prohibiting a government entity from obtaining the location information of an electronic device without a valid search warrant issued by a duly authorized judicial officer; providing that a search warrant may not be issued for the location of an electronic device for a period of time longer than is necessary to achieve the objective of the search warrant authorization; providing time periods for the validity of a search warrant; providing criteria by which to extend a search warrant for location information; providing exceptions to the requirement to obtain a search warrant for location information; providing an effective date.

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

29 Section 1. Portable electronic device; prohibited search
 30 and seizure.—

31 (1) FINDINGS.—The Legislature finds that:

32 (a) The number of residents of this state using and
 33 carrying portable electronic devices is growing at a rapidly
 34 increasing rate. These devices can store, and do encourage the
 35 storing of, an almost limitless amount of personal and private
 36 information. Commonly linked to the Internet, these devices are
 37 used to access personal and business information and databases
 38 in computers and servers that are located anywhere in the world.
 39 A user of a portable electronic device has a reasonable and
 40 justifiable expectation of privacy in the information that these
 41 devices contain and can access through the Internet.

42 (b) The right of the people to be secure in their persons,
 43 houses, papers, and effects against unreasonable searches and
 44 seizures, and against the unreasonable interception of private
 45 communications by any means, shall not be violated.

46 (c) No warrant shall be issued except upon probable cause,
 47 supported by affidavit, particularly describing the place or
 48 places to be searched, the person or persons, thing or things to
 49 be seized, the communication to be intercepted, and the nature
 50 of evidence to be obtained.

51 (d) The intrusion on the privacy of information and the
 52 freedom of communication of any person who is arrested is of
 53 such enormity that the officer who makes the arrest must obtain
 54 a warrant to search the information contained in, or accessed
 55 through, the arrested person's portable electronic device, such
 56 as a cellular telephone.

57 (2) INTENT.—It is the intent of the Legislature that this
 58 section prohibit the search of information contained in a
 59 portable electronic device, as defined in this section, by a law
 60 enforcement agency or other governmental entity at any time
 61 except pursuant to a warrant issued by a duly authorized
 62 judicial officer using established procedures.

63 (3) DEFINITION.—As used in this section, the term
 64 "portable electronic device" means an object capable of being
 65 easily transported or conveyed by a person which is capable of
 66 creating, receiving, accessing, or storing electronic data or
 67 communications and that communicates with, by any means, another
 68 entity or individual.

69 (4) PROHIBITED ACTS.—

70 (a) The contents and communications of a portable
 71 electronic device, including, but not limited to, data or
 72 information contained in or transmitted from the portable
 73 electronic device, are not subject to a search or seizure by a
 74 law enforcement agency or other governmental entity except
 75 pursuant to a warrant issued by a duly authorized judicial
 76 officer using the procedures established by law.

77 (b) Except as provided in paragraph (a), this section does
 78 not:

79 1. Curtail reliance by a law enforcement agency or other
 80 governmental entity on lawful exceptions to the warrant
 81 requirement;

82 2. Apply in cases of a search conducted incident to
 83 national security; or

84 3. Apply in cases of a search for a missing child who is

85 less than 18 years of age.

86 4. Apply to transponders used for the purpose of assessing
 87 or collecting toll.

88 5. Apply whenever the government entity reasonably
 89 believes that an emergency involving immediate danger of death
 90 or serious physical injury to a person requires the search or
 91 seizure, without delay, of the contents of a portable electronic
 92 device concerning a specific person or persons and that a
 93 warrant cannot be obtained in time to prevent the identified
 94 danger, or the possessor of the portable electronic device, in
 95 good faith, believes that an emergency involves the danger of
 96 death.

97
 98 The government entity seeking the contents of the portable
 99 electronic device shall file with the appropriate court a
 100 written statement setting forth the facts giving rise to the
 101 emergency and the facts as to why the person or persons whose
 102 contents of a portable electronic device was sought are believed
 103 to be important in addressing the emergency, no later than 48
 104 hours after seeking disclosure. Private entities providing
 105 electronic communications services shall not be made responsible
 106 for ensuring that government entities comply with this section.

107 Section 2. Location informational tracking; prohibited
 108 search and seizure.-

109 (1) FINDINGS.-The Legislature finds that existing law
 110 authorizes a court to issue a warrant for the search of a place
 111 and the seizure of property or things identified in the warrant
 112 when there is probable cause to believe that specified grounds

113 exist. The Legislature also finds that existing law provides for
 114 a warrant procedure for the acquisition of stored communications
 115 in the possession of a provider of electronic communication
 116 service or a remote computing service.

117 (2) INTENT.-It is the intent of the Legislature to
 118 prohibit a government entity from obtaining the location
 119 information of an electronic device without a valid search
 120 warrant issued by a duly authorized judicial officer unless
 121 certain exceptions apply, including in an emergency or when
 122 requested by the owner of the device. However, it is also the
 123 intent of the Legislature that this bill, with certain
 124 exceptions, prohibits the use of information obtained in
 125 violation of this section in a civil or administrative hearing.

126 (3) DEFINITIONS.-As used in this section the term:

127 (a) "Electronic communication service" means a service
 128 that provides to its users the ability to send or receive wire
 129 or electronic communications.

130 (b) "Government entity" means a state or local agency,
 131 including, but not limited to, a law enforcement entity or any
 132 other investigative entity, agency, department, division,
 133 bureau, board, or commission, or an individual acting or
 134 purporting to act for or on behalf of a state or local agency.

135 (c) "Location information" means information, concerning
 136 the location of an electronic device, including both the current
 137 location and any previous location of the device, that, in whole
 138 or in part, is generated, derived from, or obtained by the
 139 operation of an electronic device.

140 (d) "Location information service" means the provision of

141 a global positioning service or other mapping, locational, or
 142 directional information service.

143 (e) "Owner" means the person or entity recognized by the
 144 law as having the legal title, claim, or right to an electronic
 145 device.

146 (f) "Portable electronic device" means an object capable of
 147 being easily transported or conveyed by a person which is
 148 capable of creating, receiving, accessing, or storing electronic
 149 data or communications and that communicates with, by any means,
 150 another entity or individual.

151 (g) "Remote computing service" means the provision of
 152 computer storage or processing services by means of an
 153 electronic communications system.

154 (h) "User" means a person or entity that uses an
 155 electronic device.

156 (4) PROHIBITED ACTS.-

157 (a) A law enforcement agency or other government entity
 158 may not obtain the location information of an electronic device
 159 without a valid search warrant issued by a duly authorized
 160 judicial officer using procedures established pursuant to law.

161 (b)1. A search warrant may not be issued for the location
 162 of an electronic device pursuant to this section for a period of
 163 time longer than is necessary to achieve the objective of the
 164 authorization, and in any event no longer than 30 days,
 165 commencing on the day the location information is initially
 166 obtained, or 10 days after the issuance of the warrant,
 167 whichever comes first.

168 2. Extensions of a warrant may be granted, but only upon a

169 judge finding continuing probable cause and that the extension
 170 is necessary to achieve the objective of the authorization. Each
 171 extension granted for a warrant pursuant to this section shall
 172 be for no longer than the authorizing judge deems necessary to
 173 achieve the purposes for which the warrant was originally
 174 granted, but in any event, shall be for no longer than 30 days.

175 (5) EXCEPTIONS.—Notwithstanding subsection (4), a
 176 government entity may obtain location information without a
 177 search warrant if disclosure of the location information is not
 178 prohibited by federal law, in any of the following
 179 circumstances:

180 (a) Transponders used for the purpose of assessing or
 181 collecting tolls.

182 (b) Reliance by a law enforcement agency or other
 183 governmental entity on lawful exceptions to the warrant
 184 requirement.

185 (c) Cases of a search conducted incident to a national
 186 security event.

187 (d) Cases of a search for a missing child who is less than
 188 18 years of age.

189 (e) In order to respond to the user's call for emergency
 190 services.

191 (f) With the informed, affirmative consent of the owner or
 192 user of the electronic device concerned, provided that the owner
 193 or user may not consent to the disclosure of location
 194 information if the device is known or believed to be in the
 195 possession of, or attached to a possession of, a third party
 196 known to the owner or user, unless that third party is less than

197 18 years of age. The informed, affirmative consent of the owner
 198 or user of the electronic device concerned may not be used as
 199 consent to disclose the location information of another portable
 200 electronic device that may be remotely linked or connected to
 201 the owner or user of the portable electronic device concerned.

202 (g) With the informed, affirmative consent of the legal
 203 guardian or next of kin of the electronic device's user, if the
 204 user is believed to be deceased or has been reported missing and
 205 unable to be contacted.

206 (h) If the government entity reasonably believes that an
 207 emergency involving immediate danger of death or serious
 208 physical injury to a person requires the disclosure, without
 209 delay, of location information concerning a specific person or
 210 persons and that a warrant cannot be obtained in time to prevent
 211 the identified danger and the possessor of the location
 212 information, in good faith, believes that an emergency involving
 213 danger of death or serious physical injury to a person requires
 214 the disclosure without delay.

215
 216 The government entity seeking the location information shall
 217 file with the appropriate court a written statement setting
 218 forth the facts giving rise to the emergency and the facts as to
 219 why the person or persons whose location information was sought
 220 are believed to be important in addressing the emergency, no
 221 later than 48 hours after seeking disclosure. Private entities
 222 providing electronic communications services shall not be made
 223 responsible for ensuring that government entities comply with
 224 this section.

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2013

225 | (6) CAUSE OF ACTION.—This section does not create a cause
226 | of action against any foreign or Florida private entity, its
227 | officers, employees, agents, or other specified persons, for
228 | providing location information.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 875 Licensed Security Officers
SPONSOR(S): Workman
TIED BILLS: IDEN./SIM. **BILLS:** SB 1330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is responsible for licensure in the fields of private security, private investigations, and recovery services. Currently, ch. 493, F.S., does not contain any provisions specifically making it a crime to impersonate a licensee.

The bill amends s. 493.6120, F.S., to make it a first degree misdemeanor for an unlicensed person to engage in any activity for which ch. 493, F.S., requires a license. The bill also makes it a third degree felony for a person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., knowingly and intentionally force another person to assist the impersonator in an activity within the scope of duty of a person licensed under ch. 493, F.S. The penalties are increased for second or subsequent violations, or when violations occur while committing a felony.

The bill creates an unnumbered section of statute authorizing licensed security officers and licensed security agency managers who also possess a valid Class "G" license (firearm license), to temporarily detain a person, so long as the officer or manager:

- Is on duty and in a uniform with at least one patch or emblem visible at all times clearly identifying the agency employing the security officer or security agency manager;
- Is on the premises of a critical infrastructure facility; and
- Has probable cause to believe that the person has committed or is committing a crime against the client operating the premises or the client's patron.

The temporary detention must be for the purpose of ascertaining the person's identity and the circumstances of the person's activity.

The security officer must notify the appropriate law enforcement agency as soon as possible, and may only detain the person until a law enforcement officer arrives and is in the presence of the detainee. A security officer or security agency manager may search a detained person and his or her belongings if the detainee admits to having a weapon, or the officer or manager observes that the person is armed with a firearm, or other weapon that poses a threat. Such search may only be conducted to the extent necessary to disclose the presence of a weapon, which must be seized and transferred to the responding law enforcement officer.

The bill specifies that a law enforcement officer, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person if done in compliance with the provisions outlined above.

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, because the bill creates first, second, and third degree felony offenses, it will likely have a negative prison bed impact on the Department of Corrections. It may also have a negative jail bed impact on local governments.

The bill is effective July 1, 2013.

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

STORAGE NAME: h0875.CRJS.DOCX

DATE: 3/18/2013

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Impersonating Security Officers, Private Investigators, and Recovery Agents

The Division of Licensing (Division) within the Department of Agriculture and Consumer Services (DACS) is responsible for licensure in the fields of private security, private investigations, and recovery services.¹ As reflected in the following chart,² the Division issues a variety of licenses within these three fields:³

PRIVATE INVESTIGATION		COMBINED PRIVATE INVESTIGATION AND SECURITY	
Agency	Class "A"	Agency	Class "A" & Class "B"
Private Investigator	Class "C"	Branch Office	Class "AB"
Armed Private Investigator	Class "C" & Class "G"	Manager	Class "M"
Branch Office	Class "AA"		
Manager	Class "C" or Class "MA" or Class "M"		
Intern	Class "CC"		
PRIVATE SECURITY		SCHOOLS	
Agency	Class "B"	Security Officer School or Training Facility	Class "DS"
Security Officer	Class "D"	Security Officer Instructor	Class "DI"
Armed Security Officer	Class "D" & Class "G"	Recovery Agent School or Training Facility	Class "RS"
Branch Office	Class "BB"	Recovery Agent Instructor	Class "RI"
Manager	Class "MB" or Class "M"		
REPOSSESSION ACTIVITY		FIREARMS	
Agency	Class "R"	Instructor	Class "K"
Recovery Agent	Class "E"	Statewide Firearm License	Class "G"
Branch Office	Class "RR"		
Manager	Class "MR" or Class "E"		
Intern	Class "EE"		

Section 493.6101, F.S., defines terms relating to the private security, private investigations, and recovery services fields as follows:

Private Security Services

- "Security officer" means any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.⁴
- "Security agency" means any person⁵ who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners.⁶

¹ Chapter 493, F.S.

² Rule 5N-1.116(1), F.A.C.

³ A variety of individuals are exempt from the licensing requirements of ch. 493, F.S. These include local, state, and federal law enforcement officers engaged in official duties or when performing superior-approved off-duty security activities, attorneys engaged in the regular practice of her or his profession, and any person duly authorized by the laws of this state to operate a central burglar or fire alarm business..." Section 493.6102(1)-(4), F.S.

⁴ Section 493.6101(19), F.S.

⁵ Section 493.6101(2), F.S., defines "person" as any individual, firm, company, agency, organization, partnership, or corporation.

⁶ Section 493.6101(18), F.S. This includes any person who utilizes dogs and individuals to provide security services.

Private Investigative Services

- “Private investigator” means any individual who, for consideration, advertises as providing or performs private investigation.⁷
- “Private investigative agency” means any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations.⁸
- “Private investigation” means the investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters:
 - Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
 - The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
 - The credibility of witnesses or other persons.
 - The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
 - The location or recovery of lost or stolen property.
 - The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
 - The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefor.⁹

Recovery Services

- “Recovery agent” means any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.¹⁰
- “Recovery agency” means any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.¹¹
- “Repossession” is defined as the recovery of a motor vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicle, farm equipment, or industrial equipment, by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.¹²

Section 493.6121, F.S., gives DACS the power to enforce the provisions of ch. 493, F.S., irrespective of the place or location in which the violation occurred and, upon the complaint of any person or on its own initiative, to investigate any suspected violation thereof or to cause to be investigated the business and business methods of an unlicensed person. DACS also has the authority to investigate an unlicensed person when such person is advertising as providing or is engaged in performing services which require licensure.¹³ In such instances, DACS has the authority to issue an order to cease and desist the further conduct of such activities, seek an injunction, deny an application, or impose an administrative fine.¹⁴

Currently, ch. 493, F.S., does not contain any provisions specifically making it a crime to impersonate a licensee.

⁷ Section 493.6101(16), F.S.

⁸ Section 493.6101(15), F.S.

⁹ Section 493.6101(17), F.S.

¹⁰ Section 493.6101(21), F.S.

¹¹ Section 493.6101(20), F.S.

¹² Section 493.6101(22), F.S.

¹³ Section 493.6121, F.S.

¹⁴ *Id.*

Effect of the Bill

The bill amends s. 493.6120, F.S., to create two criminal offenses relating to impersonating a licensee. The bill makes it a first degree misdemeanor¹⁵ for an unlicensed person to engage in any activity for which ch. 493, F.S., requires a license. A second or subsequent violation of this provision is a third degree felony,¹⁶ and DACS is authorized to seek a civil penalty of up to \$10,000. However, these penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of his or her license.

The bill also makes it a third degree felony for a person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S. The penalty is increased to:

- A second degree felony¹⁷ if the offense occurred during the course of committing a felony; and
- A first degree felony¹⁸ if the offense occurred during the course of committing a felony that resulted in death or serious bodily injury.

Private Security Officers - The Power to Detain

Generally, only law enforcement officers have the power to detain an individual relating to criminal activity. However, there are some exceptions to this general rule. For example, s. 812.015(3)(a), F.S., authorizes law enforcement officers, merchants, farmers, and transit agency¹⁹ employees or agents who have probable cause to believe that a retail theft,²⁰ farm theft,²¹ a transit fare evasion,²² or trespass,²³ or unlawful use or attempted use of any antishoplifting or inventory control device countermeasure,²⁴ has been committed to take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time for the purpose of attempting to effect recovery or for prosecution.²⁵ In the event a merchant, farmer, or a transit agency's employee takes the person into custody, a law enforcement officer must be immediately called to the scene.

Public lodging establishment and food service establishment operators have similar statutory authority to "take a person into custody and detain a person" if there is probable cause to believe the person is engaging in disorderly conduct and that such conduct was creating a threat to the life or safety of the person or others.²⁶ In these situations, it is also required that law enforcement be called immediately.

Currently, ch. 493, F.S., does not specifically authorize security officers to detain individuals.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ Section 812.015(1), F.S., defines the terms "law enforcement officer," "merchant," "farmer," and "transit agency."

²⁰ Section 812.015(1), F.S., defines "retail theft" as the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

²¹ Section 812.015(1), F.S., defines "farm theft" as the unlawful taking possession of any items that are grown or produced on land owned, rented, or leased by another person.

²² Section 812.015(1), F.S., defines "transit fare evasion" as the unlawful refusal to pay the appropriate fare for transportation upon a mass transit vehicle, or to evade the payment of such fare, or to enter any mass transit vehicle or facility by any door, passageway, or gate, except as provided for the entry of fare-paying passengers.

²³ Section 812.015(1), F.S., defines "trespass" in accordance with s. 810.08, F.S., which specifies that whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

²⁴ Section 812.015(1), F.S., defines "antishoplifting or inventory control device countermeasure" as any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device.

²⁵ In the case of a farmer, the taking into custody can only be effectuated on property owned or leased by the farmer. In the case of retail or farm theft, the law enforcement officer, merchant, farmer, or transit agency employee must also have probable cause to believe that the property can be recovered by taking the offender into custody. Section 812.015(3)(a), F.S.

²⁶ Section 509.143, F.S.

Effect of the Bill

The bill creates an unnumbered section of statute authorizing licensed security officers and licensed security agency managers who also possess a valid Class "G" license (firearm license), to temporarily detain a person, so long as the security officer or security agency manager:

- Is on duty and in a uniform with at least one patch or emblem visible at all times clearly identifying the agency employing the security officer or security agency manager;
- Is on the premises of a critical infrastructure facility; and
- Has probable cause to believe that the person has committed or is committing a crime against the client operating the premises or the client's patron.

The temporary detention must be for the purpose of ascertaining the person's identity and the circumstances of the person's activity.

After temporarily detained a person, a security officer or security agency manager must notify the appropriate law enforcement agency as soon as reasonably possible, and may detain the person until a responding law enforcement officer arrives on the premises and is in the presence of the detainee. The custody of any person temporarily detained must be immediately transferred to the responding law enforcement officer unless the officer requests the security officer to assist in detaining the person. The security officer's authority to continue to detain the person pursuant to such request does not extend beyond the place where the person was first detained or in the immediate vicinity of that place.

A security officer or security agency manager may search a detained person and his or her belongings if the security officer or manager observes that the person is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the security officer, security agency manager, or any person for whom the officer or manager is responsible for providing protection; or if the detainee admits to having a weapon. Such search may only be conducted to the extent necessary to disclose the presence of a weapon. The security officer or security agency manager is required to seize any weapon discovered and transfer it to the responding law enforcement officer.

The bill specifies that a law enforcement officer, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person if done in compliance with the provisions outlined above.

The bill defines the term "critical infrastructure facility" as any of the following, *if it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized personnel:*

- A chemical manufacturing facility;
- A refinery;
- An electrical power plant as defined in s. 403.031, F.S., including a substation, switching station, electrical control center, or electrical transmission or distribution facility;
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station;
- A natural gas transmission compressor station;
- A liquid natural gas terminal or storage facility;
- A telecommunications central switching office;
- A deep water port or railroad switching yard; or
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

B. SECTION DIRECTORY:

Section 1. Amends s. 493.6120, F.S., relating to violations; penalty.

Section 2. Creates s. 493.631, F.S., relating to temporary detention by a licensed security officer or licensed security agency manager at critical infrastructure facilities.

