



Judiciary Committee

**Thursday, January 21, 2016
9:00 a.m. – 11:00 a.m.
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Charles McBurney
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Thursday, January 21, 2016 09:00 am
End Date and Time: Thursday, January 21, 2016 11:00 am
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 105 Public Assistance Fraud by Criminal Justice Subcommittee, Smith
CS/HB 135 Mandatory Minimum Sentences by Criminal Justice Subcommittee, Combee, Edwards
CS/HB 503 Judgments by Civil Justice Subcommittee, Renner
CS/CS/HB 545 Human Trafficking by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Spano
CS/HB 675 Federal Immigration Enforcement by Civil Justice Subcommittee, Metz
HB 7031 Marketable Record Titles to Real Property by Civil Justice Subcommittee, Passidomo

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Wednesday, January 20, 2016.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, January 20, 2016.

NOTICE FINALIZED on 01/19/2016 4:03PM by Ingram.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 105 Public Assistance Fraud
SPONSOR(S): Criminal Justice Subcommittee; Smith and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 3 N, As CS	White	White
2) Justice Appropriations Subcommittee	6 Y, 4 N	McAuliffe	Lloyd
3) Judiciary Committee		White <i>TW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Currently, s. 414.39(2), F.S., in relevant part, makes it a criminal offense for a person to knowingly use, transfer, acquire, *traffic*, alter, forge, or possess, in any manner not authorized by law, a food assistance identification card or an authorization, including an electronic authorization, for the expenditure of food assistance benefits. The subsection also specifies that it is a crime for a person to attempt to commit, or to aid or abet another person in the commission of, the aforementioned acts. Depending on the value of the public assistance wrongfully received, retained, misappropriated, sought, or used, these criminal offenses range from a first degree misdemeanor to a first degree felony.

Florida law does not currently describe acts that are included in the term "traffic" as used in s. 414.39(2), F.S. The bill adds language providing that the following acts are included in the term "traffic":

- Buying, selling, stealing, or otherwise effecting an exchange of food assistance benefits for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- Intentionally reselling a product purchased with food assistance benefits in exchange for cash or consideration other than eligible food; or
- Intentionally purchasing a product originally purchased with food assistance benefits using cash or consideration other than eligible food.

The bill also makes it a third degree felony for an individual to possess two or more electronic benefit transfer (EBT) cards for food assistance benefits, which were issued to other persons and to sell or attempt to sell one or more of the cards. The bill specifies that each EBT card possessed, sold, or attempted to be sold in violation of this prohibition constitutes a separate offense for which an offender must complete 40 hours of community service. If determined feasible by the court, such community service must be performed with a nonprofit entity that services the community with food distribution for the needy.

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department of Corrections (i.e., the bill will increase the number of prison beds needed by 10 or fewer beds). The CJIC met again on January 6, 2016, to determine if amendments adopted subsequently would affect the prior prison bed impact estimate and found that the estimate would not change. See Fiscal Impact Section.

The bill takes effect October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Food Assistance Benefits

Food assistance benefits, formerly referred to as food stamps, are provided through the federal Supplemental Nutrition Assistance Program (SNAP).¹ These benefits are disbursed to recipients on a monthly basis primarily through an electronic benefits transfer (EBT) to a debit card that may be accessed using a personal identification number (PIN), although, in some cases, manual benefits vouchers may be used, e.g., when electronic systems are not working.² In Florida, the EBT debit card is referred to as the EBT Access card.³ Benefits that are not used in one month carry over to the following month.⁴

Purchases with food assistance benefits must be made at retailers that have been approved by the United States (U.S.) Department of Agriculture.⁵ Florida law specifically prohibits use or acceptance of food assistance benefits at adult entertainment establishments, casinos, and gambling and gaming facilities.⁶ The benefits:

- May be used to buy breads cereals, fruits, vegetables, meats, fish, poultry, dairy products, and seeds and plants to grow and produce food for a household to eat.
- May not be used to buy beer, wine, liquor, cigarettes, tobacco, pet food, soaps, paper products, household supplies, vitamins, medicines, food that will be eaten in the store, or hot food.⁷

As of July 2015, 45,480,644 persons from 22,419,259 households were receiving food assistance benefits nationwide. Of those totals, 3,650,705 persons from 2,013,221 households were Florida residents (19.4 percent of this state's population).⁸ For federal Fiscal Year 2014, the average monthly benefit per Florida resident was \$129.33 and per Florida household was \$237.45.⁹ A total of \$5.47 billion in food assistance benefits were distributed in Florida during federal Fiscal Year 2014.¹⁰

¹ 7 C.F.R. § 271.1 (2015).

² U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Your Benefits*, <http://www.fns.usda.gov/snap/mobile/benefits/how-to-use-ebt-card.html> (last visited November 1, 2015); Conference call with staff of the Division of Public Assistance Fraud, Department of Financial Services (October 30, 2015).

³ Florida Department of Children and Families, *Welcome to EBT*, <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/welcome-ebt> (last visited on November 1, 2015).

⁴ U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program Retail Merchants*, <http://www.fns.usda.gov/snap/mobile/benefits/what-can-i-buy.html> (last visited November 1, 2015).

⁵ U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Your Benefits*, <http://www.fns.usda.gov/snap/retailers-0> (last visited November 1, 2015).

⁶ s. 402.82, F.S.

⁷ Florida Department of Children and Families, *Food Assistance Program Fact Sheet*, <https://www.dcf.state.fl.us/programs/access/docs/fafactsheet.pdf> (last visited November 1, 2015).

⁸ U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Number of Persons Participating*, <http://www.fns.usda.gov/sites/default/files/pd/29SNAPcurrPP.pdf> (last visited November 1, 2015); U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Number of Households Participating*, <http://www.fns.usda.gov/sites/default/files/pd/30SNAPcurrHH.pdf> (last visited November 1, 2015); Food Research and Action Center, *Supplemental Nutrition Assistance Program: Share of Population Participating* http://frac.org/wp-content/uploads/2011/01/snapdata2015_jul.pdf (last visited November 1, 2015).

⁹ U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Average Monthly Benefit per Person*, <http://www.fns.usda.gov/sites/default/files/pd/18SNAPavgSPP.pdf> (last visited November 1, 2015); and U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Average Monthly Benefit per Household*, [http://www.fns.usda.gov/sites/default/files/pd/19SNAPavg\\$HH.pdf](http://www.fns.usda.gov/sites/default/files/pd/19SNAPavg$HH.pdf) (last visited November 1, 2015).

¹⁰ U.S. Department of Agriculture, Food and Nutrition Service, *Supplemental Nutrition Assistance Program: Benefits*, <http://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap> (last visited November 1, 2015).

Public Assistance Fraud Offenses

Offenses constituting public assistance¹¹ fraud are set forth in s. 414.39, F.S, which, in relevant part, specifies that a person commits a crime if he or she knowingly uses, transfers, acquires, *traffics*, alters, forges, or possesses in any manner not authorized by law:

- A food assistance identification card;
- An authorization, including, but not limited to, an electronic authorization, for the expenditure of food assistance benefits;
- A certificate of eligibility for medical services; or
- A Medicaid identification card.¹²

Additionally, the statute specifies that it is a crime for a person to attempt to commit, or to aid or abet another person in the commission of, the aforementioned acts.¹³

Section 414.39(5), F.S., establishes the criminal penalties that apply to the above-described offenses and specifies that if the public assistance or identification wrongfully received, retained, misappropriated, sought, or used is:

- Less than an aggregate value of \$200 in any 12 consecutive months, such person commits a misdemeanor of the first degree.¹⁴
- Of an aggregate value of \$200 or more, but less than \$20,000 in any 12 consecutive months, such person commits a felony of the third degree.¹⁵
- Of an aggregate value of \$20,000 or more, but less than \$100,000 in any 12 consecutive months, such person commits a felony of the second degree.¹⁶
- Of an aggregate value of \$100,000 or more in any 12 consecutive months, such person commits a felony of the first degree.^{17, 18}

Currently, the term “traffic” is not defined by Florida’s public assistance fraud statute. In February 2013, the U.S. Department of Agriculture adopted the following definition of trafficking for federal purposes of SNAP:

Trafficking means:

(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;

(2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;

(3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and

¹¹ Section 414.0252(10), F.S., defines “public assistance” to mean “benefits paid on the basis of the temporary cash assistance, food assistance, Medicaid, or optional state supplementation program.”

¹² s. 414.39(2), F.S.

¹³ *Id.*

¹⁴ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹⁶ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

¹⁷ 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.

¹⁸ Section 414.39(5)(e), F.S., states, “As used in this subsection, the value of a food assistance authorization benefit is the cash or exchange value unlawfully obtained by the fraudulent act committed in violation of this section.”

returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;

(4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or

(5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.¹⁹

Investigations of Public Assistance Fraud

The Division of Public Assistance Fraud within the Department of Financial Services (DFS) is authorized to investigate public assistance fraud in Florida.²⁰ These investigations have found a wide variety of methods used to commit such fraud:

- Applicants may make misrepresentations on their benefit applications, e.g., not reporting or under-reporting income.
- Recipients may fail to report a change in circumstances, e.g., failing to report a change in household composition or income.²¹
- Recipients or others in possession of the food assistance benefits may sell the benefits for cash or other consideration usually valued at some amount less than the value of the benefits, to retailers who then misrepresent that the benefits were used to purchase food at the store in order to obtain the full value of the benefit from the federal government or who use the benefits to purchase food to stock the store's shelves. According to a recent news report, store clerks in Jacksonville have used this method of fraud to receive tens of thousands of dollars in profit per month per store.²²
- Recipients may purchase food with their benefits at a low-priced shopping club and resell the food to others for consumption or to retailers who resell the food at a higher price.²³

Effect of Bill

The bill amends s. 414.39(2), F.S., to specify acts that are included in the term "traffic" for purposes of the subsection's prohibitions against trafficking in food assistance benefits. The bill specifies that "traffic" includes:

- Buying, selling, stealing, or otherwise effecting an exchange of food assistance benefits for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- Intentionally reselling a product purchased with food assistance benefits in exchange for cash or consideration other than eligible food; or

¹⁹ 7 C.F.R. § 271.2 (2015).

²⁰ Section 414.411, F.S.

²¹ Requirements for the reporting of changes in circumstances are set forth in 7 C.F.R. 273.12(2015).

²² Jennifer Waugh, *EBT Fraud Steals Millions in Taxpayer Dollars*, News 4 Jax (November 20, 2014),

<http://www.news4jax.com/news/ebt-fraud-steals-millions-in-taxpayer-dollars/29640166>.

²³ U.S. Department of Agriculture, Food and Nutrition Service, *What is SNAP Fraud?*, <http://www.fns.usda.gov/fraud/what-snap-fraud> (last visited November 1, 2015); Conference call with staff of the Division of Public Assistance Fraud, Department of Financial Services (October 30, 2015).

- Intentionally purchasing a product originally purchased with food assistance benefits using cash or consideration other than eligible food.

These acts are substantively the same as some of the acts described in the federal definition of "trafficking" in 7 C.F.R. s. 271.2.

The bill also makes it a third degree felony for an individual to possess two or more EBT cards for food assistance benefits which were issued to other persons and to sell or attempt to sell one or more of the cards. The bill specifies that each EBT card possessed, sold, or attempted to be sold in violation of this prohibition constitutes a separate offense for which an offender must complete 40 hours of community service. If determined feasible by the court, such community service must be performed with a nonprofit entity that services the community with food distribution for the needy.

The bill also amends s. 921.0022(3)(a), F.S., to remove the unnecessary inclusion of specified third degree felony violations of s. 414.39(2), F.S., on the Offense Severity Ranking Chart (OSRC) as Level 1 felonies. Under s. 921.0023, F.S., third degree felonies that are not on the OSRC automatically default to a Level 1.

Finally, the bill reenacts ss. 414.41(1)(b), 772.102(1)(a), 895.02(1)(a), and 1002.91(5), F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

B. SECTION DIRECTORY:

Section 1. Amends s. 414.39, F.S., relating to fraud.

Section 2. Amends s. 921.0022, F.S., relating to the OSRC.

Section 3. Reenacts s. 414.41(1)(b), F.S., relating to the recovery of payments made due to mistake or fraud.

Section 4. Reenacts s. 772.102(1)(a), F.S., relating to definitions for civil remedies for criminal practices.

Section 5. Reenacts s. 895.02(1)(a), F.S., relating to definitions for racketeering.

Section 6. Reenacts s. 1002.91(5), F.S., relating to investigations of fraud or overpayment.

Section 7. Provides that the bill takes effect October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an insignificant prison bed impact on the Department of Corrections (i.e., the bill will increase the number of prison beds needed by 10 or fewer beds). Since that CJIC meeting the bill was amended to make the third degree felony created by the bill a separate offense for each EBT card possessed, sold, or attempted to be sold. The original bill made possession and sale of any number of cards a single offense. The CJIC met again on January 6, 2016, to determine if amendments

adopted subsequently would affect the prior prison bed impact estimate and found that the estimate would not change.

In Fiscal Year 2014-15, there were five persons found guilty or convicted and 10 where adjudication was withheld for violating s. 414.39, F.S., with first degree misdemeanors. In Fiscal Year 2014-15, there were 379 offenders sentenced under s. 414.39, F.S. Nine of these offenders were sentenced to prison (mean sentence length 28.9 months). It is unknown how many of these offenders possessed multiple EBT cards and would be affected by the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill could have a positive jail bed impact on local governments if its description of acts that constitute "trafficking" results in greater convictions for misdemeanor public assistance fraud.

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 the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 4, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment: (a) revises the bill's title to read "[a]n act relating to public assistance fraud"; (b) deletes from the bill's description of acts constituting trafficking the provision relating to the exchange of firearms, ammunition, explosives, or controlled substances for food assistance benefits, as such exchange is prohibited by s. 414.39(2)(b)1., F.S.; (c) deletes the requirement to establish the purchaser's intent at the time of purchase that was set forth in s. 414.39(2)(b)1.c., which is now s. 414.39(2)(b)2., F.S.; (d) deletes the bill's proscription of attempted trafficking in s. 414.39(2)(b)2., F.S., as attempted acts are already proscribed by s. 414.39(2)(a)2., F.S.;

(e) adds that each EBT card possessed, sold, or attempted to be sold in violation of s. 414.39(2)(c)1., F.S., constitutes a separate offense; (f) reduces the amount of community service required to be served for a violation of s. 414.39(2)(c)1., F.S., from six months to 40 hours and specifies that such community service shall be served with a nonprofit entity that provides the community with food services if determined feasible by the court; (g) amends s. 921.0022(3)(a), F.S., to remove the unnecessary inclusion of specified third degree felony violations of s. 414.39(2), F.S., on the OSRC; and (h) reenacts sections of law to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections

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

27 414.39 Fraud.—
 28 (2) (a) Any person who knowingly:
 29 1. ~~(a)~~ Uses, transfers, acquires, traffics, alters, forges,
 30 or possesses;
 31 2. ~~(b)~~ Attempts to use, transfer, acquire, traffic, alter,
 32 forge, or possess; or
 33 3. ~~(c)~~ Aids and abets another person in the use, transfer,
 34 acquisition, traffic, alteration, forgery, or possession of,
 35
 36 a food assistance identification card, an authorization,
 37 including, but not limited to, an electronic authorization, for
 38 the expenditure of food assistance benefits, a certificate of
 39 eligibility for medical services, or a Medicaid identification
 40 card in any manner not authorized by law commits a crime and
 41 shall be punished as provided in subsection (5).
 42 (b) For purposes of this subsection, the term "traffic,"
 43 as it relates to food assistance benefits, includes:
 44 1. Buying, selling, stealing, or otherwise effecting an
 45 exchange of food assistance benefits for cash or consideration
 46 other than eligible food, either directly, indirectly, in
 47 complicity or collusion with others, or acting alone;
 48 2. Intentionally reselling a product purchased with food
 49 assistance benefits in exchange for cash or consideration other
 50 than eligible food; or
 51 3. Intentionally purchasing a product originally purchased
 52 with food assistance benefits using cash or consideration other

53 than eligible food.

54 (c)1. Notwithstanding subsection (5), a person who
 55 knowingly possesses in any manner not authorized by law two or
 56 more electronic benefit transfer cards for food assistance
 57 benefits that were issued to other persons and who sells or
 58 attempts to sell one or more of such cards commits a felony of
 59 the third degree, punishable as provided in s. 775.082, s.
 60 775.083, or s. 775.084. Each electronic benefit transfer card
 61 possessed, sold, or attempted to be sold in violation of this
 62 subparagraph constitutes a separate offense.

63 2. In addition to any other penalty, a person who commits
 64 a violation of subparagraph 1. shall be ordered by the court to
 65 serve at least 40 hours of community service. If the court
 66 determines that the community service can be performed at a
 67 nonprofit entity that provides the community with food services
 68 for the needy, the court shall order that the community service
 69 be performed at such an entity.

70 Section 2. Paragraph (a) of subsection (3) of section
 71 921.0022, Florida Statutes, is amended to read:

72 921.0022 Criminal Punishment Code; offense severity
 73 ranking chart.—

74 (3) OFFENSE SEVERITY RANKING CHART

75 (a) LEVEL 1

76

Florida	Felony	
Statute	Degree	Description

77	24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
78	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
79	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
80	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
81	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
82	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
83	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license plates or validation stickers.
84			

85	322.212 (1) (a)-(c)	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
86	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
87	322.212(5) (a)	3rd	False application for driver license or identification card.
88	414.39(2)	3rd	Unauthorized use, possession, forgery, or alteration of food assistance program, Medicaid ID, value greater than \$200.
89	414.39(3) (a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
	443.071(1)	3rd	False statement or representation to obtain or increase reemployment

			assistance benefits.
90	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
91	517.302(1)	3rd	Violation of the Florida Securities and Investor Protection Act.
92	562.27(1)	3rd	Possess still or still apparatus.
93	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
94	812.014(3)(c)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
95	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
96	815.04(5)(a)	3rd	Offense against intellectual

			property (i.e., computer programs, data).
97	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
98	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.
99	826.01	3rd	Bigamy.
100	828.122(3)	3rd	Fighting or baiting animals.
101	831.04(1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
102	831.31(1)(a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
103			

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104	832.041(1)	3rd	Stopping payment with intent to defraud \$150 or more.
	832.05(2)(b) & (4)(c)	3rd	Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.
105	838.15(2)	3rd	Commercial bribe receiving.
106	838.16	3rd	Commercial bribery.
107	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
108	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
109	849.01	3rd	Keeping gambling house.
110	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money

111			by means of lottery.
112	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
113	849.25(2)	3rd	Engaging in bookmaking.
114	860.08	3rd	Interfere with a railroad signal.
115	860.13(1)(a)	3rd	Operate aircraft while under the influence.
116	893.13(2)(a)2.	3rd	Purchase of cannabis.
117	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
118	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
119	Section 3. For the purpose of incorporating the amendment		
120	made by this act to section 414.39, Florida Statutes, in a		
121	reference thereto, paragraph (b) of subsection (1) of section		

122 414.41, Florida Statutes, is reenacted to read:

123 414.41 Recovery of payments made due to mistake or fraud.—

124 (1) Whenever it becomes apparent that any person or
 125 provider has received any public assistance under this chapter
 126 to which she or he is not entitled, through either simple
 127 mistake or fraud on the part of the department or on the part of
 128 the recipient or participant, the department shall take all
 129 necessary steps to recover the overpayment. Recovery may include
 130 Federal Income Tax Refund Offset Program collections activities
 131 in conjunction with the Food and Nutrition Service and the
 132 Internal Revenue Service to intercept income tax refunds due to
 133 clients who owe food assistance or temporary cash assistance
 134 debt to the state. The department will follow the guidelines in
 135 accordance with federal rules and regulations and consistent
 136 with the Food Assistance Program. The department may make
 137 appropriate settlements and shall establish a policy and cost-
 138 effective rules to be used in the computation and recovery of
 139 such overpayments.

140 (b) When the intentional program violation or case facts
 141 do not warrant criminal prosecution for fraud as defined in s.
 142 414.39, the department will initiate an administrative
 143 disqualification hearing. The administrative disqualification
 144 hearing will be initiated regardless of the individual's current
 145 eligibility.

146 Section 4. For the purpose of incorporating the amendment
 147 made by this act to section 414.39, Florida Statutes, in a

148 reference thereto, paragraph (a) of subsection (1) of section
 149 772.102, Florida Statutes, is reenacted to read:

150 772.102 Definitions.—As used in this chapter, the term:

151 (1) "Criminal activity" means to commit, to attempt to
 152 commit, to conspire to commit, or to solicit, coerce, or
 153 intimidate another person to commit:

154 (a) Any crime that is chargeable by indictment or
 155 information under the following provisions:

- 156 1. Section 210.18, relating to evasion of payment of
 157 cigarette taxes.
- 158 2. Section 414.39, relating to public assistance fraud.
- 159 3. Section 440.105 or s. 440.106, relating to workers'
 160 compensation.
- 161 4. Part IV of chapter 501, relating to telemarketing.
- 162 5. Chapter 517, relating to securities transactions.
- 163 6. Section 550.235 or s. 550.3551, relating to dogracing
 164 and horseracing.
- 165 7. Chapter 550, relating to jai alai frontons.
- 166 8. Chapter 552, relating to the manufacture, distribution,
 167 and use of explosives.
- 168 9. Chapter 562, relating to beverage law enforcement.
- 169 10. Section 624.401, relating to transacting insurance
 170 without a certificate of authority, s. 624.437(4)(c)1., relating
 171 to operating an unauthorized multiple-employer welfare
 172 arrangement, or s. 626.902(1)(b), relating to representing or
 173 aiding an unauthorized insurer.

- 174 11. Chapter 687, relating to interest and usurious
175 practices.
- 176 12. Section 721.08, s. 721.09, or s. 721.13, relating to
177 real estate timeshare plans.
- 178 13. Chapter 782, relating to homicide.
- 179 14. Chapter 784, relating to assault and battery.
- 180 15. Chapter 787, relating to kidnapping or human
181 trafficking.
- 182 16. Chapter 790, relating to weapons and firearms.
- 183 17. Former s. 796.03, s. 796.04, s. 796.05, or s. 796.07,
184 relating to prostitution.
- 185 18. Chapter 806, relating to arson.
- 186 19. Section 810.02(2)(c), relating to specified burglary
187 of a dwelling or structure.
- 188 20. Chapter 812, relating to theft, robbery, and related
189 crimes.
- 190 21. Chapter 815, relating to computer-related crimes.
- 191 22. Chapter 817, relating to fraudulent practices, false
192 pretenses, fraud generally, and credit card crimes.
- 193 23. Section 827.071, relating to commercial sexual
194 exploitation of children.
- 195 24. Chapter 831, relating to forgery and counterfeiting.
- 196 25. Chapter 832, relating to issuance of worthless checks
197 and drafts.
- 198 26. Section 836.05, relating to extortion.
- 199 27. Chapter 837, relating to perjury.

200 28. Chapter 838, relating to bribery and misuse of public
201 office.

202 29. Chapter 843, relating to obstruction of justice.

203 30. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
204 s. 847.07, relating to obscene literature and profanity.

205 31. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.
206 849.25, relating to gambling.

207 32. Chapter 893, relating to drug abuse prevention and
208 control.

209 33. Section 914.22 or s. 914.23, relating to witnesses,
210 victims, or informants.

211 34. Section 918.12 or s. 918.13, relating to tampering
212 with jurors and evidence.

213 Section 5. For the purpose of incorporating the amendment
214 made by this act to section 414.39, Florida Statutes, in a
215 reference thereto, paragraph (a) of subsection (1) of section
216 895.02, Florida Statutes, is reenacted to read:

217 895.02 Definitions.—As used in ss. 895.01-895.08, the
218 term:

219 (1) "Racketeering activity" means to commit, to attempt to
220 commit, to conspire to commit, or to solicit, coerce, or
221 intimidate another person to commit:

222 (a) Any crime that is chargeable by petition, indictment,
223 or information under the following provisions of the Florida
224 Statutes:

225 1. Section 210.18, relating to evasion of payment of

- 226 cigarette taxes.
- 227 2. Section 316.1935, relating to fleeing or attempting to
- 228 elude a law enforcement officer and aggravated fleeing or
- 229 eluding.
- 230 3. Section 403.727(3)(b), relating to environmental
- 231 control.
- 232 4. Section 409.920 or s. 409.9201, relating to Medicaid
- 233 fraud.
- 234 5. Section 414.39, relating to public assistance fraud.
- 235 6. Section 440.105 or s. 440.106, relating to workers'
- 236 compensation.
- 237 7. Section 443.071(4), relating to creation of a
- 238 fictitious employer scheme to commit reemployment assistance
- 239 fraud.
- 240 8. Section 465.0161, relating to distribution of medicinal
- 241 drugs without a permit as an Internet pharmacy.
- 242 9. Section 499.0051, relating to crimes involving
- 243 contraband and adulterated drugs.
- 244 10. Part IV of chapter 501, relating to telemarketing.
- 245 11. Chapter 517, relating to sale of securities and
- 246 investor protection.
- 247 12. Section 550.235 or s. 550.3551, relating to dogracing
- 248 and horseracing.
- 249 13. Chapter 550, relating to jai alai frontons.
- 250 14. Section 551.109, relating to slot machine gaming.
- 251 15. Chapter 552, relating to the manufacture,

- 252 distribution, and use of explosives.
- 253 16. Chapter 560, relating to money transmitters, if the
- 254 violation is punishable as a felony.
- 255 17. Chapter 562, relating to beverage law enforcement.
- 256 18. Section 624.401, relating to transacting insurance
- 257 without a certificate of authority, s. 624.437(4)(c)1., relating
- 258 to operating an unauthorized multiple-employer welfare
- 259 arrangement, or s. 626.902(1)(b), relating to representing or
- 260 aiding an unauthorized insurer.
- 261 19. Section 655.50, relating to reports of currency
- 262 transactions, when such violation is punishable as a felony.
- 263 20. Chapter 687, relating to interest and usurious
- 264 practices.
- 265 21. Section 721.08, s. 721.09, or s. 721.13, relating to
- 266 real estate timeshare plans.
- 267 22. Section 775.13(5)(b), relating to registration of
- 268 persons found to have committed any offense for the purpose of
- 269 benefiting, promoting, or furthering the interests of a criminal
- 270 gang.
- 271 23. Section 777.03, relating to commission of crimes by
- 272 accessories after the fact.
- 273 24. Chapter 782, relating to homicide.
- 274 25. Chapter 784, relating to assault and battery.
- 275 26. Chapter 787, relating to kidnapping or human
- 276 trafficking.
- 277 27. Chapter 790, relating to weapons and firearms.

278 28. Chapter 794, relating to sexual battery, but only if
 279 such crime was committed with the intent to benefit, promote, or
 280 further the interests of a criminal gang, or for the purpose of
 281 increasing a criminal gang member's own standing or position
 282 within a criminal gang.

283 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
 284 796.05, or s. 796.07, relating to prostitution.

285 30. Chapter 806, relating to arson and criminal mischief.

286 31. Chapter 810, relating to burglary and trespass.

287 32. Chapter 812, relating to theft, robbery, and related
 288 crimes.

289 33. Chapter 815, relating to computer-related crimes.

290 34. Chapter 817, relating to fraudulent practices, false
 291 pretenses, fraud generally, and credit card crimes.

292 35. Chapter 825, relating to abuse, neglect, or
 293 exploitation of an elderly person or disabled adult.

294 36. Section 827.071, relating to commercial sexual
 295 exploitation of children.