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 an impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not met to determine the prison bed impact of the bill. However, because the bill creates first, second, and third degree felony offenses, it will likely 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:

Because the bill creates a new first degree misdemeanor offense, it may 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:

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:

Section 493.6103, F.S., requires DACS to adopt rules necessary to administer ch. 493, F.S. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to licensed security officers;
 amending s. 493.6120, F.S.; providing penalties for an
 unlicensed person who engages in an activity for which
 ch. 493, F.S., requires a license; providing an
 exception; providing penalties if a person commits a
 felony while impersonating a security officer, private
 investigator, recovery agent, or other person required
 to have a license under ch. 493, F.S.; creating s.
 493.631, F.S.; defining terms; authorizing a licensed
 security officer or licensed security agency manager
 to detain a person on the premises of a critical
 infrastructure facility in certain circumstances;
 providing procedures and requirements with respect
 thereto; authorizing the security officer or security
 agency manager to search the person detained under
 certain circumstances; providing identification
 requirements for certain licensed security officers
 and security agency managers; providing immunity to
 law enforcement officers, licensed security officers,
 and licensed security agency managers under certain
 circumstances; providing an effective date.

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

Section 1. Section 493.6120, Florida Statutes, is amended
 to read:
 493.6120 Violations; penalty.—

29 (1) (a) Except as provided in paragraph (b), a person who
 30 engages in any activity for which this chapter requires a
 31 license and who does not hold the required license commits:

32 1. For a first violation, a misdemeanor of the first
 33 degree, punishable as provided in s. 775.082 or s. 775.083.

34 2. For a second or subsequent violation, a felony of the
 35 third degree, punishable as provided in s. 775.082, s. 775.083,
 36 or s. 775.084, and the department may seek the imposition of a
 37 civil penalty not to exceed \$10,000.

38 (b) Paragraph (a) does not apply if the person engages in
 39 unlicensed activity within 90 days after the date of the
 40 expiration of his or her license.

41 (2) (a) A person who, while impersonating a security
 42 officer, private investigator, recovery agent, or other person
 43 required to have a license under this chapter, knowingly and
 44 intentionally forces another person to assist the impersonator
 45 in an activity within the scope of duty of a professional
 46 licensed under this chapter commits a felony of the third
 47 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 48 775.084.

49 (b) A person who violates paragraph (a) during the course
 50 of committing a felony commits a felony of the second degree,
 51 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

52 (c) A person who violates paragraph (a) during the course
 53 of committing a felony resulting in death or serious bodily
 54 injury to another human being commits a felony of the first
 55 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 56 775.084.

57 (3)(1) Except as otherwise provided in this chapter, a ~~Any~~
 58 person who violates any provision of this chapter ~~except s.~~
 59 ~~493.6405~~ commits a misdemeanor of the first degree, punishable
 60 as provided in s. 775.082 or s. 775.083.

61 (4)(2) A ~~Any~~ person who is convicted of any violation of
 62 this chapter is ~~shall~~ not ~~be~~ eligible for licensure for a period
 63 of 5 years.

64 (5)(3) A ~~Any~~ person who violates or disregards a ~~any~~ cease
 65 and desist order issued by the department commits a misdemeanor
 66 of the first degree, punishable as provided in s. 775.082 or s.
 67 775.083. In addition, the department may seek the imposition of
 68 a civil penalty not to exceed \$5,000.

69 (6)(4) A person who was an owner, officer, partner, or
 70 manager of a licensed agency or a Class "DS" or "RS" school or
 71 training facility at the time of any activity that is the basis
 72 for revocation of the agency or branch office license or the
 73 school or training facility license and who knew or should have
 74 known of the activity, shall have his or her personal licenses
 75 or approval suspended for 3 years and may not have any financial
 76 interest in or be employed in any capacity by a licensed agency
 77 or a school or training facility during the period of
 78 suspension.

79 Section 2. Section 493.631, Florida Statutes, is created
 80 to read:

81 493.631 Temporary detention by a licensed security officer
 82 or licensed security agency manager at critical infrastructure
 83 facilities.-

84 (1) As used in this section, the term "critical

85 infrastructure facility" means any of the following, if it
 86 employs measures such as fences, barriers, or guard posts that
 87 are designed to exclude unauthorized persons:
 88 (a) A chemical manufacturing facility.
 89 (b) A refinery.
 90 (c) An electrical power plant as defined in s. 403.031,
 91 including a substation, switching station, electrical control
 92 center, or electric transmission or distribution facility.
 93 (d) A water intake structure, water treatment facility,
 94 wastewater treatment plant, or pump station.
 95 (e) A natural gas transmission compressor station.
 96 (f) A liquid natural gas terminal or storage facility.
 97 (g) A telecommunications central switching office.
 98 (h) A deepwater port or railroad switching yard.
 99 (i) A gas processing plant, including a plant used in the
 100 processing, treatment, or fractionation of natural gas.
 101 (2) As used in this section, the terms "security officer"
 102 and "security agency manager" mean a security officer or
 103 security agency manager who possess a valid Class "D" or Class
 104 "MB" license pursuant to s. 493.6301 and a valid Class "G"
 105 license pursuant to s. 493.6115.
 106 (3) A security officer or security agency manager who is
 107 on duty, in uniform, and on the premises of a critical
 108 infrastructure facility, and who has probable cause to believe
 109 that a person has committed or is committing a crime against the
 110 client operating the premises or the client's patron may
 111 temporarily detain the person to ascertain his or her identity
 112 and the circumstances of the person's activity.

113 (4) When temporarily detaining a person, the security
 114 officer or security agency manager shall notify the appropriate
 115 law enforcement agency of the detention as soon as reasonably
 116 possible. A security officer or security agency manager may
 117 temporarily detain a person only until a law enforcement officer
 118 arrives at the premises of the client and is in the presence of
 119 the detainee. Upon arrival of the law enforcement officer, the
 120 security officer or security agency manager shall immediately
 121 transfer custody of a person being temporarily detained to the
 122 responding law enforcement officer.

123 (5) A security officer or security agency manager may not
 124 detain a person under this section after the arrival of a law
 125 enforcement officer unless the law enforcement officer requests
 126 that the security officer or security agency manager continue
 127 detaining the person. The authority of the security officer or
 128 security agency manager to continue detaining a person after the
 129 arrival of a law enforcement officer under this subsection does
 130 not extend beyond the place where the person was first detained
 131 or in the immediate vicinity of that place.

132 (6) A security officer or security agency manager may not
 133 temporarily detain a person under this section longer than is
 134 reasonably necessary to affect the purposes of this section.

135 (7) While detaining a person under this section, if a
 136 security officer or security agency manager observes that the
 137 person temporarily detained is armed with a firearm, concealed
 138 weapon, or destructive device that poses a threat to the safety
 139 of the security officer, the security agency manager, or any
 140 person for whom the security officer or security agency manager

141 | is responsible for providing protection, or if the detainee
 142 | admits to having a weapon in his or her possession, the security
 143 | officer or security agency manager may conduct a search of the
 144 | person and his or her belongings only to the extent necessary to
 145 | disclose the presence of a weapon. If the security officer or
 146 | security agency manager finds a weapon during the search, he or
 147 | she shall seize and transfer the weapon to the responding law
 148 | enforcement officer.

149 | (8) A security officer or security agency manager who
 150 | possesses a valid Class "G" license shall perform duties
 151 | regulated under this section in a uniform with at least one
 152 | patch or emblem visible at all times clearly identifying the
 153 | agency employing the security officer or security agency
 154 | manager.

155 | (9) A law enforcement officer, security officer, or
 156 | security agency manager is not criminally or civilly liable for
 157 | false arrest, false imprisonment, or unlawful detention due to
 158 | his or her custody and detention of a person if done in
 159 | compliance with this section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 915 False Claims Against Real or Personal Property

SPONSOR(S): Combee

TIED BILLS: IDEN./SIM. BILLS: CS/SB 112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox <i>fla</i>	Cunningham <i>mc</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

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

The bill creates s. 843.0855, F.S., which makes it a third degree felony for a person to file, attempt to file, solicit or direct another to file, or conspire to file, specified documents (e.g., liens) in any public record or public database, knowing or having reason to know that such document is false or contains any materially false, fictitious, or fraudulent statement or representation:

Section 817.395, F.S., also makes it a third degree felony for any person, with the intent to deceive, coerce, intimidate, or harass any person in connection with any license, authorization, claim, demand, or account, to:

- Issue, display, post, utter, or deliver any matter (printed, typed or written) that:
 - Simulates or resembles a summons, warrant, writ, or any official permit or license;
 - By its form, wording, use of specified names, use of seals or insignia, or general appearance, would reasonably create in the mind of an ordinary person the false impression that it has judicial or other official authorization, sanction, or approval; or
 - Purports to be issued by a court or authority having jurisdiction over any matter or person other than the duly authorized courts and authorities established by the United States Constitution, the Florida Constitution, Florida Statutes, or federal law; or
- File in any public record any document claiming or appearing to perfect any lien, identifying itself as or appearing to be any financing statement, or otherwise claiming to establish any encumbrance against the real or personal property of any person.

The bill requires the offenses to be reclassified to the next higher degree of felony in specified instances, and ranks the offenses in the offense severity ranking chart.

The bill authorizes any person or agency adversely affected by the filing or recording of document to file a sworn petition asking that such document be sealed/removed from the public record/database, and asking for liquidated damages up to \$10,000, actual damages, costs, and reasonable attorney fees. The court may grant such relief through a temporary injunction, and may permanently grant such relief after notice and a hearing.

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

The bill may have a negative fiscal impact on state government expenditures. See fiscal section.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Criminal Actions Under Color of Law or through Simulated Legal Process

The following subsections of s. 843.0855, F.S., makes it a third degree felony¹ for a person² to:

- (2) Deliberately impersonate or falsely act as a public officer or tribunal, public employee or utility employee (including, but not limited to, marshals, judges, prosecutors, sheriffs, deputies, court personnel, or any law enforcement authority) in connection with or relating to any legal process³ affecting persons and property, or otherwise take any action under color of law against persons or property;
- (3) Simulate legal process, including, but not limited to, actions affecting title to real estate or personal property, indictments, subpoenas, warrants, injunctions, liens, orders, judgments, or any legal documents or proceedings, knowing or having reason to know the contents of any such documents or proceedings or the basis for any action to be fraudulent; or
- (4) Falsely under color of law attempt in any way to influence, intimidate, or hinder a public officer or law enforcement officer in the discharge of his or her official duties by means of, but not limited to, threats of or actual physical abuse or harassment, or through the use of simulated legal process.⁴

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

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

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

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

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

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

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

⁵ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based, in part, on points assigned for the offense severity ranking. The points are added in order to determine the "lowest permissible sentence" for the offense. Section 921.0022, F.S.

⁶ Section 921.0023, F.S.

Effect of the Bill

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

- Person elected or appointed to a state or federal office, including any person serving on an advisory body, board, commission, committee, council, or authority;
- State or federal executive, legislative, or judicial officer, employee, or volunteer authorized to perform actions or services for any executive, legislative, or judicial office, agency, officer, or employee;
- Person who acts as a general or special magistrate, auditor, arbitrator, umpire, referee hearing officer, or consultant to any state or local governmental entity; or
- Person who is a candidate for public office or judicial position.

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

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

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

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

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

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

Florida's Recording Act

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

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

Fraud - Generally

Chapter 817, F.S., deals with a variety of fraudulent practices. Section 817.54, F.S., for example, states that a person commits a third degree felony¹¹ if he or she obtains a mortgage, mortgage note, or promissory note by false representation with the intent to defraud. Additionally, s. 817.155, F.S.,

⁷ Jesse Dukeminier and James E. Krier, PROPERTY, 662 (5th ed. 2002).

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 28.222(3), F.S.

¹¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

makes it a third degree felony to knowingly falsify any matter within the jurisdiction within the Department of State. The conduct subject to penalties appears to include filing fraudulent liens. Other provisions of law contain similar penalties specific to liens. For example, s. 713.31(3), F.S., makes it a third degree felony to fraudulently file a construction lien. A construction lien is considered fraudulent if the person who filed the lien purposefully exaggerates the amount of the lien, includes work not performed, or compiles his or her claim with willful and gross negligence.¹²

Fraudulent Recording of Deeds

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

Recent Caselaw

In a 2011 federal case in Florida, the defendant filed false financial statements and liens against a number of federal officers who were involved in a separate criminal prosecution against him.¹⁷ Although the liens in this case were "fantastic, delusional and incredible,"¹⁸ with each claiming the amount owed was "\$48,489,000.00 plus interest, penalties, and fees,"¹⁹ the court found that the sham documents could still be damaging to the credit of the federal officers because they were recorded in official state and local registries.²⁰ The court found that the liens were fraudulent and void, and enjoined the defendant from filing future liens against federal employees absent a commercial relationship and a contract authorizing the filing.²¹ The United States sought injunctive relief under several federal laws, including 26 U.S.C. s. 7402(a),²² and 18 U.S.C. s. 1345(a)(1).²³ The United States prosecuted the defendant in accordance with 18 U.S.C. s. 1341,²⁴ which prohibits actions that constitute mail fraud. Currently, there are no comparable statutes in Florida which would provide for injunctive relief or criminal prosecution.

¹² Section 713.31(2)(a), F.S.

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

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

¹⁵ *Id.*

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

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

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 7.

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

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

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

²⁴ 18 U.S.C. s. 1341, which states that any person who, having devised or intending to devise any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, places any item in any post office or authorized depository for mail matter to be sent or delivered by any private or commercial interstate carrier....or knowingly cause to be delivered by mail or such carrier according to the direction thereon shall be fined or imprisoned not more than 20 years, or both.

Effect of the Bill

The bill creates s. 817.395, F.S., which creates new criminal offenses as well as several civil causes of action relating to the unlawful filing of false claims against real or personal property.

Criminal Offenses

Subsection (1) of s. 817.395, F.S., makes it a third degree felony, for a person to file, attempt to file, solicit or direct another to file, or conspire to file, in any public or private record that is generally available to the public (public record), or in any public or private electronic database that is generally available to the public (public database), any of the following documents, knowing or having reason to know that such document is false or contains any materially false, fictitious, or fraudulent statement or representation:

- Lien, financing statement, encumbrance; or similar document or document that purports to be such a document affecting the real or personal property of any person.

The offense is reclassified to a second degree felony²⁵ for a second or subsequent offense.

Subsection (3) of the statute reclassifies the offense one felony degree higher if the person:

- Committed the violation while incarcerated in a jail or correctional institution, a participant in a pretrial diversion program, under any form of pretrial release or bond, on probation or parole, or under any post-release supervision;²⁶ or
- Has incurred any financial injury or costs by reason of or in correcting or removing any such record.

The bill ranks offenses reclassified, pursuant to subsection (3), from a third degree felony to a second degree felony in Level 8 (74 sentencing points) of the offense severity ranking chart.²⁷ Offenses reclassified from a second degree felony to a first degree felony are ranked in Level 9 (92 sentencing points) of the offense severity ranking chart.

Additionally, if a person is convicted of a violation of s. 817.395(1), F.S., the court may:

- Enjoin the person from filing in any public record and, if applicable, any public database, any lien, financing statement, encumbrance, etc., affecting the real or personal property of any person absent prior review and approval for filing by a circuit or county court judge; or
- Order the sealing from any public record and, if applicable, the removal from any public database, the lien, financing statement, encumbrance, etc., affecting real or personal property that is the subject of the prosecution.

Subsection (2) of s. 817.395, F.S., makes it a third degree felony for any person, with the intent to deceive, coerce, intimidate, or harass (or attempt deceive, coerce, etc.), any person in connection with any license, authorization, claim, demand, or account, to:

- (a) Issue, display, post, utter, or deliver any matter (printed, typed or written) that:
 - Simulates or resembles a summons, warrant, writ, or other court process or pleading, or any official permit or license;
 - By its form; wording; use of the name of the State of Florida or any officer, agency, or subdivision thereof; use of seals or insignia; or general appearance would reasonably

²⁵ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

²⁶ The bill specifies that a person convicted of s. 817.395(1), F.S., forfeits all gain-time or any early release credits accumulated prior to the date of violation.

²⁷ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based, in part, on points assigned for the offense severity ranking. The points are added in order to determine the "lowest permissible sentence" for the offense. Section 921.0022, F.S.

- create in the mind of an ordinary person the false impression that it has judicial or other official authorization, sanction, or approval; or
 - Purports to be issued by a court or authority having jurisdiction over any matter or person other than the duly authorized courts and authorities established by the United States Constitution, the Florida Constitution, Florida Statutes, or federal law; or
- (b) File in any public record any lien, financing statement, encumbrance, etc., claiming or appearing to perfect any lien, identifying itself as or appearing to be any financing statement, or otherwise claiming to establish any encumbrance against the real or personal property of any person.

The bill ranks s. 817.395(2)(a), F.S., in Level 8 (74 sentencing points) of the offense severity ranking chart. Section 817.395(2)(b), F.S., is ranked in Level 7 (56 sentencing points) of the offense severity ranking chart.

Persons convicted under s. 817.395(1) or (2), F.S., may not have their adjudication of guilt or imposition of sentence suspended, deferred or withheld.

Civil Actions

The bill authorizes any person adversely affected by the filing or recording of any lien, financing statement, encumbrance, etc., or any agency acting on behalf of an adversely affected public officer or public employee as defined in s. 843.0855, F.S., to file a sworn petition, in the circuit court in the county where the filing or recording occurred, seeking:

- The sealing from the public record and, if applicable, the removal from any public database, of the filing or recording;
- Liquidated damages up to \$10,000, or actual damages;
- Costs; and
- Reasonable attorney fees.

Within 10 days after filing the sworn petition, and upon a showing of a likelihood of success on the merits,²⁸ the court must issue an ex parte temporary injunction. The injunction must:

- Require the filing or recording to be temporarily sealed from the public record and, if applicable, removed from any public database until a final judgment is entered; and
- Bar the filer (respondent) from filing in any public record any lien, financing statement, encumbrance, etc., affecting the real or personal property against the real or personal property of any past or present public officer or employee, unless approved by a circuit or county court judge.

Upon issuance of the temporary injunction, the court must promptly schedule a hearing with notice provided to the person who made the filing or recording to appear and show cause why the filing or recording is not a violation of s. 817.395, F.S., and why it should not be sealed or removed from the public record. A hearing is not required if the filed or recorded document at issue does not identify the filer and include sufficient information to provide notice to the filer.

At the final injunction hearing, if the person adversely affected by the filing or recording demonstrates by a preponderance of the evidence that the filing or recording is in violation of s. 817.395(1), F.S., the court must:

- Enter a final judgment ordering that the filing be permanently sealed from the public record and, if applicable, removed from the public database; and
- Order the person who filed or recorded the lien, financing statement, encumbrance, etc., at issue to pay the prevailing person or agency costs and reasonable attorney fees.

²⁸ The bill specifies that a motion accompanied by a certified judgment demonstrating that the person filing the item has been convicted under s. 817.395, F.S., is presumed to have a likelihood of success on its merits.

The court *may* also enjoin the person from filing or recording in any public record and, if applicable, in any public database, any lien, financing statement, encumbrance, etc., that affects the real or personal property of any person, absent approval from a circuit or county court judge.

The records custodian or entity responsible for maintaining the public records and, if applicable, any public database, must, upon receipt of the order:

- Seal and remove the filing from its electronic database in such a manner as to prevent it from being viewed by the public; and
- Mark the entry with a notation indicating the record has been sealed or removed by order of the court, referring to the specific court order giving basis for the sealing or removing.²⁹

A certified copy of the lien, financing statement, encumbrance, etc., may be provided to the person adversely affected by the filing or recording for use in:

- Subsequent court proceedings;
- Addressing or correcting adverse effects upon the person's credit or property rights;
- Reporting the matter for investigation and prosecution; and
- Responding to a subpoena seeking the document for criminal investigative or prosecution purposes.

If the person who filed the lien, financing statement, encumbrance, etc., was not provided notice to appear at the court hearing that resulted in the sealing or removal order, they may petition the court to set a hearing to determine whether the order should remain in effect. If the court sets a hearing, the person who was the subject of the document must be noticed and given an opportunity to appear. If the petitioner establishes by clear and convincing evidence that the filed or recorded document is valid and does not contain any materially false, fictitious, or fraudulent statements or representations, the court must order the document unsealed and placed back on any applicable database. Such document is deemed effective as a filed record from the initial filing date, but is not retroactive against a purchaser of real or personal property who acts in reasonable reliance on the absence of the document from any public record or public database.

If the court finds that the person who sought to remove or seal a valid lien, financing statement, encumbrance, etc., did so in bad faith or with malicious purpose, the court must award reasonable attorney fees to the person who filed the document.

B. SECTION DIRECTORY:

Section 1. Creates s. 817.395, F.S., relating to unlawful filing of false claim against real or personal property.

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

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

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

²⁹ The bill requires any lien, financing statement, encumbrance, etc., removed from a database to be maintained under seal in paper or electronic form.

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 has not met to determine the prison bed impact of the bill. However, because the bill creates new felony offenses that are ranked in the offense severity ranking chart, it could have a negative prison bed impact on the Department of Corrections.

Additionally, the Office of the State Courts Administrator (OSCA) completed a Judicial Impact Statement for CS/SB 112, which is comparable to HB 915.³⁰ OSCA stated in their report that there may be a modest increase in additional criminal cases because this bill criminalizes a broader range of fraudulent filings that may not otherwise be specifically addressed in Florida Statutes. They also reported the fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to establish the increase in judicial workload resulting from the addition of new felonies for fraudulent filings and a related civil causes of action.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

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

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. Section 1 of the bill, creating s. 817.395, F.S., does not include any definitions that apply to the new section. Providing definitions for terms such as "file" and creating definitions that encompass public and private records and public and private databases would make the bill less repetitive and more clear.
2. It appears that the reference to "the person" on line 94 is intended to refer to the *victim* of the crime, but as used, refers to the defendant. This could be remedied by replacing the phrase "the person" with "the victim" or "the person adversely affected."
3. The phrase, "for engaging in any act prohibited by that subsection," on line 105 is redundant.
4. Section 817.395(6), F.S., states that if a person is convicted of a violation of subsection (1), the court may enjoin the person from filing liens, etc, or order a record to be sealed. To clarify this from subsection (7), where the same powers are discussed in a civil action, the words "the sentencing court may..." could be added.
5. Subsection (7)(a) of the newly created s. 817.535, F.S., authorizes a person who has been affected by a fraudulent filing to petition the circuit court for injunctive relief and for damages. On lines 147-148, the bill states that "any motion accompanied by a certified judgment demonstrating that the person *filing the item* has been..." Using the term "item" is not very descriptive. It would be clearer if the bill used the same language used in other areas of the bill (e.g., "lien, financial statement, encumbrance, etc.).
6. The bill does not rank violations of s. 817.392(1)(a) and (b), F.S. As such, these offenses default to a level 1 and level 4 ranking, respectively.
7. Section 817.395(2)(b), F.S., is numerically listed in the wrong place in the offense severity ranking chart.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to false claims against real or
3 personal property; creating s. 817.395, F.S.;
4 prohibiting certain actions relating to the filing of
5 certain false or fraudulent documents affecting real
6 or personal property; providing criminal penalties;
7 providing enhanced criminal penalties for second or
8 subsequent offenses; prohibiting certain actions done
9 with intent to intimidate or harass any person in
10 connection with any license, authorization, claim,
11 demand, or account; providing criminal penalties;
12 providing for reclassification of certain offenses
13 committed by persons who are incarcerated, on pretrial
14 release, or on specified forms of supervision or
15 persons whose offenses caused financial injury or
16 costs; providing that certain offenders forfeit gain-
17 time or early release credits; providing that
18 adjudication of guilt or imposition of sentence for a
19 violation may not be suspended, deferred, or withheld;
20 providing for injunctions prohibiting violators from
21 filing certain documents; providing for actions to
22 obtain the sealing of certain records; providing for
23 ex parte injunctions; providing for hearings;
24 providing for final injunctions; providing for
25 maintaining certain records under seal; amending s.
26 843.0855, F.S.; revising definitions; providing
27 legislative intent relating to provisions prohibiting
28 certain actions under color of law against persons or

29 property; amending s. 921.0022, F.S.; ranking certain
 30 offenses on the offense severity ranking chart of the
 31 Criminal Punishment Code; providing an effective date.

32
 33 Be It Enacted by the Legislature of the State of Florida:

34
 35 Section 1. Section 817.395, Florida Statutes, is created
 36 to read:

37 817.395 Unlawful filing of false claim against real or
 38 personal property.-

39 (1) A person who files, attempts to file, solicits or
 40 directs another to file, or conspires to file, in any public
 41 record or in any private record that is generally available to
 42 the public, or in any public electronic database or in any
 43 private electronic database that is generally available to the
 44 public, any lien, financing statement, encumbrance, or similar
 45 document or any document that purports to be such a document
 46 affecting the real or personal property of any person, knowing
 47 or having reason to know that such lien, financing statement,
 48 encumbrance, or similar document is false or contains any
 49 materially false, fictitious, or fraudulent statement or
 50 representation commits:

51 (a) For a first offense, a felony of the third degree,
 52 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

53 (b) For a second or subsequent offense, a felony of the
 54 second degree, punishable as provided in s. 775.082, s. 775.083,
 55 or s. 775.084.

56 (2) Any person who with the intent to deceive, coerce,

57 | intimidate, harass, or attempt to deceive, coerce, intimidate,
 58 | or harass any person in connection with any license,
 59 | authorization, claim, demand, or account:
 60 | (a) Issues, displays, posts, utters, or delivers any
 61 | matter, printed, typed, or written, that:
 62 | 1. Simulates or resembles a summons, warrant, writ, or
 63 | other court process or pleading, or any official permit or
 64 | license;
 65 | 2. By its form; wording; use of the name of the State of
 66 | Florida or any officer, agency, or subdivision thereof; use of
 67 | seals or insignia; or general appearance would reasonably create
 68 | in the mind of the ordinary person the false impression that it
 69 | has judicial or other official authorization, sanction, or
 70 | approval;
 71 | 3. Purports to be issued by a court or authority having
 72 | jurisdiction over any matter or person other than the duly
 73 | authorized courts and authorities established by the United
 74 | States Constitution, State Constitution, Florida Statutes, or
 75 | federal law; or
 76 | (b) Files in any public record or in any private record
 77 | that is generally available to the public any record or filing
 78 | prohibited by this section affecting property rights, claiming
 79 | or appearing to perfect any lien, identifying itself as or
 80 | appearing to be any financing statement, or otherwise claiming
 81 | to establish any encumbrance against the real or personal
 82 | property of any person,
 83 |
 84 | commits a felony of the third degree, punishable as provided in

85 | s. 775.082 or s. 775.083.

86 | (3) (a) The degree of the offense of a person convicted of
 87 | a violation under subsection (1) shall be reclassified under
 88 | paragraph (b) if:

89 | 1. The person committed the violation while incarcerated
 90 | in a jail or correctional institution, a participant in a
 91 | pretrial diversion program, under any form of pretrial release
 92 | or bond, on probation or parole, or under any post-release
 93 | supervision.

94 | 2. The person has incurred any financial injury or costs
 95 | by reason of or in correcting or removing any such record
 96 | described in subsection (1).

97 | (b) For any person convicted under this section to which
 98 | this subsection applies, the offense shall be reclassified as
 99 | follows:

100 | 1. In the case of a felony of the third degree, the
 101 | offense shall be reclassified as a felony of the second degree.

102 | 2. In the case of a felony of the second degree, the
 103 | offense shall be reclassified as a felony of the first degree.

104 | (4) A person convicted of a violation under subsection (1)
 105 | for engaging in any act prohibited by that subsection while
 106 | incarcerated in a jail or correctional institution shall forfeit
 107 | all gain-time or any early release credits accumulated prior to
 108 | the date of the violation.

109 | (5) Notwithstanding any other law, adjudication of guilt
 110 | or imposition of sentence for a violation of this section may
 111 | not be suspended, deferred, or withheld.

112 | (6) If a person is convicted of a violation under

113 subsection (1), the court may enjoin the person from filing in
 114 any public record or in any private record that is generally
 115 available to the public, and, if applicable, any public or
 116 private electronic database that is generally available to the
 117 public, any lien, financing statement, encumbrance, or similar
 118 document affecting the real or personal property of any person,
 119 absent prior review and approval for filing by a circuit or
 120 county court judge. The court may also order the sealing from
 121 any public record or the private record that is generally
 122 available to the public and, if applicable, the removal from any
 123 public or private electronic database that is generally
 124 available to the public the lien, financing statement,
 125 encumbrance, or other document affecting real or personal
 126 property that is the subject of the prosecution.

127 (7) (a) Any person adversely affected by the filing or
 128 recording of any item described in subsection (1) or any agency
 129 acting on behalf of an adversely affected public officer or
 130 public employee as defined in s. 843.0855 may file in circuit
 131 court in the county in which the filing or recording has
 132 occurred a sworn petition seeking the sealing from the public
 133 record or the private record that is generally available to the
 134 public and, if applicable, the removal from any public
 135 electronic database, or private electronic database that is
 136 generally available to the public, of the filing or recording,
 137 liquidated damages up to \$10,000, or actual damages, costs, and
 138 reasonable attorney fees. Within 10 days after filing the sworn
 139 petition, upon a showing of a likelihood of success on the
 140 merits, the court shall issue an ex parte temporary injunction

141 requiring the temporary sealing from the public record or the
 142 private record that is generally available to the public and, if
 143 applicable, removing from any public electronic database, or
 144 private electronic database that is generally available to the
 145 public, the filing or recording of the lien, financing
 146 statement, encumbrance, or similar document at issue until final
 147 judgment is entered. Any motion accompanied by a certified
 148 judgment demonstrating that the person filing the item has been
 149 convicted under this section shall be presumed to have a
 150 likelihood of success on its merits. The court shall also bar
 151 the filer from filing in any public record, or in any private
 152 record that is generally available to the public, any lien,
 153 financing statement, encumbrance, or similar document affecting
 154 real or personal property against the real or personal property
 155 of any past or present public officer or employee, unless
 156 approved by a circuit or county court judge.

157 (b) Upon issuance of an ex parte temporary injunction
 158 under subparagraph (a), the court shall promptly schedule a
 159 hearing with notice provided to the person who made the filing
 160 or recording to appear and show cause why the filing or
 161 recording is not in violation of this section and should not be
 162 sealed or removed. A hearing under this paragraph is not
 163 required if the filed or recorded document at issue does not
 164 identify the filer and include sufficient information to provide
 165 notice to the filer.

166 (c) If the person adversely affected by the filing or
 167 recording of any item described in subsection (1) demonstrates
 168 by a preponderance of the evidence that the filing or recording

169 is in violation of subsection (1), the court shall enter a final
 170 judgment ordering that the filing be permanently sealed from the
 171 public record or the private record that is generally available
 172 to the public and, if applicable, removed from any public
 173 electronic database, or private electronic database that is
 174 generally available to the public, and shall order the person
 175 who filed or recorded the document at issue to pay to the
 176 prevailing person or agency costs and reasonable attorney fees.
 177 The court may also enjoin the filer from filing or recording in
 178 any public record or in any private record that is generally
 179 available to the public, and, if applicable, in any public
 180 electronic database or in any private electronic database
 181 generally available to the public, any lien, financing
 182 statement, encumbrance, or similar document affecting the real
 183 or personal property of any person, absent approval from a
 184 circuit or county court judge. The records custodian or entity
 185 responsible for maintaining the public records or any private
 186 records that are generally available to the public, and, if
 187 applicable, any public electronic database or any private
 188 electronic database that is generally available to the public,
 189 shall, upon receipt of the order, seal and remove the filing
 190 from its electronic database in such a manner as to prevent it
 191 from being viewed by the public and shall mark the entry with a
 192 notation indicating the record has been sealed or removed by
 193 order of the court, referring to the specific court order giving
 194 basis for the sealing or removing.
 195 (d) Any document removed from an electronic database under
 196 this section shall be maintained under seal in paper or

197 | electronic form.

198 | (e) A certified copy of the document sealed or removed as
 199 | authorized in paragraph (c) and the court order authorizing the
 200 | sealing or removal may be provided to the person adversely
 201 | affected by the filing or recording for use in subsequent court
 202 | proceedings, for use in addressing or correcting adverse effects
 203 | upon the person's credit or property rights, and for reporting
 204 | the matter for investigation and prosecution. Such a copy may
 205 | also be provided in response to a subpoena seeking the document
 206 | for criminal investigative or prosecution purposes.

207 | (f) A person who filed a document that has been sealed or
 208 | removed from an applicable electronic database by court order
 209 | pursuant to paragraph (c) who was not noticed to appear at the
 210 | court hearing that resulted in the sealing or removal order may
 211 | petition the court order to set a hearing to determine whether
 212 | the order should remain in effect. If the court sets a hearing,
 213 | the person who was the subject of the document shall be noticed
 214 | and given an opportunity to appear. If the petitioner at the
 215 | hearing establishes by clear and convincing evidence that the
 216 | filed or recorded document is a valid lien financing statement
 217 | or encumbrance, or similar document that does not contain any
 218 | materially false, fictitious, or fraudulent statement or
 219 | representation, the court shall order the document unsealed and
 220 | placed back on any applicable electronic database. The document
 221 | is deemed effective as a filed record from the initial filing
 222 | date. However, it is not retroactive as against a purchaser of
 223 | real or personal property who acts in reasonable reliance on the
 224 | absence of the document from any public record or any private

225 record that is generally available to the public, or from any
 226 public electronic database or any private electronic database
 227 that is generally available to the public.

228 (g) If the court finds that the person who sought removal
 229 or sealing of a valid lien, financing statement, encumbrance, or
 230 similar document did so in bad faith or with a malicious
 231 purpose, the court shall award the person who filed the lien,
 232 financing statement, encumbrance, or similar document reasonable
 233 attorney fees.

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

236 843.0855 Criminal actions under color of law or through
 237 use of simulated legal process.—

238 (1) As used in this section:

239 (a) The term "legal process" means a document or order
 240 issued by a court or filed or recorded for the purpose of
 241 exercising jurisdiction or representing a claim against a person
 242 or property, or for the purpose of directing a person to appear
 243 before a court or tribunal, or to perform or refrain from
 244 performing a specified act. "Legal process" includes, but is not
 245 limited to, a summons, lien, complaint, warrant, injunction,
 246 writ, notice, pleading, subpoena, or order.

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

252 (c) The term "public officer or public employee" includes,

253 | but is not limited to:

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

257 | 2. Any state or federal executive, legislative, or
 258 | judicial officer, employee, or volunteer authorized to perform
 259 | actions or services for any executive, legislative, or judicial
 260 | office, agency, officer, or employee.

261 | 3. Any person who acts as a general or special magistrate,
 262 | auditor, arbitrator, umpire, referee hearing officer, or
 263 | consultant to any state or local governmental entity.

264 | 4. Any person who is a candidate for public office or
 265 | judicial position ~~means a public officer as defined by s.~~
 266 | ~~112.061.~~

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

269 | (2) Any person who deliberately impersonates or falsely
 270 | acts as a public officer or tribunal, public employee or utility
 271 | employee, including, but not limited to, marshals, judges,
 272 | prosecutors, sheriffs, deputies, court personnel, or any law
 273 | enforcement authority in connection with or relating to any
 274 | legal process affecting persons and property, or otherwise takes
 275 | any action under color of law against persons or property,
 276 | commits a felony of the third degree, punishable as provided in
 277 | s. 775.082 or s. 775.083. It is the intent of the Legislature
 278 | that this subsection apply when such a person acts as any public
 279 | officer, public employee, or tribunal purporting to supersede or
 280 | override any legislation or statute of this state, or to

281 supersede or override any action of any court of this state.

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

290 (4) Any person who falsely under color of law attempts in
 291 any way to influence, intimidate, or hinder a public officer or
 292 law enforcement officer in the discharge of his or her official
 293 duties by means of, but not limited to, threats of or actual
 294 physical abuse or harassment, or through the use of simulated
 295 legal process, commits a felony of the third degree, punishable
 296 as provided in s. 775.082 or s. 775.083.

297 (5) ~~(a)~~ ~~Nothing in~~ This section does not:

298 (a) ~~shall~~ Make unlawful any act of any law enforcement
 299 officer or legal tribunal which is performed under lawful
 300 authority under the United States Constitution or the State
 301 Constitution or as established by Florida Statutes or federal
 302 law.

303 (b) ~~Nothing in this section shall~~ Prohibit individuals
 304 from assembling freely to express opinions or designate group
 305 affiliation or association.

306 (c) ~~Nothing in this section shall~~ Prohibit or in any way
 307 limit a person's lawful and legitimate access to the courts or
 308 prevent a person from instituting or responding to legitimate

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309 and lawful legal process.

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

312 921.0022 Criminal Punishment Code; offense severity
 313 ranking chart.—

314 (3) OFFENSE SEVERITY RANKING CHART

315 (g) LEVEL 7

316

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.

320

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321	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
322	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
323	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
324	456.065(2)	3rd	Practicing a health care profession without a license.
325	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
326	458.327(1)	3rd	Practicing medicine without a license.
327	459.013(1)	3rd	Practicing osteopathic medicine without a license.
328			

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329	460.411(1)	3rd	Practicing chiropractic medicine without a license.
330	461.012(1)	3rd	Practicing podiatric medicine without a license.
331	462.17	3rd	Practicing naturopathy without a license.
332	463.015(1)	3rd	Practicing optometry without a license.
333	464.016(1)	3rd	Practicing nursing without a license.
334	465.015(2)	3rd	Practicing pharmacy without a license.
335	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
336	467.201	3rd	Practicing midwifery without a license.
337	468.366	3rd	Delivering respiratory care services without a license.
	483.828(1)	3rd	Practicing as clinical

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			laboratory personnel without a license.
338	483.901(9)	3rd	Practicing medical physics without a license.
339	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
340	484.053	3rd	Dispensing hearing aids without a license.
341	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.
342	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.
343	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than

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\$20,000.

344

655.50 (10) (b) 1. 3rd Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

345

775.21 (10) (a) 3rd Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.

346

775.21 (10) (b) 3rd Sexual predator working where children regularly congregate.

347

775.21 (10) (g) 3rd Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

348

782.051 (3) 2nd Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

349

782.07 (1) 2nd Killing of a human being by the

			act, procurement, or culpable negligence of another (manslaughter).
350	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
351	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
352	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
353	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
354	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
355	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
356			

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357	784.048 (7)	3rd	Aggravated stalking; violation of court order.
358	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
359	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
360	784.08 (2) (a)	1st	Aggravated battery on a person 65 years of age or older.
361	784.081 (1)	1st	Aggravated battery on specified official or employee.
362	784.082 (1)	1st	Aggravated battery by detained person on visitor or other detainee.
363	784.083 (1)	1st	Aggravated battery on code inspector.
364	787.06 (3) (a)	1st	Human trafficking using coercion for labor and services.
	787.06 (3) (e)	1st	Human trafficking using

			coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
365	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
366	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
367	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
368	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
369	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
370	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction

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			while committing or attempting to commit a felony.
371	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
372	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.
373	796.03	2nd	Procuring any person under 16 years for prostitution.
374	800.04 (5) (c) 1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
375	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.
376	806.01 (2)	2nd	Maliciously damage structure by

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			fire or explosive.
377	810.02 (3) (a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
378	810.02 (3) (b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
379	810.02 (3) (d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
380	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
381	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.
382	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
383			

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384	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
385	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
386	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
387	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
388	812.131(2)(a)	2nd	Robbery by sudden snatching.
389	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
390	<u>817.395(2)(b)</u>	<u>3rd</u>	<u>Filing of false lien or other document.</u>
391	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.

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392	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
393	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
394	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.
395	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
396	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.

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397	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
398	837.05 (2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
399	838.015	2nd	Bribery.
400	838.016	2nd	Unlawful compensation or reward for official behavior.
401	838.021 (3) (a)	2nd	Unlawful harm to a public servant.
402	838.22	2nd	Bid tampering.
403	<u>843.0855 (2)</u>	<u>3rd</u>	<u>Impersonation of public officer, specified employee, or tribunal.</u>
404	<u>843.0855 (3)</u>	<u>3rd</u>	<u>Unlawful simulation of legal process.</u>
405	<u>843.0855 (4)</u>	<u>3rd</u>	<u>Intimidation of public officer or law enforcement officer.</u>

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406

847.0135(3) 3rd Solicitation of a child, via a computer service, to commit an unlawful sex act.

407

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

408

872.06 2nd Abuse of a dead human body.

409

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

410

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.

411

893.13(1)(e)1. 1st Sell, manufacture, or deliver

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			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.
412	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).
413	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
414	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
415	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
416	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.

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417

893.135(1)(e)1. 1st Trafficking in methaqualone,
more than 200 grams, less than
5 kilograms.

418

893.135(1)(f)1. 1st Trafficking in amphetamine,
more than 14 grams, less than
28 grams.