296 37. Section 828.122, relating to fighting or baiting
 297 animals.

298 38. Chapter 831, relating to forgery and counterfeiting.

299 39. Chapter 832, relating to issuance of worthless checks
 300 and drafts.

301 40. Section 836.05, relating to extortion.

302 41. Chapter 837, relating to perjury.

303 42. Chapter 838, relating to bribery and misuse of public

304 office.

305 43. Chapter 843, relating to obstruction of justice.

306 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
 307 s. 847.07, relating to obscene literature and profanity.

308 45. Chapter 849, relating to gambling, lottery, gambling
 309 or gaming devices, slot machines, or any of the provisions
 310 within that chapter.

311 46. Chapter 874, relating to criminal gangs.

312 47. Chapter 893, relating to drug abuse prevention and
 313 control.

314 48. Chapter 896, relating to offenses related to financial
 315 transactions.

316 49. Sections 914.22 and 914.23, relating to tampering with
 317 or harassing a witness, victim, or informant, and retaliation
 318 against a witness, victim, or informant.

319 50. Sections 918.12 and 918.13, relating to tampering with
 320 jurors and evidence.

321 Section 6. For the purpose of incorporating the amendment
 322 made by this act to section 414.39, Florida Statutes, in a
 323 reference thereto, subsection (5) of section 1002.91, Florida
 324 Statutes, is reenacted to read:

325 1002.91 Investigations of fraud or overpayment;
 326 penalties.—

327 (5) If a school readiness program provider or a Voluntary
 328 Prekindergarten Education Program provider, or an owner,
 329 officer, or director thereof, is convicted of, found guilty of,

330 or pleads guilty or nolo contendere to, regardless of
 331 adjudication, public assistance fraud pursuant to s. 414.39, or
 332 is acting as the beneficial owner for someone who has been
 333 convicted of, found guilty of, or pleads guilty or nolo
 334 contendere to, regardless of adjudication, public assistance
 335 fraud pursuant to s. 414.39, the early learning coalition shall
 336 refrain from contracting with, or using the services of, that
 337 provider for a period of 5 years. In addition, the coalition
 338 shall refrain from contracting with, or using the services of,
 339 any provider that shares an officer or director with a provider
 340 that is convicted of, found guilty of, or pleads guilty or nolo
 341 contendere to, regardless of adjudication, public assistance
 342 fraud pursuant to s. 414.39 for a period of 5 years.

343 Section 7. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 135 Mandatory Minimum Sentences
SPONSOR(S): Criminal Justice Subcommittee; Combee; Edwards and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	White	White
2) Justice Appropriations Subcommittee	10 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		White <i>TW</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Currently, s. 775.087, F.S., commonly known as the "10-20-Life" law, requires the court to sentence a person convicted of aggravated assault, attempted aggravated assault, or other specified offenses to a minimum term of imprisonment of:

- Three years if, during the commission of the offense, the person actually possessed a firearm or destructive device or 15 years if the firearm possessed was a semiautomatic firearm and its high-capacity detachable box magazine or a machine gun.
- Twenty years if, during the commission of the offense, the person discharged a firearm, destructive device, semiautomatic firearm, or machine gun or 25 years to life imprisonment if such discharge resulted in death or great bodily harm to a person.

These minimum terms must be imposed for an aggravated assault conviction unless the court makes written findings that:

- The defendant had a good faith belief that the aggravated assault was justifiable pursuant to chapter 776, F.S.
- The aggravated assault was not committed in the course of committing another criminal offense.
- The defendant does not pose a threat to public safety.
- The totality of the circumstances involved in the offense do not justify the imposition of such sentence.

The bill deletes aggravated assault from the offenses that are subject to the mandatory minimum sentences set forth in s. 775.087, F.S., and makes a conforming change by repealing the exception to such sentences based on specified court findings. Thus, persons who are convicted of aggravated assault or attempted aggravated assault and who actually possessed or discharged a firearm or other specified weapon during the commission of that offense will no longer be subject to the 10-20-Life mandatory minimum sentences.

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined that this bill will have an indeterminate prison bed impact on the Department of Corrections likely reducing the number of prison beds needed. The CJIC met again on January 6, 2016, to determine if amendments adopted subsequently would affect the prior prison bed impact estimate and found that the estimate would not change. See Fiscal Impact Section.

The bill takes effect on July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Aggravated Assault and 10-20-Life

Aggravated Assault

Assault, a first degree misdemeanor,¹ is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.² "Aggravated assault," a third degree felony,³ is an assault with:

- A deadly weapon without intent to kill; or
- An intent to commit a felony.⁴

10-20-Life

Section 775.087, F.S., commonly known as the "10-20-Life" law, requires the court to sentence a person convicted of aggravated assault, attempted aggravated assault, or other specified offenses to a minimum term of imprisonment of:

- Three years⁵ if, during the commission of the offense, the person actually *possessed*⁶ a "firearm" or "destructive device."^{7, 8}
- Fifteen years⁹ if the firearm in the person's possession was a semiautomatic firearm and its high-capacity detachable box magazine¹⁰ or a machine gun.^{11, 12}

If, during the aggravated assault or attempted aggravated assault, the person *discharged* a firearm, destructive device, semiautomatic firearm, or machine gun, the court must sentence the person to a minimum term of imprisonment of 20 years.¹³ If such discharge resulted in death or great bodily harm to a person, the person must be sentenced to a minimum term of imprisonment of not less than 25 years and not more than life in prison.¹⁴

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

² s. 784.011, F.S.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁴ s. 784.021, F.S.

⁵ The other offenses subject to the three-year mandatory minimum term are burglary of a conveyance and certain possession of firearm by a felon. s. 775.087(2)(a)1., F.S. A ten-year minimum mandatory term applies to the possession of a firearm or destructive device during the commission of or attempt to commit the following offenses: murder; sexual battery; robbery; certain burglary; arson; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking and capital importation of illegal drugs and specified controlled substances; and certain possession of a firearm by a felon. *Id.*

⁶ Section 775.087(4), F.S., states, "For purposes of imposition of minimum mandatory sentencing provisions of this section, with respect to a firearm, the term "possession" is defined as carrying it on the person. Possession may also be proven by demonstrating that the defendant had the firearm within immediate physical reach with ready access with the intent to use the firearm during the commission of the offense, if proven beyond a reasonable doubt."

⁷ s. 775.087(2)(a)1., F.S.

⁸ The terms "firearm" and "destructive device" are defined in s. 790.001, F.S.

⁹ The other offenses subject to the 15-year mandatory minimum term are murder; sexual battery; robbery; burglary; arson; aggravated battery; kidnapping; escape; sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; and trafficking and capital importation of illegal drugs and specified controlled substances. s. 775.087(3)(a)1., F.S.

¹⁰ The terms "semiautomatic firearm" and "high capacity detachable box magazine" are defined in s. 775.087(2)(e) and (3)(e), F.S.

¹¹ The term "machine gun" is defined in s. 790.001, F.S.

¹² s. 775.087(3)(a)1., F.S.

¹³ s. 775.087(2)(a)2. and (3)(a)2., F.S.

¹⁴ s. 775.087(2)(a)3. and (3)(a)3., F.S.

According to information from the Office of Economic and Demographic Research, 27 inmates were admitted to prison in Fiscal Year 2014-2015 under 10-20-Life mandatory minimum sentences for aggravated assault.¹⁵

Deviations from 10-20-Life

Section 27.366, F.S., states that it is the Legislature's intent "that convicted criminal offenders who meet the criteria in s. 775.087(2) and (3) be sentenced to the minimum mandatory prison terms," provided "that prosecutors should appropriately exercise their discretion in those cases in which the offenders' possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime." If an offender meets the mandatory minimum sentencing criteria in the 10-20-Life law, but does not receive such sentence, the state attorney "must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney."¹⁶

While s. 27.366, F.S., accords prosecutors the discretion to waive imposition of minimum mandatory sentences, the statute, aside from one exception adopted by the Legislature in 2014, does not accord such discretion to the sentencing courts.¹⁷ If the charging document specifically pleads the basis for the 10-20-Life mandatory minimum sentence and there is a clear jury finding that the defendant actually possessed or used a firearm or other specified weapon, imposition of a mandatory minimum sentence is a non-discretionary duty of the sentencing court.¹⁸

During the 2014 Regular Session, the Legislature enacted a single exception to the mandatory minimum terms which applies only to sentences for aggravated assault.¹⁹ Section 775.087(6), F.S., specifies that the sentencing court shall not impose such mandatory minimum terms if the court makes written findings that:

- The defendant had a good faith belief that the aggravated assault was justifiable pursuant to chapter 776, F.S.
- The aggravated assault was not committed in the course of committing another criminal offense.
- The defendant does not pose a threat to public safety.
- The totality of the circumstances involved in the offense do not justify the imposition of such sentence.

Effect of Bill

The bill deletes aggravated assault from the offenses that are subject to the mandatory minimum sentences set forth in s. 775.087, F.S. Thus, persons who are convicted of aggravated assault or attempted aggravated assault and who actually possessed or discharged a firearm or other specified weapon will no longer be subject to the 10-20-Life law.

The bill also makes a conforming change by repealing subsection (6) of s. 775.087, F.S., which prohibits the imposition of mandatory minimum sentences to an aggravated assault conviction if the sentencing court makes specified findings. Such exception is no longer relevant due to the bill's deletion of aggravated assault from the 10-20-Life law.

Finally, the bill amends s. 985.557(2)(d), F.S., to conform a cross-reference to changes made by the act and reenacts ss. 27.366, 921.0022(2), 921.0024(1)(b), and 947.136(3)(b), F.S., to incorporate the amendment to s. 775.087, F.S.

¹⁵ Email from Matthew Hasbrouck, Office of Economic and Demographic Research, Criminal Justice Impact Conference Summaries, (Oct. 28, 2015) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

¹⁶ s. 27.366, F.S.

¹⁷ *State v. Kelly*, 147 So. 3d 1061 (Fla. 3d DCA 2014).

¹⁸ *Johnson v. State*, 53 So. 3d 360, 362 (Fla. 5th DCA 2011) ; *Orjales v. State*, 758 So. 2d 1157, 1159 (Fla. 2d DCA 2000) (quoting *State v. Hargrove*, 694 So. 2d 729, 731 (Fla. 1997)).

¹⁹ Ch. 2014-195, Laws of Fla.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.087, F.S., relating to minimum sentences for possession or use of a weapon during certain felony offenses.

Section 2. Amends s. 985.557, F.S., relating to the direct filing of juveniles.

Section 3. Reenacts s. 27.366, F.S., relating to the legislative intent for the 10-20-Life law.

Section 4. Reenacts s. 921.0022, F.S., relating to the Criminal Punishment Code offense severity ranking chart.

Section 5. Reenacts s. 921.0024, F.S., relating to the Criminal Punishment Code worksheet computations and scoresheets.

Section 6. Reenacts s. 947.146, F.S., relating to the Control Release Authority.

Section 7. Provides that the bill takes effect on July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have an indeterminate prison bed impact on the Department of Corrections likely reducing the number of prison beds needed.

Since that CJIC meeting, the bill was amended to delete aggravated assault from the offenses that are subject to the mandatory minimum sentences set forth in s. 775.087, F.S. The original bill amended s. 775.087, F.S., extending an exception to certain mandatory minimum sentences if a use or threatened use of force was justifiable under specified provisions to other cases and allowed all 10-20-Life defendants the opportunity to avoid a minimum mandatory sentence associated with his or her offense by presenting mitigating evidence prior to sentencing that the defendant had a good faith belief that his or her use of force or threatened use of force was justifiable, the defendant does not pose a threat to public safety, and the mandatory minimum sentence is not justified given the totality of circumstances involved in the offense.

The CJIC met again on January 6, 2016, to determine if amendments adopted subsequently would affect the prior prison bed impact estimate and found that the estimate would not change.

According to information from the Office of Economic and Demographic Research, 27 inmates were admitted to prison in Fiscal Year 2014-2015 under 10-20-Life mandatory minimum sentences for aggravated assault.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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 the need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 4, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by deleting all references to aggravated assault specified in s. 775.087, F.S., rather than only modifying the exception for aggravated assault specified in s. 775.087(6), F.S.

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

1 A bill to be entitled
 2 An act relating to mandatory minimum sentences;
 3 amending s. 775.087, F.S.; deleting aggravated assault
 4 from lists of convictions that carry a minimum term of
 5 imprisonment if the convicted person possessed a
 6 firearm, destructive device, semiautomatic firearm and
 7 its high-capacity detachable box magazine, or machine
 8 gun during the commission of the offense; deleting a
 9 provision prohibiting a sentencing court from imposing
 10 the mandatory minimum sentence for a conviction for
 11 aggravated assault if the court makes specified
 12 written findings; conforming cross-references;
 13 amending s. 985.557, F.S.; conforming a cross-
 14 reference; reenacting ss. 27.366, 921.0022(2),
 15 921.0024(1)(b), and 947.146(3)(b), F.S., relating to
 16 legislative intent and policy in cases meeting the
 17 criteria of s. 775.087(2) and (3), F.S., the Criminal
 18 Punishment Code, the Criminal Punishment Code
 19 worksheet, and the Control Release Authority,
 20 respectively, to incorporate the amendment made by the
 21 act to s. 775.087, F.S., in references thereto;
 22 providing an effective date.

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

25
 26 Section 1. Subsections (2), (3), and (6) of section

27 | 775.087, Florida Statutes, are amended to read:

28 | 775.087 Possession or use of weapon; aggravated battery;
29 | felony reclassification; minimum sentence.—

30 | (2)(a)1. Any person who is convicted of a felony or an
31 | attempt to commit a felony, regardless of whether the use of a
32 | weapon is an element of the felony, and the conviction was for:

- 33 | a. Murder;
- 34 | b. Sexual battery;
- 35 | c. Robbery;
- 36 | d. Burglary;
- 37 | e. Arson;
- 38 | ~~f. Aggravated assault;~~
- 39 | f.g. Aggravated battery;
- 40 | g.h. Kidnapping;
- 41 | h.i. Escape;
- 42 | i.j. Aircraft piracy;
- 43 | j.k. Aggravated child abuse;
- 44 | k.l. Aggravated abuse of an elderly person or disabled
45 | adult;
- 46 | l.m. Unlawful throwing, placing, or discharging of a
47 | destructive device or bomb;
- 48 | m.n. Carjacking;
- 49 | n.o. Home-invasion robbery;
- 50 | o.p. Aggravated stalking;
- 51 | p.q. Trafficking in cannabis, trafficking in cocaine,
52 | capital importation of cocaine, trafficking in illegal drugs,

53 capital importation of illegal drugs, trafficking in
 54 phencyclidine, capital importation of phencyclidine, trafficking
 55 in methaqualone, capital importation of methaqualone,
 56 trafficking in amphetamine, capital importation of amphetamine,
 57 trafficking in flunitrazepam, trafficking in gamma-
 58 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
 59 trafficking in Phenethylamines, or other violation of s.
 60 893.135(1); or

61 q. ~~q.~~ Possession of a firearm by a felon

62
 63 and during the commission of the offense, such person actually
 64 possessed a "firearm" or "destructive device" as those terms are
 65 defined in s. 790.001, shall be sentenced to a minimum term of
 66 imprisonment of 10 years, except that a person who is convicted
 67 for ~~aggravated assault~~, possession of a firearm by a felon, or
 68 burglary of a conveyance shall be sentenced to a minimum term of
 69 imprisonment of 3 years if such person possessed a "firearm" or
 70 "destructive device" during the commission of the offense.

71 However, if an offender who is convicted of the offense of
 72 possession of a firearm by a felon has a previous conviction of
 73 committing or attempting to commit a felony listed in s.
 74 775.084(1)(b)1. and actually possessed a firearm or destructive
 75 device during the commission of the prior felony, the offender
 76 shall be sentenced to a minimum term of imprisonment of 10
 77 years.

78 2. Any person who is convicted of a felony or an attempt

79 to commit a felony listed in sub-subparagraphs (a)1.a.-p.
 80 ~~(a)1.a.-q.~~, regardless of whether the use of a weapon is an
 81 element of the felony, and during the course of the commission
 82 of the felony such person discharged a "firearm" or "destructive
 83 device" as defined in s. 790.001 shall be sentenced to a minimum
 84 term of imprisonment of 20 years.

85 3. Any person who is convicted of a felony or an attempt
 86 to commit a felony listed in sub-subparagraphs (a)1.a.-p.
 87 ~~(a)1.a.-q.~~, regardless of whether the use of a weapon is an
 88 element of the felony, and during the course of the commission
 89 of the felony such person discharged a "firearm" or "destructive
 90 device" as defined in s. 790.001 and, as the result of the
 91 discharge, death or great bodily harm was inflicted upon any
 92 person, the convicted person shall be sentenced to a minimum
 93 term of imprisonment of not less than 25 years and not more than
 94 a term of imprisonment of life in prison.

95 (b) Subparagraph (a)1., subparagraph (a)2., or
 96 subparagraph (a)3. does not prevent a court from imposing a
 97 longer sentence of incarceration as authorized by law in
 98 addition to the minimum mandatory sentence, or from imposing a
 99 sentence of death pursuant to other applicable law. Subparagraph
 100 (a)1., subparagraph (a)2., or subparagraph (a)3. does not
 101 authorize a court to impose a lesser sentence than otherwise
 102 required by law.

103

104 Notwithstanding s. 948.01, adjudication of guilt or imposition

105 of sentence shall not be suspended, deferred, or withheld, and
 106 the defendant is not eligible for statutory gain-time under s.
 107 944.275 or any form of discretionary early release, other than
 108 pardon or executive clemency, or conditional medical release
 109 under s. 947.149, prior to serving the minimum sentence.

110 (c) If the minimum mandatory terms of imprisonment imposed
 111 pursuant to this section exceed the maximum sentences authorized
 112 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
 113 chapter 921, then the mandatory minimum sentence must be
 114 imposed. If the mandatory minimum terms of imprisonment pursuant
 115 to this section are less than the sentences that could be
 116 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
 117 Punishment Code under chapter 921, then the sentence imposed by
 118 the court must include the mandatory minimum term of
 119 imprisonment as required in this section.

120 (d) It is the intent of the Legislature that offenders who
 121 actually possess, carry, display, use, threaten to use, or
 122 attempt to use firearms or destructive devices be punished to
 123 the fullest extent of the law, and the minimum terms of
 124 imprisonment imposed pursuant to this subsection shall be
 125 imposed for each qualifying felony count for which the person is
 126 convicted. The court shall impose any term of imprisonment
 127 provided for in this subsection consecutively to any other term
 128 of imprisonment imposed for any other felony offense.

129 (3)(a)1. Any person who is convicted of a felony or an
 130 attempt to commit a felony, regardless of whether the use of a

131 | firearm is an element of the felony, and the conviction was for:
 132 | a. Murder;
 133 | b. Sexual battery;
 134 | c. Robbery;
 135 | d. Burglary;
 136 | e. Arson;
 137 | ~~f. Aggravated assault;~~
 138 | f.g. Aggravated battery;
 139 | ~~g.h.~~ Kidnapping;
 140 | h.i. Escape;
 141 | i.j. Sale, manufacture, delivery, or intent to sell,
 142 | manufacture, or deliver any controlled substance;
 143 | j.k. Aircraft piracy;
 144 | k.l. Aggravated child abuse;
 145 | l.m. Aggravated abuse of an elderly person or disabled
 146 | adult;
 147 | m.n. Unlawful throwing, placing, or discharging of a
 148 | destructive device or bomb;
 149 | n.o. Carjacking;
 150 | o.p. Home-invasion robbery;
 151 | p.q. Aggravated stalking; or
 152 | q.r. Trafficking in cannabis, trafficking in cocaine,
 153 | capital importation of cocaine, trafficking in illegal drugs,
 154 | capital importation of illegal drugs, trafficking in
 155 | phencyclidine, capital importation of phencyclidine, trafficking
 156 | in methaqualone, capital importation of methaqualone,

157 trafficking in amphetamine, capital importation of amphetamine,
 158 trafficking in flunitrazepam, trafficking in gamma-
 159 hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol,
 160 trafficking in Phenethylamines, or other violation of s.
 161 893.135(1);

162

163 and during the commission of the offense, such person possessed
 164 a semiautomatic firearm and its high-capacity detachable box
 165 magazine or a machine gun as defined in s. 790.001, shall be
 166 sentenced to a minimum term of imprisonment of 15 years.

167 2. Any person who is convicted of a felony or an attempt
 168 to commit a felony listed in subparagraph (a)1., regardless of
 169 whether the use of a weapon is an element of the felony, and
 170 during the course of the commission of the felony such person
 171 discharged a semiautomatic firearm and its high-capacity box
 172 magazine or a "machine gun" as defined in s. 790.001 shall be
 173 sentenced to a minimum term of imprisonment of 20 years.

174 3. Any person who is convicted of a felony or an attempt
 175 to commit a felony listed in subparagraph (a)1., regardless of
 176 whether the use of a weapon is an element of the felony, and
 177 during the course of the commission of the felony such person
 178 discharged a semiautomatic firearm and its high-capacity box
 179 magazine or a "machine gun" as defined in s. 790.001 and, as the
 180 result of the discharge, death or great bodily harm was
 181 inflicted upon any person, the convicted person shall be
 182 sentenced to a minimum term of imprisonment of not less than 25

183 years and not more than a term of imprisonment of life in
 184 prison.

185 (b) Subparagraph (a)1., subparagraph (a)2., or
 186 subparagraph (a)3. does not prevent a court from imposing a
 187 longer sentence of incarceration as authorized by law in
 188 addition to the minimum mandatory sentence, or from imposing a
 189 sentence of death pursuant to other applicable law. Subparagraph
 190 (a)1., subparagraph (a)2., or subparagraph (a)3. does not
 191 authorize a court to impose a lesser sentence than otherwise
 192 required by law.

193

194 Notwithstanding s. 948.01, adjudication of guilt or imposition
 195 of sentence shall not be suspended, deferred, or withheld, and
 196 the defendant is not eligible for statutory gain-time under s.
 197 944.275 or any form of discretionary early release, other than
 198 pardon or executive clemency, or conditional medical release
 199 under s. 947.149, prior to serving the minimum sentence.

200 (c) If the minimum mandatory terms of imprisonment imposed
 201 pursuant to this section exceed the maximum sentences authorized
 202 by s. 775.082, s. 775.084, or the Criminal Punishment Code under
 203 chapter 921, then the mandatory minimum sentence must be
 204 imposed. If the mandatory minimum terms of imprisonment pursuant
 205 to this section are less than the sentences that could be
 206 imposed as authorized by s. 775.082, s. 775.084, or the Criminal
 207 Punishment Code under chapter 921, then the sentence imposed by
 208 the court must include the mandatory minimum term of

209 imprisonment as required in this section.

210 (d) It is the intent of the Legislature that offenders who
 211 possess, carry, display, use, threaten to use, or attempt to use
 212 a semiautomatic firearm and its high-capacity detachable box
 213 magazine or a machine gun as defined in s. 790.001 be punished
 214 to the fullest extent of the law, and the minimum terms of
 215 imprisonment imposed pursuant to this subsection shall be
 216 imposed for each qualifying felony count for which the person is
 217 convicted. The court shall impose any term of imprisonment
 218 provided for in this subsection consecutively to any other term
 219 of imprisonment imposed for any other felony offense.

220 (e) As used in this subsection, the term:

221 1. "High-capacity detachable box magazine" means any
 222 detachable box magazine, for use in a semiautomatic firearm,
 223 which is capable of being loaded with more than 20 centerfire
 224 cartridges.

225 2. "Semiautomatic firearm" means a firearm which is
 226 capable of firing a series of rounds by separate successive
 227 depressions of the trigger and which uses the energy of
 228 discharge to perform a portion of the operating cycle.

229 ~~(6) Notwithstanding s. 27.366, the sentencing court shall~~
 230 ~~not impose the mandatory minimum sentence required by subsection~~
 231 ~~(2) or subsection (3) for a conviction for aggravated assault if~~
 232 ~~the court makes written findings that:~~

233 ~~(a) The defendant had a good faith belief that the~~
 234 ~~aggravated assault was justifiable pursuant to chapter 776.~~

235 ~~(b) The aggravated assault was not committed in the course~~
 236 ~~of committing another criminal offense.~~

237 ~~(c) The defendant does not pose a threat to public safety.~~

238 ~~(d) The totality of the circumstances involved in the~~
 239 ~~offense do not justify the imposition of such sentence.~~

240 Section 2. Paragraph (d) of subsection (2) of section
 241 985.557, Florida Statutes, is amended to read:

242 985.557 Direct filing of an information; discretionary and
 243 mandatory criteria.—

244 (2) MANDATORY DIRECT FILE.—

245 (d)1. With respect to any child who was 16 or 17 years of
 246 age at the time the alleged offense was committed, the state
 247 attorney shall file an information if the child has been charged
 248 with committing or attempting to commit an offense listed in s.
 249 775.087(2)(a)1.a.-p. ~~775.087(2)(a)1.a.-q.~~, and, during the
 250 commission of or attempt to commit the offense, the child:

251 a. Actually possessed a firearm or destructive device, as
 252 those terms are defined in s. 790.001.

253 b. Discharged a firearm or destructive device, as
 254 described in s. 775.087(2)(a)2.

255 c. Discharged a firearm or destructive device, as
 256 described in s. 775.087(2)(a)3., and, as a result of the
 257 discharge, death or great bodily harm was inflicted upon any
 258 person.

259 2. Upon transfer, any child who is:

260 a. Charged under sub-subparagraph 1.a. and who has been

261 | previously adjudicated or had adjudication withheld for a
 262 | forcible felony offense or any offense involving a firearm, or
 263 | who has been previously placed in a residential commitment
 264 | program, shall be subject to sentencing under s. 775.087(2)(a),
 265 | notwithstanding s. 985.565.

266 | b. Charged under sub-subparagraph 1.b. or sub-subparagraph
 267 | 1.c., shall be subject to sentencing under s. 775.087(2)(a),
 268 | notwithstanding s. 985.565.

269 | 3. Upon transfer, any child who is charged under this
 270 | paragraph, but who does not meet the requirements specified in
 271 | subparagraph 2., shall be sentenced under s. 985.565; however,
 272 | if the court imposes a juvenile sanction, the court must commit
 273 | the child to a high-risk or maximum-risk juvenile facility.

274 | 4. This paragraph shall not apply if the state attorney
 275 | has good cause to believe that exceptional circumstances exist
 276 | that preclude the just prosecution of the child in adult court.

277 | 5. The Department of Corrections shall make every
 278 | reasonable effort to ensure that any child 16 or 17 years of age
 279 | who is convicted and sentenced under this paragraph be
 280 | completely separated such that there is no physical contact with
 281 | adult offenders in the facility, to the extent that it is
 282 | consistent with chapter 958.

283 | Section 3. For the purpose of incorporating the amendment
 284 | made by this act to section 775.087, Florida Statutes, in
 285 | references thereto, section 27.366, Florida Statutes, is
 286 | reenacted to read:

287 27.366 Legislative intent and policy in cases meeting
 288 criteria of s. 775.087(2) and (3).—It is the intent of the
 289 Legislature that convicted criminal offenders who meet the
 290 criteria in s. 775.087(2) and (3) be sentenced to the minimum
 291 mandatory prison terms provided therein. It is the intent of the
 292 Legislature to establish zero tolerance of criminals who use,
 293 threaten to use, or avail themselves of firearms in order to
 294 commit crimes and thereby demonstrate their lack of value for
 295 human life. It is also the intent of the Legislature that
 296 prosecutors should appropriately exercise their discretion in
 297 those cases in which the offenders' possession of the firearm is
 298 incidental to the commission of a crime and not used in
 299 furtherance of the crime, used in order to commit the crime, or
 300 used in preparation to commit the crime. For every case in which
 301 the offender meets the criteria in this act and does not receive
 302 the mandatory minimum prison sentence, the state attorney must
 303 explain the sentencing deviation in writing and place such
 304 explanation in the case file maintained by the state attorney.

305 Section 4. For the purpose of incorporating the amendment
 306 made by this act to section 775.087, Florida Statutes, in a
 307 reference thereto, subsection (2) of section 921.0022, Florida
 308 Statutes, is reenacted to read:

309 921.0022 Criminal Punishment Code; offense severity
 310 ranking chart.—

311 (2) The offense severity ranking chart has 10 offense
 312 levels, ranked from least severe, which are level 1 offenses, to

313 most severe, which are level 10 offenses, and each felony
 314 offense is assigned to a level according to the severity of the
 315 offense. For purposes of determining which felony offenses are
 316 specifically listed in the offense severity ranking chart and
 317 which severity level has been assigned to each of these
 318 offenses, the numerical statutory references in the left column
 319 of the chart and the felony degree designations in the middle
 320 column of the chart are controlling; the language in the right
 321 column of the chart is provided solely for descriptive purposes.
 322 Reclassification of the degree of the felony through the
 323 application of s. 775.0845, s. 775.0861, s. 775.0862, s.
 324 775.087, s. 775.0875, s. 794.023, or any other law that provides
 325 an enhanced penalty for a felony offense, to any offense listed
 326 in the offense severity ranking chart in this section shall not
 327 cause the offense to become unlisted and is not subject to the
 328 provisions of s. 921.0023.

329 Section 5. For the purpose of incorporating the amendment
 330 made by this act to section 775.087, Florida Statutes, in
 331 references thereto, paragraph (b) of subsection (1) of section
 332 921.0024, Florida Statutes, is reenacted to read:

333 921.0024 Criminal Punishment Code; worksheet computations;
 334 scoresheets.—

335 (1)

336 (b) WORKSHEET KEY:

337 Legal status points are assessed when any form of legal status
 338 existed at the time the offender committed an offense before the

339 court for sentencing. Four (4) sentence points are assessed for
 340 an offender's legal status.

341 Community sanction violation points are assessed when a
 342 community sanction violation is before the court for sentencing.
 343 Six (6) sentence points are assessed for each community sanction
 344 violation and each successive community sanction violation,
 345 unless any of the following apply:

346 1. If the community sanction violation includes a new
 347 felony conviction before the sentencing court, twelve (12)
 348 community sanction violation points are assessed for the
 349 violation, and for each successive community sanction violation
 350 involving a new felony conviction.

351 2. If the community sanction violation is committed by a
 352 violent felony offender of special concern as defined in s.
 353 948.06:

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

357 I. The violation does not include a new felony conviction;
 358 and

359 II. The community sanction violation is not based solely
 360 on the probationer or offender's failure to pay costs or fines
 361 or make restitution payments.

362 b. Twenty-four (24) community sanction violation points
 363 are assessed for the violation and for each successive violation
 364 of felony probation or community control where the violation

365 | includes a new felony conviction.

366 | Multiple counts of community sanction violations before the
 367 | sentencing court shall not be a basis for multiplying the
 368 | assessment of community sanction violation points.

369 | Prior serious felony points: If the offender has a primary
 370 | offense or any additional offense ranked in level 8, level 9, or
 371 | level 10, and one or more prior serious felonies, a single
 372 | assessment of thirty (30) points shall be added. For purposes of
 373 | this section, a prior serious felony is an offense in the
 374 | offender's prior record that is ranked in level 8, level 9, or
 375 | level 10 under s. 921.0022 or s. 921.0023 and for which the
 376 | offender is serving a sentence of confinement, supervision, or
 377 | other sanction or for which the offender's date of release from
 378 | confinement, supervision, or other sanction, whichever is later,
 379 | is within 3 years before the date the primary offense or any
 380 | additional offense was committed.

381 | Prior capital felony points: If the offender has one or more
 382 | prior capital felonies in the offender's criminal record, points
 383 | shall be added to the subtotal sentence points of the offender
 384 | equal to twice the number of points the offender receives for
 385 | the primary offense and any additional offense. A prior capital
 386 | felony in the offender's criminal record is a previous capital
 387 | felony offense for which the offender has entered a plea of nolo
 388 | contendere or guilty or has been found guilty; or a felony in

389 another jurisdiction which is a capital felony in that
 390 jurisdiction, or would be a capital felony if the offense were
 391 committed in this state.

392 Possession of a firearm, semiautomatic firearm, or machine gun:
 393 If the offender is convicted of committing or attempting to
 394 commit any felony other than those enumerated in s. 775.087(2)
 395 while having in his or her possession: a firearm as defined in
 396 s. 790.001(6), an additional eighteen (18) sentence points are
 397 assessed; or if the offender is convicted of committing or
 398 attempting to commit any felony other than those enumerated in
 399 s. 775.087(3) while having in his or her possession a
 400 semiautomatic firearm as defined in s. 775.087(3) or a machine
 401 gun as defined in s. 790.001(9), an additional twenty-five (25)
 402 sentence points are assessed.

403 Sentencing multipliers:

404 Drug trafficking: If the primary offense is drug trafficking
 405 under s. 893.135, the subtotal sentence points are multiplied,
 406 at the discretion of the court, for a level 7 or level 8
 407 offense, by 1.5. The state attorney may move the sentencing
 408 court to reduce or suspend the sentence of a person convicted of
 409 a level 7 or level 8 offense, if the offender provides
 410 substantial assistance as described in s. 893.135(4).

411 Law enforcement protection: If the primary offense is a
 412 violation of the Law Enforcement Protection Act under s.

413 775.0823(2), (3), or (4), the subtotal sentence points are
 414 multiplied by 2.5. If the primary offense is a violation of s.
 415 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points
 416 are multiplied by 2.0. If the primary offense is a violation of
 417 s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement
 418 Protection Act under s. 775.0823(10) or (11), the subtotal
 419 sentence points are multiplied by 1.5.

420 Grand theft of a motor vehicle: If the primary offense is grand
 421 theft of the third degree involving a motor vehicle and in the
 422 offender's prior record, there are three or more grand thefts of
 423 the third degree involving a motor vehicle, the subtotal
 424 sentence points are multiplied by 1.5.

425 Offense related to a criminal gang: If the offender is convicted
 426 of the primary offense and committed that offense for the
 427 purpose of benefiting, promoting, or furthering the interests of
 428 a criminal gang as defined in s. 874.03, the subtotal sentence
 429 points are multiplied by 1.5. If applying the multiplier results
 430 in the lowest permissible sentence exceeding the statutory
 431 maximum sentence for the primary offense under chapter 775, the
 432 court may not apply the multiplier and must sentence the
 433 defendant to the statutory maximum sentence.

434 Domestic violence in the presence of a child: If the offender is
 435 convicted of the primary offense and the primary offense is a
 436 crime of domestic violence, as defined in s. 741.28, which was

437 committed in the presence of a child under 16 years of age who
 438 is a family or household member as defined in s. 741.28(3) with
 439 the victim or perpetrator, the subtotal sentence points are
 440 multiplied by 1.5.

441 Adult-on-minor sex offense: If the offender was 18 years of age
 442 or older and the victim was younger than 18 years of age at the
 443 time the offender committed the primary offense, and if the
 444 primary offense was an offense committed on or after October 1,
 445 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
 446 violation involved a victim who was a minor and, in the course
 447 of committing that violation, the defendant committed a sexual
 448 battery under chapter 794 or a lewd act under s. 800.04 or s.
 449 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
 450 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
 451 800.04; or s. 847.0135(5), the subtotal sentence points are
 452 multiplied by 2.0. If applying the multiplier results in the
 453 lowest permissible sentence exceeding the statutory maximum
 454 sentence for the primary offense under chapter 775, the court
 455 may not apply the multiplier and must sentence the defendant to
 456 the statutory maximum sentence.

457 Section 6. For the purpose of incorporating the amendment
 458 made by this act to section 775.087, Florida Statutes, in a
 459 reference thereto, paragraph (b) of subsection (3) of section
 460 947.146, Florida Statutes, is reenacted to read:

461 947.146 Control Release Authority.—

462 (3) Within 120 days prior to the date the state

463 correctional system is projected pursuant to s. 216.136 to
 464 exceed 99 percent of total capacity, the authority shall
 465 determine eligibility for and establish a control release date
 466 for an appropriate number of parole ineligible inmates committed
 467 to the department and incarcerated within the state who have
 468 been determined by the authority to be eligible for
 469 discretionary early release pursuant to this section. In
 470 establishing control release dates, it is the intent of the
 471 Legislature that the authority prioritize consideration of
 472 eligible inmates closest to their tentative release date. The
 473 authority shall rely upon commitment data on the offender
 474 information system maintained by the department to initially
 475 identify inmates who are to be reviewed for control release
 476 consideration. The authority may use a method of objective risk
 477 assessment in determining if an eligible inmate should be
 478 released. Such assessment shall be a part of the department's
 479 management information system. However, the authority shall have
 480 sole responsibility for determining control release eligibility,
 481 establishing a control release date, and effectuating the
 482 release of a sufficient number of inmates to maintain the inmate
 483 population between 99 percent and 100 percent of total capacity.
 484 Inmates who are ineligible for control release are inmates who
 485 are parole eligible or inmates who:

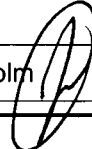

486 (b) Are serving the mandatory minimum portion of a
 487 sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);
 488

489 In making control release eligibility determinations under this
490 subsection, the authority may rely on any document leading to or
491 generated during the course of the criminal proceedings,
492 including, but not limited to, any presentence or postsentence
493 investigation or any information contained in arrest reports
494 relating to circumstances of the offense.

495 Section 7. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 503 Judgments
SPONSOR(S): Civil Justice Subcommittee; Renner
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Malcolm	Bond
2) Judiciary Committee		Malcolm 	Havlicak 

SUMMARY ANALYSIS

Proceedings supplementary allow for the discovery of assets that a judgment debtor may have improperly transferred or concealed in an effort to delay or hinder a creditor attempting to satisfy a final judgment. A key part of proceedings supplementary is the ability of a judgment creditor to bring in to the proceeding a non-party who improperly received the property from the judgment debtor.

The bill makes a number of changes to current law governing proceedings supplementary:

- Revises and updates terms and creates a stand-alone "Definitions" section to provide uniform usage of terms.
- Moves the discovery provisions in current law into a single provision and provides that the discovery provisions are in addition to those provided under the rules of civil procedure.
- Provides a procedure for bringing non-parties into proceedings supplementary via service of a Notice to Appear that describes the property at issue, notifies the third-party of the right to a jury trial, and requires the third-party to serve an answer within a time set by the court.
- Provides that Uniform Fraudulent Transaction Act (UFTA) claims raised during proceedings supplementary must be initiated by a supplemental complaint and that such claims are governed by the provisions of the UFTA and the rules of civil procedure.
- Provides that a person who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to court-imposed penalties.

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

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Final Process and Proceedings Supplementary

Chapter 56, F.S., regulates the final process, referred to as “execution,” to enforce a final judgment of a court. Section 56.29, F.S., titled “Proceedings Supplementary,” was enacted to replace the common law requirement of a creditor’s bill in which a judgment creditor initiates a separate action to enjoin the fraudulent disposition of a judgment debtor’s property.¹ Proceedings supplementary allow for the discovery of assets that may have been improperly transferred, covered up, or concealed by a judgment debtor in an effort to delay or hinder creditors attempting to satisfy a final judgment.² A key part of proceedings supplementary is the ability of a judgment creditor to bring a non-party who improperly received the property into the proceeding.

First enacted in 1919, s. 56.29, F.S., has remained substantially unchanged with the exception of a minor change in 2014 that allows separate claims under the Uniform Fraudulent Transfer Act³ to be filed in proceedings supplementary.⁴ According to the Florida Bar, because of its age, s. 56.29, F.S., “contains formulaic provisions and references to archaic rules of civil procedure resulting in a lack of uniformity in the procedural application of the statute”⁵ and raises concerns about adequate due process to non-parties brought into the proceeding.⁶

The bill makes the following changes to ch. 56, F.S.:

Terms and Definitions

A number of terms currently used in ch. 56, F.S., are not used uniformly, are imprecise, and lack conformity with current law and practice.⁷ Additionally, ch. 56, F.S., does not currently provide definitions for terms used in the chapter.

The bill revises and updates terms in ch. 56, F.S., and creates s. 56.0101, F.S., a stand-alone “Definitions” section, to provide uniform definitions and usage of terms in ch. 56, F.S. Revisions and definitions made in the bill include the following:

- Where applicable, “defendant” and “defendant in execution” is changed to “judgment debtor,” which is defined as “each person who is liable on a judgment, order, or decree subject to execution under this chapter.”
- “Plaintiff,” “plaintiff in execution,” and “creditor” are changed to “judgment creditor,” which is defined as “the holder of an unsatisfied judgment, order, or decree for the payment of money, including any transferee or any surety having the right to control and collect the judgment.”
- “Corporations” is changed to “corporate judgment debtor,” which means “any judgment debtor other than an individual, an estate, or a trust that is not a business trust.” This definition conforms to corporate law,⁸ which encompasses a variety of business entities.

¹ Benjamin H. Brodsky, *Caught in the Web of Florida’s Statutory Proceedings Supplementary: Procedural and Constitutional Problems Facing Impleaded Third Parties*, FLORIDA BAR JOURNAL, Dec. 2012, at 28, available at <https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Articles/A29338FA50F7A88085257AC2007494DE>.

² See *State v. Viney*, 163 So. 57, 60 (Fla. 1935).

³ ch. 726, F.S.

⁴ s. 17, ch. 2014-182, Laws of Fla.

⁵ Business Law Section of the Florida Bar, *Analysis of Proposed Amendments to Chapter 56*, 1 (on file with the Civil Justice Subcommittee).

⁶ Brodsky, *supra* note 1.

⁷ Business Law Section, *supra* note 5, at 1.

- “Levying creditor” is defined as the “levying judgment creditor.”
- Where applicable, “defendant” is changed to “claimant,” which is defined as any person other than the judgment debtor who claims any property levied on.”

Discovery in Proceedings Supplementary

Currently, the discovery tools available to a judgment creditor in proceedings supplementary, such as requiring a judgment debtor to be examined before the court, are spread around in s. 56.29, F.S. It is also unclear whether these discovery tools are generally available or whether they may be used prior to initiating proceedings supplementary.⁹

The bill moves the discovery provisions in s. 56.29, F.S., to a newly-created s. 56.30, F.S., to provide clearly identifiable discovery procedures in proceedings supplementary. The provisions in s. 56.30, F.S., are identical to current law with the following additions:

- The discovery provisions in s. 56.30, F.S., are in addition to those provided under the rules of civil procedure.
- A judgment debtor may be required to appear before the court in the county of the judgment debtor’s principal place of business.
- A court’s examination of a judgment debtor may occur before issuance of a Notice to Appear to third-parties.¹⁰
- A corporate judgment debtor may send a designee with knowledge of the property subject to execution to be examined by the court.

Notification and Examination of Third-Parties

As explained above, proceedings supplementary allow for the discovery of assets that may have been transferred, covered up, or concealed by a judgment debtor in an effort to hinder creditors attempting to satisfy a final judgment. Such attempts at hindering creditors generally involve people and entities that were not parties in the underlying case. However, the process for bringing these third-parties into the proceedings under s. 56.29(2), F.S., is unclear, which has caused confusion and raised due process concerns among practitioners and judges.¹¹

The bill amends s. 56.29(2), F.S., to provide a uniform procedure for bringing non-parties into proceedings supplementary. A judgment creditor, in its motion to initiate proceedings supplementary, must describe the property of the judgment debtor that may be applied toward satisfaction of the judgment. After proceedings supplementary have been initiated, a court must issue a notice to appear to third-parties informing them that property in their possession or control may be subject to execution and applied to satisfy a judgment. Service of the notice to appear makes them parties to the proceedings supplementary. The notice to appear must be served by process server, should describe with reasonable particularity the property at issue, require the third-party to serve an answering affidavit within a time to be fixed by the court (no less than seven business days, unless shortened by the court for cause), and require the third-party to assert any defenses in the answering affidavit. The notice to appear must also inform the third-party that he or she has the right to a trial by jury.

Uniform Fraudulent Transfers Act Claims

Section 56.29(5), F.S., currently allows judgment creditors to file claims under the Uniform Fraudulent Transfers Act¹² (UFTA) in proceedings supplementary. The bill moves this provision from s. 56.29(5), F.S., to newly-created s. 56.29(9), F.S. To highlight that UFTA claims are distinct from proceedings

⁸ chs. 605-621, F.S.

⁹ Business Law Section, *supra* note 5, at 7.

¹⁰ See Notification and Examination of Third-Parties section below.

¹¹ See Brodsky, *supra* note 1.

¹² ch. 726, F.S.

supplementary, the bill provides that UFTA claims must be initiated by a supplemental complaint and served as provided by the rules of civil procedures, and that the UFTA claims are subject to ch. 726, F.S., and the rules of civil procedure. Additionally, the bill requires the clerk of court to provide the parties with a parallel case number that the parties will use for the UFTA action.

Defenses or Claims Raised Solely for Delay

Sections 56.16 and 56.18, F.S., currently provide that a person (referred to as a "claimant"), other than the judgment debtor, who claims any property levied on by the judgment creditor, may file an affidavit stating the claim. If the court determines that the claimant's asserted claim on the property was brought for the purpose of delay, the judgment creditor may be awarded damages up to 20 percent of the value of the property claimed. The bill amends ss. 56.16, 56.18, and 56.29, F.S., to provide that "a person to whom a Notice to Appear has been issued" in proceedings supplementary and who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to the penalties provided in ss. 56.16 and 56.18, F.S.

Other Effects of the Bill

The bill amends s. 56.021, F.S., to provide that an execution may be issued upon an "order," in addition to a judgment or decree. This is a codification of existing case law¹³ and practice.

The bill amends s. 56.29(6), F.S., to provide that the provisions and remedies available in ss. 56.16-56.20, F.S., related to third-party claims and executions against third-parties, apply to orders, judgments, and writs issued pursuant to the proceedings supplementary process.

The bill provides cross-references and makes technical and conforming corrections.

B. SECTION DIRECTORY:

Section 1 creates s. 56.0101, F.S., related to definitions.

Section 2 amends s. 56.011, F.S., related to executions and *capias ad satisfaciendum* abolished.

Section 3 amends s. 56.021, F.S., related to executions, issuance and return, alias, etc.

Section 4 amends s. 56.041, F.S., related to executions, collection and return.

Section 5 amends s. 56.071, F.S., related to executions on equities of redemption and discovery of value.

Section 6 amends s. 56.09, F.S., related to executions against corporations; generally.

Section 7 amends s. 56.10, F.S., related to executions against corporations; receivership.

Section 8 amends s. 56.12, F.S., related to executions; levy and forthcoming bond.

Section 9 amends s. 56.15, F.S., related to executions; stay of illegal writs.

Section 10 amends s. 56.16, F.S., related to executions; claims of third parties to property levied on.

Section 11 amends s. 56.18, F.S., related to executions; trial of claims of third persons.

Section 12 amends s. 56.19, F.S., related to judgments upon claims of third persons.

¹³ See *Davidson v. Seegar*, 15 Fla. 671 (Fla. 1876).

Section 13 amends s. 56.20, F.S., related to executions on judgments against third person claimants.

Section 14 amends s. 56.22, F.S., related to execution sales; time, date, and place of sale.

Section 15 amends s. 56.26, F.S., related to executions; mandamus to force levy and sale.

Section 16 amends s. 56.27, F.S., related to executions; payment of money collected.

Section 17 amends s. 56.28, F.S., related to executions; failure of officer to pay over moneys collected.

Section 18 amends s. 56.29, F.S., related to proceedings supplementary.

Section 19 creates s. 56.30, F.S., related to discovery in proceedings supplementary.

Section 20 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The State Courts System commented on the bill, saying:

Language clarifying process and otherwise providing more explicit direction regarding requirements preliminary to proceedings supplementary will likely assist the courts handling these matters and may contribute to a reduction in the related expenditure of judicial time . . . [however, the] fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the effects on judicial time and workload resulting from language clarifying ch. 56, F.S., relating to final process in execution of judgments.¹⁴

¹⁴ Office of the State Courts Administrator, 2016 Judicial Impact Statement for HB 503, dated November 25, 2015 (on file with the Civil Justice Subcommittee).

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 may require amendment of Florida Rules of Civil Procedure 1.550 (executions and final process) and 1.560 (discovery in aid of execution).¹⁵ The Supreme Court has sufficient rulemaking authority in current law to make these changes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments make technical corrections and provide cross-references where necessary. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

¹⁵ *Id.*

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

Section 1. Section 56.0101, Florida Statutes, is created to read:

56.0101 Definitions.—As used in this chapter, the term:

(1) "Claimant" means any person other than the judgment debtor who claims any property levied on.

(2) "Corporate judgment debtor" means any judgment debtor other than an individual, an estate, or a trust that is not a business trust.

(3) "Judgment creditor" means the holder of an unsatisfied judgment, order, or decree for the payment of money, including any transferee or any surety having the right to control and collect the judgment under s. 55.13.

(4) "Judgment debtor" means each person who is liable on a judgment, order, or decree subject to execution under this chapter.

(5) "Levying creditor" means the levying judgment creditor.

(6) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(7) "Relative" means an individual related by consanguinity within the third degree as determined by the

53 common law, a spouse, or an individual related to a spouse
 54 within the third degree as determined by the common law, and
 55 includes an individual in an adoptive relationship within the
 56 third degree.

57 Section 2. Section 56.011, Florida Statutes, is amended to
 58 read:

59 56.011 Executions; capias ad satisfaciendum abolished.—~~In~~
 60 ~~no case shall~~ A capias ad satisfaciendum may not be issued upon
 61 a judgment, nor may shall the body of any person ~~defendant~~ be
 62 subject to arrest or confinement for the payment of money,
 63 except ~~it be~~ for fines imposed by lawful authority.

64 Section 3. Section 56.021, Florida Statutes, is amended to
 65 read:

66 56.021 Executions; issuance and return, alias, etc.—When
 67 issued, an execution is valid and effective during the life of
 68 the judgment, order, or decree on which it is issued. When fully
 69 paid, the officer executing it shall make his or her return and
 70 file it in the court which issued the execution. If the
 71 execution is lost or destroyed, the party entitled thereto may
 72 have an alias, pluries or other copies on making proof of such
 73 loss or destruction by affidavit and filing it in the court
 74 issuing the execution.

75 Section 4. Subsection (1) of section 56.041, Florida
 76 Statutes, is amended to read:

77 56.041 Executions; collection and return.—

78 (1) All executions shall be returnable when satisfied, and

79 | the officers to whom they are delivered shall collect the
 80 | amounts thereof as soon as possible and shall furnish the
 81 | judgment debtor ~~defendant~~ with a satisfaction of judgment. All
 82 | receipts shall be endorsed on the execution.

83 | Section 5. Section 56.071, Florida Statutes, is amended to
 84 | read:

85 | 56.071 Executions on equities of redemption; discovery of
 86 | value.—On motion made by the person ~~party~~ causing a levy to be
 87 | made on an equity of redemption, the court from which the
 88 | execution issued shall order the mortgagor, mortgagee, and all
 89 | other persons interested in the mortgaged property levied on to
 90 | appear and be examined about the amount remaining due on the
 91 | mortgage, the amount that has been paid, the person ~~party~~ to
 92 | whom that amount has been paid, and the date when that amount
 93 | was paid so that the value of the equity of redemption may be
 94 | ascertained before the property is sold. The court may appoint a
 95 | general or special magistrate to conduct the examination. This
 96 | section shall also apply to the interest of and personal
 97 | property in possession of a vendee under a retained title
 98 | contract or conditional sales contract.

99 | Section 6. Section 56.09, Florida Statutes, is amended to
 100 | read:

101 | 56.09 Executions against corporate judgment debtors
 102 | ~~corporations~~; generally.—On any judgment against a corporate
 103 | judgment debtor, the judgment creditor ~~corporation~~ ~~plaintiff~~ may
 104 | have an execution levied on the current money as well as on the

105 goods and chattels, lands and tenements of the corporate
 106 judgment debtor ~~said corporation~~.

107 Section 7. Section 56.10, Florida Statutes, is amended to
 108 read:

109 56.10 Executions against corporate judgment debtors
 110 ~~corporations~~; receivership.—If an execution cannot be satisfied
 111 in whole or in part for lack of property of the corporate
 112 judgment debtor ~~defendant corporation~~ subject to levy and sale,
 113 on motion of the judgment creditor the circuit court in chancery
 114 within whose circuit such corporate judgment debtor ~~corporation~~
 115 is or has been doing business, or in which any of its effects
 116 are found, may sequester the property, things in action, goods
 117 and chattels of the corporate judgment debtor ~~corporation~~ for
 118 the purpose of enforcing the judgment, and may appoint a
 119 receiver for the corporate judgment debtor ~~corporation~~. A
 120 receiver so appointed is subject to the rules prescribed by law
 121 for receivers of the property of other judgment debtors. His or
 122 her power shall extend throughout the state.

123 Section 8. Section 56.12, Florida Statutes, is amended to
 124 read:

125 56.12 Executions; levy, forthcoming bond.—If a judgment
 126 debtor ~~defendant in execution~~ wants to retake possession of any
 127 property levied on, the judgment debtor ~~he or she~~ may do so by
 128 executing a bond with surety to be approved by the officer in
 129 favor of the judgment creditor ~~plaintiff~~ in a sum double the
 130 value of the property retaken as fixed by the officer holding

131 the execution and conditioned that the property will be
 132 forthcoming on the day of sale stated in the bond.

133 Section 9. Section 56.15, Florida Statutes, is amended to
 134 read:

135 56.15 Executions; stay of illegal writs.—If any execution
 136 issues illegally, the judgment debtor ~~defendant in execution~~ may
 137 obtain a stay by making and delivering an affidavit to the
 138 officer having the execution, stating the illegality and whether
 139 any part of the execution is due, with a bond with surety
 140 payable to the judgment creditor ~~plaintiff~~ in double the amount
 141 of the execution or the part of which a stay is sought
 142 conditioned to pay the execution or part claimed to be illegal
 143 and any damages for delay if the affidavit is not well founded.
 144 On receipt of such affidavit and bond the officer shall stay
 145 proceedings on the execution and return the bond and affidavit
 146 to the court from which the execution issued. The court shall
 147 pass on the question of illegality as soon as possible. If the
 148 execution is adjudged illegal in any part, the court shall stay
 149 it as to the part but if it is adjudged legal in whole or in
 150 part, the court shall enter judgment against the principal and
 151 surety on such bond for the amount of so much of the execution
 152 as is adjudged to be legal and execution shall issue thereon.

153 Section 10. Section 56.16, Florida Statutes, is amended to
 154 read:

155 56.16 Executions; claims of third parties to property
 156 levied on.—If any person, including a person to whom a Notice to

157 Appear has been issued pursuant to s. 56.29(2), other than the
 158 judgment debtor ~~defendant in execution~~ claims any property
 159 levied on, he or she may obtain possession of the property by
 160 filing with the officer having the execution an affidavit by the
 161 claimant, or the claimant's ~~himself or herself, his or her~~ agent
 162 or attorney, that the property claimed belongs to the claimant
 163 ~~him or her~~ and by furnishing the officer a bond with surety to
 164 be approved by the officer in favor of the judgment creditor
 165 ~~plaintiff~~ in double the value of the goods claimed as the value
 166 is fixed by the officer and conditioned to deliver said property
 167 on demand of said officer if it is adjudged to be the property
 168 of the judgment debtor ~~defendant in execution~~ and to pay the
 169 judgment creditor ~~plaintiff~~ all damages found against the
 170 claimant ~~him or her~~ if it appears that the claim was interposed
 171 for the purpose of delay.