419

893.135 1st Trafficking in flunitrazepam, 4
(1)(g)1.a. grams or more, less than 14
grams.

420

893.135 1st Trafficking in gamma-
(1)(h)1.a. hydroxybutyric acid (GHB), 1
kilogram or more, less than 5
kilograms.

421

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

422

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

423

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

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			of controlled substance.
424	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
425	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
426	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
427	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
428	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
429	943.0435(13)	3rd	Failure to report or providing false information about a

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			sexual offender; harbor or conceal a sexual offender.
430	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
431	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
432	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
433	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
434	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
435	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a

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digitized photograph.

436

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

437

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

438

439 (h) LEVEL 8

440

Florida	Felony	
Statute	Degree	Description

441

316.193	2nd	DUI manslaughter.
(3) (c) 3.a.		

442

316.1935 (4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
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443

327.35 (3) (c) 3.	2nd	Vessel BUI manslaughter.
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444

499.0051 (7)	1st	Knowing trafficking in contraband prescription drugs.
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445

499.0051(8) 1st Knowing forgery of prescription labels or prescription drug labels.

446

560.123(8)(b)2. 2nd Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.

447

560.125(5)(b) 2nd Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.

448

655.50(10)(b)2. 2nd Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.

449

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

450

782.04(4) 2nd Killing of human without design when engaged in act or attempt

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			of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
451	782.051(2)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
452	782.071(1)(b)	1st	Committing vehicular homicide and failing to render aid or give information.
453	782.072(2)	1st	Committing vessel homicide and failing to render aid or give information.
454	787.06(3)(b)	1st	Human trafficking using coercion for commercial sexual activity.
455	787.06(3)(c)	1st	Human trafficking using coercion for labor and services of an unauthorized alien.

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456

787.06(3)(f) 1st Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state.

457

790.161(3) 1st Discharging a destructive device which results in bodily harm or property damage.

458

794.011(5) 2nd Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.

459

794.08(3) 2nd Female genital mutilation, removal of a victim younger than 18 years of age from this state.

460

800.04(4) 2nd Lewd or lascivious battery.

461

806.01(1) 1st Maliciously damage dwelling or structure by fire or explosive, believing person in structure.

462

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463	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
464	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
465	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
466	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
467	812.13 (2) (b)	1st	Robbery with a weapon.
468	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
469	<u>817.395 (2)</u>	<u>3rd</u>	<u>Issuing or filing unauthorized documents.</u>
470	<u>817.395 (3) (b) 1.</u>	<u>2nd</u>	<u>Filing false lien or other document; reclassified offense.</u>
	817.568 (6)	2nd	Fraudulent use of personal

			identification information of an individual under the age of 18.
471	825.102 (2)	1st	Aggravated abuse of an elderly person or disabled adult.
472	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
473	825.103 (2) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$100,000 or more.
474	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
475	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
476	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.

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477	860.16	1st	Aircraft piracy.
478	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
479	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
480	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
481	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
482	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
483	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
484			

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485	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
486	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
487	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
488	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
489	893.135 (1)(h)1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
490	893.135 (1)(j)1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
	893.135 (1)(k)2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.

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491

893.1351(3) 1st Possession of a place used to manufacture controlled substance when minor is present or resides there.

492

895.03(1) 1st Use or invest proceeds derived from pattern of racketeering activity.

493

895.03(2) 1st Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.

494

895.03(3) 1st Conduct or participate in any enterprise through pattern of racketeering activity.

495

896.101(5)(b) 2nd Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

496

896.104(4)(a)2. 2nd Structuring transactions to evade reporting or registration requirements, financial transactions totaling or

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exceeding \$20,000 but less than \$100,000.

497

498

(i) LEVEL 9

499

Florida

Felony

Statute

Degree

Description

500

316.193
(3) (c) 3.b.

1st

DUI manslaughter; failing to render aid or give information.

501

327.35(3) (c) 3.b.

1st

BUI manslaughter; failing to render aid or give information.

502

409.920
(2) (b) 1.c.

1st

Medicaid provider fraud; \$50,000 or more.

503

499.0051(9)

1st

Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.

504

560.123(8) (b) 3.

1st

Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.

505

560.125(5) (c)

1st

Money transmitter business by unauthorized person, currency,

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			or payment instruments totaling or exceeding \$100,000.
506	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
507	775.0844	1st	Aggravated white collar crime.
508	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
509	782.04(3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
510	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
511	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled

512			adult.
	787.01(1)(a)1.	1st,PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
513			
	787.01(1)(a)2.	1st,PBL	Kidnapping with intent to commit or facilitate commission of any felony.
514			
	787.01(1)(a)4.	1st,PBL	Kidnapping with intent to interfere with performance of any governmental or political function.
515			
	787.02(3)(a)	1st	False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.
516			
	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized alien.
517			

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518	787.06(3)(g)	1st, PBL	Human trafficking for commercial sexual activity of a child under the age of 18.
519	787.06(4)	1st	Selling or buying of minors into human trafficking.
520	790.161	1st	Attempted capital destructive device offense.
521	790.166(2)	1st, PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
522	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
523	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
524	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
	794.011(8)(b)	1st	Sexual battery; engage in

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			sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
525	794.08 (2)	1st	Female genital mutilation; victim younger than 18 years of age.
526	796.035	1st	Selling or buying of minors into prostitution.
527	800.04 (5) (b)	Life	Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older.
528	812.13 (2) (a)	1st, PBL	Robbery with firearm or other deadly weapon.
529	812.133 (2) (a)	1st, PBL	Carjacking; firearm or other deadly weapon.
530	812.135 (2) (b)	1st	Home-invasion robbery with weapon.
531	<u>817.395 (3) (b) 2.</u>	<u>1st</u>	<u>Filing false lien or other document; reclassified offense.</u>
532	817.568 (7)	2nd,	Fraudulent use of personal

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		PBL	identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
533	827.03(2)(a)	1st	Aggravated child abuse.
534	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
535	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
536	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
537	893.135	1st	Attempted capital trafficking offense.
538	893.135(1)(a)3.	1st	Trafficking in cannabis, more

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			than 10,000 lbs.
539	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
540	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
541	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
542	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.
543	893.135 (1) (f) 1.c.	1st	Trafficking in amphetamine, more than 200 grams.
544	893.135 (1) (h) 1.c.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
545	893.135 (1) (j) 1.c.	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
546	893.135 (1) (k) 2.c.	1st	Trafficking in Phenethylamines, 400 grams or more.

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547

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

548

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

549

550

Section 4. This act shall take effect October 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 915 (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 _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee
3 Representative Combee offered the following:

Amendment (with title amendment)

4
5
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 817.535, Florida Statutes, is created
8 to read:

9 817.535 Unlawful filing of false documents or records
10 against real or personal property.-

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

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

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

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

Amendment No. 1

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

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

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

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

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

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 915 (2013)

Amendment No. 1

47 services for any state or federal executive, legislative, or
48 judicial office, or agency;

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

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

54 (2) (a) A person who files or directs a filer to file, with
55 the intent to defraud or harass another, any instrument
56 containing a materially false, fictitious, or fraudulent
57 statement or representation that purports to affect an owner's
58 interest in the property described in the instrument commits a
59 felony of the third degree, punishable as provided in s.
60 775.082, s. 775.083, or s. 775.084.

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

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

68 (a) In the case of a felony of the third degree, to a
69 felony of the second degree, punishable as provided in ss.
70 775.082, 775.083, or 775.084.

71 (b) In the case of a felony of the second degree, to a
72 felony of the first degree, punishable as provided in ss.
73 775.082, 775.083, or 775.084.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 915 (2013)

Amendment No. 1

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

80 1. In the case of a felony of the third degree, to a felony
81 of the second degree, punishable as provided in ss. 775.082,
82 775.083, or 775.084.

83 2. In the case of a felony of the second degree, to a
84 felony of the first degree, punishable as provided in ss.
85 775.082, 775.083, or 775.084.

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

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

Amendment No. 1

102 (a) In the case of a felony of the third degree, to a
103 felony of the second degree, punishable as provided in ss.
104 775.082, 775.083, or 775.084.

105 (b) In the case of a felony of the second degree, to a
106 felony of the first degree, punishable as provided in ss.
107 775.082, 775.083, or 775.084.

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

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

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

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

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

149 2. Upon a finding of intent to defraud or harass, the court
150 or jury shall award actual damages and punitive damages, subject
151 to the criteria in s. 768.72, to the person adversely affected
152 by the instrument. The court may also levy a civil penalty of
153 \$2,500 for each instrument determined to be in violation of
154 subsection (2).

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

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

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

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

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

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

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

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

187 (10) This section does not apply to the procedures for
188 sealing or expunging criminal history records as provided in ss.
189 943.0585 and 943.059.

190 (11) If any section, subsection, sentence, clause, phrase,
191 or word of this statute is for any reason held or declared to be
192 unconstitutional, invalid, inoperative, ineffective,
193 inapplicable, or void, such invalidity or unconstitutionality
194 shall not affect the portions of this statute not so held to be
195 unconstitutional, void, invalid, or ineffective, or affect the
196 application of this statute to other circumstances not so held
197 to be invalid, it being the express legislative intent that any
198 such unconstitutional, illegal, invalid, ineffective,
199 inapplicable, or void portion or portions of this statute did
200 not induce its passage, and that without the inclusion of any
201 such unconstitutional, illegal, invalid, ineffective, or void
202 portions of this statute, the Legislature would have enacted the
203 valid and constitutional portions thereof.

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

206 843.0855 Criminal actions under color of law or through
207 use of simulated legal process.—

208 (1) As used in this section:

209 (a) The term "legal process" means a document or order
210 issued by a court or filed or recorded with an official court of

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211 this state or the United States or with any official
212 governmental entity of this state or the United States for the
213 purpose of exercising jurisdiction or representing a claim
214 against a person or property, or for the purpose of directing a
215 person to appear before a court or tribunal, or to perform or
216 refrain from performing a specified act. "Legal process"
217 includes, but is not limited to, a summons, lien, complaint,
218 warrant, injunction, writ, notice, pleading, subpoena, or order.

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

224 (c) The term "public officer or employee" includes, but is
225 not limited to:

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

229 2. An employee of a state, county, municipal, political
230 subdivision, school district, educational institution, or
231 special district agency or entity, including all judges,
232 attorneys, law enforcement officers, deputy clerks of court, or
233 marshals;

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

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

241 5. A person who is a candidate for public office or
242 judicial position means a public officer as defined by s.
243 112.061.

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

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

259 (3) A Any person who simulates legal process, including,
260 but not limited to, actions affecting title to real estate or
261 personal property, indictments, subpoenas, warrants,
262 injunctions, liens, orders, judgments, or any legal documents or
263 proceedings, knowing or having reason to know the contents of
264 any such documents or proceedings or the basis for any action to

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265 | be fraudulent, commits a felony of the third degree, punishable
 266 | as provided in s. 775.082, ~~or~~ s. 775.083 or s. 775.084.

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

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

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

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

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

287 | 921.0022 Criminal Punishment Code; offense severity
 288 | ranking chart.—

289 | (3) OFFENSE SEVERITY RANKING CHART

290 | (g) LEVEL 7

291 |

Florida	Felony	Description
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	Amendment No. 1 Statute	Degree	
292	316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
293	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
294	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
295	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
296	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
297	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.

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298

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

299

456.065(2) 3rd Practicing a health care
 profession without a license.

300

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

301

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

302

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

303

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

304

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

305

462.17 3rd Practicing naturopathy without
 a license.

306

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307	463.015(1)	3rd	Practicing optometry without a license.
308	464.016(1)	3rd	Practicing nursing without a license.
309	465.015(2)	3rd	Practicing pharmacy without a license.
310	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
311	467.201	3rd	Practicing midwifery without a license.
312	468.366	3rd	Delivering respiratory care services without a license.
313	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
314	483.901(9)	3rd	Practicing medical physics without a license.
315	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.

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316	484.053	3rd	Dispensing hearing aids without a license.
	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
317			
	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.
318			
	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
319			
	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
320			
	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew

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			driver's license or identification card; other registration violations.
321			
	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
322			
	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
323			
	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
324			
	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
325			
	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).

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334

784.08(2)(a) 1st Aggravated battery on a person
65 years of age or older.

335

784.081(1) 1st Aggravated battery on specified
official or employee.

336

784.082(1) 1st Aggravated battery by detained
person on visitor or other
detainee.

337

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

338

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

339

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.

340

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

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341

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

342

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

343

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

344

790.166(3) 2nd Possessing, selling, using, or
attempting to use a hoax weapon
of mass destruction.

345

790.166(4) 2nd Possessing, displaying, or
threatening to use a hoax
weapon of mass destruction
while committing or attempting
to commit a felony.

346

790.23 1st,PBL Possession of a firearm by a
person who qualifies for the
penalty enhancements provided
for in s. 874.04.

347

794.08(4) 3rd Female genital mutilation;

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consent by a parent, guardian,
or a person in custodial
authority to a victim younger
than 18 years of age.

348

796.03 2nd Procuring any person under 16
years for prostitution.

349

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

350

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.

351

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

352

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

353

810.02(3)(b) 2nd Burglary of unoccupied
dwelling; unarmed; no assault
or battery.

354

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355	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
356	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
357	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.
358	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
359	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
360	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
	812.0145(2)(a)	1st	Theft from person 65 years of

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age or older; \$50,000 or more.

361

812.019(2) 1st Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

362

812.131(2)(a) 2nd Robbery by sudden snatching.

363

812.133(2)(b) 1st Carjacking; no firearm, deadly weapon, or other weapon.

364

817.234(8)(a) 2nd Solicitation of motor vehicle accident victims with intent to defraud.

365

817.234(9) 2nd Organizing, planning, or participating in an intentional motor vehicle collision.

366

817.234(11)(c) 1st Insurance fraud; property value \$100,000 or more.

367

817.2341 1st Making false entries of
(2)(b) & material fact or false
(3)(b) statements regarding property values relating to the solvency of an insuring entity which are

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a significant cause of the
insolvency of that entity.

368

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

369

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

370

825.103(2)(b) 2nd Exploiting an elderly person or
disabled adult and property is
valued at \$20,000 or more, but
less than \$100,000.

371

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

372

827.04(3) 3rd Impregnation of a child under
16 years of age by person 21
years of age or older.

373

837.05(2) 3rd Giving false information about
alleged capital felony to a law
enforcement officer.

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374

838.015 2nd Bribery.

375

838.016 2nd Unlawful compensation or reward
for official behavior.

376

838.021(3)(a) 2nd Unlawful harm to a public
servant.

377

838.22 2nd Bid tampering.

378

843.0855(2) 3rd Impersonation of public officer
or employee.

379

843.0855(3) 3rd Unlawful simulation of legal
process.

380

843.0855(4) 3rd Intimidation of public officer
or employee.

381

847.0135(3) 3rd Solicitation of a child, via a
computer service, to commit an
unlawful sex act.

382

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

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383

872.06 2nd Abuse of a dead human body.

384

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

385

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.

386

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.

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387

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).

388

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

389

893.135 (1)(b)1.a. 1st Trafficking in cocaine, more than 28 grams, less than 200 grams.

390

893.135 (1)(c)1.a. 1st Trafficking in illegal drugs, more than 4 grams, less than 14 grams.

391

893.135(1)(d)1. 1st Trafficking in phencyclidine, more than 28 grams, less than 200 grams.

392

893.135(1)(e)1. 1st Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.

393

893.135(1)(f)1. 1st Trafficking in amphetamine, more than 14 grams, less than

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			28 grams.
394	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
395	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
396	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
397	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
398	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
399	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
400	896.104(4)(a)1.	3rd	Structuring transactions to

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evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.

401

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

402

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

403

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

404

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

405

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

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406

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

407

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

408

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

409

944.607(13) 3rd Sexual offender; failure to
report and reregister; failure
to respond to address
verification.

410

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

411

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

412

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985.4815(13)

3rd Sexual offender; failure to
report and reregister; failure
to respond to address
verification.

413

414 (h) LEVEL 8

415

Florida Statute	Felony Degree	Description
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416

316.193 (3)(c)3.a.	2nd	DUI manslaughter.
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417

316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
----------------	-----	--

418

327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
----------------	-----	--------------------------

419

499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
-------------	-----	--

420

499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
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421

560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or
-----------------	-----	--

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			exceeding \$20,000, but less than \$100,000 by money transmitter.
422	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
423	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
424	777.03(2)(a)	1st	Accessory after the fact, capital felony.
425	782.04(4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.

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426

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

427

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

428

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

429

787.06(3)(b) 1st Human trafficking using
coercion for commercial sexual
activity.

430

787.06(3)(c) 1st Human trafficking using
coercion for labor and services
of an unauthorized alien.

431

787.06(3)(f) 1st Human trafficking using
coercion for commercial sexual
activity by the transfer or
transport of any individual
from outside Florida to within
the state.

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432

790.161(3) 1st Discharging a destructive device which results in bodily harm or property damage.

433

794.011(5) 2nd Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.

434

794.08(3) 2nd Female genital mutilation, removal of a victim younger than 18 years of age from this state.

435

800.04(4) 2nd Lewd or lascivious battery.

436

806.01(1) 1st Maliciously damage dwelling or structure by fire or explosive, believing person in structure.

437

810.02(2)(a) 1st,PBL Burglary with assault or battery.

438

810.02(2)(b) 1st,PBL Burglary; armed with explosives or dangerous weapon.

439

810.02(2)(c) 1st Burglary of a dwelling or

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			structure causing structural damage or \$1,000 or more property damage.
440			
	812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
441			
	812.13(2)(b)	1st	Robbery with a weapon.
442			
	812.135(2)(c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
443			
	<u>817.535(2)(b)</u>	<u>2nd</u>	<u>Second or subsequent offense filing false lien or other unauthorized document.</u>
444			
	<u>817.535(3)(a)</u>	<u>2nd</u>	<u>Filing false lien or other unauthorized document; property owner is public officer or employee.</u>
445			
446			
	<u>817.535(4)(a)</u>	<u>2nd</u>	<u>Filing false lien or other unauthorized document;</u>

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defendant is incarcerated or
under supervision.

447

817.535(5) (a) 2nd Filing false lien or other
unauthorized document; owner of
property incurs financial loss
as a result of the false
instrument.

448

817.568(6) 2nd Fraudulent use of personal
identification information of
an individual under the age of
18.

449

825.102(2) 1st Aggravated abuse of an elderly
person or disabled adult.

450

825.1025(2) 2nd Lewd or lascivious battery upon
an elderly person or disabled
adult.

451

825.103(2) (a) 1st Exploiting an elderly person or
disabled adult and property is
valued at \$100,000 or more.

452

837.02(2) 2nd Perjury in official proceedings
relating to prosecution of a

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capital felony.

453

837.021(2) 2nd Making contradictory statements
in official proceedings
relating to prosecution of a
capital felony.

454

860.121(2)(c) 1st Shooting at or throwing any
object in path of railroad
vehicle resulting in great
bodily harm.

455

860.16 1st Aircraft piracy.

456

893.13(1)(b) 1st Sell or deliver in excess of 10
grams of any substance
specified in s. 893.03(1)(a) or
(b).

457

893.13(2)(b) 1st Purchase in excess of 10 grams
of any substance specified in
s. 893.03(1)(a) or (b).

458

893.13(6)(c) 1st Possess in excess of 10 grams
of any substance specified in
s. 893.03(1)(a) or (b).

459

893.135(1)(a)2. 1st Trafficking in cannabis, more

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			than 2,000 lbs., less than 10,000 lbs.
460	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
461	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
462	893.135 (1)(d)1.b.	1st	Trafficking in phencyclidine, more than 200 grams, less than 400 grams.
463	893.135 (1)(e)1.b.	1st	Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.
464	893.135 (1)(f)1.b.	1st	Trafficking in amphetamine, more than 28 grams, less than 200 grams.
465	893.135 (1)(g)1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
466	893.135	1st	Trafficking in gamma-

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467	(1) (h) 1.b.		hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
468	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
469	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
470	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
471	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
472	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
	895.03(3)	1st	Conduct or participate in any enterprise through pattern of

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racketeering activity.

473

896.101(5)(b) 2nd Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

474

896.104(4)(a)2. 2nd Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.

475

476

(i) LEVEL 9

477

Florida Statute	Felony Degree	Description
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478

316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
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479

327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
------------------	-----	--

480

409.920 (2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
-----------------------	-----	--

481

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482	499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
483	560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
484	560.125(5)(c)	1st	Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
485	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
486	775.0844	1st	Aggravated white collar crime.
487	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
	782.04(3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding

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with serious bodily injury or death, and other specified felonies.