172 Section 11. Section 56.18, Florida Statutes, is amended to
 173 read:

174 56.18 Executions; trial of claims of third persons.—As
 175 soon as possible after the return, or after service of a Notice
 176 to Appear pursuant to s. 56.29(2), a jury, if not waived, shall
 177 be impaneled to try the right of property. If the verdict is in
 178 favor of the judgment creditor ~~plaintiff~~ and it appears that the
 179 claim brought pursuant to s. 56.16 was interposed for delay, the
 180 judgment creditor ~~plaintiff~~ may be awarded reasonable damages,
 181 not exceeding 20 percent of the value of the property claimed.
 182 If the claimant denies in writing under oath filed at least 3

183 days before the trial, the correctness of the appraisement of
 184 the value of the property by the officer levying the execution,
 185 and the verdict is in favor of the judgment creditor ~~plaintiff~~,
 186 the jury if not waived, shall fix the value of each item
 187 thereof, or of the items covered by such denial.

188 Section 12. Section 56.19, Florida Statutes, is amended to
 189 read:

190 56.19 Judgments upon claims of third persons.—Upon the
 191 verdict of the jury, the court shall enter judgment deciding the
 192 right of property, and if the verdict is for the judgment
 193 creditor ~~plaintiff~~, awarding a recovery by the judgment creditor
 194 ~~plaintiff~~ from the claimant ~~defendant~~ and the claimant's ~~his or~~
 195 ~~her~~ sureties, of the value (as fixed by the officer, or as fixed
 196 by the jury if fixed by it) of such parts of the property as the
 197 jury may have found subject to execution that were delivered to
 198 the claimant, and awarding separately such damages as ~~the jury~~
 199 may be ~~have~~ awarded under s. 56.18, and of all costs attending
 200 the presentation and trial of the claim.

201 Section 13. Section 56.20, Florida Statutes, is amended to
 202 read:

203 56.20 Executions on judgments against third person
 204 claimants.—If the execution issued on the judgment is not paid,
 205 it shall be satisfied in the usual manner unless on demand of
 206 the officer holding it, the principal and surety in the claim
 207 bond deliver the property released under the claim bond to the
 208 officer and pay him or her the damages and costs awarded to the

209 judgment creditor ~~plaintiff~~. If the property is returned to the
 210 officer but damages and costs are not paid, execution shall be
 211 enforced for the damages and costs. If part of the property is
 212 returned to the officer, the execution shall be enforced for the
 213 value, fixed as aforesaid, of that not returned. All property
 214 returned shall be sold under the original execution against the
 215 judgment debtor ~~original defendant~~.

216 Section 14. Section 56.22, Florida Statutes, is amended to
 217 read:

218 56.22 Execution sales; ~~time, date, and place of sale.~~-

219 (1) All sales of property under legal process shall take
 220 place at the time, date, and place advertised in the notice of
 221 the sheriff's sale on any day of the week except Saturday and
 222 Sunday and shall continue from day to day until such property is
 223 disposed of.

224 (2) Property not effectively disposed of at the initial
 225 sheriff's sale may be readvertised, as provided in s. 56.21,
 226 upon receipt of an additional deposit to cover costs incurred in
 227 connection with the maintenance of the property under legal
 228 process. ~~If in the event~~ no additional deposit is received by
 229 the sheriff, the property may be returned to the judgment debtor
 230 ~~defendant~~; if the judgment debtor ~~defendant~~ refuses to accept
 231 such property, the property may be returned to a third party,
 232 such as a lienholder, upon presentation of a proper court order
 233 directing such return. If the property cannot be returned as
 234 described in this subsection ~~none of the above can be~~

235 ~~accomplished~~, such property shall be disposed of as unclaimed or
 236 abandoned.

237 Section 15. Section 56.26, Florida Statutes, is amended to
 238 read:

239 56.26 Executions; mandamus to force levy and sale.—When an
 240 officer holds an unsatisfied execution and refuses to levy on
 241 property liable thereunder and on which it is his or her duty to
 242 levy or having levied, refuses to advertise and sell the
 243 property levied on, the judgment creditor ~~plaintiff in execution~~
 244 is entitled to an alternative writ of mandamus requiring the
 245 officer to levy such execution or advertise and sell the
 246 property levied on, or both, as the case may be.

247 Section 16. Subsection (1) and paragraph (a) of subsection
 248 (4) of section 56.27, Florida Statutes, are amended to read:

249 56.27 Executions; payment of money collected.—

250 (1) All money received under executions shall be paid, in
 251 the order prescribed, to the following: the sheriff, for costs;
 252 the levying creditor in the amount of \$500 as liquidated
 253 expenses; and the priority lienholder under s. 55.10(1) and (2),
 254 s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an
 255 affidavit required by subsection (4), or the levying creditor's
 256 ~~his or her~~ attorney, in satisfaction of the judgment lien, if
 257 the judgment lien has not lapsed at the time of the levy. The
 258 receipt of the attorney shall be a release of the officer paying
 259 the money to him or her. If the name of more than one attorney
 260 appears in the court file, the money shall be paid to the

261 attorney who originally commenced the action or who made the
 262 original defense unless the file shows that another attorney has
 263 been substituted.

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

269 (a) For a personal property levy, an attestation by the
 270 levying creditor or the levying creditor's attorney of record
 271 that he or she has reviewed the database or judgment lien
 272 records established in accordance with ss. 55.201-55.209 and
 273 that the information contained in the affidavit based on that
 274 review is true and correct. For a real property levy in
 275 accordance with s. 55.10(1) and (2), an attestation by the
 276 levying creditor or the levying creditor's ~~his or her~~ attorney
 277 of record that he or she has reviewed the records of the clerk
 278 of the court of the county where the property is situated, or
 279 that he or she has performed or reviewed a title search, and
 280 that the information contained in the affidavit, including a
 281 disclosure of all judgment liens, mortgages, financing
 282 statements, tax warrants, and other liens against the real
 283 property, based on that review or title search is true and
 284 correct.

285 Section 17. Section 56.28, Florida Statutes, is amended to
 286 read:

287 56.28 Executions; failure of officer to pay over moneys
 288 collected.—If any officer collecting money under execution fails
 289 or refuses to pay it over within 30 days after it has been
 290 received by him or her, or within 10 days after demand by the
 291 levying creditor or the levying creditor's ~~plaintiff or his or~~
 292 ~~her~~ attorney of record made in writing and delivered during
 293 regular business hours to the civil process bureau, the officer
 294 is liable to pay the same and 20 percent damages, to be
 295 recovered by motion in court.

296 Section 18. Section 56.29, Florida Statutes, is amended to
 297 read:

298 56.29 Proceedings supplementary.—

299 (1) When any judgment creditor ~~person or entity~~ holds an
 300 unsatisfied judgment or judgment lien obtained under chapter 55,
 301 the judgment creditor ~~holder or judgment lienholder~~ may file a
 302 motion and an affidavit so stating, identifying, if applicable,
 303 the issuing court, the case number, and the unsatisfied amount
 304 of the judgment or judgment lien, including accrued costs and
 305 interest, and stating that the execution is valid and
 306 outstanding, and thereupon the judgment creditor ~~holder or~~
 307 ~~judgment lienholder~~ is entitled to these proceedings
 308 supplementary to execution.

309 (2) The judgment creditor shall, in the motion described
 310 in subsection (1) or in a supplemental affidavit, describe any
 311 property of the judgment debtor not exempt from execution in the
 312 hands of any person or any property, debt, or other obligation

313 due to the judgment debtor that may be applied toward the
 314 satisfaction of the judgment. Upon filing of the motion and
 315 affidavits that property of the judgment debtor, or any debt, or
 316 other obligation due to the judgment debtor in the custody or
 317 control of any other person may be applied to satisfy the
 318 judgment, then the court shall issue a Notice to Appear. The
 319 Notice to Appear shall direct such person to file an affidavit,
 320 as provided in s. 56.16, with the court by a date certain, which
 321 date shall not be less than 7 business days from the date of
 322 service of the Notice to Appear, stating why the property, debt,
 323 or other obligation should not be applied to satisfy the
 324 judgment. For good cause shown, the court may shorten the time
 325 for serving an affidavit. The Notice to Appear shall describe
 326 with reasonable particularity the property, debt, or other
 327 obligation that may be available to satisfy the judgment, shall
 328 provide such person with the opportunity to present defenses,
 329 and shall indicate that discovery as provided under the rules of
 330 civil procedure is available and that there is a right to a jury
 331 trial as provided in s. 56.18. The Notice to Appear shall be
 332 served as provided for in chapter 48. A responding affidavit
 333 shall raise any fact or defense opposing application of the
 334 property described in the Notice to Appear to satisfy the
 335 judgment, including legal defenses, such as lack of personal
 336 jurisdiction. Legal defenses need not be filed under oath but
 337 must be served contemporaneously with the affidavit ~~On such~~
 338 plaintiff's motion the court shall require the defendant in

339 ~~execution to appear before it or a general or special magistrate~~
 340 ~~at a time and place specified by the order in the county of the~~
 341 ~~defendant's residence to be examined concerning his or her~~
 342 ~~property.~~

343 ~~(3) The order shall be served in a reasonable time before~~
 344 ~~the date of the examination in the manner provided for service~~
 345 ~~of summons or may be served on such defendant or his or her~~
 346 ~~attorney as provided for service of papers in the rules of civil~~
 347 ~~procedure.~~

348 ~~(4) Testimony shall be under oath, shall be comprehensive~~
 349 ~~and cover all matters and things pertaining to the business and~~
 350 ~~financial interests of defendant which may tend to show what~~
 351 ~~property he or she has and its location. Any testimony tending~~
 352 ~~directly or indirectly to aid in satisfying the execution is~~
 353 ~~admissible. A corporation must attend and answer by an officer~~
 354 ~~who may be specified in the order. Examination of witnesses~~
 355 ~~shall be as at trial and any party may call other witnesses.~~

356 ~~(5) The court may order any property of the judgment~~
 357 ~~debtor, not exempt from execution, in the hands of any person,~~
 358 ~~or any property, debt, or other obligation due to the judgment~~
 359 ~~debtor, to be applied toward the satisfaction of the judgment~~
 360 ~~debt. The court may entertain claims concerning the judgment~~
 361 ~~debtor's assets brought under chapter 726 and enter any order or~~
 362 ~~judgment, including a money judgment against any initial or~~
 363 ~~subsequent transferee, in connection therewith, irrespective of~~
 364 ~~whether the transferee has retained the property. Claims under~~

365 ~~chapter 726 are subject to the provisions of chapter 726 and~~
 366 ~~applicable rules of civil procedure.~~

367 (3)(6)(a) When, within 1 year before the service of
 368 process on the judgment debtor in the original proceeding or
 369 action ~~him or her~~, the judgment debtor ~~defendant~~ has had title
 370 to, or paid the purchase price of, any personal property to
 371 which the judgment debtor's ~~defendant's~~ spouse, any relative, or
 372 any person on confidential terms with the judgment debtor
 373 ~~defendant~~ claims title and right of possession ~~at the time of~~
 374 ~~examination~~, the judgment debtor ~~defendant~~ has the burden of
 375 proof to establish that such transfer or gift ~~from him or her~~
 376 was not made to delay, hinder, or defraud creditors.

377 (b) When any gift, transfer, assignment or other
 378 conveyance of personal property has been made or contrived by
 379 the judgment debtor to delay, hinder, or defraud creditors, the
 380 court shall order the gift, transfer, assignment or other
 381 conveyance to be void and direct the sheriff to take the
 382 property to satisfy the execution. This does not authorize
 383 seizure of property exempted from levy and sale under execution
 384 or property which has passed to a bona fide purchaser for value
 385 and without notice. Any person aggrieved by the levy or Notice
 386 to Appear may proceed under ss. 56.16-56.20.

387 (4)(7) At any time the court may refer the proceeding to a
 388 general or special magistrate who may be directed to report
 389 findings of law or fact, or both. The general or special
 390 magistrate has all the powers thereof, including the power to

391 issue subpoena, and shall be paid the fees provided by the court
 392 law.

393 ~~(5)(8)~~ A party or a witness examined under these
 394 provisions is not excused from answering a question on the
 395 ground that the answer will tend to show him or her guilty of
 396 the commission of a fraud, or prove that he or she has been a
 397 party or privy to, or knowing of a conveyance, assignment,
 398 transfer, or other disposition of property for any purpose, or
 399 that the party or witness or another person claims to have title
 400 as against the judgment debtor ~~defendant~~ or to hold property
 401 derived from or through the judgment debtor ~~defendant~~, or to be
 402 discharged from the payment of a debt which was due to the
 403 judgment debtor ~~defendant~~ or to a person on ~~in his or her~~ behalf
 404 of the judgment debtor. An answer cannot be used as evidence
 405 against the person so answering in any criminal proceeding.

406 ~~(6)(9)~~ The court may order any property of the judgment
 407 debtor, not exempt from execution, or any property, debt, or
 408 other obligation due to the judgment debtor, in the hands of or
 409 under the control of any person subject to the Notice to Appear,
 410 to be levied upon and applied toward the satisfaction of the
 411 judgment debt. The court may enter any orders, judgments, or
 412 writs required to carry out the purpose of this section,
 413 including those orders necessary or proper to subject property
 414 or property rights of any judgment debtor to execution, and
 415 including entry of money judgments as provided in ss. 56.16-
 416 56.19 against any person to whom a Notice to Appear has been

417 directed and over whom the court obtained personal jurisdiction
 418 ~~impleaded defendant~~ irrespective of whether such person
 419 ~~defendant~~ has retained the property, subject to ~~ss. 56.18 and~~
 420 ~~56.19 and~~ applicable principles of equity, and in accordance
 421 with chapters 76 and 77 and all applicable rules of civil
 422 procedure. Sections 56.16-56.20 apply to any order issued under
 423 this subsection.

424 ~~(7)(10)~~ Any person failing to obey any order issued under
 425 this section by a judge or general or special magistrate or
 426 failing to attend in response to a subpoena served on him or her
 427 may be held in contempt.

428 ~~(8)(11)~~ Costs for proceedings supplementary shall be taxed
 429 against the judgment debtor ~~defendant~~ as well as all other
 430 incidental costs determined to be reasonable and just by the
 431 court including, but not limited to, docketing the execution,
 432 sheriff's service fees, and court reporter's fees. Reasonable
 433 attorney ~~attorney's~~ fees may be taxed against the judgment
 434 debtor ~~defendant~~.

435 (9) The court may entertain claims concerning the judgment
 436 debtor's assets brought under chapter 726 and enter any order or
 437 judgment, including a money judgment against any initial or
 438 subsequent transferee, in connection therewith, irrespective of
 439 whether the transferee has retained the property. Claims under
 440 chapter 726 brought under this section shall be initiated by a
 441 supplemental complaint and served as provided by the rules of
 442 civil procedure, and the claims under the supplemental complaint

443 are subject to chapter 726 and the rules of civil procedure. The
 444 clerk of the court shall docket a supplemental proceeding under
 445 both the same case number assigned to the original complaint
 446 filed by the judgment creditor or the case number assigned to a
 447 judgment domesticated pursuant to s. 55.01, shall assign a
 448 separate supplemental proceeding number, and shall assign such
 449 supplemental proceeding to the same division and judge assigned
 450 to the main case or domesticated judgment.

451 Section 19. Section 56.30, Florida Statutes, is created to
 452 read:

453 56.30 Discovery in proceedings supplementary.—

454 (1) In addition to any other discovery permitted under the
 455 rules of civil procedure, on the judgment creditor's motion the
 456 court shall require the judgment debtor to appear before it or a
 457 general or special magistrate at a time and place specified by
 458 the order in the county of the judgment debtor's residence or
 459 principal place of business to be examined concerning property
 460 subject to execution. This examination may occur before issuance
 461 of a Notice to Appear.

462 (2) The order shall be served in a reasonable time before
 463 the date of the examination in the manner provided for service
 464 of summons or may be served on the judgment debtor or the
 465 judgment debtor's attorney of record as provided for service of
 466 papers in the rules of civil procedure.

467 (3) Testimony shall be under oath, shall be comprehensive,
 468 and cover all matters and things pertaining to the business and

469 financial interests of the judgment debtor which may tend to
 470 show what property the judgment debtor has and its location. Any
 471 testimony tending directly or indirectly to aid in satisfying
 472 the execution is admissible. A corporate judgment debtor must
 473 attend and answer by a designee with knowledge or an identified
 474 officer or manager who may be specified in the order.
 475 Examination of witnesses shall be as at trial and any party may
 476 call other witnesses to be examined concerning property that may
 477 be subject to execution.

478 Section 20. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 545 Human Trafficking

SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Spano and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 784

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Aziz	White
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	McAuliffe	Lloyd
3) Judiciary Committee		Aziz <i>PA</i>	Havlicak <i>RH</i>

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. Human trafficking in Florida proliferates through illegal industries such as prostitution. In recent years, the Legislature has overhauled Florida's human trafficking laws to increase penalties for solicitation and removed offenses that penalize minors for the commission of prostitution in order to reflect that minors are unable to consent to prostitution and should be viewed as victims of human trafficking. Despite these changes, 39 minors were arrested for prostitution in the past year.

The bill removes persons under the age of 18 from being prosecuted for prostitution. The bill makes correlating changes in ch. 39, F.S., relating to the definition of sexual abuse of a child concerning dependency, to reflect that sexually exploiting a child in prostitution should be viewed as human trafficking. This ensures that children involved in prostitution are viewed as victims, not culprits.

The bill also:

- Adds faith-based programs on the negative effects of prostitution and human trafficking to the educational programs that a person convicted of soliciting prostitution must attend if such programs exist in their respective judicial district;
- Increases the penalties for knowingly renting space to be used for prostitution;
- Reclassifies an offense of s. 796.07(2)(a), F.S., if the place, structure, building, or conveyance that is owned, established, maintained, or operated for prostitution is a massage establishment that is or should be licensed under s. 480.043, F.S., and adds such reclassified offense to the list of offenses that disqualify applicants from a massage therapist or massage establishment license;
- Adds human trafficking as a qualifying felony for first degree murder in the commission of a felony;
- Clarifies the offense of branding a victim of human trafficking;
- Reclassifies an offense in s. 787.06, F.S., if the victim suffers great bodily harm, permanent disability, or permanent disfigurement; and
- Adds racketeering, s. 895.03, F.S., to the qualifying offenses for a sexual predator or sexual offender if a judge makes written findings that racketeering activity involved at least one sexual offense included in the definition of sexual predator or sexual offender.

The Criminal Justice Impact Conference met January 5, 2016, and determined this bill will have an insignificant impact on state prison beds (and increase in 10 or fewer prison beds) in that the bill increases the number of people subject to sex offender registration requirements and reclassifies existing felony offenses.

The bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, teenagers, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.¹ The International Labor Organization (ILO), the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.² The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500-17,500.³

It is estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.⁴ The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets, and generally come from homes where they have been abused, or from families that have abandoned them. These children often become involved in prostitution as a way to support themselves financially.⁵ The average age at which girls first become victims of prostitution is 12-14; for boys and transgender youth it is 11-13.⁶

Third party or pimp-controlled commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations. About one-fifth of these children become involved in nationally organized crime networks and are trafficked nationally. They are transported around the United States by a variety of means - cars, buses, vans, trucks or planes - and are often provided counterfeit identification to use in the event of arrest.

Survivors of human trafficking often face both criminalization and stigmatization. Trafficked persons are not always recognized or treated as victims by law enforcement and prosecutors. Despite being victims, individuals who are trafficked are often arrested and convicted of prostitution and other related offenses, and may plead guilty not understanding the consequences. Multiple arrests, incarceration, police violence, deportation, employment, and housing discrimination may result.⁷

Prostitution

Human trafficking in Florida proliferates through illegal industries such as prostitution.⁸ This illegal industry is thriving because of the demand of men soliciting prostitution.⁹ Chapter 796, F.S., defines

¹ U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on Nov. 11, 2015).

² See U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013, <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited on Nov. 11, 2015).

³ Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx> (last visited on Nov. 22, 2015).

⁴ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, http://ojp.gov/newsroom/factsheets/ojpbs_humantrafficking.html (last visited Nov. 22, 2015).

⁵ Tamar R. Birckhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U.L. REV. 1055, 1092, n193 (2011).

⁶ *Id.*

⁷ Melissa Broudo and Sienna Baskin, *Vacating Criminal Convictions For Trafficked Persons: A Legal Memorandum for Advocates and Legislators*. Urban Justice Center. The Sex Workers Project, April 3, 2012, <http://www.sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (last visited on Nov. 22, 2015).

⁸ Florida State University Center for the Advancement of Human Rights, "Florida Responds to Human Trafficking" Fall 2003 available at http://www.cahr.fsu.edu/sub_category/floridarespondstohumantrafficking.pdf (last visited Nov. 23, 2015).

⁹ Cheryl George, *Jailing the Johns: The Issue of Demand in Human Sex Trafficking*, 13 FLA. COASTAL L. REV. 293, 299 (2012).

prostitution as “the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.”¹⁰ Currently, a person who offers to commit or engage in prostitution, lewdness, or assignation commits a second degree misdemeanor for a first time offense.¹¹ ¹² A second offense is a first degree misdemeanor,¹³ and a third or subsequent offense is a third degree felony¹⁴. Florida law also makes it a misdemeanor to rent any space with knowledge that it will be used for prostitution.¹⁵

Last session, in order to further thwart human trafficking, the Legislature amended ch. 796, F.S., to increase the penalty for solicitation from a misdemeanor to a third degree felony for subsequent violations, and to add requirements for community service, a minimum sentence of 10 days in jail, and attendance of an educational program about the negative effects of prostitution and human trafficking.¹⁶

In recent years, the federal government and other states have adopted legislation recognizing that minors cannot consent to prostitution and should be treated as victims. For example, the federal Trafficking Victims Protection Act, recognizes all prostituted minors as victims of sex trafficking.¹⁷ Likewise, Tennessee expanded its human trafficking offenses to include commercial sex acts where the victim is less than 18 years of age.¹⁸ The Texas Supreme Court has stated that “children are the victims, not the perpetrators, of child prostitution. Children do not freely choose a life of prostitution.”¹⁹

In the same vein, in 2014, legislative intent language was added to ch. 796, F.S., directing the prosecutions of adults who involve minors in prostitution to be prosecuted under other chapters of law as minors are unable to consent to an act of prostitution.²⁰ Adults who use minors in any act prohibited under ch. 796, F.S., should not be prosecuted under ch. 796, F.S., but should rather be prosecuted under other criminal laws, such as, but not limited to s. 787.06, F.S. (human trafficking), ch. 794, F.S. (sexual battery), ch. 800, F.S. (lewdness and indecent exposure), s. 810.145, F.S. (video voyeurism), ch. 827, F.S. (abuse of children), and ch. 847, F.S. (obscenity).²¹ Since ch. 796, F.S., should not be used to prosecute crimes involving minors, the 2014 legislation repealed the following provisions from ch. 796, F.S.:

- Procuring persons under age 18 for prostitution;
- Selling or buying of minors into prostitution; and
- Reclassifying prostitution violations involving minors.²²

In Florida, 39 minors were arrested for an offense under s. 796.07, F.S., in Fiscal Year 2014-2015.²³

Effect of the Bill

The bill amends s. 796.07(2)(e), F.S., to narrow the scope of who may be convicted of engaging in prostitution to persons 18 years of age and older. Thus, the bill ensures that minors cannot be arrested for offering, committing, or engaging in prostitution. The bill also amends s. 39.01, F.S., relating to child

¹⁰ s. 796.07(1)(a), F.S. “Sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation. . .” s. 796.07(1)(d), F.S.

¹¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

¹² s. 796.07(4), F.S.

¹³ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹⁵ s. 796.06, F.S.

¹⁶ Ch. 2015-145, Laws of Fla.; s. 796.07(2)(f) and (5), F.S.

¹⁷ 22 U.S.C. § 7102(9)(A). See also Cheryl Nelson Butler, *Kids for Sale: Does America Recognize Its Own Sexually Exploited Minors As Victims of Human Trafficking?*, 44 SETON HALL L. REV. 833, 843 (2014).

¹⁸ TENN. CODE ANN. § 39-13-301(4)(A).

¹⁹ *In re B.W.*, 313 S.W.3d 818, 826 (Tex. 2010).

²⁰ Ch. 2014-160, Laws of Fla.

²¹ s. 796.001, F.S.

²² Ch. 2014-160, Laws of Fla.

²³ Email from Meredith Stanfield, Legislative Affairs Director for Department of Juvenile Justice, on November 12, 2015 (on file with Criminal Justice Subcommittee).

dependency process, to reflect that sexually exploiting a child in prostitution should be viewed as human trafficking. This ensures that children involved in prostitution are viewed as victims, not culprits, by the courts and receive services from the Department of Children and Families.

Further, the bill adds faith-based programs on the negative effects of prostitution and human trafficking to the educational programs that a person convicted of soliciting prostitution must attend if such programs exist in their respective judicial district.

Additionally, the bill increases penalties for a violation of s. 796.06, relating to renting space to be used for lewdness, assignation, or prostitution. The bill increases a first violation from a second degree misdemeanor to a first degree misdemeanor and a subsequent violation from a first degree misdemeanor to a third degree felony.

Massage Establishments

Chapter 480, F.S., entitled the "Massage Practice Act" (Act), governs the practice of massage²⁴ in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as "a site or premises, or portion thereof, wherein a massage therapist practices massage."²⁵

Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).²⁶ The Board's rules:²⁷

- Govern the operation of massage establishments and their facilities, personnel, safety and sanitary requirements, financial responsibility, and insurance coverage;
- Require DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require DOH to periodically inspect licensed massage establishments at least once a year.

In order to be licensed as a massage therapist, an applicant must:²⁸

- Be at least 18 years of age or have received a high school diploma or graduate equivalency diploma;
- Complete a course of study at a massage school or apprentice program approved by the Board;
- Pass an examination; and
- Submit to a background screening.

The Board must deny an application for a massage therapist or a massage establishment if the applicant, owner, officer manager or person with an ownership interest in the establishment has been convicted or found guilty of a criminal offense under sections:

- 787.01, F.S., relating to kidnapping;
- 787.02, F.S., relating to false imprisonment;
- 787.025, F.S., relating to luring or enticing a child;
- 787.06, F.S., relating to human trafficking;
- 787.07, F.S., relating to human smuggling;
- 794.011, F.S., relating to sexual battery;
- 794.08, F.S., relating to female genital mutilation;
- 796.03, F.S., relating to procuring a person under the age of 18 for prostitution;
- 796.035, F.S., relating to the selling or buying of minors into prostitution;
- 796.04, F.S., relating to forcing, compelling, or coercing another to become a prostitute;

²⁴ The term "massage" is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation. s. 480.033(3), F.S.

²⁵ s. 480.033(7), F.S.

²⁶ s. 480.043(1), F.S.

²⁷ See Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.

²⁸ ss. 480.041, and 480.042, F.S.

- 796.05, F.S., relating to deriving support from the proceeds of a prostitute;
- 796.07(4)(c), F.S., relating to a felony of the third degree for a third or subsequent violation of s. 796.07, F.S., relating to prohibiting prostitution and related acts;
- 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- 825.1025(2)(b), F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly or disabled person;
- 827.071, F.S., relating to sexual performance by a child;
- 847.0133, F.S., relating to the protection of minors;
- 847.0135, F.S., relating to computer pornography;
- 847.0138, F.S., relating to the transmission of harmful materials to a minor by electronic device or equipment; or
- 847.0145, F.S., relating to the selling or buying of minors.²⁹

DOH may issue an emergency order suspending the license of a massage therapist or establishment upon information that he or she has committed an offense listed above.³⁰ In addition to practicing massage therapy in a licensed massage establishment, a massage therapist may practice at a client's residence or office, at a sports event, or at a convention or trade show.³¹

Florida law prohibits sexual misconduct³² in the practice of massage therapy.³³ In 2013, the Legislature passed legislation to restrict the practice of illicit sex acts at massage establishments by limiting the hours a massage establishment may be open at night.³⁴ Additionally, s. 796.07(2)(a), F.S., makes it a second degree misdemeanor to own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness, assignation, or prostitution. Subsequent convictions under s. 796.07(2)(a), F.S., may be a first degree misdemeanor or a third degree felony.

Despite these prohibitions, many massage establishments are used as havens for prostitution.³⁵ For example, in 2014, five women were arrested for prostitution at a Winter Park massage parlor that was well known for prostitution activity.³⁶ In that same year, police raided a Boca Raton spa and arrested the owner and two employees for prostitution.³⁷ Additionally, in 2015, two women were arrested for prostitution at a Port St. Lucie massage parlor.³⁸

Effect of the Bill

The bill creates s. 796.07(7) which reclassifies an offense of s. 796.07(2)(a), F.S., as: first degree misdemeanor for a first violation; a third degree felony for a second violation; and a second degree

²⁹ ss. 480.041(7) and 480.043(8), F.S.

³⁰ s. 456.074(5), F.S.

³¹ Section 480.046(1)(n), F.S.

³² "Sexual misconduct in the practice of massage therapy means violation of the massage therapist-patient relationship through which the massage therapist uses that relationship to induce or attempt to induce the patient to engage, or to engage or attempt to engage the patient, in sexual activity outside the scope of practice or the scope of generally accepted examination or treatment of the patient." s. 480.0485

³³ s. 480.0485, F.S.

³⁴ Ch. 2013-212, Laws of Fla. Section 480.0475(1), F.S., states a person may not operate a massage establishment between the hours of midnight and 5 a.m., with exceptions. A person who violates s. 480.0475(1), F.S., commits a first degree misdemeanor and any subsequent violations is a third degree felony. s. 480.0475(3), F.S.

³⁵ Laura J. Lederer, *Addressing Demand: Why and How Policymakers Should Utilize Law and Law Enforcement to Target Customers of Commercial Sexual Exploitation*, 23 REGENT U. L. REV. 297, 302 (2011).

³⁶ David Harris, *MBI: Massage parlor in Winter Park raided for prostitution*, ORLANDO SENTINEL (Dec. 11, 2014), <http://www.orlandosentinel.com/news/breaking-news/os-massage-parlor-winter-park-prostitution-20141211-story.html>.

³⁷ Brett Clarkson, *Boca Raton spa a front for prostitution, say cops: Owner, two employees of O Asian Wellness Spa and Massage arrested Friday*, SUN SENTINEL (June 9, 2014) http://articles.sun-sentinel.com/2014-06-09/news/fl-boca-raton-massage-arrest-20140609_1_prostitution-three-women-two-employees.

³⁸ *Two arrested in Port St. Lucie massage parlor prostitution bust*, TC PALM (July 16, 2015) <http://www.tcpalm.com/news/st-lucie-county/two-arrested-in-port-st-lucie-massage-parlor-prostitution-bust-ep-1190549285-335284131.html>.

felony for a third or subsequent violation, if the place, structure, building or conveyance that is owned, established, maintained, or operated for prostitution is a massage establishment that is or should be licensed under s. 480.043, F.S.

The bill adds the new offense to the list of prohibited criminal offenses that disqualify an applicant for a massage therapist license or massage establishment license in ss. 480.041, and 480.043, F.S. The bill also adds the new offense to the list of prohibited criminal offenses in s. 456.074(5), F.S., which requires DOH to issue an emergency order suspending the license of a therapist or an establishment that has committed the new reclassification offense.

Human Trafficking

Section 787.06, F.S., is Florida's 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." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking using coercion for labor or services, or for commercial sexual activity.³⁹ The statute also makes it a second degree felony to permanently brand⁴⁰ a victim of human trafficking.⁴¹

Effect of the Bill

The bill clarifies that one can only be convicted of branding a victim of human trafficking if the branding is for the purpose of *committing* or *facilitating* an offense of human trafficking. Thus, a tattoo artist could not be arrested for giving a tattoo to a victim of human trafficking years after the trafficking occurred.

The bill adds a reclassification of an offense if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of an offense under s. 787.06, F.S. The reclassification makes a second degree felony a first degree felony and a first degree felony a life felony.

First Degree Murder

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

- Trafficking offense prohibited by s. 893.135(1), F.S.;
- Arson;
- Sexual battery;
- Robbery;
- 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;
- Aggravated fleeing or eluding with serious bodily injury or death;
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

³⁹ s. 787.06(3), F.S.

⁴⁰ Section 787.06(4)(b), F.S., defines permanently brand as a mark on the body that can only be removed or repaired by surgical means, laser treatment or other medical procedure.

⁴¹ s. 787.06(4)(b), F.S.

First degree murder is a capital felony punishable by death if the proceeding held to determine the sentence according to the procedure set forth in s. 921.141, F.S.,⁴² 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.

Effect of the Bill

The bill adds human trafficking to the list of offenses contained in s. 782.04(1)(a)2., F.S. As a result, when a death results during the perpetration or attempt to perpetrate human trafficking, a person could be charged with first degree murder.

Sexual Predator and Sexual Offender Qualifying Offenses

Section 775.21, F.S., which contains various registration requirements for sexual predators, provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

1. A capital, life, or first-degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
 - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian
 - Section 794.011, F.S. (sexual battery)
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
 - Section 847.0145, F.S. (selling or buying of minors); or

2. Any felony violation, or attempt thereof, of:
 - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability)
 - Section 394.4593(2), F.S. (sexual misconduct with a patient)
 - Sections 787.01 (kidnapping), 787.02 (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian
 - Section 787.06(3)(b),(d),(f),(g), F.S. (relating to human trafficking)
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.⁴³
 - Section 794.05, F.S. (unlawful activity with certain minors)
 - Former section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
 - Former section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
 - Section 810.145(8)(b), F.S. (relating to video voyeurism)
 - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
 - Section 827.071, F.S. (sexual performance by a child)
 - Section 847.0135, F.S. (computer pornography) excluding s. 847.0135(6), F.S.⁴⁴

⁴² 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.

⁴³ Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

- Section 847.0145, F.S. (selling or buying of minors)
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client)
- Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
- The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

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

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
 - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability)
 - Section 394.4593(2), F.S. (sexual misconduct of a patient)
 - Sections 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim’s parent or guardian
 - Section 787.06(3)(b),(d),(f),(g), F.S. (relating to human trafficking)
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.
 - Section 794.05, F.S. (unlawful activity with certain minors)
 - Former section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
 - Former section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
 - Section 810.145(8), F.S. (relating to video voyeurism)
 - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
 - Section 827.071, F.S. (sexual performance by a child)
 - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
 - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.
 - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment)
 - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment)
 - Section 847.0145, F.S. (selling or buying of minors)
 - Section 916.1075(2), F.S. (sexual misconduct with a forensic client)
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction⁴⁵ imposed for any conviction of an offense described above.

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term “sexual offender” that include the list of qualifying offenses enumerated above. A sexual predator or sexual offender must comply with a number of statutory registration requirements.⁴⁶ Failure to comply with these requirements is generally a third degree felony.⁴⁷

⁴⁴ Section 847.0135(6), F.S., relates to owners or operators of computer services liable for permitting subscribers to post child pornography.

⁴⁵ A sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. Section 943.0435(1)(a), F.S.

⁴⁶ See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

⁴⁷ ss. 775.21(10) and 943.0435(14), F.S.

Currently, a person convicted of racketeering under s. 895.03, F.S., that involved an offense listed above is not adjudicated as a sexual predator or sexual offender. For example, a person could be convicted of racketeering involving human trafficking by deriving proceeds from the commercial sexual activity of a minor but not be required to register as sexual predator or sexual offender.

Effect of the Bill

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to add the offense of s. 895.03, F.S., (racketeering) to the qualifying offenses for sexual offender and sexual predator if the court has made written findings that the racketeering activity involved at least one sexual offense included in the definition of sexual predator or sexual offender or the offense listed in the definition of sexual predator or sexual offender involved sexual intent or motive.

Finally, the bill reenacts sections of law to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

B. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to definitions concerning proceedings relating to children.

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

Section 3. Amends s. 787.06, F.S., relating to human trafficking.

Section 4. Amends s. 456.074, F.S., relating to health care practitioners.

Section 5. Amends s. 480.041, F.S., relating to massage therapists; qualifications; licensure; endorsement.

Section 6. Amends s. 480.043, F.S., relating to massage establishments; requisites; licensure; inspection.

Section 7. Amends s. 796.06, F.S., relating to renting space to be used for lewdness, assignation, or prostitution.

Section 8. Amends s. 796.07, F.S., relating to prohibiting prostitution and related acts.

Section 9. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 10. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 11. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 12. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 13. – 69. Reenacting sections of law to incorporate the bill's amendments to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

Section 70. Providing an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met January 5, 2016, and determined this bill will have an insignificant impact on state prison beds (and increase in 10 or fewer prison beds) in that the bill increases the number of people subject to sex offender registration requirements and reclassifies existing felony offenses.

This bill amends s. 782.04(1)(a)2., F.S., making it a first degree murder when an unlawful killing is committed by a person engaged in the perpetration of human trafficking. In Fiscal Year 2014-15, there were 12 offenders sentenced under s. 787.06, F.S. (human trafficking), and 9 of these offenders were sentenced to prison (average sentence length 149.3 months). None of those sentenced to prison would be charged with the additional offense of first degree murder. Furthermore, no one sent to prison for manslaughter or murder had an additional charge of human trafficking.

This bill also amends s. 787.06(4)(b), F.S., clarifying that a person can only be convicted of branding a victim of human trafficking if it is for the purpose of committing or facilitating an offense of human trafficking. In Fiscal Year 2014-15, there were no offenders sentenced under s. 787.06(4)(b), F.S.

This bill also amends s. 787.06, F.S., to provide that if a human trafficking offense causes great bodily harm, permanent disability, or permanent disfigurement to another person during the commission of the offense, the degree of that offense will be reclassified as follows: second degree felony increased to first degree felony and a first degree felony increased to life felony. In Fiscal Year 2014-15, there were 12 offenders sentenced under both s. 787.06, F.S. (human trafficking), and 9 of these offenders were sentenced to prison (average sentence length 149.3 months). Two offenders were charged with felony battery in addition to human trafficking, and one was charged with domestic battery.

This bill amends s. 796.06(2)(b), F.S., increasing the current first degree misdemeanor to an unranked, third degree felony for a second or subsequent violation of renting space to be used for lewdness, assignation, or prostitution. In Fiscal Year 2014-15, of the eight convictions and one adjudication withheld for violating s. 796.06, F.S., all were second degree misdemeanors and none of these were repeat offenders. In Fiscal Year 2014-15, the incarceration rate for an unranked, 3rd degree felony was 9.9%.

This bill also creates a reclassification of s. 796.07(2)(a), F.S., reclassifying the second degree misdemeanor offense as a first degree misdemeanor for a first violation, a first degree misdemeanor as an unranked, third degree felony for a second violation, the third degree felony as a second degree felony for a third or subsequent violation, if the place, structure, building, or conveyance that is owned, established, maintained, or operated for prostitution is a massage establishment required to be licensed under s. 480.043, F.S. In Fiscal Year 2014-15, there were no guilty/convicted counts and two adjudication withheld counts for violating s. 796.07(2)(a), F.S.

This bill also amends s. 796.07(2)(e), F.S., increasing the age to 18 years of age or older for someone to be charged with the offense of offering to commit, or to commit, or to engage in, prostitution, lewdness, or assignation. This offense is currently a second degree misdemeanor for a first violation, a first degree misdemeanor for a second violation, and an unranked, third degree

felony for a third or subsequent violation. In Fiscal Year 2014-15, there was one guilty/convicted count and one adjudication withheld count for violating s. 796.07(2)(e), F.S. In Fiscal Year 2014-15, there were no offenders sentenced for committing the offense of prostitution for a third or subsequent violation while under 18 years of age.

This bill also amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to add the offense of s. 895.03, F.S., (racketeering) to the qualifying offenses for sexual offender and sexual predator if the court has made written findings that the racketeering activity involved at least one sexual offense included in the definition of sexual predator or sexual offender or the offense involved sexual intent or motive. This would add these offenders to the pool of those that could potentially commit sexual offender/predator registration related offenses. In Fiscal Year 2014-15, there were 12 offenders sentenced under s. 787.06, F.S., (human trafficking), and nine of these offenders were sentenced to prison (mean sentence length 149.3 months) and one was sentenced to prison with both racketeering and sexual offenses.

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:

The equal protection clause of the United States Constitution requires that no state shall deny any person within its jurisdiction "equal protection of the laws."⁴⁸ Furthermore, Florida's equal protection clause states that "no person shall be deprived of any right because of race, religion, national origin, or physical disability."⁴⁹ The bill may raise an equal protection issue where minors will be immune from prosecution for prostitution.

A court's response to an equal protection claim depends on the classification of people involved. Courts review classifications based on age under rational basis standard, in which classifications will be upheld unless they are wholly arbitrary or bear no rational relationship to any conceivable

⁴⁸ U.S. CONST. amend XIV, s. 1.

⁴⁹ FLA. CONST. art. I, s. 2.

legitimate government interest.⁵⁰ The Florida Supreme Court has held that the state has a compelling interest in preventing the sexual exploitation of children.⁵¹

Furthermore, the Texas Supreme Court overturned a 13 year-old's conviction for prostitution because children lack the capacity to consent to sex.⁵²

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute with two amendments and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Adding human trafficking as a qualifying felony for first degree murder in the commission of a felony;
- Clarifying the offense of branding a victim of human trafficking;
- Reclassifying an offense in s. 787.06, F.S., if the victim suffers great bodily harm, permanent disability, or permanent disfigurement;
- Reclassifying an offense of s. 796.07(2)(a), F.S., if the place, structure, building or conveyance that is owned, established, maintained, or operated for prostitution is a massage establishment required to be licensed under s. 480.043, F.S.;
- Adding the reclassification offense to the list of disqualifying offenses for applicants for a massage therapist or massage establishment license; and
- Increasing penalties for knowingly renting space to be used for prostitution.

On January 13, 2016, the Justice Appropriations Subcommittee adopted a committee substitute with one amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies the new reclassification offense relating to increasing penalties for anyone who operates a business for prostitution, applies to businesses that are licensed or should be licensed under s. 480.043, F.S.;
- Provides proportionality to the new reclassification offense of operating a business for prostitution when that business is or should be licensed under s. 480.043, F.S.;
- Adds the new reclassification offense to s. 456.074(5), F.S., relating to the Department of Health's ability to issue emergency orders suspending licenses of therapist or massage establishments for convictions of specified felonies.

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

⁵⁰ *Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991).

⁵¹ *Jones v. State*, 640 So. 2d 1084, 1091 (Fla. 1994).

⁵² *In re B.W.*, 313 S.W.3d at 825.

27 assignment, or prostitution in conjunction with a
 28 massage establishment; correcting a cross-reference;
 29 amending s. 480.043, F.S.; providing that a licensed
 30 massage establishment may not receive a new or renewal
 31 license if specified persons connected to the
 32 establishment are convicted of owning, establishing,
 33 maintaining, or operating a place, structure,
 34 building, or conveyance for lewdness, assignation, or
 35 prostitution in conjunction with the establishment;
 36 correcting a cross-reference; amending s. 796.06,
 37 F.S.; increasing criminal penalties for the offense of
 38 renting space to be used for lewdness, assignation, or
 39 prostitution; amending s. 796.07, F.S.; providing that
 40 minors may not be charged with specified prostitution
 41 offenses; specifying that certain educational programs
 42 may be offered by faith-based providers; providing for
 43 the reclassification of the offense of owning,
 44 establishing, maintaining, or operating a place,
 45 structure, building, or conveyance for lewdness,
 46 assignation, or prostitution if the offense is
 47 committed in conjunction with a massage establishment;
 48 amending ss. 775.21 and 943.0435, F.S.; requiring a
 49 person convicted of specified racketeering offenses to
 50 register as a sexual predator or sexual offender under
 51 certain circumstances; amending ss. 944.606 and
 52 944.607, F.S.; revising the definition of the term

53 "sexual offender" for purposes of offender
 54 notification to include a person convicted of
 55 specified racketeering offenses if the court makes
 56 specified findings; reenacting s. 394.495(4)(p), F.S.,
 57 relating to the child and adolescent mental health
 58 system of care, s. 409.1678(1)(c) and (6)(a) and (b),
 59 F.S., relating to specialized residential options for
 60 children who are victims of sexual exploitation, and
 61 s. 960.065(5), F.S., relating to eligibility for
 62 awards, to incorporate the amendment made by the act
 63 to s. 39.01, F.S., in references thereto; reenacting
 64 s. 39.806(1)(d) and (n), F.S., relating to grounds for
 65 termination of parental rights, to incorporate the
 66 amendments made by the act to ss. 775.21 and 782.04,
 67 F.S., in references thereto; reenacting s.
 68 63.089(4)(b), F.S., relating to proceedings to
 69 terminate parental rights pending adoption, to
 70 incorporate the amendments made by the act to ss.
 71 775.21 and 782.04, F.S., in references thereto;
 72 reenacting s. 95.11(10), F.S., relating to limitations
 73 other than for the recovery of real property, s.
 74 775.082(1)(b) and (3)(a), (b), and (c), F.S., relating
 75 to penalties, s. 782.065, F.S., relating to murder of
 76 specified officers, s. 921.16(1), F.S., relating to
 77 when sentences should be concurrent and when they
 78 should be consecutive, s. 948.062(1)(a), F.S.,

79 relating to reviewing and reporting serious offenses
 80 committed by offenders placed on probation or
 81 community control, s. 985.265(3)(b), F.S., relating to
 82 detention transfer and release, and s. 1012.315(1)(d),
 83 F.S., relating to disqualification from employment, to
 84 incorporate the amendment made by the act to s.
 85 782.04, F.S., in references thereto; reenacting s.
 86 1012.467(2)(g), F.S., relating to noninstructional
 87 contractors who are permitted access to school grounds
 88 when students are present, to incorporate the
 89 amendments made by the act to ss. 782.04 and 943.0435,
 90 F.S., in references thereto; reenacting s. 775.0823(1)
 91 and (2), F.S., relating to violent offenses committed
 92 against certain officers, attorneys, and judges, s.
 93 921.0022(3)(i), F.S., relating to the offense severity
 94 ranking chart, s. 947.146(3)(i), F.S., relating to the
 95 Control Release Authority, and s. 394.912(9)(a), F.S.,
 96 relating to definitions relating to involuntary civil
 97 commitment of sexually violent predators, to
 98 incorporate the amendment made by the act to s.
 99 782.04, F.S., in references thereto; reenacting s.
 100 775.15(19), F.S., relating to time limitations, to
 101 incorporate the amendment made by the act to s.
 102 787.06, F.S., in a reference thereto; reenacting s.
 103 60.05(4), F.S., relating to abatement of nuisances, s.
 104 775.0877(1)(m), F.S., relating to criminal

105 transmission of HIV, s. 796.08(2) and (3), F.S.,
 106 relating to screening for HIV and sexually
 107 transmissible diseases, s. 796.09(2), F.S., relating
 108 to certain civil causes of action, s. 895.02(1)(a),
 109 F.S., relating to definitions for the Florida RICO
 110 Act, and s. 948.16(1)(a), F.S., relating to specified
 111 misdemeanor pretrial intervention programs, to
 112 incorporate the amendment made by the act to s.
 113 796.07, F.S., in references thereto; reenacting s.
 114 39.0139(3)(a), F.S., relating to visitation or other
 115 contact, s. 39.509(6)(b), F.S., relating to
 116 grandparents rights, s. 63.092(3), F.S., relating to a
 117 report to the court of intended placement by an
 118 adoption entity, to incorporate the amendment made by
 119 the act to s. 775.21, F.S., in references thereto;
 120 reenacting s. 68.07(3)(i) and (6), F.S., relating to
 121 change of name, to incorporate the amendments made by
 122 this act to ss. 775.21 and 943.0435, F.S., in
 123 references thereto; reenacting s. 322.141(3), F.S.,
 124 relating to color or markings of certain licenses or
 125 identification cards, to incorporate the amendments
 126 made by this act to ss. 775.21, 943.0435, and 944.607,
 127 F.S., in references thereto; reenacting s.
 128 397.4872(2)(a) and (c), F.S., relating to exemption
 129 from disqualification, to incorporate the amendments
 130 made by this act to ss. 775.21 and 943.0435, F.S., in

131 references thereto; reenacting s. 775.13(4) (e) and
 132 (f), F.S., relating to registration of convicted
 133 felons, to incorporate the amendments made by this act
 134 to ss. 775.21, 943.0435, and 944.607, F.S., in
 135 references thereto; reenacting s. 775.25, F.S.,
 136 relating to prosecutions for acts or omissions, to
 137 incorporate the amendments made to this act by ss.
 138 775.21, 943.0435, 944.606, and 944.607, F.S., in
 139 references thereto; reenacting s. 775.261(3) (b), F.S.,
 140 relating to The Florida Career Offender Registration
 141 Act, to incorporate the amendments made by this act to
 142 ss. 775.21, 943.0435, and 944.607, F.S., in references
 143 thereto; reenacting s. 794.075(1), F.S., relating to
 144 sexual predators and erectile dysfunction drugs, and
 145 s. 903.0351(1) (c), F.S., relating to restrictions on
 146 pretrial release pending probation-violation hearing
 147 or community-control-violation hearing, to incorporate
 148 the amendment made by the act to s. 775.21, F.S., in
 149 references thereto; reenacting s. 903.046(2) (m), F.S.,
 150 relating to purpose of and criteria for bail
 151 determination, to incorporate the amendments made by
 152 this act to ss. 775.21 and 943.0435, F.S., in
 153 references thereto; reenacting s. 921.141(5) (o), F.S.,
 154 relating to sentence of death or life imprisonment for
 155 capital felonies, to incorporate the amendment made by
 156 the act to s. 775.21, F.S., in a reference thereto;

157 reenacting s. 938.10(1), F.S., relating to additional
 158 court cost imposed in cases of certain crimes, to
 159 incorporate the amendments made by this act to ss.
 160 775.21 and 943.0435, F.S., in references thereto;
 161 reenacting s. 943.0435(3), (4), and (5), F.S.,
 162 relating to sexual offenders required to register with
 163 the department, to incorporate the amendments made by
 164 this act to ss. 775.21, 944.606, and 944.607, F.S., in
 165 references thereto; reenacting s. 944.607(4)(a) and
 166 (9), F.S., relating to notification to the Department
 167 of Law Enforcement of information on sexual offenders,
 168 to incorporate the amendments made by this act to ss.
 169 775.21 and 943.0435, F.S., in references thereto;
 170 reenacting s. 944.608(7), F.S., relating to
 171 notification to the Department of Law Enforcement of
 172 information on career offenders, to incorporate the
 173 amendments made by this act to ss. 775.21 and 944.607,
 174 F.S., in references thereto; reenacting s. 944.609(4),
 175 F.S., relating to career offenders and notification
 176 upon release, to incorporate the amendment made by the
 177 act to s. 775.21, F.S., in references thereto;
 178 reenacting s. 947.1405(2)(c), (10), and (12), F.S.,
 179 relating to the conditional release program, to
 180 incorporate the amendments made by this act to ss.
 181 775.21 and 943.0435, F.S., in references thereto;
 182 reenacting s. 948.06(4) and (8)(b), (c), and (d),

183 F.S., relating to violation of probation or community
 184 control, to incorporate the amendments made by this
 185 act to ss. 782.04, 775.21, 943.0435, and 944.607,
 186 F.S., in references thereto; reenacting s. 948.063,
 187 F.S., relating to violations of probation or community
 188 control by designated sexual offenders and sexual
 189 predators, to incorporate the amendments made by this
 190 act to ss. 775.21, 943.0435, and 944.607, F.S., in
 191 references thereto; reenacting s. 948.064(4), F.S.,
 192 relating to notification of status as a violent felony
 193 offender of special concern, and s. 948.12(3), F.S.,
 194 relating to intensive supervision for postprison
 195 release of violent offenders, to incorporate the
 196 amendment made by the act to s. 775.21, F.S., in
 197 references thereto; reenacting s. 948.30(3)(b) and
 198 (4), F.S., relating to additional terms and conditions
 199 of probation or community control for certain sex
 200 offenses, to incorporate the amendments made by this
 201 act to ss. 775.21 and 943.0435, F.S., in references
 202 thereto; reenacting s. 948.31, F.S., relating to
 203 evaluation and treatment of sexual predators and
 204 offenders on probation or community control, and s.
 205 985.04(6)(b), F.S., relating to oaths, records, and
 206 confidential information, to incorporate the
 207 amendments made by the act to ss. 775.21, 943.0435,
 208 944.606, and 944.607, F.S., in references thereto;

209 reenacting s. 985.4815(9), F.S., relating to
 210 notification to the Department of Law Enforcement of
 211 information on juvenile sexual offenders, to
 212 incorporate the amendments made by this act to ss.
 213 775.21 and 943.0435, F.S., in references thereto;
 214 reenacting s. 92.55(1)(b), F.S., relating to judicial
 215 or other proceedings involving certain victims,
 216 witnesses, and persons, to incorporate the amendments
 217 made by this act to ss. 775.21 and 943.0435, F.S., in
 218 references thereto; reenacting s. 394.9125(2)(a),
 219 F.S., relating to state attorney authority to refer a
 220 person for civil commitment, to incorporate the
 221 amendment made by the act to s. 943.0435, F.S., in a
 222 reference thereto; reenacting s. 775.21(5)(d) and
 223 (10)(c), F.S., relating to the Florida Sexual
 224 Predators Act, to incorporate the amendments made by
 225 this act to ss. 943.0435 and 944.607, F.S., in
 226 references thereto; reenacting s. 775.24(2), F.S.,
 227 relating to the duty of the court to uphold laws
 228 governing sexual predators and sexual offenders, to
 229 incorporate the amendments made by this act to ss.
 230 943.0435, 944.606, and 944.607, F.S., in references
 231 thereto; reenacting s. 943.0436(2), F.S., relating to
 232 the duty of the court to uphold laws governing sexual
 233 predators and sexual offenders, to incorporate the
 234 amendments made by this act to ss. 775.21, 943.0435,

235 944.606, and 944.607, F.S., in references thereto;
 236 reenacting s. 775.0862(2), F.S., relating to
 237 reclassification of sexual offenses against students
 238 by authority figures, to incorporate the amendment
 239 made by the act to s. 943.0435, F.S., in a reference
 240 thereto; providing an effective date.