488

782.051(1) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

489

782.07(2) 1st Aggravated manslaughter of an elderly person or disabled adult.

490

787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or reward or as a shield or hostage.

491

787.01(1)(a)2. 1st,PBL Kidnapping with intent to commit or facilitate commission of any felony.

492

787.01(1)(a)4. 1st,PBL Kidnapping with intent to interfere with performance of any governmental or political function.

493

787.02(3)(a) 1st False imprisonment; child under age 13; perpetrator also

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commits aggravated child abuse,
sexual battery, or lewd or
lascivious battery,
molestation, conduct, or
exhibition.

494

787.06(3)(d) 1st Human trafficking using
coercion for commercial sexual
activity of an unauthorized
alien.

495

787.06(3)(g) 1st,PBL Human trafficking for
commercial sexual activity of a
child under the age of 18.

496

787.06(4) 1st Selling or buying of minors
into human trafficking.

497

790.161 1st Attempted capital destructive
device offense.

498

790.166(2) 1st,PBL Possessing, selling, using, or
attempting to use a weapon of
mass destruction.

499

794.011(2) 1st Attempted sexual battery;
victim less than 12 years of
age.

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500

794.011(2) Life Sexual battery; offender
younger than 18 years and
commits sexual battery on a
person less than 12 years.

501

794.011(4) 1st Sexual battery; victim 12 years
or older, certain
circumstances.

502

794.011(8) (b) 1st Sexual battery; engage in
sexual conduct with minor 12 to
18 years by person in familial
or custodial authority.

503

794.08(2) 1st Female genital mutilation;
victim younger than 18 years of
age.

504

796.035 1st Selling or buying of minors
into prostitution.

505

800.04(5) (b) Life Lewd or lascivious molestation;
victim less than 12 years;
offender 18 years or older.

506

812.13(2) (a) 1st, PBL Robbery with firearm or other
deadly weapon.

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Amendment No. 1

507

812.133(2)(a) 1st, PBL Carjacking; firearm or other
deadly weapon.

508

812.135(2)(b) 1st Home-invasion robbery with
weapon.

509

817.535(3)(b) 1st Second or subsequent offense,
filing false lien or other
unauthorized document; property
owner is public officer or
employee.

510

817.535(4)(b) 1st Second or subsequent offense,
filing false lien or other
unauthorized document;
defendant is incarcerated or
under supervision.

511

817.535(5)(b) 1st Second or subsequent offense,
Filing false lien or other
unauthorized document; owner of
property incurs financial loss
as a result of the false
instrument.

512

817.568(7) 2nd, Fraudulent use of personal
PBL identification information of

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Amendment No. 1

			an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
513			
	827.03(2)(a)	1st	Aggravated child abuse.
514			
	847.0145(1)	1st	Selling, or otherwise transferring custody or control, of a minor.
515			
	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
516			
	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
517			
	893.135	1st	Attempted capital trafficking offense.
518			
	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.

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Amendment No. 1

519

893.135 1st Trafficking in cocaine, more
(1) (b) 1.c. than 400 grams, less than 150
kilograms.

520

893.135 1st Trafficking in illegal drugs,
(1) (c) 1.c. more than 28 grams, less than
30 kilograms.

521

893.135 1st Trafficking in phencyclidine,
(1) (d) 1.c. more than 400 grams.

522

893.135 1st Trafficking in methaqualone,
(1) (e) 1.c. more than 25 kilograms.

523

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

524

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

525

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

526

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

527

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Bill No. HB 915 (2013)

Amendment No. 1

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

528

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

529

530

531

532

533

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

534

Remove everything before the enacting clause and insert:

535

A bill to be entitled

536

An act relating to filing false documents against real

537

or personal property; creating s. 817.535, F.S.;

538

defining terms; prohibiting a person from filing or

539

causing to be filed, with intent to defraud another, a

540

document relating to the ownership, transfer, or

541

encumbrance of, or claim against real or personal

542

property, or any interest in real or personal

543

property; providing criminal penalties; establishing

544

reclassified penalties for persons who commit the

545

specified offenses a second or subsequent times, when

546

the person is a convicted offender who commits the

547

specified offenses while incarcerated in a jail or

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Bill No. HB 915 (2013)

Amendment No. 1

548 participating in community correctional programs, and
549 when the victim of the offense is a public officer or
550 employee under certain circumstances; authorizing the
551 court to issue injunction; authorizing a court to seal
552 specified public or private records under certain
553 circumstances; providing that the subject of the false
554 statements has a civil cause of action against the
555 perpetrator; providing for actual and punitive
556 damages; providing that the prevailing party is
557 entitled to costs and reasonable attorney fees;
558 providing duties of the custodian of the official
559 record; providing applicability; requiring that
560 attorney fees be paid to the government agency that
561 provides legal representation, under certain
562 circumstances; providing a severability clause;
563 amending s. 843.0855, F.S.; revising definitions;
564 defining the term "public officer or employee";
565 amending s. 921.0022, F.S.; revising provisions of the
566 offense severity ranking chart of the Criminal
567 Punishment Code to conform to changes made by the act;
568 adding all subsections of s. 817.535 to the offense
569 severity ranking chart; adding all subsections of s.
570 843.0855 to the offense severity ranking chart;
571 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1173 Florida Communications Fraud Act
SPONSOR(S): Spano
TIED BILLS: IDEN./SIM. **BILLS:** SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>LTS</i>	Cunningham <i>gcu</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 775.15, F.S., establishes the following statutes of limitations for commencing criminal prosecutions:

- Prosecution for a felony of the first degree must be commenced within 4 years after it is committed;
- Prosecution for any other felony must be commenced within 3 years after it is committed;
- Prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

The statutes of limitations in s. 775.15, F.S., generally apply to all crimes. However, some criminal statutes provide a specific statute of limitations only applicable to that crime.

Section 817.034, F.S., the Communication Fraud Act (CFA), makes it a crime for a person to engage in a scheme to defraud and obtain property; or engage in a scheme to defraud and, in furtherance of that scheme, communicate with any person with intent to obtain property from that person. The statute does not contain a provision specifying a specific statute of limitations for violations. As such, the general statutes of limitations contained in s. 775.15, F.S., apply.

The bill amends s. 817.034, F.S., to add a statute of limitations to the CFA. The bill provides that any criminal or civil action under the CFA may commence any time within 5 years after the cause of action accrues. The bill specifies that in criminal cases, the period of limitation does not run at any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state. However, this provision can only extend the limitation period by 1 year.

The bill also moves s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of \$50,000 or more), from Level 6 to Level 7 in the offense severity ranking chart. This has the effect of increasing the lowest permissible sentence for such offense.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill; however, the bill may have a negative prison bed impact on the Department of Corrections and a negative jail bed impact on local governments. See fiscal section.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Statutes of Limitation

Statutes of limitation are a statutory creation. In *State v. Hickman*, the court found that:

Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.¹

In *State v. Garofalo*, the court found that "The sole purpose of a statute of limitations in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable."²

Section 775.15, F.S., establishes the following statutes of limitations for commencing criminal prosecutions:

- Prosecution for a felony of the first degree must be commenced within 4 years after it is committed;
- Prosecution for any other felony must be commenced within 3 years after it is committed;
- Prosecution for a misdemeanor of the first degree must be commenced within 2 years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within 1 year after it is committed.

The statute provides that time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.³

The statutes of limitations in s. 775.15, F.S., generally apply to all crimes. However, some criminal statutes provide a specific statute of limitations only applicable to that crime. For example, s. 812.035(10), F.S., allows for any criminal or civil action under ss. 812.012-812.037 or 812.081, F.S. (all relating to theft), to be commenced at any time within 5 years after the cause of action accrues. The statute further specifies that in criminal proceedings, the period of limitation does not run during any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state.⁴ However, this provision can only extend the limitation period by 1 year.⁵

Communication Fraud Act

When creating the Communication Fraud Act (CFA), the legislature recognized that schemes to defraud were on the rise and that those operating the schemes were using communications technology

¹ *State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

² 453 So.2d 905, 906 (Fla. 4th DCA 1984) (citing *State v. Hickman*, 189 So.2d 254 (Fla. 2nd DCA 1966)).

³ Section 775.15(3), F.S.

⁴ Section 812.035(10), F.S.

⁵ *Id.*

to further their schemes to defraud.⁶ Codified in s. 817.034, F.S., subsection (4) and (5) of the CFA create the following criminal offenses:

- (a) Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows:
 1. If the amount of property obtained has an aggregate value of \$50,000 or more, the violator is guilty of a felony of the first degree⁷, ranked in Level 6 of the Criminal Punishment Code offense severity ranking chart;⁸
 2. If the amount of property obtained has an aggregate value of \$20,000 or more, but less than \$50,000, the violator is guilty of a felony of the second degree;⁹ or
 3. If the amount of property obtained has an aggregate value of less than \$20,000, the violator is guilty of a felony of the third degree.¹⁰

- (b) Any person who engages in a scheme to defraud and, in furtherance of that scheme, communicates with any person with intent to obtain property from that person is guilty, for each such act of communication, of communications fraud, punishable as follows:
 1. If the value of property obtained or endeavored to be obtained by the communication is valued at \$300 or more, the violator is guilty of a third degree felony; or
 2. If the value of the property obtained or endeavored to be obtained by the communication is valued at less than \$300, the violator is guilty of a misdemeanor of the first degree.¹¹

The CFA does not currently contain a statute of limitations for the above-described crimes. As such, the general statutes of limitations contained in s. 775.15, F.S., apply (prosecutions must be commenced within 4 years of the commission of a first degree felony, within 3 years of the commission of any other felony, and within 2 years of the commission of a first degree misdemeanor).

Effect of the Bill

The bill amends s. 817.034, F.S., to add a statute of limitations. The bill provides that any criminal or civil action under the CFA may commence any time within 5 years after the cause of action accrues. The bill specifies that in criminal cases, the period of limitation does not run at any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state. However, this provision can only extend the limitation period by 1 year.

The bill also provides that if a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent, or restrain any violation of the CFA, the running of the period of limitations prescribed by this section with respect to any cause of action arising under this section which is based in whole or in part upon any matter complained of in any such prosecution, action, or proceeding shall be suspended during the pendency of such prosecution, action, or proceeding and for 2 years after its termination.

The bill amends s. 921.0022, F.S., to move s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of \$50,000 or more), from Level 6 in the offense severity ranking

⁶ Section 817.034(1), F.S.

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

⁸ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.

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

¹⁰ 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.

¹¹ 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.

chart (36 points) to Level 7 (56 points). This has the effect of increasing the lowest permissible sentence for such offense.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.034, F.S., relating to Florida Communications Fraud Act.

Section 2. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 3. Provides an effective date of October 1, 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 has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because it extends the statute of limitations for violations of s. 817.034, F.S. (which includes felony offenses), and moves s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of \$50,000 or more), from Level 6 in the offense severity ranking chart (36 points) to Level 7 (56 points).

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 a negative jail bed impact on local governments because it extends the statute of limitations for violations of s. 817.034, F.S. (which includes a first degree misdemeanor offense).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 33-42 of the bill contain language that references other actions under the CFA. This language does not appear necessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Florida Communications Fraud
 3 Act; amending s. 817.034, F.S.; providing a
 4 limitations period for civil and criminal actions
 5 under that act; providing that in a criminal
 6 proceeding the period does not run during any time the
 7 defendant is absent from the state or without a
 8 reasonably ascertainable place of abode or work within
 9 the state; limiting the amount of such an exception;
 10 providing for a suspension of limitations periods for
 11 civil and criminal actions during the pendency of
 12 certain proceedings and for a specified period
 13 thereafter; amending s. 921.0022, F.S.; reclassifying
 14 the offense of communications fraud with a value
 15 greater than \$50,000 on the offense severity ranking
 16 chart of the Criminal Punishment Code; providing an
 17 effective date.

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

20
 21 Section 1. Paragraph (d) is added to subsection (4) of
 22 section 817.034, Florida Statutes, to read:

23 817.034 Florida Communications Fraud Act.—

24 (4) OFFENSES.—

25 (d) Notwithstanding any other provision of law, a criminal
 26 action or civil action or proceeding under this section may be
 27 commenced at any time within 5 years after the cause of action
 28 accrues; however, in a criminal proceeding under this section,

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29 the period of limitation does not run during any time when the
 30 defendant is continuously absent from the state or is without a
 31 reasonably ascertainable place of abode or work within the
 32 state, but in no case shall this extend the period of limitation
 33 otherwise applicable by more than 1 year. If a criminal
 34 prosecution or civil action or other proceeding is brought, or
 35 intervened in, to punish, prevent, or restrain any violation of
 36 this section, the running of the period of limitations
 37 prescribed by this section with respect to any cause of action
 38 arising under this section which is based in whole or in part
 39 upon any matter complained of in any such prosecution, action,
 40 or proceeding shall be suspended during the pendency of such
 41 prosecution, action, or proceeding and for 2 years after its
 42 termination.

43 Section 2. Paragraphs (f) and (g) of subsection (3) of
 44 section 921.0022, Florida Statutes, are amended to read:

45 921.0022 Criminal Punishment Code; offense severity
 46 ranking chart.-

47 (3) OFFENSE SEVERITY RANKING CHART

48 (f) LEVEL 6

49

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree

50

51

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			papers.
52	499.0051 (4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
53	499.0051 (5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
54	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
55	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
56	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
57	784.041	3rd	Felony battery; domestic battery by strangulation.
58	784.048 (3)	3rd	Aggravated stalking; credible threat.
59	784.048 (5)	3rd	Aggravated stalking of person under 16.
60			

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61	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
62	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
63	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
64	784.081(2)	2nd	Aggravated assault on specified official or employee.
65	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
66	784.083(2)	2nd	Aggravated assault on code inspector.
67	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
68	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
	790.161(2)	2nd	Make, possess, or throw

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			destructive device with intent to do bodily harm or damage property.
69	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
70	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
71	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
72	794.05(1)	2nd	Unlawful sexual activity with specified minor.
73	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
74	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.

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75	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
76	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
77	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
78	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
79	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
80	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
81	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
82			

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83	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
84	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
85	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
86	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
87	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
88	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
89	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
90	827.03(2)(c)	3rd	Abuse of a child.
91	827.03(2)(d)	3rd	Neglect of a child.

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92	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
93	836.05	2nd	Threats; extortion.
94	836.10	2nd	Written threats to kill or do bodily injury.
95	843.12	3rd	Aids or assists person to escape.
96	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
97	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
98	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.

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99	944.35 (3) (a) 2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
100	944.40	2nd	Escapes.
101	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
102	944.47 (1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
103	951.22 (1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
104			
105	(g) LEVEL 7		
106			
	Florida Statute	Felony Degree	Description
107	316.027 (1) (b)	1st	Accident involving death, failure to stop; leaving scene.

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108

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

109

316.1935(3)(b) 1st Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.

110

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

111

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

112

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

113

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

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114	456.065(2)	3rd	Practicing a health care profession without a license.
115	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
116	458.327(1)	3rd	Practicing medicine without a license.
117	459.013(1)	3rd	Practicing osteopathic medicine without a license.
118	460.411(1)	3rd	Practicing chiropractic medicine without a license.
119	461.012(1)	3rd	Practicing podiatric medicine without a license.
120	462.17	3rd	Practicing naturopathy without a license.
121	463.015(1)	3rd	Practicing optometry without a license.
122	464.016(1)	3rd	Practicing nursing without a

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123			license.
	465.015(2)	3rd	Practicing pharmacy without a license.
124			
	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
125			
	467.201	3rd	Practicing midwifery without a license.
126			
	468.366	3rd	Delivering respiratory care services without a license.
127			
	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
128			
	483.901(9)	3rd	Practicing medical physics without a license.
129			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
130			
	484.053	3rd	Dispensing hearing aids without a license.
131			
	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.

132

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.

133

560.125(5)(a) 3rd Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

134

655.50(10)(b)1. 3rd Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

135

775.21(10)(a) 3rd Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.

136

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137	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
138	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
139	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
140	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
141	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel

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142			homicide).
	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
143			
	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
144			
	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
145			
	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
146			
	784.048(7)	3rd	Aggravated stalking; violation of court order.
147			
	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
148			
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
149			
	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
150			

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151	784.081(1)	1st	Aggravated battery on specified official or employee.
152	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
153	784.083(1)	1st	Aggravated battery on code inspector.
154	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
155	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.
156	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
157	790.16(1)	1st	Discharge of a machine gun under specified circumstances.

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158	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
159	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
160	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
161	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
162	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.

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171	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
172	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.
173	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
174	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
175	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
176	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the

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			theft of property and traffics in stolen property.
177			
	812.131(2)(a)	2nd	Robbery by sudden snatching.
178			
	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
179			
	<u>817.034(4)(a)1.</u>	<u>1st</u>	<u>Communications fraud, value greater than \$50,000.</u>
180			
	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
181			
	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
182			
	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
183			
	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

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			insolvency of that entity.
184	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
185	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
186	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
187	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
188	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
189	838.015	2nd	Bribery.
190	838.016	2nd	Unlawful compensation or reward for official behavior.

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191	838.021(3)(a)	2nd	Unlawful harm to a public servant.
192	838.22	2nd	Bid tampering.
193	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
194	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
195	872.06	2nd	Abuse of a dead human body.
196	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
197	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

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			park or publicly owned recreational facility or community center.
198	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.
199	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).
200	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
201	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
202	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14

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			grams.
203	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
204	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
205	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
206	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
207	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
208	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
209	893.135	1st	Trafficking in Phenethylamines,

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210	(1) (k) 2.a.		10 grams or more, less than 200 grams.
211	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
212	896.101(5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
213	896.104(4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
214	943.0435(4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
215	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
	943.0435(9) (a)	3rd	Sexual offender; failure to

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			comply with reporting requirements.
216	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
217	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
218	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
219	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
220	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
221	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure

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to respond to address
verification.

222

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

223

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

224

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

225

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1173 (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 _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Spano offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 33-42 and insert:

7 otherwise applicable by more than 1 year.

8

9

10

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

11

Remove lines 10-13 and insert:

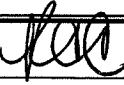

12

amending s. 921.0022, F.S.; reclassifying

13

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1221 Murder of a Child 17 Years of Age or Younger
SPONSOR(S): Artiles
TIED BILLS: IDEN./SIM. BILLS: SB 1476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox 	Cunningham 
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 1221 creates s. 782.066, F.S., entitled "Murder; child 17 years of age or younger." The bill provides that when a person is charged with second or third degree murder pursuant to s. 782.04(2) or (4), F.S., where the victim was a child 17 years of age or younger, the offense for which the person is charged will be reclassified, regardless of whether the person had a reason to know the age of the victim. The bill reclassifies the offenses as follows:

- In the case of a violation of s. 782.04(2), F.S., (second degree murder) from a first degree felony to a capital felony.
- In the case of a violation of s. 782.04(4), F.S., (third degree murder) from a second degree felony to a first degree felony punishable by up to 30 years imprisonment and a \$10,000 fine.

The bill prohibits a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for any violation of s. 782.066, F.S.

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the fiscal impact of this bill. However, on April 4, 2011, CJIC determined that HB 1005, which was identical to the current bill, would have an insignificant prison bed impact on the Department of Corrections.

The bill is effective on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

First Degree Murder

Section 782.04(1), F.S., defines first degree murder as the unlawful killing of a human being:

- When perpetrated from a premeditated design to effect the death of the person killed or any human being;
- When committed by a person engaged in the perpetration of, or in the attempt to perpetrate:
 - Trafficking offense prohibited by s. 893.135(1), F.S.;
 - Arson;
 - Sexual battery;
 - Robbery;
 - Burglary;
 - Kidnapping;
 - Escape;
 - Aggravated child abuse;
 - Aggravated abuse of an elderly person or disabled adult;
 - Aircraft piracy;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Carjacking;
 - Home-invasion robbery;
 - Aggravated stalking;
 - Murder of another human being;
 - Resisting an officer with violence to his or her person;
 - Felony that is an act of terrorism¹ or is in furtherance of an act of terrorism; or
- Which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user.

First degree murder is a capital felony punishable by death if the sentencing proceeding held in accordance with s. 921.141, F.S.,² results in findings by the court that such person shall be punished by death. If such proceeding results in findings by the court that the person shall not be punished by death, such person must be punished by life imprisonment and is ineligible for parole.

Second Degree Murder

Section 782.04(2), F.S., provides that it is second degree murder to unlawfully kill a human being when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual.

¹ Section 782.04(5), F.S., defines "terrorism" as an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States, or involves a violation of s. 815.06; and is intended to:

- Intimidate, injure, or coerce a civilian population;
- Influence the policy of a government by intimidation or coercion; or
- Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

² Section 921.141, F.S., requires a court, upon conviction or adjudication of guilt of a defendant of a capital felony, to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. After hearing all the evidence, the jury must deliberate and render an advisory sentence to the court, based upon specified aggravating and mitigating circumstances. Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, must enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it must set forth in writing its findings upon which the sentence of death is based.

Second degree murder, as provided in s. 782.04(2), F.S., is a first degree felony punishable by imprisonment for a term of years not exceeding life or by up to 30 years imprisonment and a \$10,000 fine.

Third Degree Murder

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

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

Third degree murder is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine.

Effect of the Bill

The bill creates s. 782.066, F.S., entitled "Murder; child 17 years of age or younger." The bill provides that when a person is charged with second or third degree murder pursuant to s. 782.04(2) or (4), F.S., where the victim was a child 17 years of age or younger, the offense for which the person is charged will be reclassified, regardless of whether the person had a reason to know the age of the victim. The bill reclassifies the offenses as follows:

- In the case of a violation of s. 782.04(2), F.S., (second degree murder) from a first degree felony to a capital felony.
- In the case of a violation of s. 782.04(4), F.S., (third degree murder) from a second degree felony to a first degree felony punishable by up to 30 years imprisonment and a \$10,000 fine.

The bill provides that notwithstanding s. 948.01, F.S.,³ the court may not suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation.

³ Section 948.01(2), F.S., provides that if it appears to the court upon a hearing of the matter that a defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt. In either case, the court shall stay and withhold the imposition of sentence upon the defendant and shall place a felony defendant upon probation.

B. SECTION DIRECTORY:

Section 1. Creates s. 782.066, F.S., relating to murder; child 17 years of age or younger.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) has not yet met to determine the fiscal impact of this bill. However, on April 4, 2011, CJIC determined that HB 1005, which was identical to the current bill, would have an insignificant prison bed impact on the Department of Corrections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 1221

2013

1 A bill to be entitled
2 An act relating to murder of a child 17 years of age
3 or younger; creating s. 782.066, F.S.; providing for
4 reclassification of specified murder offenses if
5 committed upon a child 17 years of age or younger;
6 prohibiting a court from suspending, deferring, or
7 withholding adjudication of guilt or imposition of
8 sentence; providing an effective date.

9

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

11

12 Section 1. Section 782.066, Florida Statutes, is created
13 to read:

14

782.066 Murder; child 17 years of age or younger.-

15

(1) Whenever a person is charged with committing a
16 violation of s. 782.04, other than s. 782.04(1), upon a child 17
17 years of age or younger, the offense for which the person is
18 charged may be reclassified as follows, regardless of whether he
19 or she had a reason to know the age of the victim:

20

(a) In the case of a violation of s. 782.04(2), from a
21 felony of the first degree to a capital felony, punishable as
22 provided in s. 775.082.

23

(b) In the case of a violation of s. 782.04(4), from a
24 felony of the second degree to a felony of the first degree.

25

(2) Notwithstanding s. 948.01, a court may not suspend,
26 defer, or withhold adjudication of guilt or imposition of
27 sentence for any violation of this section.

28

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1325 Victims of Human Trafficking
SPONSOR(S): Spano and others
TIED BILLS: HB 1327 **IDEN./SIM. BILLS:** SB 1644

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>LJJ</i>	Cunningham <i>gmc</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 787.06, F.S., Florida's human trafficking statute, defines human trafficking as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person. The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking using coercion for labor or services and for commercial sexual activity. In addition to addressing the perpetrators of human trafficking, s. 787.06, F.S., addresses *victims* of human trafficking by providing legislative intent that "victims of trafficking be protected and assisted by this state and its agencies."

The bill creates s. 943.0583, F.S., which authorizes a victim of human trafficking to petition the court for the expunction of any conviction for an offense committed while he or she was a victim of human trafficking. A "victim of human trafficking" is defined as a person subjected to coercion for the purpose of being used in human trafficking, a minor who is a victim of human trafficking through coercion, or an individual subject to human trafficking as defined by federal law.

A petition must be initiated with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking. The bill requires the petition to include:

- A sworn statement attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation of the victim's status as a victim of human trafficking, if any exists. Official documentation of the victim's status creates a presumption that his or her participation in the offense was a result of having been a victim of human trafficking. However, a petition may be granted without official documentation.

The court's determination of the petition must be by a preponderance of the evidence. A determination made without official documentation must be made by a showing of clear and convincing evidence. If a court grants an expunction the bill requires criminal justice agencies with custody of the expunged record, except the Florida Department of Law Enforcement (FDLE), to physically destroy the record. Persons who have had their human trafficking criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record.

The bill specifies that an expunged conviction is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.

FDLE reports that the bill may have a negative fiscal impact because the dissemination of information about the criminal history records in the bill is different than the dissemination of information on records expunged under s. 943.0585, F.S.

The bill is effective on July 1, 2013.

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

STORAGE NAME: h1325.CRJS

DATE: 3/15/2013

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Human Trafficking

In October 2010, the Center for the Advancement of Human Rights at Florida State University provided the Florida Task Force on Human Trafficking a "Statewide Strategic Plan on Human Trafficking."¹ The Strategic Plan found that Florida is the third most popular American destination for human traffickers and that sex trafficking is the most under-reported offense.²

Florida first passed legislation specifically criminalizing human trafficking in 2004.³ This legislation created separate statutes for involuntary servitude, human trafficking in labor and services, and human sex trafficking.⁴ While the human trafficking statutes have been amended in various ways over the years, comprehensive legislation passed in 2012 that updated and enhanced Florida's human trafficking statutes, and consolidated the various laws into one statute.⁵

Section 787.06, F.S., is Florida's current human trafficking statute and defines human trafficking as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.⁶ The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking using coercion for labor or services and for commercial sexual activity.⁷

In addition to addressing the perpetrators of human trafficking, s. 787.06, F.S., acknowledges, through the following language, the Legislature's intent regarding victims of human trafficking:

It is the intent of the Legislature that...the victims of trafficking be protected and assisted by this state and its agencies. In furtherance of this policy, it is the intent of the Legislature that the state Supreme Court, The Florida Bar, and relevant state agencies prepare and implement training programs in order that judges, attorneys, law enforcement personnel, investigators, and others are able to identify...victims of human trafficking and direct victims to appropriate agencies for assistance. It is the intent of the Legislature that the Department of Children and Family Services and other state agencies cooperate with other state and federal agencies to ensure that victims of human trafficking can access social services and benefits to alleviate their plight.⁸

Sealing and Expunging Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.⁹ Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order.¹⁰ FDLE is required to retain expunged records.¹¹ When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, criminal justice agencies for their respective criminal justice

¹ The Strategic Plan is available and can be viewed at http://www.cahr.fsu.edu/sub_category/Florida_StrategicPlanonHumanTrafficking.html (last visited March 14, 2013).

² Page 3 of the Strategic Plan.

³ Chapter 2004-391, L.O.F.

⁴ *Id.*

⁵ Chapter 2012-97, L.O.F.

⁶ Section 787.06(2)(d), F.S.

⁷ Section 787.06(3), F.S.

⁸ Section 787.06(1)(d), F.S.

⁹ Section 943.0585(4), F.S.

¹⁰ *Id.*

¹¹ *Id.*

purposes, judges in the state courts system for the purpose of assisting them in their case-related decision-making responsibilities, and certain other specified agencies for their respective licensing and employment purposes.¹² Records that have been sealed or expunged are confidential and exempt from the public records law.¹³ It is a first degree misdemeanor¹⁴ to divulge their existence.¹⁵

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,¹⁶ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.¹⁷

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE. In order to receive a certificate, a person must:

- Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that:
 - An indictment, information, or other charging document was not filed or issued in the case; or if filed, was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;
 - None of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt; and
 - The criminal history record does not relate to a violation of specified offenses.¹⁸
- Pay a \$75 processing fee.
- Submit a certified copy of the disposition of the record they wish to have expunged.
- Have never been adjudicated guilty or delinquent for committing a felony or misdemeanor specified in 943.051(3)(b), F.S.,¹⁹ prior to the date of their application for the certificate.²⁰
- Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record they wish to have expunged.

¹² Section 943.059(4), F.S.

¹³ Sections 943.059(4)(c) and 943.0585(4)(c), F.S.

¹⁴ 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.

¹⁵ Sections 943.059 and 943.0585, F.S., require FDLE to disclose sealed and expunged criminal history record to specified entities for specified purposes.

¹⁶ These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

¹⁷ Sections 943.059(4)(c), and 943.0585(4)(c), F.S.

¹⁸ These offenses include: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients, or the reporting of such sexual misconduct; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child, lewd or lascivious offenses committed on an elderly or disabled person; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sexually explicit conduct; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, home invasion robbery, carjacking, stalking, domestic violence, and burglary.

¹⁹ These offenses include: assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; negligent treatment of children, as defined in s. 827.05, F.S.; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b), F.S.; open carrying of a weapon, as defined in s. 790.053 F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; petit theft, as defined in s. 812.014(3), F.S.; cruelty to animals, as defined in s. 828.12(1), F.S.; arson, as defined in s. 806.031(1), F.S.; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115, F.S.

²⁰ Section 943.0585(2)(d), F.S.

- Have never had a prior sealing or expunction of criminal history record unless an expunction is sought for a record previously sealed for 10 years and the record is otherwise eligible for expunction. A record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court.²¹
- No longer be under any court supervision related to the disposition of the record they wish to have expunged.²²

In addition to the certificate, a petition to seal or expunge a criminal history record must also include the petitioner's sworn statement that he or she:

- Has not previously been adjudicated guilty of any offense or comparable ordinance violation, or adjudicated delinquent for committing any felony or misdemeanor listed in s. 943.051(3)(b), F.S.;
- Has not been adjudicated guilty or delinquent for committing any of the acts he or she is currently trying to have sealed or expunged;
- Has not obtained a prior sealing or expunction; and
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before any court.²³

Once a petition to seal or expunge is submitted, it is up to the court to decide whether the sealing or expunction is appropriate.²⁴

Effect of the Bill

The bill creates s. 943.0583, F.S., entitled "human trafficking victim expunction," and provides the following whereas clauses:

- Whereas victims of trafficking may be forced to engage in a variety of illegal acts beyond prostitution;
- Whereas, trafficked persons are not always recognized as victims by the police and prosecutors and are thus pressured into pleading guilty or do not understand the consequences of criminal charges;
- Whereas, all persons with criminal records reflecting their involvement in the sex industry may face barriers to employment and other life opportunities long after they escape from their trafficking situations; and
- Whereas, there is a genuine need for a workable solution to alleviate the impact of the collateral consequences of conviction for victims of human trafficking.

The bill authorizes a victim of human trafficking to petition the court for the expunction of any conviction for an offense, except an offense listed in s. 775.084(1)(b)1, F.S., committed while he or she was a victim of human trafficking, which offense was committed as a part of the human trafficking scheme of which he or she was a victim, or at the direction of an operator of the scheme. A "victim of human trafficking" is defined as a person subjected to coercion²⁵ for the purpose of being used in human trafficking, a minor who is a victim of human trafficking through coercion,²⁶ or an individual subject to human trafficking as defined by federal law.

A petition must be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking or has sought services for victims of human trafficking (subject to reasonable concerns for the safety of the victim, family members of the victim, or other victims of human trafficking that may be jeopardized by the bringing of such petition).

²¹ Section 943.0585(2)(h), F.S.

²² Sections 943.09(2) and 943.0585(2), F.S.

²³ Sections 943.059(1)(b) and 943.0585(1)(b), F.S. Any person knowingly providing false information on the sworn statement commits a third degree felony.

²⁴ Sections 943.0585 and 943.059, F.S.

²⁵ As defined in s. 787.06, F.S.

²⁶ *Id.*

The bill requires the petition to include:

- A sworn statement²⁷ attesting that the victim is eligible for such expunction to the best of his or her knowledge or belief and does not have another petition to expunge or seal before any other court; and
- Official documentation of the victim's status as a victim of human trafficking, if any exists.

The bill defines "official documentation" as any documentation issued by a federal, state, or local agency tending to show a person's status as a victim of human trafficking. Official documentation of the victim's status creates a presumption that his or her participation in the offense was a result of having been a victim of human trafficking. However, a petition may be granted without official documentation.

The completed petition must be served on the appropriate state attorney or statewide prosecutor and the arresting agency, who can each respond to the court regarding the petition.²⁸

The court's determination of the petition must be by a preponderance of the evidence. A determination made without official documentation must be made by a showing of clear and convincing evidence. If a court grants an expunction the bill requires:

- The clerk of the court to certify copies of the order to the appropriate state attorney or the statewide prosecutor, the arresting agency, and to any other agency that the records of the court reflect has received the criminal history record from the court;
- The arresting agency to forward the order to any other agency listed in the court order to which the arresting agency disseminated the criminal history record information to which the order pertains;
- FDLE to forward the order to expunge to the Federal Bureau of Investigation; and
- Criminal justice agencies with custody of the expunged record, except FDLE, to physically destroy the record.

The bill also allows for persons who have had their human trafficking criminal history records expunged to lawfully deny or fail to acknowledge the arrests covered by the expunged record and not face perjury charges or otherwise be liable for giving a false statement for failing to acknowledge an expunged criminal record. The bill requires persons to acknowledge such arrests when applying for future sealing or expunctions under ss. 943.059, 943.0585, or 943.0583, F.S.

The bill specifies that an expunged conviction is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.

The bill makes conforming changes by adding the newly created statute s. 943.0583, F.S., to ss. 943.0582 (relating to juvenile diversion program expunction) and 961.06, F.S. (relating to administrative expunction).

B. SECTION DIRECTORY:

Section 1. Creates s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 2. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 3. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 4. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

²⁷ Providing false information on the sworn statement is punishable as a third degree felony.

²⁸ In judicial proceedings on the petition, the petitioner and their attorney may appear telephonically, via video conference, or other electronic means.

Section 5. Amends s. 961.06, F.S., relating to compensation for wrongful incarceration.

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 does not appear to have any impact on state revenues.

2. Expenditures:

FDLE reports that the bill may have a negative fiscal impact because the dissemination of information about the criminal history records in the bill is different than the dissemination of information on records expunged under s. 943.0585, F.S.²⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

1. The bill specifies that an expunged conviction is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings. Currently a sentence can only be vacated in narrow circumstances provided by the Florida Rules of Criminal Procedure.

2. The bill requires that a petition must be initiated by the petitioner with due diligence after the victim has ceased to be a victim of human trafficking. It is unclear how long a person will have to file a petition under this standard.
3. Under current expunction law, a person can only have one record expunged. The bill does not contain such a limitation.
4. The bill does not clearly establish a standard that courts must use when ruling on a petition.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

29 conforming provisions to changes made by the act;
 30 providing an effective date.

31
 32 WHEREAS, victims of trafficking may be forced to engage in
 33 a variety of illegal acts beyond prostitution, and

34 WHEREAS, trafficked persons are not always recognized as
 35 victims by the police and prosecutors and are thus pressured
 36 into pleading guilty or do not understand the consequences of
 37 criminal charges, and

38 WHEREAS, all persons with criminal records reflecting their
 39 involvement in the sex industry may face barriers to employment
 40 and other life opportunities long after they escape from their
 41 trafficking situations, and

42 WHEREAS, there is a genuine need for a workable solution to
 43 alleviate the impact of the collateral consequences of
 44 conviction for victims of human trafficking, NOW, THEREFORE,

45

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

47

48 Section 1. Section 943.0583, Florida Statutes, is created
 49 to read:

50 943.0583 Human trafficking victim expunction.-

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

52 (a) "Human trafficking" has the same meaning as provided
 53 in s. 787.06.

54 (b) "Official documentation" means any documentation
 55 issued by a federal, state, or local agency tending to show a
 56 person's status as a victim of human trafficking.

57 (c) "Victim of human trafficking" means a person subjected
 58 to coercion, as defined in s. 787.06, for the purpose of being
 59 used in human trafficking, a minor who is a victim of human
 60 trafficking through coercion, as defined in s. 787.06, or an
 61 individual subject to human trafficking as defined by federal
 62 law.

63 (2) Notwithstanding any other provision of law, the court
 64 of original jurisdiction over the crime sought to be expunged
 65 may order a criminal justice agency to expunge the criminal
 66 history record of a victim of human trafficking who complies
 67 with the requirements of this section. This section does not
 68 confer any right to the expunction of any criminal history
 69 record, and any request for expunction of a criminal history
 70 record may be denied at the discretion of the court.

71 (3) A person who is a victim of human trafficking may
 72 petition for the expunction of any conviction for an offense
 73 committed while he or she was a victim of human trafficking,
 74 which offense was committed as a part of the human trafficking
 75 scheme of which he or she was a victim or at the direction of an
 76 operator of the scheme, including, but not limited to,
 77 violations under chapters 796 and 847. However, this section
 78 does not apply to any offense listed in s. 775.084(1)(b)1.
 79 Determination of the petition under this section should be by a
 80 preponderance of the evidence. A conviction expunged under this
 81 section is deemed to have been vacated due to a substantive
 82 defect in the underlying criminal proceedings.

83 (4) A petition under this section must be initiated by the
 84 petitioner with due diligence after the victim has ceased to be

85 a victim of human trafficking or has sought services for victims
 86 of human trafficking, subject to reasonable concerns for the
 87 safety of the victim, family members of the victim, or other
 88 victims of human trafficking that may be jeopardized by the
 89 bringing of such petition or for other reasons consistent with
 90 the purpose of this section.

91 (5) Official documentation of the victim's status creates
 92 a presumption that his or her participation in the offense was a
 93 result of having been a victim of human trafficking but is not
 94 required for granting a petition under this section. A
 95 determination made without such official documentation must be
 96 made by a showing of clear and convincing evidence.

97 (6) Each petition to a court to expunge a criminal history
 98 record is complete only when accompanied by:

99 (a) The petitioner's sworn statement attesting that the
 100 petitioner is eligible for such an expunction to the best of his
 101 or her knowledge or belief and does not have any other petition
 102 to expunge or any petition to seal pending before any court.

103 (b) Official documentation of the petitioner's status as a
 104 victim of human trafficking, if any exists.

105
 106 Any person who knowingly provides false information on such
 107 sworn statement to the court commits a felony of the third
 108 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 109 775.084.

110 (7) (a) In judicial proceedings under this section, a copy
 111 of the completed petition to expunge shall be served upon the
 112 appropriate state attorney or the statewide prosecutor and upon

113 the arresting agency; however, it is not necessary to make any
 114 agency other than the state a party. The appropriate state
 115 attorney or the statewide prosecutor and the arresting agency
 116 may respond to the court regarding the completed petition to
 117 expunge.

118 (b) The petitioner or the petitioner's attorney may appear
 119 at any hearing under this section telephonically, via video
 120 conference, or by other electronic means.

121 (c) If relief is granted by the court, the clerk of the
 122 court shall certify copies of the order to the appropriate state
 123 attorney or the statewide prosecutor and the arresting agency.
 124 The arresting agency is responsible for forwarding the order to
 125 any other agency listed in the court order to which the
 126 arresting agency disseminated the criminal history record
 127 information to which the order pertains. The department shall
 128 forward the order to expunge to the Federal Bureau of
 129 Investigation. The clerk of the court shall certify a copy of
 130 the order to any other agency that the records of the court
 131 reflect has received the criminal history record from the court.

132 (8)(a) Any criminal history record of a minor or an adult
 133 that is ordered expunged by the court of original jurisdiction
 134 over the crime sought to be expunged pursuant to this section
 135 must be physically destroyed or obliterated by any criminal
 136 justice agency having custody of such record, except that any
 137 criminal history record in the custody of the department must be
 138 retained in all cases.

139 (b) The person who is the subject of a criminal history
 140 record that is expunged under this section may lawfully deny or

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141 fail to acknowledge the arrests covered by the expunged record.

142 (c) A person who has been granted an expunction under this
 143 section may not be held under any law of this state to commit
 144 perjury or to be otherwise liable for giving a false statement
 145 by reason of such person's failure to recite or acknowledge an
 146 expunged criminal history record.

147 (9) Any reference to any other chapter, section, or
 148 subdivision of the Florida Statutes in this section constitutes
 149 a general reference under the doctrine of incorporation by
 150 reference.