241

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

243

244 Section 1. Paragraph (g) of subsection (69) of section
 245 39.01, Florida Statutes, is amended to read:

246 39.01 Definitions.—When used in this chapter, unless the
 247 context otherwise requires:

248 (69) "Sexual abuse of a child" for purposes of finding a
 249 child to be dependent means one or more of the following acts:

250 (g) The sexual exploitation of a child, which includes the
 251 act of a child offering to engage in or engaging in
 252 prostitution, ~~provided that the child is not under arrest or is~~
 253 ~~not being prosecuted in a delinquency or criminal proceeding for~~
 254 ~~a violation of any offense in chapter 796 based on such~~
 255 ~~behavior;~~ or the act of allowing, encouraging, or forcing a
 256 child to:

- 257 1. Solicit for or engage in prostitution;
- 258 2. Engage in a sexual performance, as defined by chapter
- 259 827; or
- 260 3. Participate in the trade of human trafficking as

261 provided in s. 787.06(3)(g).

262 Section 2. Paragraph (a) of subsection (1) of section
 263 782.04, Florida Statutes, is amended to read:

264 782.04 Murder.—

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

266 1. When perpetrated from a premeditated design to effect
 267 the death of the person killed or any human being;

268 2. When committed by a person engaged in the perpetration
 269 of, or in the attempt to perpetrate, any:

270 a. Trafficking offense prohibited by s. 893.135(1),

271 b. Arson,

272 c. Sexual battery,

273 d. Robbery,

274 e. Burglary,

275 f. Kidnapping,

276 g. Escape,

277 h. Aggravated child abuse,

278 i. Aggravated abuse of an elderly person or disabled
 279 adult,

280 j. Aircraft piracy,

281 k. Unlawful throwing, placing, or discharging of a
 282 destructive device or bomb,

283 l. Carjacking,

284 m. Home-invasion robbery,

285 n. Aggravated stalking,

286 o. Murder of another human being,

287 p. Resisting an officer with violence to his or her
 288 person,
 289 q. Aggravated fleeing or eluding with serious bodily
 290 injury or death,
 291 r. Felony that is an act of terrorism or is in furtherance
 292 of an act of terrorism,
 293 s. Human trafficking; or
 294 3. Which resulted from the unlawful distribution of any
 295 substance controlled under s. 893.03(1), cocaine as described in
 296 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
 297 compound, derivative, or preparation of opium, or methadone by a
 298 person 18 years of age or older, when such drug is proven to be
 299 the proximate cause of the death of the user,
 300
 301 is murder in the first degree and constitutes a capital felony,
 302 punishable as provided in s. 775.082.
 303 Section 3. Subsections (8) and (9) of section 787.06,
 304 Florida Statutes, are renumbered as subsections (9) and (10),
 305 respectively, paragraph (b) of subsection (4) is amended, and a
 306 new subsection (8) is added to that section, to read:
 307 787.06 Human trafficking.—
 308 (4)
 309 (b) Any person who, for the purpose of committing or
 310 facilitating an offense under this section, permanently brands,
 311 or directs to be branded, a victim of an offense under this
 312 section commits a second degree felony, punishable as provided

313 in s. 775.082, s. 775.083, or s. 775.084. For purposes of this
 314 subsection, the term "permanently branded" means a mark on the
 315 individual's body that, if it can be removed or repaired at all,
 316 can only be removed or repaired by surgical means, laser
 317 treatment, or other medical procedure.

318 (8) The degree of an offense shall be reclassified as
 319 follows if a person causes great bodily harm, permanent
 320 disability, or permanent disfigurement to another person during
 321 the commission of an offense under this section:

322 (a) A felony of the second degree shall be reclassified as
 323 a felony of the first degree.

324 (b) A felony of the first degree shall be reclassified as
 325 a life felony.

326 Section 4. Subsection (5) of section 456.074, Florida
 327 Statutes, is amended to read:

328 456.074 Certain health care practitioners; immediate
 329 suspension of license.—

330 (5) The department shall issue an emergency order
 331 suspending the license of a massage therapist or establishment
 332 as defined in chapter 480 upon receipt of information that the
 333 massage therapist, a person with an ownership interest in the
 334 establishment, or, for a corporation that has more than \$250,000
 335 of business assets in this state, the owner, officer, or
 336 individual directly involved in the management of the
 337 establishment has been convicted or found guilty of, or has
 338 entered a plea of guilty or nolo contendere to, regardless of

339 adjudication, a violation of s. 796.07(2)(a) which is
 340 reclassified under s. 796.07(7) or a felony offense under any of
 341 the following provisions of state law or a similar provision in
 342 another jurisdiction:

- 343 (a) Section 787.01, relating to kidnapping.
- 344 (b) Section 787.02, relating to false imprisonment.
- 345 (c) Section 787.025, relating to luring or enticing a
 346 child.
- 347 (d) Section 787.06, relating to human trafficking.
- 348 (e) Section 787.07, relating to human smuggling.
- 349 (f) Section 794.011, relating to sexual battery.
- 350 (g) Section 794.08, relating to female genital mutilation.
- 351 (h) Former s. 796.03, relating to procuring a person under
 352 the age of 18 for prostitution.
- 353 (i) Former s. 796.035, relating to the selling or buying
 354 of minors into prostitution.
- 355 (j) Section 796.04, relating to forcing, compelling, or
 356 coercing another to become a prostitute.
- 357 (k) Section 796.05, relating to deriving support from the
 358 proceeds of prostitution.
- 359 (l) Section 796.07(4)(a)3. ~~796.07(4)(c)~~, relating to a
 360 felony of the third degree for a third or subsequent violation
 361 of s. 796.07, relating to prohibiting prostitution and related
 362 acts.
- 363 (m) Section 800.04, relating to lewd or lascivious
 364 offenses committed upon or in the presence of persons less than

365 16 years of age.

366 (n) Section 825.1025(2)(b), relating to lewd or lascivious
 367 offenses committed upon or in the presence of an elderly or
 368 disabled person.

369 (o) Section 827.071, relating to sexual performance by a
 370 child.

371 (p) Section 847.0133, relating to the protection of
 372 minors.

373 (q) Section 847.0135, relating to computer pornography.

374 (r) Section 847.0138, relating to the transmission of
 375 material harmful to minors to a minor by electronic device or
 376 equipment.

377 (s) Section 847.0145, relating to the selling or buying of
 378 minors.

379 Section 5. Subsection (7) of section 480.041, Florida
 380 Statutes, is amended to read:

381 480.041 Massage therapists; qualifications; licensure;
 382 endorsement.—

383 (7) The board shall deny an application for a new or
 384 renewal license if an applicant has been convicted or found
 385 guilty of, or enters a plea of guilty or nolo contendere to,
 386 regardless of adjudication, a violation of s. 796.07(2)(a) which
 387 is reclassified under s. 796.07(7) or a felony offense under any
 388 of the following provisions of state law or a similar provision
 389 in another jurisdiction:

390 (a) Section 787.01, relating to kidnapping.

- 391 (b) Section 787.02, relating to false imprisonment.
- 392 (c) Section 787.025, relating to luring or enticing a
- 393 child.
- 394 (d) Section 787.06, relating to human trafficking.
- 395 (e) Section 787.07, relating to human smuggling.
- 396 (f) Section 794.011, relating to sexual battery.
- 397 (g) Section 794.08, relating to female genital mutilation.
- 398 (h) Former s. 796.03, relating to procuring a person under
- 399 the age of 18 for prostitution.
- 400 (i) Former s. 796.035, relating to the selling or buying
- 401 of minors into prostitution.
- 402 (j) Section 796.04, relating to forcing, compelling, or
- 403 coercing another to become a prostitute.
- 404 (k) Section 796.05, relating to deriving support from the
- 405 proceeds of prostitution.
- 406 (l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a
- 407 felony of the third degree for a third or subsequent violation
- 408 of s. 796.07, relating to prohibiting prostitution and related
- 409 acts.
- 410 (m) Section 800.04, relating to lewd or lascivious
- 411 offenses committed upon or in the presence of persons less than
- 412 16 years of age.
- 413 (n) Section 825.1025(2)(b), relating to lewd or lascivious
- 414 offenses committed upon or in the presence of an elderly or
- 415 disabled person.
- 416 (o) Section 827.071, relating to sexual performance by a

417 child.

418 (p) Section 847.0133, relating to the protection of
419 minors.

420 (q) Section 847.0135, relating to computer pornography.

421 (r) Section 847.0138, relating to the transmission of
422 material harmful to minors to a minor by electronic device or
423 equipment.

424 (s) Section 847.0145, relating to the selling or buying of
425 minors.

426

427 Section 6. Subsection (8) of section 480.043, Florida
428 Statutes, is amended to read:

429 480.043 Massage establishments; requisites; licensure;
430 inspection.-

431 (8) The department shall deny an application for a new or
432 renewal license if a person with an ownership interest in the
433 establishment or, for a corporation that has more than \$250,000
434 of business assets in this state, the owner, officer, or
435 individual directly involved in the management of the
436 establishment has been convicted or found guilty of, or entered
437 a plea of guilty or nolo contendere to, regardless of
438 adjudication, a violation of s. 796.07(2)(a) which is
439 reclassified under s. 796.07(7) or a felony offense under any of
440 the following provisions of state law or a similar provision in
441 another jurisdiction:

442 (a) Section 787.01, relating to kidnapping.

- 443 (b) Section 787.02, relating to false imprisonment.
- 444 (c) Section 787.025, relating to luring or enticing a
- 445 child.
- 446 (d) Section 787.06, relating to human trafficking.
- 447 (e) Section 787.07, relating to human smuggling.
- 448 (f) Section 794.011, relating to sexual battery.
- 449 (g) Section 794.08, relating to female genital mutilation.
- 450 (h) Former s. 796.03, relating to procuring a person under
- 451 the age of 18 for prostitution.
- 452 (i) Former s. 796.035, relating to selling or buying of
- 453 minors into prostitution.
- 454 (j) Section 796.04, relating to forcing, compelling, or
- 455 coercing another to become a prostitute.
- 456 (k) Section 796.05, relating to deriving support from the
- 457 proceeds of prostitution.
- 458 (l) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a
- 459 felony of the third degree for a third or subsequent violation
- 460 of s. 796.07, relating to prohibiting prostitution and related
- 461 acts.
- 462 (m) Section 800.04, relating to lewd or lascivious
- 463 offenses committed upon or in the presence of persons less than
- 464 16 years of age.
- 465 (n) Section 825.1025(2)(b), relating to lewd or lascivious
- 466 offenses committed upon or in the presence of an elderly or
- 467 disabled person.
- 468 (o) Section 827.071, relating to sexual performance by a

469 child.

470 (p) Section 847.0133, relating to the protection of
471 minors.

472 (q) Section 847.0135, relating to computer pornography.

473 (r) Section 847.0138, relating to the transmission of
474 material harmful to minors to a minor by electronic device or
475 equipment.

476 (s) Section 847.0145, relating to the selling or buying of
477 minors.

478 Section 7. Subsection (2) of section 796.06, Florida
479 Statutes, is amended to read:

480 796.06 Renting space to be used for lewdness, assignation,
481 or prostitution.—

482 (2) A person who violates this section commits:

483 (a) A misdemeanor of the first ~~second~~ degree for a first
484 violation, punishable as provided in s. 775.082 or s. 775.083.

485 (b) A felony ~~misdemeanor~~ of the third ~~first~~ degree for a
486 second or subsequent violation, punishable as provided in s.
487 775.082, ~~or~~ s. 775.083, or s. 775.084.

488 Section 8. Paragraph (e) of subsection (2) and paragraph
489 (b) of subsection (5) of section 796.07, Florida Statutes, are
490 amended, and subsection (7) is added to that section, to read:

491 796.07 Prohibiting prostitution and related acts.—

492 (2) It is unlawful:

493 (e) For a person 18 years of age or older to offer to
494 commit, or to commit, or to engage in, prostitution, lewdness,

495 or assignation.

496 (5)

497 (b) In addition to any other penalty imposed, the court
 498 shall order a person convicted of a violation of paragraph
 499 (2)(f) to:

- 500 1. Perform 100 hours of community service; and
- 501 2. Pay for and attend an educational program about the
 502 negative effects of prostitution and human trafficking, such as
 503 a sexual violence prevention education program, including such
 504 programs offered by faith-based providers, if such programs
 505 exist ~~program exists~~ in the judicial circuit in which the
 506 offender is sentenced.

507 (7) If the place, structure, building, or conveyance that
 508 is owned, established, maintained, or operated in violation of
 509 paragraph (2)(a) is a massage establishment that is or should be
 510 licensed under s. 480.043, the offense shall be reclassified to
 511 the next higher degree as follows:

512 (a) A misdemeanor of the second degree for a first
 513 violation is reclassified as a misdemeanor of the first degree,
 514 punishable as provided in s. 775.082 or s. 775.083.

515 (b) A misdemeanor of the first degree for a second
 516 violation is reclassified as a felony of the third degree,
 517 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

518 (c) A felony of the third degree for a third or subsequent
 519 violation is reclassified as a felony of the second degree,
 520 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

521 Section 9. Paragraph (a) of subsection (4) of section
 522 775.21, Florida Statutes, is amended to read:

523 775.21 The Florida Sexual Predators Act.—

524 (4) SEXUAL PREDATOR CRITERIA.—

525 (a) For a current offense committed on or after October 1,
 526 1993, upon conviction, an offender shall be designated as a
 527 "sexual predator" under subsection (5), and subject to
 528 registration under subsection (6) and community and public
 529 notification under subsection (7) if:

530 1. The felony is:

531 a. A capital, life, or first degree felony violation, or
 532 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 533 is a minor and the defendant is not the victim's parent or
 534 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 535 violation of a similar law of another jurisdiction; or

536 b. Any felony violation, or any attempt thereof, of s.
 537 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 538 787.025(2)(c), where the victim is a minor and the defendant is
 539 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 540 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.
 541 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.
 542 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0135,
 543 excluding s. 847.0135(6); s. 847.0145; s. 895.03, if the court
 544 makes a written finding that the racketeering activity involved
 545 at least one sexual offense listed in this sub-subparagraph or
 546 at least one offense listed in this sub-subparagraph with sexual

547 intent or motive; s. 916.1075(2); or s. 985.701(1); or a
 548 violation of a similar law of another jurisdiction, and the
 549 offender has previously been convicted of or found to have
 550 committed, or has pled nolo contendere or guilty to, regardless
 551 of adjudication, any violation of s. 393.135(2); s. 394.4593(2);
 552 s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
 553 minor and the defendant is not the victim's parent or guardian;
 554 s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 555 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 556 former s. 796.035; s. 800.04; s. 825.1025; s. 827.071; s.
 557 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s.
 558 895.03, if the court makes a written finding that the
 559 racketeering activity involved at least one sexual offense
 560 listed in this sub-subparagraph or at least one offense listed
 561 in this sub-subparagraph with sexual intent or motive; s.
 562 916.1075(2); or s. 985.701(1); or a violation of a similar law
 563 of another jurisdiction;

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

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

570 Section 10. Paragraph (a) of subsection (1) of section
 571 943.0435, Florida Statutes, is amended to read:

572 943.0435 Sexual offenders required to register with the

573 department; penalty.—

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

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

578 a.(I) Has been convicted of committing, or attempting,
579 soliciting, or conspiring to commit, any of the criminal
580 offenses proscribed in the following statutes in this state or
581 similar offenses in another jurisdiction: s. 393.135(2); s.
582 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
583 the victim is a minor and the defendant is not the victim's
584 parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s.
585 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05;
586 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);
587 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
588 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03,
589 if the court makes a written finding that the racketeering
590 activity involved at least one sexual offense listed in this
591 sub-sub-subparagraph or at least one offense listed in this sub-
592 sub-subparagraph with sexual intent or motive; s. 916.1075(2);
593 or s. 985.701(1); or any similar offense committed in this state
594 which has been redesignated from a former statute number to one
595 of those listed in this sub-sub-subparagraph; and

596 (II) Has been released on or after October 1, 1997, from
597 the sanction imposed for any conviction of an offense described
598 in sub-sub-subparagraph (I). For purposes of sub-sub-

599 | subparagraph (I), a sanction imposed in this state or in any
 600 | other jurisdiction includes, but is not limited to, a fine,
 601 | probation, community control, parole, conditional release,
 602 | control release, or incarceration in a state prison, federal
 603 | prison, private correctional facility, or local detention
 604 | facility;

605 | b. Establishes or maintains a residence in this state and
 606 | who has not been designated as a sexual predator by a court of
 607 | this state but who has been designated as a sexual predator, as
 608 | a sexually violent predator, or by another sexual offender
 609 | designation in another state or jurisdiction and was, as a
 610 | result of such designation, subjected to registration or
 611 | community or public notification, or both, or would be if the
 612 | person were a resident of that state or jurisdiction, without
 613 | regard to whether the person otherwise meets the criteria for
 614 | registration as a sexual offender;

615 | c. Establishes or maintains a residence in this state who
 616 | is in the custody or control of, or under the supervision of,
 617 | any other state or jurisdiction as a result of a conviction for
 618 | committing, or attempting, soliciting, or conspiring to commit,
 619 | any of the criminal offenses proscribed in the following
 620 | statutes or similar offense in another jurisdiction: s.
 621 | 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 622 | 787.025(2)(c), where the victim is a minor and the defendant is
 623 | not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 624 | or (g); former s. 787.06(3)(h); s. 794.011, excluding s.

625 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.
 626 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.
 627 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
 628 847.0145; s. 895.03, if the court makes a written finding that
 629 the racketeering activity involved at least one sexual offense
 630 listed in this sub-subparagraph or at least one offense listed
 631 in this sub-subparagraph with sexual intent or motive; s.
 632 916.1075(2); or s. 985.701(1); or any similar offense committed
 633 in this state which has been redesignated from a former statute
 634 number to one of those listed in this sub-subparagraph; or
 635 d. On or after July 1, 2007, has been adjudicated
 636 delinquent for committing, or attempting, soliciting, or
 637 conspiring to commit, any of the criminal offenses proscribed in
 638 the following statutes in this state or similar offenses in
 639 another jurisdiction when the juvenile was 14 years of age or
 640 older at the time of the offense:
 641 (I) Section 794.011, excluding s. 794.011(10);
 642 (II) Section 800.04(4)(a)2. where the victim is under 12
 643 years of age or where the court finds sexual activity by the use
 644 of force or coercion;
 645 (III) Section 800.04(5)(c)1. where the court finds
 646 molestation involving unclothed genitals; or
 647 (IV) Section 800.04(5)(d) where the court finds the use of
 648 force or coercion and unclothed genitals.
 649 2. For all qualifying offenses listed in sub-subparagraph
 650 (1)(a)1.d., the court shall make a written finding of the age of

651 the offender at the time of the offense.

652

653 For each violation of a qualifying offense listed in this
 654 subsection, except for a violation of s. 794.011, the court
 655 shall make a written finding of the age of the victim at the
 656 time of the offense. For a violation of s. 800.04(4), the court
 657 shall also make a written finding indicating whether the offense
 658 involved sexual activity and indicating whether the offense
 659 involved force or coercion. For a violation of s. 800.04(5), the
 660 court shall also make a written finding that the offense did or
 661 did not involve unclothed genitals or genital area and that the
 662 offense did or did not involve the use of force or coercion.

663 Section 11. Paragraph (b) of subsection (1) of section
 664 944.606, Florida Statutes, is amended to read:

665 944.606 Sexual offenders; notification upon release.—

666 (1) As used in this section:

667 (b) "Sexual offender" means a person who has been
 668 convicted of committing, or attempting, soliciting, or
 669 conspiring to commit, any of the criminal offenses proscribed in
 670 the following statutes in this state or similar offenses in
 671 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 672 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 673 the defendant is not the victim's parent or guardian; s.
 674 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 675 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 676 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.

677 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 678 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court
 679 makes a written finding that the racketeering activity involved
 680 at least one sexual offense listed in this paragraph or at least
 681 one offense listed in this paragraph with sexual intent or
 682 motive; s. 916.1075(2); or s. 985.701(1); or any similar offense
 683 committed in this state which has been redesignated from a
 684 former statute number to one of those listed in this subsection,
 685 when the department has received verified information regarding
 686 such conviction; an offender's computerized criminal history
 687 record is not, in and of itself, verified information.

688 Section 12. Paragraph (a) of subsection (1) of section
 689 944.607, Florida Statutes, is amended to read:

690 944.607 Notification to Department of Law Enforcement of
 691 information on sexual offenders.-

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

693 (a) "Sexual offender" means a person who is in the custody
 694 or control of, or under the supervision of, the department or is
 695 in the custody of a private correctional facility:

696 1. On or after October 1, 1997, as a result of a
 697 conviction for committing, or attempting, soliciting, or
 698 conspiring to commit, any of the criminal offenses proscribed in
 699 the following statutes in this state or similar offenses in
 700 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 701 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 702 the defendant is not the victim's parent or guardian; s.

703 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 704 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 705 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.
 706 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 707 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court
 708 makes a written finding that the racketeering activity involved
 709 at least one sexual offense listed in this subparagraph or at
 710 least one offense listed in this subparagraph with sexual intent
 711 or motive; s. 916.1075(2); or s. 985.701(1); or any similar
 712 offense committed in this state which has been redesignated from
 713 a former statute number to one of those listed in this
 714 paragraph; or

715 2. Who establishes or maintains a residence in this state
 716 and who has not been designated as a sexual predator by a court
 717 of this state but who has been designated as a sexual predator,
 718 as a sexually violent predator, or by another sexual offender
 719 designation in another state or jurisdiction and was, as a
 720 result of such designation, subjected to registration or
 721 community or public notification, or both, or would be if the
 722 person were a resident of that state or jurisdiction, without
 723 regard as to whether the person otherwise meets the criteria for
 724 registration as a sexual offender.

725 Section 13. For the purpose of incorporating the amendment
 726 made by this act to section 39.01, Florida Statutes, in a
 727 reference thereto, paragraph (p) of subsection (4) of section
 728 394.495, Florida Statutes, is reenacted to read:

729 394.495 Child and adolescent mental health system of care;
 730 programs and services.—

731 (4) The array of services may include, but is not limited
 732 to:

733 (p) Trauma-informed services for children who have
 734 suffered sexual exploitation as defined in s. 39.01(69)(g).

735 Section 14. For the purpose of incorporating the amendment
 736 made by this act to section 39.01, Florida Statutes, in
 737 references thereto, paragraph (c) of subsection (1) and
 738 paragraphs (a) and (b) of subsection (6) of section 409.1678,
 739 Florida Statutes, are reenacted to read:

740 409.1678 Specialized residential options for children who
 741 are victims of sexual exploitation.—

742 (1) DEFINITIONS.—As used in this section, the term:

743 (c) "Sexually exploited child" means a child who has
 744 suffered sexual exploitation as defined in s. 39.01(69)(g) and
 745 is ineligible for relief and benefits under the federal
 746 Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

747 (6) LOCATION INFORMATION.—

748 (a) Information about the location of a safe house, safe
 749 foster home, or other residential facility serving victims of
 750 sexual exploitation, as defined in s. 39.01(69)(g), which is
 751 held by an agency, as defined in s. 119.011, is confidential and
 752 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 753 Constitution. This exemption applies to such confidential and
 754 exempt information held by an agency before, on, or after the

755 effective date of the exemption.

756 (b) Information about the location of a safe house, safe
 757 foster home, or other residential facility serving victims of
 758 sexual exploitation, as defined in s. 39.01(69)(g), may be
 759 provided to an agency, as defined in s. 119.011, as necessary to
 760 maintain health and safety standards and to address emergency
 761 situations in the safe house, safe foster home, or other
 762 residential facility.

763 Section 15. For the purpose of incorporating the amendment
 764 made by this act to section 39.01, Florida Statutes, in a
 765 reference thereto, subsection (5) of section 960.065, Florida
 766 Statutes, is reenacted to read:

767 960.065 Eligibility for awards.—

768 (5) A person is not ineligible for an award pursuant to
 769 paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c) if that
 770 person is a victim of sexual exploitation of a child as defined
 771 in s. 39.01(69)(g).

772 Section 16. For the purpose of incorporating the
 773 amendments made by this act to sections 775.21 and 782.04,
 774 Florida Statutes, in references thereto, paragraphs (d) and (n)
 775 of subsection (1) of section 39.806, Florida Statutes, are
 776 reenacted to read:

777 39.806 Grounds for termination of parental rights.—

778 (1) Grounds for the termination of parental rights may be
 779 established under any of the following circumstances:

780 (d) When the parent of a child is incarcerated and either:

781 1. The period of time for which the parent is expected to
 782 be incarcerated will constitute a significant portion of the
 783 child's minority. When determining whether the period of time is
 784 significant, the court shall consider the child's age and the
 785 child's need for a permanent and stable home. The period of time
 786 begins on the date that the parent enters into incarceration;

787 2. The incarcerated parent has been determined by the
 788 court to be a violent career criminal as defined in s. 775.084,
 789 a habitual violent felony offender as defined in s. 775.084, or
 790 a sexual predator as defined in s. 775.21; has been convicted of
 791 first degree or second degree murder in violation of s. 782.04
 792 or a sexual battery that constitutes a capital, life, or first
 793 degree felony violation of s. 794.011; or has been convicted of
 794 an offense in another jurisdiction which is substantially
 795 similar to one of the offenses listed in this paragraph. As used
 796 in this section, the term "substantially similar offense" means
 797 any offense that is substantially similar in elements and
 798 penalties to one of those listed in this subparagraph, and that
 799 is in violation of a law of any other jurisdiction, whether that
 800 of another state, the District of Columbia, the United States or
 801 any possession or territory thereof, or any foreign
 802 jurisdiction; or

803 3. The court determines by clear and convincing evidence
 804 that continuing the parental relationship with the incarcerated
 805 parent would be harmful to the child and, for this reason, that
 806 termination of the parental rights of the incarcerated parent is

807 in the best interest of the child. When determining harm, the
 808 court shall consider the following factors:

- 809 a. The age of the child.
- 810 b. The relationship between the child and the parent.
- 811 c. The nature of the parent's current and past provision
 812 for the child's developmental, cognitive, psychological, and
 813 physical needs.
- 814 d. The parent's history of criminal behavior, which may
 815 include the frequency of incarceration and the unavailability of
 816 the parent to the child due to incarceration.
- 817 e. Any other factor the court deems relevant.
- 818 (n) The parent is convicted of an offense that requires
 819 the parent to register as a sexual predator under s. 775.21.

820 Section 17. For the purpose of incorporating the
 821 amendments made by this act to sections 775.21 and 782.04,
 822 Florida Statutes, in references thereto, paragraph (b) of
 823 subsection (4) of section 63.089, Florida Statutes, is reenacted
 824 to read:

825 63.089 Proceeding to terminate parental rights pending
 826 adoption; hearing; grounds; dismissal of petition; judgment.—

827 (4) FINDING OF ABANDONMENT.—A finding of abandonment
 828 resulting in a termination of parental rights must be based upon
 829 clear and convincing evidence that a parent or person having
 830 legal custody has abandoned the child in accordance with the
 831 definition contained in s. 63.032. A finding of abandonment may
 832 also be based upon emotional abuse or a refusal to provide

833 reasonable financial support, when able, to a birth mother
 834 during her pregnancy or on whether the person alleged to have
 835 abandoned the child, while being able, failed to establish
 836 contact with the child or accept responsibility for the child's
 837 welfare.