151 Section 2. Subsection (6) of section 943.0582, Florida
 152 Statutes, is amended to read:

153 943.0582 Prearrest, postarrest, or teen court diversion
 154 program expunction.—

155 (6) Expunction or sealing granted under this section does
 156 not prevent the minor who receives such relief from petitioning
 157 for the expunction or sealing of a later criminal history record
 158 as provided for in ss. 943.0583, 943.0585, and 943.059, if the
 159 minor is otherwise eligible under those sections.

160 Section 3. Paragraph (a) of subsection (4) of section
 161 943.0585, Florida Statutes, is amended to read:

162 943.0585 Court-ordered expunction of criminal history
 163 records.—The courts of this state have jurisdiction over their
 164 own procedures, including the maintenance, expunction, and
 165 correction of judicial records containing criminal history
 166 information to the extent such procedures are not inconsistent
 167 with the conditions, responsibilities, and duties established by
 168 this section. Any court of competent jurisdiction may order a

169 criminal justice agency to expunge the criminal history record
 170 of a minor or an adult who complies with the requirements of
 171 this section. The court shall not order a criminal justice
 172 agency to expunge a criminal history record until the person
 173 seeking to expunge a criminal history record has applied for and
 174 received a certificate of eligibility for expunction pursuant to
 175 subsection (2). A criminal history record that relates to a
 176 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 177 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
 178 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
 179 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
 180 any violation specified as a predicate offense for registration
 181 as a sexual predator pursuant to s. 775.21, without regard to
 182 whether that offense alone is sufficient to require such
 183 registration, or for registration as a sexual offender pursuant
 184 to s. 943.0435, may not be expunged, without regard to whether
 185 adjudication was withheld, if the defendant was found guilty of
 186 or pled guilty or nolo contendere to the offense, or if the
 187 defendant, as a minor, was found to have committed, or pled
 188 guilty or nolo contendere to committing, the offense as a
 189 delinquent act. The court may only order expunction of a
 190 criminal history record pertaining to one arrest or one incident
 191 of alleged criminal activity, except as provided in this
 192 section. The court may, at its sole discretion, order the
 193 expunction of a criminal history record pertaining to more than
 194 one arrest if the additional arrests directly relate to the
 195 original arrest. If the court intends to order the expunction of
 196 records pertaining to such additional arrests, such intent must

197 | be specified in the order. A criminal justice agency may not
 198 | expunge any record pertaining to such additional arrests if the
 199 | order to expunge does not articulate the intention of the court
 200 | to expunge a record pertaining to more than one arrest. This
 201 | section does not prevent the court from ordering the expunction
 202 | of only a portion of a criminal history record pertaining to one
 203 | arrest or one incident of alleged criminal activity.

204 | Notwithstanding any law to the contrary, a criminal justice
 205 | agency may comply with laws, court orders, and official requests
 206 | of other jurisdictions relating to expunction, correction, or
 207 | confidential handling of criminal history records or information
 208 | derived therefrom. This section does not confer any right to the
 209 | expunction of any criminal history record, and any request for
 210 | expunction of a criminal history record may be denied at the
 211 | sole discretion of the court.

212 | (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
 213 | criminal history record of a minor or an adult which is ordered
 214 | expunged by a court of competent jurisdiction pursuant to this
 215 | section must be physically destroyed or obliterated by any
 216 | criminal justice agency having custody of such record; except
 217 | that any criminal history record in the custody of the
 218 | department must be retained in all cases. A criminal history
 219 | record ordered expunged that is retained by the department is
 220 | confidential and exempt from the provisions of s. 119.07(1) and
 221 | s. 24(a), Art. I of the State Constitution and not available to
 222 | any person or entity except upon order of a court of competent
 223 | jurisdiction. A criminal justice agency may retain a notation
 224 | indicating compliance with an order to expunge.

225 (a) The person who is the subject of a criminal history
 226 record that is expunged under this section or under other
 227 provisions of law, including former s. 893.14, former s. 901.33,
 228 and former s. 943.058, may lawfully deny or fail to acknowledge
 229 the arrests covered by the expunged record, except when the
 230 subject of the record:

- 231 1. Is a candidate for employment with a criminal justice
 232 agency;
- 233 2. Is a defendant in a criminal prosecution;
- 234 3. Concurrently or subsequently petitions for relief under
 235 this section, s. 943.0583, or s. 943.059;
- 236 4. Is a candidate for admission to The Florida Bar;
- 237 5. Is seeking to be employed or licensed by or to contract
 238 with the Department of Children and Family Services, the
 239 Division of Vocational Rehabilitation within the Department of
 240 Education, the Agency for Health Care Administration, the Agency
 241 for Persons with Disabilities, the Department of Health, the
 242 Department of Elderly Affairs, or the Department of Juvenile
 243 Justice or to be employed or used by such contractor or licensee
 244 in a sensitive position having direct contact with children, the
 245 disabled, or the elderly;
- 246 6. Is seeking to be employed or licensed by the Department
 247 of Education, any district school board, any university
 248 laboratory school, any charter school, any private or parochial
 249 school, or any local governmental entity that licenses child
 250 care facilities; or
- 251 7. Is seeking authorization from a seaport listed in s.
 252 311.09 for employment within or access to one or more of such

253 seaports pursuant to s. 311.12.

254 Section 4. Paragraph (a) of subsection (4) of section
 255 943.059, Florida Statutes, is amended to read:

256 943.059 Court-ordered sealing of criminal history
 257 records.—The courts of this state shall continue to have
 258 jurisdiction over their own procedures, including the
 259 maintenance, sealing, and correction of judicial records
 260 containing criminal history information to the extent such
 261 procedures are not inconsistent with the conditions,
 262 responsibilities, and duties established by this section. Any
 263 court of competent jurisdiction may order a criminal justice
 264 agency to seal the criminal history record of a minor or an
 265 adult who complies with the requirements of this section. The
 266 court shall not order a criminal justice agency to seal a
 267 criminal history record until the person seeking to seal a
 268 criminal history record has applied for and received a
 269 certificate of eligibility for sealing pursuant to subsection
 270 (2). A criminal history record that relates to a violation of s.
 271 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
 272 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
 273 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
 274 916.1075, a violation enumerated in s. 907.041, or any violation
 275 specified as a predicate offense for registration as a sexual
 276 predator pursuant to s. 775.21, without regard to whether that
 277 offense alone is sufficient to require such registration, or for
 278 registration as a sexual offender pursuant to s. 943.0435, may
 279 not be sealed, without regard to whether adjudication was
 280 withheld, if the defendant was found guilty of or pled guilty or

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281 | nolo contendere to the offense, or if the defendant, as a minor,
 282 | was found to have committed or pled guilty or nolo contendere to
 283 | committing the offense as a delinquent act. The court may only
 284 | order sealing of a criminal history record pertaining to one
 285 | arrest or one incident of alleged criminal activity, except as
 286 | provided in this section. The court may, at its sole discretion,
 287 | order the sealing of a criminal history record pertaining to
 288 | more than one arrest if the additional arrests directly relate
 289 | to the original arrest. If the court intends to order the
 290 | sealing of records pertaining to such additional arrests, such
 291 | intent must be specified in the order. A criminal justice agency
 292 | may not seal any record pertaining to such additional arrests if
 293 | the order to seal does not articulate the intention of the court
 294 | to seal records pertaining to more than one arrest. This section
 295 | does not prevent the court from ordering the sealing of only a
 296 | portion of a criminal history record pertaining to one arrest or
 297 | one incident of alleged criminal activity. Notwithstanding any
 298 | law to the contrary, a criminal justice agency may comply with
 299 | laws, court orders, and official requests of other jurisdictions
 300 | relating to sealing, correction, or confidential handling of
 301 | criminal history records or information derived therefrom. This
 302 | section does not confer any right to the sealing of any criminal
 303 | history record, and any request for sealing a criminal history
 304 | record may be denied at the sole discretion of the court.

305 | (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
 306 | history record of a minor or an adult which is ordered sealed by
 307 | a court of competent jurisdiction pursuant to this section is
 308 | confidential and exempt from the provisions of s. 119.07(1) and

309 | s. 24(a), Art. I of the State Constitution and is available only
 310 | to the person who is the subject of the record, to the subject's
 311 | attorney, to criminal justice agencies for their respective
 312 | criminal justice purposes, which include conducting a criminal
 313 | history background check for approval of firearms purchases or
 314 | transfers as authorized by state or federal law, to judges in
 315 | the state courts system for the purpose of assisting them in
 316 | their case-related decisionmaking responsibilities, as set forth
 317 | in s. 943.053(5), or to those entities set forth in
 318 | subparagraphs (a)1., 4., 5., 6., and 8. for their respective
 319 | licensing, access authorization, and employment purposes.

320 | (a) The subject of a criminal history record sealed under
 321 | this section or under other provisions of law, including former
 322 | s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
 323 | deny or fail to acknowledge the arrests covered by the sealed
 324 | record, except when the subject of the record:

- 325 | 1. Is a candidate for employment with a criminal justice
 326 | agency;
- 327 | 2. Is a defendant in a criminal prosecution;
- 328 | 3. Concurrently or subsequently petitions for relief under
 329 | this section, s. 943.0583, or s. 943.0585;
- 330 | 4. Is a candidate for admission to The Florida Bar;
- 331 | 5. Is seeking to be employed or licensed by or to contract
 332 | with the Department of Children and Family Services, the
 333 | Division of Vocational Rehabilitation within the Department of
 334 | Education, the Agency for Health Care Administration, the Agency
 335 | for Persons with Disabilities, the Department of Health, the
 336 | Department of Elderly Affairs, or the Department of Juvenile

337 Justice or to be employed or used by such contractor or licensee
 338 in a sensitive position having direct contact with children, the
 339 disabled, or the elderly;

340 6. Is seeking to be employed or licensed by the Department
 341 of Education, any district school board, any university
 342 laboratory school, any charter school, any private or parochial
 343 school, or any local governmental entity that licenses child
 344 care facilities;

345 7. Is attempting to purchase a firearm from a licensed
 346 importer, licensed manufacturer, or licensed dealer and is
 347 subject to a criminal history check under state or federal law;
 348 or

349 8. Is seeking authorization from a Florida seaport
 350 identified in s. 311.09 for employment within or access to one
 351 or more of such seaports pursuant to s. 311.12.

352 Section 5. Paragraph (e) of subsection (1) of section
 353 961.06, Florida Statutes, is amended to read:

354 961.06 Compensation for wrongful incarceration.—

355 (1) Except as otherwise provided in this act and subject
 356 to the limitations and procedures prescribed in this section, a
 357 person who is found to be entitled to compensation under the
 358 provisions of this act is entitled to:

359 (e) Notwithstanding any provision to the contrary in s.
 360 943.0583 or s. 943.0585, immediate administrative expunction of
 361 the person's criminal record resulting from his or her wrongful
 362 arrest, wrongful conviction, and wrongful incarceration. The
 363 Department of Legal Affairs and the Department of Law
 364 Enforcement shall, upon a determination that a claimant is

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365 entitled to compensation, immediately take all action necessary
 366 to administratively expunge the claimant's criminal record
 367 arising from his or her wrongful arrest, wrongful conviction,
 368 and wrongful incarceration. All fees for this process shall be
 369 waived.

370
 371 The total compensation awarded under paragraphs (a), (c), and
 372 (d) may not exceed \$2 million. No further award for attorney's
 373 fees, lobbying fees, costs, or other similar expenses shall be
 374 made by the state.

375 Section 6. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1325 (2013)

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 _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Eagle offered the following:

4
5 **Amendment (with title amendment)**

6 Between lines 374 and 375, insert:

7 Section 6. Paragraph (a) of subsection (23) of section
8 90.803, Florida Statutes, is amended to read:

9 90.803 Hearsay exceptions; availability of declarant
10 immaterial.—The provision of s. 90.802 to the contrary
11 notwithstanding, the following are not inadmissible as evidence,
12 even though the declarant is available as a witness:

13 (23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.—

14 (a) Unless the source of information or the method or
15 circumstances by which the statement is reported indicates a
16 lack of trustworthiness, an out-of-court statement made by a
17 child victim with a physical, mental, emotional, or
18 developmental age of 16 ~~11~~ or less describing any act of child
19 abuse or neglect, any act of sexual abuse against a child, the
20 offense of child abuse, the offense of aggravated child abuse,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1325 (2013)

Amendment No. 2

21 or any offense involving an unlawful sexual act, contact,
22 intrusion, or penetration performed in the presence of, with,
23 by, or on the declarant child, not otherwise admissible, is
24 admissible in evidence in any civil or criminal proceeding if:

25 1. The court finds in a hearing conducted outside the
26 presence of the jury that the time, content, and circumstances
27 of the statement provide sufficient safeguards of reliability.
28 In making its determination, the court may consider the mental
29 and physical age and maturity of the child, the nature and
30 duration of the abuse or offense, the relationship of the child
31 to the offender, the reliability of the assertion, the
32 reliability of the child victim, and any other factor deemed
33 appropriate; and

34 2. The child either:

35 a. Testifies; or

36 b. Is unavailable as a witness, provided that there is
37 other corroborative evidence of the abuse or offense.

38 Unavailability shall include a finding by the court that the
39 child's participation in the trial or proceeding would result in
40 a substantial likelihood of severe emotional or mental harm, in
41 addition to findings pursuant to s. 90.804(1).
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T I T L E A M E N D M E N T

Remove line 29 and insert:

conforming provisions to changes made by the act; amending s.
90.803, F.S.; providing that an out-of-court statement by a
child victim with a physical, mental, emotional, or

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1325 (2013)

Amendment No. 2

49 developmental age of 16 or less rather than 11 or less
50 describing specified criminal acts is admissible in evidence in
51 certain instances;

52

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1327 Pub. Rec./Crim. Hist./Human Trafficking Victims
SPONSOR(S): Spano
TIED BILLS: HB 1325 IDEN./SIM. BILLS: SB 1734

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>LJJ</i>	Cunningham <i>SC</i>
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes guarantee every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Currently, s. 943.0585, F.S., provides a public records exemption for criminal history records that have been expunged but that are retained by the Florida Department of Law Enforcement (FDLE).

The bill is linked to HB 1325, which creates s. 943.0583, F.S., authorizing a victim of human trafficking to petition the court for the expunction of any conviction for an offense committed while he or she was a victim of human trafficking. HB 1325 specifies that criminal history records expunged pursuant to the newly created statute must be retained by FDLE.

The bill creates a public record exemption for criminal history records that have been expunged pursuant to s. 943.0583, F.S., and that have been retained by FDLE.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

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

The bill provides an effective date linked to the passage of HB1325, or similar legislation.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Florida Constitution

Article I, Section 24(a), of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹

The Legislature, however, may provide by general law passed by two-thirds vote of each chamber for the exemption of records from the requirements of Article I, Section 24 of the Florida Constitution, provided the exemption:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁵

Section 943.0585, F.S., Court-Ordered Expunction

Currently, s. 943.0585(4), F.S., provides a public record exemption relating to the expunction of criminal history records. When a criminal history record is expunged, criminal justice agencies in possession of the record, except for the Florida Department of Law Enforcement (FDLE), must physically destroy the record.⁶ FDLE is required to retain the criminal history record, but such records are confidential and exempt from s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution and are not available to any person or entity except upon order of the court with jurisdiction.⁷

¹ Article 1, Sec. 24(a), FLA. CONST.

² Article 1, Sec. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ Section 943.0585(4), F.S.

⁷ *Id.*

Effect of the Bill

The bill is linked to HB 1325, which creates s. 943.0583, F.S., and authorizes a victim of human trafficking to petition the court for the expunction of any conviction for an offense committed while he or she was a victim of human trafficking. HB 1325 requires criminal history records expunged pursuant to the newly created statute to be physically destroyed by the criminal justice agency having custody of the record, except for FDLE, which must keep the criminal history record in all cases.

The bill amends s. 943.0583, F.S., to provide that the criminal history record retained by FDLE (as specified in HB 1325, s. 943.0583, F.S.) is confidential and exempt from s. 119.07(1), F.S., and Article I, Section 24(a) of the Florida Constitution and is not available to any person or entity except upon order of the court with jurisdiction.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides the following statement of public necessity as required by the Florida Constitution:⁸

The Legislature finds that it is a public necessity that persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.

B. SECTION DIRECTORY:

Section 1. Creates s. 943.0583, F.S., relating to human trafficking victim expunction.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date linked to the passage of HB1325, or similar legislation and their effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**A. FISCAL IMPACT ON STATE GOVERNMENT:****1. Revenues:**

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

2. Expenditures:

The 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.

⁸ Article 1, Sec. 24(c), FLA. CONST.
STORAGE NAME: h1327.CRJS.DOCX
DATE: 3/15/2013

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

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A bill to be entitled
 An act relating to public records; amending s.
 943.0583, F.S.; providing an exemption from public
 records requirements for criminal history records of
 victims of human trafficking expunged under s.
 943.0583, F.S.; providing for future legislative
 review and repeal of the exemption under the Open
 Government Sunset Review Act; providing a statement of
 public necessity; providing a contingent effective
 date.

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

Section 1. Subsection (9) of section 943.0583, Florida
 Statutes, is created to read:

943.0583 Human trafficking victim expunction.—

(9) (a) A criminal history record ordered expunged under
 this section that is retained by the department is confidential
 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 Constitution and shall not be disclosed to any person or entity
 except upon order of a court of competent jurisdiction. A
 criminal justice agency may retain a notation indicating
 compliance with an order to expunge.

(b) This subsection is subject to the Open Government
 Sunset Review Act in accordance with s. 119.15 and shall stand
 repealed on October 2, 2018, unless reviewed and saved from
 repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public

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29 necessity that persons who are victims of human trafficking and
30 who have been convicted of crimes committed at the behest of
31 their traffickers are themselves victims of crimes. Such victims
32 face barriers to employment and other life opportunities as long
33 as these criminal convictions remain on record and accessible to
34 potential employers and others. It is necessary that these
35 records be made confidential in order for human trafficking
36 victims to have the chance to rebuild their lives and reenter
37 society.

38 Section 3. This act shall take effect on the same date
39 that HB 1325 or similar legislation takes effect, if such
40 legislation is adopted in the same legislative session or an
41 extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1355 Purchase of Firearms by Mentally Ill Persons
SPONSOR(S): Watson, B.
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cunningham <i>SM</i>	Cunningham <i>SM</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Section 790.065, FS., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms to persons who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court. The term "committed to a mental institution" is currently defined as:

Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.

A person who is taken to a receiving facility pursuant to the Baker Act must be examined by a physician and, within 72 hours, may be released (unless charged with a crime) for voluntary outpatient or inpatient treatment. Because the definition of "committed to a mental institution" does not include persons who have *voluntarily* admitted themselves to a mental institution, such persons are not precluded from purchasing a firearm.

The bill amends the definition of "committed to a mental institution" to include persons who have had an involuntary examination under the Baker Act and who have voluntarily admitted themselves for outpatient or inpatient treatment so long as the below requirements are satisfied:

- The examining physician found that the person is an imminent danger to himself or herself or others;
- The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed;
- Before agreeing to voluntary treatment, the person received written notice of the examining physician's finding and certification, and written notice that as a result of such finding, the person would be prohibited from purchasing a firearm, and would not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06, F.S., and the person acknowledged such notice in writing;
- Within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgement is filed with the clerk of the court for the county in which the involuntary examination under s. 394.463 occurred and the clerk presented the records to a judge or magistrate within 24 hours after receipt of the records; and
- A judge or a magistrate has the lawful authority to review the record classifying the person as an imminent danger to himself or herself or others, and to approve the record for submittal to the department. If a judge or magistrate approves the submittal of the records to the department, it must be submitted to the department within 24 hours.

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

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Mental Health Act

In 1971, the legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs in the state.¹ Codified in Part I of Chapter 394, F.S., the Baker Act provides the authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment.

Section 394.463, F.S., provides that a person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination, or the person is unable to determine for himself or herself whether examination is necessary; and
 - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
 - There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

A patient must be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay.² In no case may a patient be held in a receiving facility for involuntary examination longer than 72 hours.³ Within the 72-hour examination period, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case the patient must be returned to the custody of a law enforcement officer;
- The patient must be released (unless charged with a crime) for voluntary outpatient treatment;
- The patient (unless charged with a crime) must be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient must be admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in the circuit court when outpatient or inpatient treatment is deemed necessary.⁴

Florida Firearms Law

In accordance with the federal Brady Handgun Violence Prevention Act,⁵ Florida law requires federal firearms licensees⁶ (FFLs) to request background checks on individuals attempting to purchase a firearm. To comply with this requirement, FFLs in Florida contact the Florida Department of Law Enforcement's (FDLE) Firearms Purchase Program (FPP).