838 (b) The child has been abandoned when the parent of a
 839 child is incarcerated on or after October 1, 2001, in a federal,
 840 state, or county correctional institution and:

841 1. The period of time for which the parent has been or is
 842 expected to be incarcerated will constitute a significant
 843 portion of the child's minority. In determining whether the
 844 period of time is significant, the court shall consider the
 845 child's age and the child's need for a permanent and stable
 846 home. The period of time begins on the date that the parent
 847 enters into incarceration;

848 2. The incarcerated parent has been determined by a court
 849 of competent jurisdiction to be a violent career criminal as
 850 defined in s. 775.084, a habitual violent felony offender as
 851 defined in s. 775.084, convicted of child abuse as defined in s.
 852 827.03, or a sexual predator as defined in s. 775.21; has been
 853 convicted of first degree or second degree murder in violation
 854 of s. 782.04 or a sexual battery that constitutes a capital,
 855 life, or first degree felony violation of s. 794.011; or has
 856 been convicted of a substantially similar offense in another
 857 jurisdiction. As used in this section, the term "substantially
 858 similar offense" means any offense that is substantially similar

859 in elements and penalties to one of those listed in this
 860 subparagraph, and that is in violation of a law of any other
 861 jurisdiction, whether that of another state, the District of
 862 Columbia, the United States or any possession or territory
 863 thereof, or any foreign jurisdiction; or

864 3. The court determines by clear and convincing evidence
 865 that continuing the parental relationship with the incarcerated
 866 parent would be harmful to the child and, for this reason,
 867 termination of the parental rights of the incarcerated parent is
 868 in the best interests of the child.

869 Section 18. For the purpose of incorporating the amendment
 870 made by this act to section 782.04, Florida Statutes, in
 871 references thereto, subsection (10) of section 95.11, Florida
 872 Statutes, is reenacted to read:

873 95.11 Limitations other than for the recovery of real
 874 property.—Actions other than for recovery of real property shall
 875 be commenced as follows:

876 (10) FOR INTENTIONAL TORTS RESULTING IN DEATH FROM ACTS
 877 DESCRIBED IN S. 782.04 OR S. 782.07.—Notwithstanding paragraph
 878 (4)(d), an action for wrongful death seeking damages authorized
 879 under s. 768.21 brought against a natural person for an
 880 intentional tort resulting in death from acts described in s.
 881 782.04 or s. 782.07 may be commenced at any time. This
 882 subsection shall not be construed to require an arrest, the
 883 filing of formal criminal charges, or a conviction for a
 884 violation of s. 782.04 or s. 782.07 as a condition for filing a

885 civil action.

886 Section 19. For the purpose of incorporating the amendment
 887 made by this act to section 782.04, Florida Statutes, in
 888 references thereto, paragraph (b) of subsection (1) and
 889 paragraphs (a), (b), and (c) of subsection (3) of section
 890 775.082, Florida Statutes, are reenacted to read:

891 775.082 Penalties; applicability of sentencing structures;
 892 mandatory minimum sentences for certain reoffenders previously
 893 released from prison.-

894 (1)

895 (b)1. A person who actually killed, intended to kill, or
 896 attempted to kill the victim and who is convicted under s.
 897 782.04 of a capital felony, or an offense that was reclassified
 898 as a capital felony, which was committed before the person
 899 attained 18 years of age shall be punished by a term of
 900 imprisonment for life if, after a sentencing hearing conducted
 901 by the court in accordance with s. 921.1401, the court finds
 902 that life imprisonment is an appropriate sentence. If the court
 903 finds that life imprisonment is not an appropriate sentence,
 904 such person shall be punished by a term of imprisonment of at
 905 least 40 years. A person sentenced pursuant to this subparagraph
 906 is entitled to a review of his or her sentence in accordance
 907 with s. 921.1402(2)(a).

908 2. A person who did not actually kill, intend to kill, or
 909 attempt to kill the victim and who is convicted under s. 782.04
 910 of a capital felony, or an offense that was reclassified as a

911 capital felony, which was committed before the person attained
 912 18 years of age may be punished by a term of imprisonment for
 913 life or by a term of years equal to life if, after a sentencing
 914 hearing conducted by the court in accordance with s. 921.1401,
 915 the court finds that life imprisonment is an appropriate
 916 sentence. A person who is sentenced to a term of imprisonment of
 917 more than 15 years is entitled to a review of his or her
 918 sentence in accordance with s. 921.1402(2)(c).

919 3. The court shall make a written finding as to whether a
 920 person is eligible for a sentence review hearing under s.
 921 921.1402(2)(a) or (c). Such a finding shall be based upon
 922 whether the person actually killed, intended to kill, or
 923 attempted to kill the victim. The court may find that multiple
 924 defendants killed, intended to kill, or attempted to kill the
 925 victim.

926 (3) A person who has been convicted of any other
 927 designated felony may be punished as follows:

928 (a)1. For a life felony committed before October 1, 1983,
 929 by a term of imprisonment for life or for a term of at least 30
 930 years.

931 2. For a life felony committed on or after October 1,
 932 1983, by a term of imprisonment for life or by a term of
 933 imprisonment not exceeding 40 years.

934 3. Except as provided in subparagraph 4., for a life
 935 felony committed on or after July 1, 1995, by a term of
 936 imprisonment for life or by imprisonment for a term of years not

937 exceeding life imprisonment.

938 4.a. Except as provided in sub-subparagraph b., for a life
 939 felony committed on or after September 1, 2005, which is a
 940 violation of s. 800.04(5)(b), by:

941 (I) A term of imprisonment for life; or

942 (II) A split sentence that is a term of at least 25 years'
 943 imprisonment and not exceeding life imprisonment, followed by
 944 probation or community control for the remainder of the person's
 945 natural life, as provided in s. 948.012(4).

946 b. For a life felony committed on or after July 1, 2008,
 947 which is a person's second or subsequent violation of s.
 948 800.04(5)(b), by a term of imprisonment for life.

949 5. Notwithstanding subparagraphs 1.-4., a person who is
 950 convicted under s. 782.04 of an offense that was reclassified as
 951 a life felony which was committed before the person attained 18
 952 years of age may be punished by a term of imprisonment for life
 953 or by a term of years equal to life imprisonment if the judge
 954 conducts a sentencing hearing in accordance with s. 921.1401 and
 955 finds that life imprisonment or a term of years equal to life
 956 imprisonment is an appropriate sentence.

957 a. A person who actually killed, intended to kill, or
 958 attempted to kill the victim and is sentenced to a term of
 959 imprisonment of more than 25 years is entitled to a review of
 960 his or her sentence in accordance with s. 921.1402(2)(b).

961 b. A person who did not actually kill, intend to kill, or
 962 attempt to kill the victim and is sentenced to a term of

963 imprisonment of more than 15 years is entitled to a review of
964 his or her sentence in accordance with s. 921.1402(2)(c).

965 c. The court shall make a written finding as to whether a
966 person is eligible for a sentence review hearing under s.
967 921.1402(2)(b) or (c). Such a finding shall be based upon
968 whether the person actually killed, intended to kill, or
969 attempted to kill the victim. The court may find that multiple
970 defendants killed, intended to kill, or attempted to kill the
971 victim.

972 6. For a life felony committed on or after October 1,
973 2014, which is a violation of s. 787.06(3)(g), by a term of
974 imprisonment for life.

975 (b)1. For a felony of the first degree, by a term of
976 imprisonment not exceeding 30 years or, when specifically
977 provided by statute, by imprisonment for a term of years not
978 exceeding life imprisonment.

979 2. Notwithstanding subparagraph 1., a person convicted
980 under s. 782.04 of a first degree felony punishable by a term of
981 years not exceeding life imprisonment, or an offense that was
982 reclassified as a first degree felony punishable by a term of
983 years not exceeding life, which was committed before the person
984 attained 18 years of age may be punished by a term of years
985 equal to life imprisonment if the judge conducts a sentencing
986 hearing in accordance with s. 921.1401 and finds that a term of
987 years equal to life imprisonment is an appropriate sentence.

988 a. A person who actually killed, intended to kill, or

989 attempted to kill the victim and is sentenced to a term of
 990 imprisonment of more than 25 years is entitled to a review of
 991 his or her sentence in accordance with s. 921.1402(2)(b).

992 b. A person who did not actually kill, intend to kill, or
 993 attempt to kill the victim and is sentenced to a term of
 994 imprisonment of more than 15 years is entitled to a review of
 995 his or her sentence in accordance with s. 921.1402(2)(c).

996 c. The court shall make a written finding as to whether a
 997 person is eligible for a sentence review hearing under s.
 998 921.1402(2)(b) or (c). Such a finding shall be based upon
 999 whether the person actually killed, intended to kill, or
 1000 attempted to kill the victim. The court may find that multiple
 1001 defendants killed, intended to kill, or attempted to kill the
 1002 victim.

1003 (c) Notwithstanding paragraphs (a) and (b), a person
 1004 convicted of an offense that is not included in s. 782.04 but
 1005 that is an offense that is a life felony or is punishable by a
 1006 term of imprisonment for life or by a term of years not
 1007 exceeding life imprisonment, or an offense that was reclassified
 1008 as a life felony or an offense punishable by a term of
 1009 imprisonment for life or by a term of years not exceeding life
 1010 imprisonment, which was committed before the person attained 18
 1011 years of age may be punished by a term of imprisonment for life
 1012 or a term of years equal to life imprisonment if the judge
 1013 conducts a sentencing hearing in accordance with s. 921.1401 and
 1014 finds that life imprisonment or a term of years equal to life

1015 imprisonment is an appropriate sentence. A person who is
 1016 sentenced to a term of imprisonment of more than 20 years is
 1017 entitled to a review of his or her sentence in accordance with
 1018 s. 921.1402(2)(d).

1019 Section 20. For the purpose of incorporating the amendment
 1020 made by this act to section 782.04, Florida Statutes, in
 1021 references thereto, section 782.065, Florida Statutes, is
 1022 reenacted to read:

1023 782.065 Murder; law enforcement officer, correctional
 1024 officer, correctional probation officer.—Notwithstanding ss.
 1025 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant
 1026 shall be sentenced to life imprisonment without eligibility for
 1027 release upon findings by the trier of fact that, beyond a
 1028 reasonable doubt:

1029 (1) The defendant committed murder in the first degree in
 1030 violation of s. 782.04(1) and a death sentence was not imposed;
 1031 murder in the second or third degree in violation of s.
 1032 782.04(2), (3), or (4); attempted murder in the first or second
 1033 degree in violation of s. 782.04(1)(a)1. or (2); or attempted
 1034 felony murder in violation of s. 782.051; and

1035 (2) The victim of any offense described in subsection (1)
 1036 was a law enforcement officer, part-time law enforcement
 1037 officer, auxiliary law enforcement officer, correctional
 1038 officer, part-time correctional officer, auxiliary correctional
 1039 officer, correctional probation officer, part-time correctional
 1040 probation officer, or auxiliary correctional probation officer,

1041 as those terms are defined in s. 943.10, engaged in the lawful
 1042 performance of a legal duty.

1043 Section 21. For the purpose of incorporating the amendment
 1044 made by this act to section 782.04, Florida Statutes, in a
 1045 reference thereto, subsection (1) of section 921.16, Florida
 1046 Statutes, is reenacted to read:

1047 921.16 When sentences to be concurrent and when
 1048 consecutive.—

1049 (1) A defendant convicted of two or more offenses charged
 1050 in the same indictment, information, or affidavit or in
 1051 consolidated indictments, informations, or affidavits shall
 1052 serve the sentences of imprisonment concurrently unless the
 1053 court directs that two or more of the sentences be served
 1054 consecutively. Sentences of imprisonment for offenses not
 1055 charged in the same indictment, information, or affidavit shall
 1056 be served consecutively unless the court directs that two or
 1057 more of the sentences be served concurrently. Any sentence for
 1058 sexual battery as defined in chapter 794 or murder as defined in
 1059 s. 782.04 must be imposed consecutively to any other sentence
 1060 for sexual battery or murder which arose out of a separate
 1061 criminal episode or transaction.

1062 Section 22. For the purpose of incorporating the amendment
 1063 made by this act to section 782.04, Florida Statutes, in a
 1064 reference thereto, paragraph (a) of subsection (1) of section
 1065 948.062, Florida Statutes, is reenacted to read:

1066 948.062 Reviewing and reporting serious offenses committed

1067 by offenders placed on probation or community control.—

1068 (1) The department shall review the circumstances related
 1069 to an offender placed on probation or community control who has
 1070 been arrested while on supervision for the following offenses:

1071 (a) Any murder as provided in s. 782.04;

1072 Section 23. For the purpose of incorporating the amendment
 1073 made by this act to section 782.04, Florida Statutes, in a
 1074 reference thereto, paragraph (b) of subsection (3) of section
 1075 985.265, Florida Statutes, is reenacted to read:

1076 985.265 Detention transfer and release; education; adult
 1077 jails.—

1078 (3)

1079 (b) When a juvenile is released from secure detention or
 1080 transferred to nonsecure detention, detention staff shall
 1081 immediately notify the appropriate law enforcement agency,
 1082 school personnel, and victim if the juvenile is charged with
 1083 committing any of the following offenses or attempting to commit
 1084 any of the following offenses:

- 1085 1. Murder, under s. 782.04;
- 1086 2. Sexual battery, under chapter 794;
- 1087 3. Stalking, under s. 784.048; or
- 1088 4. Domestic violence, as defined in s. 741.28.

1089 Section 24. For the purpose of incorporating the amendment
 1090 made by this act to section 782.04, Florida Statutes, in a
 1091 reference thereto, paragraph (d) of subsection (1) of section
 1092 1012.315, Florida Statutes, is reenacted to read:

1093 1012.315 Disqualification from employment.—A person is
 1094 ineligible for educator certification, and instructional
 1095 personnel and school administrators, as defined in s. 1012.01,
 1096 are ineligible for employment in any position that requires
 1097 direct contact with students in a district school system,
 1098 charter school, or private school that accepts scholarship
 1099 students under s. 1002.39 or s. 1002.395, if the person,
 1100 instructional personnel, or school administrator has been
 1101 convicted of:

1102 (1) Any felony offense prohibited under any of the
 1103 following statutes:

1104 (d) Section 782.04, relating to murder.

1105 Section 25. For the purpose of incorporating the amendment
 1106 made by this act to sections 782.04 and 943.0435, Florida
 1107 Statutes, in references thereto, paragraph (g) of subsection (2)
 1108 of section 1012.467, Florida Statutes, is reenacted to read:

1109 1012.467 Noninstructional contractors who are permitted
 1110 access to school grounds when students are present; background
 1111 screening requirements.—

1112 (2)

1113 (g) A noninstructional contractor for whom a criminal
 1114 history check is required under this section may not have been
 1115 convicted of any of the following offenses designated in the
 1116 Florida Statutes, any similar offense in another jurisdiction,
 1117 or any similar offense committed in this state which has been
 1118 redesignated from a former provision of the Florida Statutes to

1119 one of the following offenses:

1120 1. Any offense listed in s. 943.0435(1)(a)1., relating to
1121 the registration of an individual as a sexual offender.

1122 2. Section 393.135, relating to sexual misconduct with
1123 certain developmentally disabled clients and the reporting of
1124 such sexual misconduct.

1125 3. Section 394.4593, relating to sexual misconduct with
1126 certain mental health patients and the reporting of such sexual
1127 misconduct.

1128 4. Section 775.30, relating to terrorism.

1129 5. Section 782.04, relating to murder.

1130 6. Section 787.01, relating to kidnapping.

1131 7. Any offense under chapter 800, relating to lewdness and
1132 indecent exposure.

1133 8. Section 826.04, relating to incest.

1134 9. Section 827.03, relating to child abuse, aggravated
1135 child abuse, or neglect of a child.

1136 Section 26. For the purpose of incorporating the amendment
1137 made by this act to section 782.04, Florida Statutes, in
1138 references thereto, subsections (1) and (2) of section 775.0823,
1139 Florida Statutes, are reenacted to read:

1140 775.0823 Violent offenses committed against law
1141 enforcement officers, correctional officers, state attorneys,
1142 assistant state attorneys, justices, or judges.—The Legislature
1143 does hereby provide for an increase and certainty of penalty for
1144 any person convicted of a violent offense against any law

1145 enforcement or correctional officer, as defined in s. 943.10(1),
 1146 (2), (3), (6), (7), (8), or (9); against any state attorney
 1147 elected pursuant to s. 27.01 or assistant state attorney
 1148 appointed under s. 27.181; or against any justice or judge of a
 1149 court described in Art. V of the State Constitution, which
 1150 offense arises out of or in the scope of the officer's duty as a
 1151 law enforcement or correctional officer, the state attorney's or
 1152 assistant state attorney's duty as a prosecutor or investigator,
 1153 or the justice's or judge's duty as a judicial officer, as
 1154 follows:

1155 (1) For murder in the first degree as described in s.
 1156 782.04(1), if the death sentence is not imposed, a sentence of
 1157 imprisonment for life without eligibility for release.

1158 (2) For attempted murder in the first degree as described
 1159 in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083,
 1160 or s. 775.084.

1161
 1162 Notwithstanding the provisions of s. 948.01, with respect to any
 1163 person who is found to have violated this section, adjudication
 1164 of guilt or imposition of sentence shall not be suspended,
 1165 deferred, or withheld.

1166 Section 27. For the purpose of incorporating the amendment
 1167 made by this act to section 782.04, Florida Statutes, in a
 1168 reference thereto, paragraph (i) of subsection (3) of section
 1169 921.0022, Florida Statutes, is reenacted to read:

1170 921.0022 Criminal Punishment Code; offense severity

1171 ranking chart.—

1172 (3) OFFENSE SEVERITY RANKING CHART

1173 (i) LEVEL 9

1174

Florida	Felony	
Statute	Degree	Description

1175

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

1176

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

1177

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

1178

499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
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1179

560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
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1180

560.125(5)(c)	1st	Money transmitter business by
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			unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.
1181	655.50(10)(b)3.	1st	Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.
1182	775.0844	1st	Aggravated white collar crime.
1183	782.04(1)	1st	Attempt, conspire, or solicit to commit premeditated murder.
1184	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.
1185	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

1186

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

1187

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

1188

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

1189

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

1190

787.02(3)(a) 1st,PBL False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, molestation, conduct, or exhibition.

1191

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1192	787.06(3)(c)1.	1st	Human trafficking for labor and services of an unauthorized alien child.
1193	787.06(3)(d)	1st	Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien.
1194	787.06(3)(f)1.	1st,PBL	Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state.
1195	790.161	1st	Attempted capital destructive device offense.
1196	790.166(2)	1st,PBL	Possessing, selling, using, or attempting to use a weapon of mass destruction.
1197	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.

1198	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
1199	794.011(4)(a)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older.
1200	794.011(4)(b)	1st	Sexual battery, certain circumstances; victim and offender 18 years of age or older.
1201	794.011(4)(c)	1st	Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years.
	794.011(4)(d)	1st, PBL	Sexual battery, certain circumstances; victim 12 years of age or older; prior conviction for specified sex offenses.

1202

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

1203

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

1204

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

1205

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

1206

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

1207

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

1208

817.535(3)(b) 1st Filing false lien or other unauthorized document; second or subsequent offense; property

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			owner is a public officer or employee.
1209	817.535(4)(a)2.	1st	Filing false claim or other unauthorized document; defendant is incarcerated or under supervision.
1210	817.535(5)(b)	1st	Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument.
1211	817.568(7)	2nd, PBL	Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority.
1212	827.03(2)(a)	1st	Aggravated child abuse.
1213	847.0145(1)	1st	Selling, or otherwise transferring custody or

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			control, of a minor.
1214	847.0145(2)	1st	Purchasing, or otherwise obtaining custody or control, of a minor.
1215	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.
1216	893.135	1st	Attempted capital trafficking offense.
1217	893.135(1)(a)3.	1st	Trafficking in cannabis, more than 10,000 lbs.
1218	893.135 (1)(b)1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
1219	893.135 (1)(c)1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than

1220			30 kilograms.
	893.135	1st	Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms.
	(1)(c)2.d.		
1221			
	893.135	1st	Trafficking in oxycodone, 100 grams or more, less than 30 kilograms.
	(1)(c)3.d.		
1222			
	893.135	1st	Trafficking in phencyclidine, more than 400 grams.
	(1)(d)1.c.		
1223			
	893.135	1st	Trafficking in methaqualone, more than 25 kilograms.
	(1)(e)1.c.		
1224			
	893.135	1st	Trafficking in amphetamine, more than 200 grams.
	(1)(f)1.c.		
1225			
	893.135	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 10 kilograms or more.
	(1)(h)1.c.		
1226			
	893.135	1st	Trafficking in 1,4-Butanediol, 10 kilograms or more.
	(1)(j)1.c.		
1227			

1228 893.135 1st Trafficking in Phenethylamines,
 (1) (k) 2.c. 400 grams or more.

1229 896.101(5)(c) 1st Money laundering, financial
 instruments totaling or
 exceeding \$100,000.

1230 896.104(4)(a)3. 1st Structuring transactions to
 evade reporting or registration
 requirements, financial
 transactions totaling or
 exceeding \$100,000.

1231 Section 28. For the purpose of incorporating the amendment
 1232 made by this act to section 782.04, Florida Statutes, in a
 1233 reference thereto, paragraph (i) of subsection (3) of section
 1234 947.146, Florida Statutes, is reenacted to read:

1235 947.146 Control Release Authority.—

1236 (3) Within 120 days prior to the date the state
 1237 correctional system is projected pursuant to s. 216.136 to
 1238 exceed 99 percent of total capacity, the authority shall
 1239 determine eligibility for and establish a control release date
 1240 for an appropriate number of parole ineligible inmates committed
 1241 to the department and incarcerated within the state who have
 1242 been determined by the authority to be eligible for
 1243 discretionary early release pursuant to this section. In

1244 establishing control release dates, it is the intent of the
 1245 Legislature that the authority prioritize consideration of
 1246 eligible inmates closest to their tentative release date. The
 1247 authority shall rely upon commitment data on the offender
 1248 information system maintained by the department to initially
 1249 identify inmates who are to be reviewed for control release
 1250 consideration. The authority may use a method of objective risk
 1251 assessment in determining if an eligible inmate should be
 1252 released. Such assessment shall be a part of the department's
 1253 management information system. However, the authority shall have
 1254 sole responsibility for determining control release eligibility,
 1255 establishing a control release date, and effectuating the
 1256 release of a sufficient number of inmates to maintain the inmate
 1257 population between 99 percent and 100 percent of total capacity.
 1258 Inmates who are ineligible for control release are inmates who
 1259 are parole eligible or inmates who:

1260 (i) Are convicted, or have been previously convicted, of
 1261 committing or attempting to commit murder in the first, second,
 1262 or third degree under s. 782.04(1), (2), (3), or (4), or have
 1263 ever been convicted of any degree of murder or attempted murder
 1264 in another jurisdiction;

1265
 1266 In making control release eligibility determinations under this
 1267 subsection, the authority may rely on any document leading to or
 1268 generated during the course of the criminal proceedings,
 1269 including, but not limited to, any presentence or postsentence

1270 investigation or any information contained in arrest reports
 1271 relating to circumstances of the offense.

1272 Section 29. For the purpose of incorporating the amendment
 1273 made by this act to section 782.04, Florida Statutes, in a
 1274 reference thereto, paragraph (a) of subsection (9) of section
 1275 394.912, Florida Statutes, is reenacted to read:

1276 394.912 Definitions.—As used in this part, the term:

1277 (9) "Sexually violent offense" means:

1278 (a) Murder of a human being while engaged in sexual
 1279 battery in violation of s. 782.04(1)(a)2.;

1280 Section 30. For the purpose of incorporating the amendment
 1281 made by this act to section 787.06, Florida Statutes, in a
 1282 reference thereto, subsection (19) of section 775.15, Florida
 1283 Statutes, is reenacted to read:

1284 775.15 Time limitations; general time limitations;
 1285 exceptions.—

1286 (19) A prosecution for a violation of s. 787.06 may be
 1287 commenced at any time. This subsection applies to any such
 1288 offense except an offense the prosecution of which would have
 1289 been barred by subsection (2) on or before October 1, 2014.

1290 Section 31. For the purpose of incorporating the amendment
 1291 made by this act to section 796.07, Florida Statutes, in a
 1292 reference thereto, subsection (4) of section 60.05, Florida
 1293 Statutes, is reenacted to read:

1294 60.05 Abatement of nuisances.—

1295 (4) On trial if the existence of a nuisance is shown, the

1296 court shall issue a permanent injunction and order the costs to
 1297 be paid by the persons establishing or maintaining the nuisance
 1298 and shall adjudge that the costs are a lien on all personal
 1299 property found in the place of the nuisance and on the failure
 1300 of the property to bring enough to pay the costs, then on the
 1301 real estate occupied by the nuisance. No lien shall attach to
 1302 the real estate of any other than said persons unless 5 days'
 1303 written notice has been given to the owner or his or her agent
 1304 who fails to begin to abate the nuisance within said 5 days. In
 1305 a proceeding abating a nuisance pursuant to s. 823.10 or s.
 1306 823.05, if a tenant has been convicted of an offense under
 1307 chapter 893 or s. 796.07, the court may order the tenant to
 1308 vacate the property within 72 hours if the tenant and owner of
 1309 the premises are parties to the nuisance abatement action and
 1310 the order will lead to the abatement of the nuisance.

1311 Section 32. For the purpose of incorporating the amendment
 1312 made by this act to section 796.07, Florida Statutes, in a
 1313 reference thereto, paragraph (m) of subsection (1) of section
 1314 775.0877, Florida Statutes, is reenacted to read:

1315 775.0877 Criminal transmission of HIV; procedures;
 1316 penalties.—

1317 (1) In any case in which a person has been convicted of or
 1318 has pled nolo contendere or guilty to, regardless of whether
 1319 adjudication is withheld, any of the following offenses, or the
 1320 attempt thereof, which offense or attempted offense involves the
 1321 transmission of body fluids from one person to another:

1322 (m) Sections 796.07 and 796.08, relating to prostitution;
 1323
 1324 the court shall order the offender to undergo HIV testing, to be
 1325 performed under the direction of the Department of Health in
 1326 accordance with s. 381.004, unless the offender has undergone
 1327 HIV testing voluntarily or pursuant to procedures established in
 1328 s. 381.004(2)(h)6. or s. 951.27, or any other applicable law or
 1329 rule providing for HIV testing of criminal offenders or inmates,
 1330 subsequent to her or his arrest for an offense enumerated in
 1331 paragraphs (a)-(n) for which she or he was convicted or to which
 1332 she or he pled nolo contendere or guilty. The results of an HIV
 1333 test performed on an offender pursuant to this subsection are
 1334 not admissible in any criminal proceeding arising out of the
 1335 alleged offense.

1336 Section 33. For the purpose of incorporating the amendment
 1337 made by this act to section 796.07, Florida Statutes, in
 1338 references thereto, subsections (2) and (3) of section 796.08,
 1339 Florida Statutes, are reenacted to read:

1340 796.08 Screening for HIV and sexually transmissible
 1341 diseases; providing penalties.—

1342 (2) A person arrested under s. 796.07 may request
 1343 screening for a sexually transmissible disease under direction
 1344 of the Department of Health and, if infected, shall submit to
 1345 appropriate treatment and counseling. A person who requests
 1346 screening for a sexually transmissible disease under this
 1347 subsection must pay any costs associated with such screening.

1348 (3) A person convicted under s. 796.07 of prostitution or
 1349 procuring another to commit prostitution must undergo screening
 1350 for a sexually transmissible disease, including, but not limited
 1351 to, screening to detect exposure to the human immunodeficiency
 1352 virus, under direction of the Department of Health. If the
 1353 person is infected, he or she must submit to treatment and
 1354 counseling prior to release from probation, community control,
 1355 or incarceration. Notwithstanding the provisions of s. 384.29,
 1356 the results of tests conducted pursuant to this subsection shall
 1357 be made available by the Department of Health to the offender,
 1358 medical personnel, appropriate state agencies, state attorneys,
 1359 and courts of appropriate jurisdiction in need of such
 1360 information in order to enforce the provisions of this chapter.