¹ Chapter 71-131, L.O.F.

² Section 394.463(2)(f), F.S.

³ *Id.*

⁴ Section 394.463(2)(i), F.S.

⁵ Pub. L. No. 103-159 (1993).

⁶ 18 U.S.C. 923 sets forth the requirements necessary to obtain a federal firearms license. The Federal Firearms Licensing Center, a branch within the Bureau of Alcohol, Tobacco, Firearms and Explosives, is responsible for licensing firearms manufacturers, importers, collectors, and dealers, and implementing related legislation.

Created in 1989, the FPP operates 7 days a week, 363 days a year and is designed to provide FFLs immediate responses to background check inquiries.⁷ Pursuant to s. 790.065, F.S., FFLs must contact the FPP using a toll-free number to request a criminal history check on potential purchasers prior to selling or transferring a firearm. Upon receiving such request, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the sale or transfer of a firearm would violate state or federal law, and provides a response to the FFL.⁸

Section 790.065, F.S., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms⁹ to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.¹⁰ Florida defines "adjudicated mentally defective" as:

A determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.¹¹

The term "committed to a mental institution" is defined as:

Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.¹²

To help ensure that the above-described persons are not able to purchase a firearm, FDLE created the Mental Competency (MECOM) database. Codified in s. 790.065(2)(a), F.S., the MECOM database is an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. The statute requires clerks to submit court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month of the adjudication or commitment.¹³ These records are then uploaded into the MECOM database,¹⁴ and are accessed by the FPP as part of the screening of potential firearm purchasers.¹⁵ According to FDLE, there are currently more than 90,000 mental health records in the MECOM database.

⁷ Section 790.065, F.S.

⁸ *Id.*

⁹ "Firearm" is defined in s. 790.001(6), F.S., as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term 'firearm' does not include an antique firearm unless the antique firearm is used in the commission of a crime."

¹⁰ Section 790.065(1) and (2)(a)4., F.S.

¹¹ Section 790.065(2)(a)4.a., F.S.

¹² Section 790.065(2)(a)4.b., F.S.

¹³ Section 790.065(2)(a)4.c., F.S.

¹⁴ FDLE also uploads the records into the National Instant Criminal Background Check System (NICS).

¹⁵ FDLE is authorized to disclose the data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. FDLE is also authorized to disclose any collected data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license. Section 790.065(2)(a)4.f., F.S.

As noted above, a person who is taken to a receiving facility pursuant to the Baker Act must be examined by a physician and, within 72 hours, may be released (unless charged with a crime) for voluntary outpatient or inpatient treatment. Because the definition of "committed to a mental institution" does not include persons who have *voluntarily* admitted themselves to a mental institution, such persons are not precluded from purchasing a firearm.

Effect of the Bill

The bill amends the definition of "committed to a mental institution" in s. 790.065(2)(a)4.b., F.S., to specify that the term means:

Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution, unless the voluntary admission was for outpatient or inpatient treatment of a person who had an involuntary examination under s. 394.463, and:

- The examining physician found that the person is an imminent danger to himself or herself or others;
- The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed under s. 394.463(2)(i)4.;
- Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she would be prohibited from purchasing a firearm, and would not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06 and the person acknowledged such notice in writing, in substantially the following form:

"I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, the doctor will file a petition in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. I understand that by agreeing to voluntary treatment in this situation, I will be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

- Within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgement is filed with the clerk of the court for the county in which the involuntary examination under s. 394.463 occurred and the clerk presented the records to a judge or magistrate within 24 hours after receipt of the records.
- A judge or a magistrate has the lawful authority to review the record classifying the person as an imminent danger to himself or herself or others, and to approve the record for submittal to the department. If a judge or magistrate approves the submittal of the records to the department, it must be submitted to the department within 24 hours.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.065, F.S., relating to sale and delivery of firearms.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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:

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 additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

29 | the licensee's call or by return call, forthwith:

30 | (a) Review any records available to determine if the
31 | potential buyer or transferee:

32 | 1. Has been convicted of a felony and is prohibited from
33 | receipt or possession of a firearm pursuant to s. 790.23;

34 | 2. Has been convicted of a misdemeanor crime of domestic
35 | violence, and therefore is prohibited from purchasing a firearm;

36 | 3. Has had adjudication of guilt withheld or imposition of
37 | sentence suspended on any felony or misdemeanor crime of
38 | domestic violence unless 3 years have elapsed since probation or
39 | any other conditions set by the court have been fulfilled or
40 | expunction has occurred; or

41 | 4. Has been adjudicated mentally defective or has been
42 | committed to a mental institution by a court and as a result is
43 | prohibited by federal law from purchasing a firearm.

44 | a. As used in this subparagraph, "adjudicated mentally
45 | defective" means a determination by a court that a person, as a
46 | result of marked subnormal intelligence, or mental illness,
47 | incompetency, condition, or disease, is a danger to himself or
48 | herself or to others or lacks the mental capacity to contract or
49 | manage his or her own affairs. The phrase includes a judicial
50 | finding of incapacity under s. 744.331(6)(a), an acquittal by
51 | reason of insanity of a person charged with a criminal offense,
52 | and a judicial finding that a criminal defendant is not
53 | competent to stand trial.

54 | b. As used in this subparagraph, "committed to a mental
55 | institution" means involuntary commitment, commitment for mental
56 | defectiveness or mental illness, and commitment for substance

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57 | abuse. The phrase includes involuntary inpatient placement as
 58 | defined in s. 394.467, involuntary outpatient placement as
 59 | defined in s. 394.4655, involuntary assessment and stabilization
 60 | under s. 397.6818, and involuntary substance abuse treatment
 61 | under s. 397.6957, but does not include a person in a mental
 62 | institution for observation or discharged from a mental
 63 | institution based upon the initial review by the physician or a
 64 | voluntary admission to a mental institution, unless the
 65 | voluntary admission was for outpatient or inpatient treatment of
 66 | a person who had an involuntary examination under s. 394.463,
 67 | and:

68 | (I) The examining physician found that the person is an
 69 | imminent danger to himself or herself or others;

70 | (II) The examining physician certified that if the person
 71 | did not agree to voluntary treatment, a petition for involuntary
 72 | outpatient or inpatient treatment would have been filed under s.
 73 | 394.463(2)(i)4.;

74 | (III) Before agreeing to voluntary treatment, the person
 75 | received written notice of that finding and certification, and
 76 | written notice that as a result of such finding, he or she would
 77 | be prohibited from purchasing a firearm, and would not be
 78 | eligible to apply for or retain a concealed weapon or firearms
 79 | license under s. 790.06 and the person acknowledged such notice
 80 | in writing, in substantially the following form:

81 |
 82 | "I understand that the doctor who examined me believes
 83 | I am a danger to myself or to others. I understand
 84 | that if I do not agree to voluntary treatment, the

85 doctor will file a petition in court to require me to
86 receive involuntary treatment. I understand that if
87 that petition is filed, I have the right to contest
88 it. I understand that by agreeing to voluntary
89 treatment in this situation, I will be prohibited from
90 buying firearms and from applying for or retaining a
91 concealed weapons or firearms license until I apply
92 for and receive relief from that restriction under
93 Florida law."

94
95 (IV) Within 24 hours after the person's agreement to
96 voluntary admission, a record of the finding, certification,
97 notice, and written acknowledgement is filed with the clerk of
98 the court for the county in which the involuntary examination
99 under s. 394.463 occurred and the clerk presented the records to
100 a judge or magistrate within 24 hours after receipt of the
101 records.

102 (V) A judge or a magistrate has the lawful authority to
103 review the record classifying the person as an imminent danger
104 to himself or herself or others, and to approve the record for
105 submittal to the department. If a judge or magistrate approves
106 the submittal of the records to the department, it must be
107 submitted to the department within 24 hours.

108 c. In order to check for these conditions, the department
109 shall compile and maintain an automated database of persons who
110 are prohibited from purchasing a firearm based on court records
111 of adjudications of mental defectiveness or commitments to
112 mental institutions. Clerks of court shall submit these records

113 to the department within 1 month after the rendition of the
 114 adjudication or commitment. Reports shall be submitted in an
 115 automated format. The reports must, at a minimum, include the
 116 name, along with any known alias or former name, the sex, and
 117 the date of birth of the subject.

118 d. A person who has been adjudicated mentally defective or
 119 committed to a mental institution, as those terms are defined in
 120 this paragraph, may petition the circuit court that made the
 121 adjudication or commitment for relief from the firearm
 122 disabilities imposed by such adjudication or commitment. A copy
 123 of the petition shall be served on the state attorney for the
 124 county in which the person was adjudicated or committed. The
 125 state attorney may object to and present evidence relevant to
 126 the relief sought by the petition. The hearing on the petition
 127 may be open or closed as the petitioner may choose. The
 128 petitioner may present evidence and subpoena witnesses to appear
 129 at the hearing on the petition. The petitioner may confront and
 130 cross-examine witnesses called by the state attorney. A record
 131 of the hearing shall be made by a certified court reporter or by
 132 court-approved electronic means. The court shall make written
 133 findings of fact and conclusions of law on the issues before it
 134 and issue a final order. The court shall grant the relief
 135 requested in the petition if the court finds, based on the
 136 evidence presented with respect to the petitioner's reputation,
 137 the petitioner's mental health record and, if applicable,
 138 criminal history record, the circumstances surrounding the
 139 firearm disability, and any other evidence in the record, that
 140 the petitioner will not be likely to act in a manner that is

141 | dangerous to public safety and that granting the relief would
 142 | not be contrary to the public interest. If the final order
 143 | denies relief, the petitioner may not petition again for relief
 144 | from firearm disabilities until 1 year after the date of the
 145 | final order. The petitioner may seek judicial review of a final
 146 | order denying relief in the district court of appeal having
 147 | jurisdiction over the court that issued the order. The review
 148 | shall be conducted de novo. Relief from a firearm disability
 149 | granted under this sub-subparagraph has no effect on the loss of
 150 | civil rights, including firearm rights, for any reason other
 151 | than the particular adjudication of mental defectiveness or
 152 | commitment to a mental institution from which relief is granted.

153 | e. Upon receipt of proper notice of relief from firearm
 154 | disabilities granted under sub-subparagraph d., the department
 155 | shall delete any mental health record of the person granted
 156 | relief from the automated database of persons who are prohibited
 157 | from purchasing a firearm based on court records of
 158 | adjudications of mental defectiveness or commitments to mental
 159 | institutions.

160 | f. The department is authorized to disclose the collected
 161 | data to agencies of the Federal Government and other states for
 162 | use exclusively in determining the lawfulness of a firearm sale
 163 | or transfer. The department is also authorized to disclose any
 164 | collected data to the Department of Agriculture and Consumer
 165 | Services for purposes of determining eligibility for issuance of
 166 | a concealed weapons or concealed firearms license and for
 167 | determining whether a basis exists for revoking or suspending a
 168 | previously issued license pursuant to s. 790.06(10). When a

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169 potential buyer or transferee appeals a nonapproval based on
170 these records, the clerks of court and mental institutions
171 shall, upon request by the department, provide information to
172 help determine whether the potential buyer or transferee is the
173 same person as the subject of the record. Photographs and any
174 other data that could confirm or negate identity must be made
175 available to the department for such purposes, notwithstanding
176 any other provision of state law to the contrary. Any such
177 information that is made confidential or exempt from disclosure
178 by law shall retain such confidential or exempt status when
179 transferred to the department.

180 Section 2. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1355 (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 _____

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee
3 Representative Watson, B. offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (2) of section
8 790.065, Florida Statutes, is amended to read:

9 790.065 Sale and delivery of firearms.-

10 (2) Upon receipt of a request for a criminal history
11 record check, the Department of Law Enforcement shall, during
12 the licensee's call or by return call, forthwith:

13 (a) Review any records available to determine if the
14 potential buyer or transferee:

15 1. Has been convicted of a felony and is prohibited from
16 receipt or possession of a firearm pursuant to s. 790.23;

17 2. Has been convicted of a misdemeanor crime of domestic
18 violence, and therefore is prohibited from purchasing a firearm;

19 3. Has had adjudication of guilt withheld or imposition of
20 sentence suspended on any felony or misdemeanor crime of

COMMITTEE/SUBCOMMITTEE AMENDMENT

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Amendment No. 1

21 domestic violence unless 3 years have elapsed since probation or
22 any other conditions set by the court have been fulfilled or
23 expunction has occurred; or

24 4. Has been adjudicated mentally defective or has been
25 committed to a mental institution by a court and as a result is
26 prohibited by federal law from purchasing a firearm.

27 a. As used in this subparagraph, "adjudicated mentally
28 defective" means a determination by a court that a person, as a
29 result of marked subnormal intelligence, or mental illness,
30 incompetency, condition, or disease, is a danger to himself or
31 herself or to others or lacks the mental capacity to contract or
32 manage his or her own affairs. The phrase includes a judicial
33 finding of incapacity under s. 744.331(6)(a), an acquittal by
34 reason of insanity of a person charged with a criminal offense,
35 and a judicial finding that a criminal defendant is not
36 competent to stand trial.

37 b. As used in this subparagraph, "committed to a mental
38 institution" means:

39 (I) Involuntary ~~involuntary~~ commitment, commitment for
40 mental defectiveness or mental illness, and commitment for
41 substance abuse. The phrase includes involuntary inpatient
42 placement as defined in s. 394.467, involuntary outpatient
43 placement as defined in s. 394.4655, involuntary assessment and
44 stabilization under s. 397.6818, and involuntary substance abuse
45 treatment under s. 397.6957, but does not include a person in a
46 mental institution for observation or discharged from a mental
47 institution based upon the initial review by the physician or a
48 voluntary admission to a mental institution; or-

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49 (II) Notwithstanding (I), voluntary admission to a mental
50 institution for outpatient or inpatient treatment of a person
51 who had an involuntary examination under s. 394.463, and:

52 (A) The examining physician found that the person is an
53 imminent danger to himself or herself or others;

54 (B) The examining physician certified that if the person
55 did not agree to voluntary treatment, a petition for involuntary
56 outpatient or inpatient treatment would have been filed under s.
57 394.463(2)(i)4.;

58 (C) Before agreeing to voluntary treatment, the person
59 received written notice of that finding and certification, and
60 written notice that as a result of such finding, he or she may
61 be prohibited from purchasing a firearm, and may not be eligible
62 to apply for or retain a concealed weapon or firearms license
63 under s. 790.06 and the person acknowledged such notice in
64 writing, in substantially the following form:

65
66 "I understand that the doctor who examined me believes
67 I am a danger to myself or to others. I understand
68 that if I do not agree to voluntary treatment, the
69 doctor will file a petition in court to require me to
70 receive involuntary treatment. I understand that if
71 that petition is filed, I have the right to contest
72 it. I understand that by agreeing to voluntary
73 treatment in this situation, I may be prohibited from
74 buying firearms and from applying for or retaining a
75 concealed weapons or firearms license until I apply
76 for and receive relief from that restriction under

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77 Florida law."; and

78
79 (D) A judge or a magistrate has, pursuant to sub-sub-
80 subparagraph c.(II), reviewed the record of the finding,
81 certification, notice, and written acknowledgement classifying
82 the person as an imminent danger to himself or herself or
83 others, and approved such record for submittal to the
84 department.

85 c. In order to check for these conditions, the department
86 shall compile and maintain an automated database of persons who
87 are prohibited from purchasing a firearm based on court records
88 of adjudications of mental defectiveness or commitments to
89 mental institutions.

90 (I) Except as provided in sub-sub-subparagraph (II), clerks
91 Clerks of court shall submit these records to the department
92 within 1 month after the rendition of the adjudication or
93 commitment. Reports shall be submitted in an automated format.
94 The reports must, at a minimum, include the name, along with any
95 known alias or former name, the sex, and the date of birth of
96 the subject.

97 (II) For persons committed to a mental institution pursuant
98 to sub-sub-subparagraph 4.b.(II), within 24 hours after the
99 person's agreement to voluntary admission, a record of the
100 finding, certification, notice, and written acknowledgement must
101 be filed with the clerk of the court for the county in which the
102 involuntary examination under s. 394.463 occurred. The clerk
103 must present the records to a judge or magistrate within 24
104 hours after receipt of the records. A judge or magistrate is

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105 required and has the lawful authority to review the records and,
106 if the judge or magistrate determines that the record supports
107 the classifying of the person as an imminent danger to himself
108 or herself or others, to approve the record for submittal to the
109 department. If a judge or magistrate approves the submittal of
110 the record to the department, the record must be submitted to
111 the department within 24 hours.

112 d. A person who has been adjudicated mentally defective or
113 committed to a mental institution, as those terms are defined in
114 this paragraph, may petition the circuit court that made the
115 adjudication or commitment, or the court that approved the
116 record for submittal to the department pursuant to sub-sub-
117 subparagraph c. (II), for relief from the firearm disabilities
118 imposed by such adjudication or commitment. A copy of the
119 petition shall be served on the state attorney for the county in
120 which the person was adjudicated or committed. The state
121 attorney may object to and present evidence relevant to the
122 relief sought by the petition. The hearing on the petition may
123 be open or closed as the petitioner may choose. The petitioner
124 may present evidence and subpoena witnesses to appear at the
125 hearing on the petition. The petitioner may confront and cross-
126 examine witnesses called by the state attorney. A record of the
127 hearing shall be made by a certified court reporter or by court-
128 approved electronic means. The court shall make written findings
129 of fact and conclusions of law on the issues before it and issue
130 a final order. The court shall grant the relief requested in the
131 petition if the court finds, based on the evidence presented
132 with respect to the petitioner's reputation, the petitioner's

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133 mental health record and, if applicable, criminal history
134 record, the circumstances surrounding the firearm disability,
135 and any other evidence in the record, that the petitioner will
136 not be likely to act in a manner that is dangerous to public
137 safety and that granting the relief would not be contrary to the
138 public interest. If the final order denies relief, the
139 petitioner may not petition again for relief from firearm
140 disabilities until 1 year after the date of the final order. The
141 petitioner may seek judicial review of a final order denying
142 relief in the district court of appeal having jurisdiction over
143 the court that issued the order. The review shall be conducted
144 de novo. Relief from a firearm disability granted under this
145 sub-subparagraph has no effect on the loss of civil rights,
146 including firearm rights, for any reason other than the
147 particular adjudication of mental defectiveness or commitment to
148 a mental institution from which relief is granted.

149 e. Upon receipt of proper notice of relief from firearm
150 disabilities granted under sub-subparagraph d., the department
151 shall delete any mental health record of the person granted
152 relief from the automated database of persons who are prohibited
153 from purchasing a firearm based on court records of
154 adjudications of mental defectiveness or commitments to mental
155 institutions.

156 f. The department is authorized to disclose the data
157 collected pursuant to this subparagraph ~~data~~ to agencies of the
158 Federal Government and other states for use exclusively in
159 determining the lawfulness of a firearm sale or transfer. The
160 department is also authorized to disclose this ~~any collected~~

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161 data to the Department of Agriculture and Consumer Services for
162 purposes of determining eligibility for issuance of a concealed
163 weapons or concealed firearms license and for determining
164 whether a basis exists for revoking or suspending a previously
165 issued license pursuant to s. 790.06(10). When a potential buyer
166 or transferee appeals a nonapproval based on these records, the
167 clerks of court and mental institutions shall, upon request by
168 the department, provide information to help determine whether
169 the potential buyer or transferee is the same person as the
170 subject of the record. Photographs and any other data that could
171 confirm or negate identity must be made available to the
172 department for such purposes, notwithstanding any other
173 provision of state law to the contrary. Any such information
174 that is made confidential or exempt from disclosure by law shall
175 retain such confidential or exempt status when transferred to
176 the department.

177 Section 2. This act shall take effect July 1, 2013.

178

179

180

181

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

182

Remove everything before the enacting clause and insert:

183

An act relating to the purchase of firearms by mentally ill
184 persons; amending s. 790.065, F.S.; providing conditions under
185 which a person who has been voluntarily admitted to a mental
186 institution for treatment and has undergone an involuntary
187 examination under the Baker Act may be prohibited from
188 purchasing a firearm; providing requirements for the examining

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189 | physician; providing for judicial review of certain findings;
190 | providing specified notice requirements; providing form and
191 | contents of notice; providing requirements with respect to the
192 | filing of specified records with the court and presentation of
193 | such records to a judge or magistrate; providing lawful
194 | authority of a judge or magistrate to review specified records
195 | and submit such records to the Department of Law Enforcement;
196 | providing a timeframe for submission of records to the
197 | department upon approval of a record by a judge or magistrate;
198 | providing an effective date.