1361 Section 34. For the purpose of incorporating the amendment
 1362 made by this act to section 796.07, Florida Statutes, in a
 1363 reference thereto, subsection (2) of section 796.09, Florida
 1364 Statutes, is reenacted to read:

1365 796.09 Coercion; civil cause of action; evidence;
 1366 defenses; attorney's fees.-

1367 (2) As used in this section, the term "prostitution" has
 1368 the same meaning as in s. 796.07.

1369 Section 35. For the purpose of incorporating the amendment
 1370 made by this act to section 796.07, Florida Statutes, in a
 1371 reference thereto, paragraph (a) of subsection (1) of section
 1372 895.02, Florida Statutes, is reenacted to read:

1373 895.02 Definitions.-As used in ss. 895.01-895.08, the

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term:
 (1) "Racketeering activity" means to commit, to attempt to
 commit, to conspire to commit, or to solicit, coerce, or
 intimidate another person to commit:
 (a) Any crime that is chargeable by petition, indictment,
 or information under the following provisions of the Florida
 Statutes:
 1. Section 210.18, relating to evasion of payment of
 cigarette taxes.
 2. Section 316.1935, relating to fleeing or attempting to
 elude a law enforcement officer and aggravated fleeing or
 eluding.
 3. Section 403.727(3)(b), relating to environmental
 control.
 4. Section 409.920 or s. 409.9201, relating to Medicaid
 fraud.
 5. Section 414.39, relating to public assistance fraud.
 6. Section 440.105 or s. 440.106, relating to workers'
 compensation.
 7. Section 443.071(4), relating to creation of a
 fictitious employer scheme to commit reemployment assistance
 fraud.
 8. Section 465.0161, relating to distribution of medicinal
 drugs without a permit as an Internet pharmacy.
 9. Section 499.0051, relating to crimes involving
 contraband and adulterated drugs.

- 1400 10. Part IV of chapter 501, relating to telemarketing.
- 1401 11. Chapter 517, relating to sale of securities and
- 1402 investor protection.
- 1403 12. Section 550.235 or s. 550.3551, relating to dogracing
- 1404 and horseracing.
- 1405 13. Chapter 550, relating to jai alai frontons.
- 1406 14. Section 551.109, relating to slot machine gaming.
- 1407 15. Chapter 552, relating to the manufacture,
- 1408 distribution, and use of explosives.
- 1409 16. Chapter 560, relating to money transmitters, if the
- 1410 violation is punishable as a felony.
- 1411 17. Chapter 562, relating to beverage law enforcement.
- 1412 18. Section 624.401, relating to transacting insurance
- 1413 without a certificate of authority, s. 624.437(4)(c)1., relating
- 1414 to operating an unauthorized multiple-employer welfare
- 1415 arrangement, or s. 626.902(1)(b), relating to representing or
- 1416 aiding an unauthorized insurer.
- 1417 19. Section 655.50, relating to reports of currency
- 1418 transactions, when such violation is punishable as a felony.
- 1419 20. Chapter 687, relating to interest and usurious
- 1420 practices.
- 1421 21. Section 721.08, s. 721.09, or s. 721.13, relating to
- 1422 real estate timeshare plans.
- 1423 22. Section 775.13(5)(b), relating to registration of
- 1424 persons found to have committed any offense for the purpose of
- 1425 benefiting, promoting, or furthering the interests of a criminal

- 1426 gang.
- 1427 23. Section 777.03, relating to commission of crimes by
- 1428 accessories after the fact.
- 1429 24. Chapter 782, relating to homicide.
- 1430 25. Chapter 784, relating to assault and battery.
- 1431 26. Chapter 787, relating to kidnapping or human
- 1432 trafficking.
- 1433 27. Chapter 790, relating to weapons and firearms.
- 1434 28. Chapter 794, relating to sexual battery, but only if
- 1435 such crime was committed with the intent to benefit, promote, or
- 1436 further the interests of a criminal gang, or for the purpose of
- 1437 increasing a criminal gang member's own standing or position
- 1438 within a criminal gang.
- 1439 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
- 1440 796.05, or s. 796.07, relating to prostitution.
- 1441 30. Chapter 806, relating to arson and criminal mischief.
- 1442 31. Chapter 810, relating to burglary and trespass.
- 1443 32. Chapter 812, relating to theft, robbery, and related
- 1444 crimes.
- 1445 33. Chapter 815, relating to computer-related crimes.
- 1446 34. Chapter 817, relating to fraudulent practices, false
- 1447 pretenses, fraud generally, and credit card crimes.
- 1448 35. Chapter 825, relating to abuse, neglect, or
- 1449 exploitation of an elderly person or disabled adult.
- 1450 36. Section 827.071, relating to commercial sexual
- 1451 exploitation of children.

- 1452 37. Section 828.122, relating to fighting or baiting
 1453 animals.
- 1454 38. Chapter 831, relating to forgery and counterfeiting.
- 1455 39. Chapter 832, relating to issuance of worthless checks
 1456 and drafts.
- 1457 40. Section 836.05, relating to extortion.
- 1458 41. Chapter 837, relating to perjury.
- 1459 42. Chapter 838, relating to bribery and misuse of public
 1460 office.
- 1461 43. Chapter 843, relating to obstruction of justice.
- 1462 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or
 1463 s. 847.07, relating to obscene literature and profanity.
- 1464 45. Chapter 849, relating to gambling, lottery, gambling
 1465 or gaming devices, slot machines, or any of the provisions
 1466 within that chapter.
- 1467 46. Chapter 874, relating to criminal gangs.
- 1468 47. Chapter 893, relating to drug abuse prevention and
 1469 control.
- 1470 48. Chapter 896, relating to offenses related to financial
 1471 transactions.
- 1472 49. Sections 914.22 and 914.23, relating to tampering with
 1473 or harassing a witness, victim, or informant, and retaliation
 1474 against a witness, victim, or informant.
- 1475 50. Sections 918.12 and 918.13, relating to tampering with
 1476 jurors and evidence.
- 1477 Section 36. For the purpose of incorporating the amendment

1478 made by this act to section 796.07, Florida Statutes, in a
 1479 reference thereto, paragraph (a) of subsection (1) of section
 1480 948.16, Florida Statutes, is reenacted to read:

1481 948.16 Misdemeanor pretrial substance abuse education and
 1482 treatment intervention program; misdemeanor pretrial veterans'
 1483 treatment intervention program.-

1484 (1)(a) A person who is charged with a nonviolent,
 1485 nontraffic-related misdemeanor and identified as having a
 1486 substance abuse problem or who is charged with a misdemeanor for
 1487 possession of a controlled substance or drug paraphernalia under
 1488 chapter 893, prostitution under s. 796.07, possession of alcohol
 1489 while under 21 years of age under s. 562.111, or possession of a
 1490 controlled substance without a valid prescription under s.
 1491 499.03, and who has not previously been convicted of a felony,
 1492 is eligible for voluntary admission into a misdemeanor pretrial
 1493 substance abuse education and treatment intervention program,
 1494 including a treatment-based drug court program established
 1495 pursuant to s. 397.334, approved by the chief judge of the
 1496 circuit, for a period based on the program requirements and the
 1497 treatment plan for the offender, upon motion of either party or
 1498 the court's own motion, except, if the state attorney believes
 1499 the facts and circumstances of the case suggest the defendant is
 1500 involved in dealing and selling controlled substances, the court
 1501 shall hold a preadmission hearing. If the state attorney
 1502 establishes, by a preponderance of the evidence at such hearing,
 1503 that the defendant was involved in dealing or selling controlled

1504 substances, the court shall deny the defendant's admission into
 1505 the pretrial intervention program.

1506 Section 37. For the purpose of incorporating the amendment
 1507 made by this act to section 775.21, Florida Statutes, in a
 1508 reference thereto, paragraph (a) of subsection (3) of section
 1509 39.0139, Florida Statutes, is reenacted to read:

1510 39.0139 Visitation or other contact; restrictions.—

1511 (3) PRESUMPTION OF DETRIMENT.—

1512 (a) A rebuttable presumption of detriment to a child is
 1513 created when:

1514 1. A court of competent jurisdiction has found probable
 1515 cause exists that a parent or caregiver has sexually abused a
 1516 child as defined in s. 39.01;

1517 2. A parent or caregiver has been found guilty of,
 1518 regardless of adjudication, or has entered a plea of guilty or
 1519 nolo contendere to, charges under the following statutes or
 1520 substantially similar statutes of other jurisdictions:

1521 a. Section 787.04, relating to removing minors from the
 1522 state or concealing minors contrary to court order;

1523 b. Section 794.011, relating to sexual battery;

1524 c. Section 798.02, relating to lewd and lascivious
 1525 behavior;

1526 d. Chapter 800, relating to lewdness and indecent
 1527 exposure;

1528 e. Section 826.04, relating to incest; or

1529 f. Chapter 827, relating to the abuse of children; or

1530 3. A court of competent jurisdiction has determined a
 1531 parent or caregiver to be a sexual predator as defined in s.
 1532 775.21 or a parent or caregiver has received a substantially
 1533 similar designation under laws of another jurisdiction.

1534 Section 38. For the purpose of incorporating the amendment
 1535 made by this act to section 775.21, Florida Statutes, in a
 1536 reference thereto, paragraph (b) of subsection (6) of section
 1537 39.509, Florida Statutes, is reenacted to read:

1538 39.509 Grandparents rights.—Notwithstanding any other
 1539 provision of law, a maternal or paternal grandparent as well as
 1540 a stepgrandparent is entitled to reasonable visitation with his
 1541 or her grandchild who has been adjudicated a dependent child and
 1542 taken from the physical custody of the parent unless the court
 1543 finds that such visitation is not in the best interest of the
 1544 child or that such visitation would interfere with the goals of
 1545 the case plan. Reasonable visitation may be unsupervised and,
 1546 where appropriate and feasible, may be frequent and continuing.
 1547 Any order for visitation or other contact must conform to the
 1548 provisions of s. 39.0139.

1549 (6) In determining whether grandparental visitation is not
 1550 in the child's best interest, consideration may be given to the
 1551 following:

1552 (b) The designation by a court as a sexual predator as
 1553 defined in s. 775.21 or a substantially similar designation
 1554 under laws of another jurisdiction.

1555 Section 39. For the purpose of incorporating the amendment

1556 made by this act to section 775.21, Florida Statutes, in a
 1557 reference thereto, subsection (3) of section 63.092, Florida
 1558 Statutes, is reenacted to read:

1559 63.092 Report to the court of intended placement by an
 1560 adoption entity; at-risk placement; preliminary study.—

1561 (3) PRELIMINARY HOME STUDY.—Before placing the minor in
 1562 the intended adoptive home, a preliminary home study must be
 1563 performed by a licensed child-placing agency, a child-caring
 1564 agency registered under s. 409.176, a licensed professional, or
 1565 an agency described in s. 61.20(2), unless the adoptee is an
 1566 adult or the petitioner is a stepparent or a relative. If the
 1567 adoptee is an adult or the petitioner is a stepparent or a
 1568 relative, a preliminary home study may be required by the court
 1569 for good cause shown. The department is required to perform the
 1570 preliminary home study only if there is no licensed child-
 1571 placing agency, child-caring agency registered under s. 409.176,
 1572 licensed professional, or agency described in s. 61.20(2), in
 1573 the county where the prospective adoptive parents reside. The
 1574 preliminary home study must be made to determine the suitability
 1575 of the intended adoptive parents and may be completed prior to
 1576 identification of a prospective adoptive minor. A favorable
 1577 preliminary home study is valid for 1 year after the date of its
 1578 completion. Upon its completion, a signed copy of the home study
 1579 must be provided to the intended adoptive parents who were the
 1580 subject of the home study. A minor may not be placed in an
 1581 intended adoptive home before a favorable preliminary home study

1582 is completed unless the adoptive home is also a licensed foster
 1583 home under s. 409.175. The preliminary home study must include,
 1584 at a minimum:

- 1585 (a) An interview with the intended adoptive parents;
- 1586 (b) Records checks of the department's central abuse
 1587 registry and criminal records correspondence checks under s.
 1588 39.0138 through the Department of Law Enforcement on the
 1589 intended adoptive parents;
- 1590 (c) An assessment of the physical environment of the home;
- 1591 (d) A determination of the financial security of the
 1592 intended adoptive parents;
- 1593 (e) Documentation of counseling and education of the
 1594 intended adoptive parents on adoptive parenting;
- 1595 (f) Documentation that information on adoption and the
 1596 adoption process has been provided to the intended adoptive
 1597 parents;
- 1598 (g) Documentation that information on support services
 1599 available in the community has been provided to the intended
 1600 adoptive parents; and
- 1601 (h) A copy of each signed acknowledgment of receipt of
 1602 disclosure required by s. 63.085.

1603
 1604 If the preliminary home study is favorable, a minor may be
 1605 placed in the home pending entry of the judgment of adoption. A
 1606 minor may not be placed in the home if the preliminary home
 1607 study is unfavorable. If the preliminary home study is

1608 unfavorable, the adoption entity may, within 20 days after
 1609 receipt of a copy of the written recommendation, petition the
 1610 court to determine the suitability of the intended adoptive
 1611 home. A determination as to suitability under this subsection
 1612 does not act as a presumption of suitability at the final
 1613 hearing. In determining the suitability of the intended adoptive
 1614 home, the court must consider the totality of the circumstances
 1615 in the home. A minor may not be placed in a home in which there
 1616 resides any person determined by the court to be a sexual
 1617 predator as defined in s. 775.21 or to have been convicted of an
 1618 offense listed in s. 63.089(4)(b)2.

1619 Section 40. For the purpose of incorporating the
 1620 amendments made by this act to sections 775.21 and 943.0435,
 1621 Florida Statutes, in references thereto, paragraph (i) of
 1622 subsection (3) and subsection (6) of section 68.07, Florida
 1623 Statutes, are reenacted to read:

1624 68.07 Change of name.--

1625 (3) Each petition shall be verified and show:

1626 (i) Whether the petitioner has ever been required to
 1627 register as a sexual predator under s. 775.21 or as a sexual
 1628 offender under s. 943.0435.

1629 (6) The clerk of the court must, within 5 business days
 1630 after the filing of the final judgment, send a report of the
 1631 judgment to the Department of Law Enforcement on a form to be
 1632 furnished by that department. If the petitioner is required to
 1633 register as a sexual predator or a sexual offender pursuant to

1634 s. 775.21 or s. 943.0435, the clerk of court shall
 1635 electronically notify the Department of Law Enforcement of the
 1636 name change, in a manner prescribed by that department, within 2
 1637 business days after the filing of the final judgment. The
 1638 Department of Law Enforcement must send a copy of the report to
 1639 the Department of Highway Safety and Motor Vehicles, which may
 1640 be delivered by electronic transmission. The report must contain
 1641 sufficient information to identify the petitioner, including the
 1642 results of the criminal history records check if applicable, the
 1643 new name of the petitioner, and the file number of the judgment.
 1644 The Department of Highway Safety and Motor Vehicles shall
 1645 monitor the records of any sexual predator or sexual offender
 1646 whose name has been provided to it by the Department of Law
 1647 Enforcement. If the sexual predator or sexual offender does not
 1648 obtain a replacement driver license or identification card
 1649 within the required time as specified in s. 775.21 or s.
 1650 943.0435, the Department of Highway Safety and Motor Vehicles
 1651 shall notify the Department of Law Enforcement. The Department
 1652 of Law Enforcement shall notify applicable law enforcement
 1653 agencies of the predator's or offender's failure to comply with
 1654 registration requirements. Any information retained by the
 1655 Department of Law Enforcement and the Department of Highway
 1656 Safety and Motor Vehicles may be revised or supplemented by said
 1657 departments to reflect changes made by the final judgment. With
 1658 respect to a person convicted of a felony in another state or of
 1659 a federal offense, the Department of Law Enforcement must send

1660 the report to the respective state's office of law enforcement
 1661 records or to the office of the Federal Bureau of Investigation.
 1662 The Department of Law Enforcement may forward the report to any
 1663 other law enforcement agency it believes may retain information
 1664 related to the petitioner.

1665 Section 41. For the purpose of incorporating the
 1666 amendments made by this act to sections 775.21, 943.0435, and
 1667 944.607, Florida Statutes, in references thereto, subsection (3)
 1668 of section 322.141, Florida Statutes, is reenacted to read:

1669 322.141 Color or markings of certain licenses or
 1670 identification cards.—

1671 (3) All licenses for the operation of motor vehicles or
 1672 identification cards originally issued or reissued by the
 1673 department to persons who are designated as sexual predators
 1674 under s. 775.21 or subject to registration as sexual offenders
 1675 under s. 943.0435 or s. 944.607, or who have a similar
 1676 designation or are subject to a similar registration under the
 1677 laws of another jurisdiction, shall have on the front of the
 1678 license or identification card the following:

1679 (a) For a person designated as a sexual predator under s.
 1680 775.21 or who has a similar designation under the laws of
 1681 another jurisdiction, the marking "SEXUAL PREDATOR."

1682 (b) For a person subject to registration as a sexual
 1683 offender under s. 943.0435 or s. 944.607, or subject to a
 1684 similar registration under the laws of another jurisdiction, the
 1685 marking "943.0435, F.S."

1686 Section 42. For the purpose of incorporating the
 1687 amendments made by this act to sections 775.21 and 943.0435,
 1688 Florida Statutes, in references thereto, paragraphs (a) and (c)
 1689 of subsection (2) of section 397.4872, Florida Statutes, are
 1690 reenacted to read:

1691 397.4872 Exemption from disqualification; publication.—

1692 (2) The department may exempt a person from ss. 397.487(6)
 1693 and 397.4871(5) if it has been at least 3 years since the person
 1694 has completed or been lawfully released from confinement,
 1695 supervision, or sanction for the disqualifying offense. An
 1696 exemption from the disqualifying offenses may not be given under
 1697 any circumstances for any person who is a:

1698 (a) Sexual predator pursuant to s. 775.21;

1699 (c) Sexual offender pursuant to s. 943.0435, unless the
 1700 requirement to register as a sexual offender has been removed
 1701 pursuant to s. 943.04354.

1702 Section 43. For the purpose of incorporating the
 1703 amendments made by this act to sections 775.21, 943.0435, and
 1704 944.607, Florida Statutes, in references thereto, paragraphs (e)
 1705 and (f) of subsection (4) of section 775.13, Florida Statutes,
 1706 are reenacted to read:

1707 775.13 Registration of convicted felons, exemptions;
 1708 penalties.—

1709 (4) This section does not apply to an offender:

1710 (e) Who is a sexual predator and has registered as
 1711 required under s. 775.21;

1712 (f) Who is a sexual offender and has registered as
 1713 required in s. 943.0435 or s. 944.607; or

1714 Section 44. For the purpose of incorporating the
 1715 amendments made by this act to sections 775.21, 943.0435,
 1716 944.606, and 944.607, Florida Statutes, in references thereto,
 1717 section 775.25, Florida Statutes, is reenacted to read:

1718 775.25 Prosecutions for acts or omissions.—A sexual
 1719 predator or sexual offender who commits any act or omission in
 1720 violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s.
 1721 944.607, or former s. 947.177 may be prosecuted for the act or
 1722 omission in the county in which the act or omission was
 1723 committed, in the county of the last registered address of the
 1724 sexual predator or sexual offender, in the county in which the
 1725 conviction occurred for the offense or offenses that meet the
 1726 criteria for designating a person as a sexual predator or sexual
 1727 offender, in the county where the sexual predator or sexual
 1728 offender was released from incarceration, or in the county of
 1729 the intended address of the sexual predator or sexual offender
 1730 as reported by the predator or offender prior to his or her
 1731 release from incarceration. In addition, a sexual predator may
 1732 be prosecuted for any such act or omission in the county in
 1733 which he or she was designated a sexual predator.

1734 Section 45. For the purpose of incorporating the
 1735 amendments made by this act to sections 775.21, 943.0435, and
 1736 944.607, Florida Statutes, in references thereto, paragraph (b)
 1737 of subsection (3) of section 775.261, Florida Statutes, is

1738 reenacted to read:

1739 775.261 The Florida Career Offender Registration Act.—

1740 (3) CRITERIA FOR REGISTRATION AS A CAREER OFFENDER.—

1741 (b) This section does not apply to any person who has been
 1742 designated as a sexual predator and required to register under
 1743 s. 775.21 or who is required to register as a sexual offender
 1744 under s. 943.0435 or s. 944.607. However, if a person is no
 1745 longer required to register as a sexual predator under s. 775.21
 1746 or as a sexual offender under s. 943.0435 or s. 944.607, the
 1747 person must register as a career offender under this section if
 1748 the person is otherwise designated as a career offender as
 1749 provided in this section.

1750 Section 46. For the purpose of incorporating the amendment
 1751 made by this act to section 775.21, Florida Statutes, in a
 1752 reference thereto, subsection (1) of section 794.075, Florida
 1753 Statutes, is reenacted to read:

1754 794.075 Sexual predators; erectile dysfunction drugs.—

1755 (1) A person may not possess a prescription drug, as
 1756 defined in s. 499.003(43), for the purpose of treating erectile
 1757 dysfunction if the person is designated as a sexual predator
 1758 under s. 775.21.

1759 Section 47. For the purpose of incorporating the amendment
 1760 made by this act to section 775.21, Florida Statutes, in a
 1761 reference thereto, paragraph (c) of subsection (1) of section
 1762 903.0351, Florida Statutes, is reenacted to read:

1763 903.0351 Restrictions on pretrial release pending

1764 probation-violation hearing or community-control-violation
 1765 hearing.—

1766 (1) In the instance of an alleged violation of felony
 1767 probation or community control, bail or any other form of
 1768 pretrial release shall not be granted prior to the resolution of
 1769 the probation-violation hearing or the community-control-
 1770 violation hearing to:

1771 (c) A person who is on felony probation or community
 1772 control and has previously been found by a court to be a
 1773 habitual violent felony offender as defined in s. 775.084(1)(b),
 1774 a three-time violent felony offender as defined in s.
 1775 775.084(1)(c); or a sexual predator under s. 775.21, and who is
 1776 arrested for committing a qualifying offense as defined in s.
 1777 948.06(8)(c) on or after the effective date of this act.

1778 Section 48. For the purpose of incorporating the
 1779 amendments made by this act to sections 775.21 and 943.0435,
 1780 Florida Statutes, in references thereto, paragraph (m) of
 1781 subsection (2) of section 903.046, Florida Statutes, is
 1782 reenacted to read:

1783 903.046 Purpose of and criteria for bail determination.—

1784 (2) When determining whether to release a defendant on
 1785 bail or other conditions, and what that bail or those conditions
 1786 may be, the court shall consider:

1787 (m) Whether the defendant, other than a defendant whose
 1788 only criminal charge is a misdemeanor offense under chapter 316,
 1789 is required to register as a sexual offender under s. 943.0435

1790 or a sexual predator under s. 775.21; and, if so, he or she is
 1791 not eligible for release on bail or surety bond until the first
 1792 appearance on the case in order to ensure the full participation
 1793 of the prosecutor and the protection of the public.

1794 Section 49. For the purpose of incorporating the amendment
 1795 made by this act to section 775.21, Florida Statutes, in a
 1796 reference thereto, paragraph (o) of subsection (5) of section
 1797 921.141, Florida Statutes, is reenacted to read:

1798 921.141 Sentence of death or life imprisonment for capital
 1799 felonies; further proceedings to determine sentence.—

1800 (5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances
 1801 shall be limited to the following:

1802 (o) The capital felony was committed by a person
 1803 designated as a sexual predator pursuant to s. 775.21 or a
 1804 person previously designated as a sexual predator who had the
 1805 sexual predator designation removed.

1806 Section 50. For the purpose of incorporating the
 1807 amendments made by this act to sections 775.21 and 943.0435,
 1808 Florida Statutes, in references thereto, subsection (1) of
 1809 section 938.10, Florida Statutes, is reenacted to read:

1810 938.10 Additional court cost imposed in cases of certain
 1811 crimes.—

1812 (1) If a person pleads guilty or nolo contendere to, or is
 1813 found guilty of, regardless of adjudication, any offense against
 1814 a minor in violation of s. 784.085, chapter 787, chapter 794,
 1815 former s. 796.03, former s. 796.035, s. 800.04, chapter 827, s.

1816 847.012, s. 847.0133, s. 847.0135(5), s. 847.0138, s. 847.0145,
 1817 s. 893.147(3), or s. 985.701, or any offense in violation of s.
 1818 775.21, s. 823.07, s. 847.0125, s. 847.0134, or s. 943.0435, the
 1819 court shall impose a court cost of \$151 against the offender in
 1820 addition to any other cost or penalty required by law.

1821 Section 51. For the purpose of incorporating the
 1822 amendments made by this act to sections 775.21, 944.606, and
 1823 944.607, Florida Statutes, in references thereto, subsections
 1824 (3), (4), and (5) of section 943.0435, Florida Statutes, are
 1825 reenacted to read:

1826 943.0435 Sexual offenders required to register with the
 1827 department; penalty.—

1828 (3) Within 48 hours after the report required under
 1829 subsection (2), a sexual offender shall report in person at a
 1830 driver license office of the Department of Highway Safety and
 1831 Motor Vehicles, unless a driver license or identification card
 1832 that complies with the requirements of s. 322.141(3) was
 1833 previously secured or updated under s. 944.607. At the driver
 1834 license office the sexual offender shall:

1835 (a) If otherwise qualified, secure a Florida driver
 1836 license, renew a Florida driver license, or secure an
 1837 identification card. The sexual offender shall identify himself
 1838 or herself as a sexual offender who is required to comply with
 1839 this section and shall provide proof that the sexual offender
 1840 reported as required in subsection (2). The sexual offender
 1841 shall provide any of the information specified in subsection

1842 (2), if requested. The sexual offender shall submit to the
 1843 taking of a photograph for use in issuing a driver license,
 1844 renewed license, or identification card, and for use by the
 1845 department in maintaining current records of sexual offenders.

1846 (b) Pay the costs assessed by the Department of Highway
 1847 Safety and Motor Vehicles for issuing or renewing a driver
 1848 license or identification card as required by this section. The
 1849 driver license or identification card issued must be in
 1850 compliance with s. 322.141(3).

1851 (c) Provide, upon request, any additional information
 1852 necessary to confirm the identity of the sexual offender,
 1853 including a set of fingerprints.

1854 (4)(a) Each time a sexual offender's driver license or
 1855 identification card is subject to renewal, and, without regard
 1856 to the status of the offender's driver license or identification
 1857 card, within 48 hours after any change in the offender's
 1858 permanent, temporary, or transient residence or change in the
 1859 offender's name by reason of marriage or other legal process,
 1860 the offender shall report in person to a driver license office,
 1861 and is subject to the requirements specified in subsection (3).
 1862 The Department of Highway Safety and Motor Vehicles shall
 1863 forward to the department all photographs and information
 1864 provided by sexual offenders. Notwithstanding the restrictions
 1865 set forth in s. 322.142, the Department of Highway Safety and
 1866 Motor Vehicles may release a reproduction of a color-photograph
 1867 or digital-image license to the Department of Law Enforcement

1868 for purposes of public notification of sexual offenders as
 1869 provided in this section and ss. 943.043 and 944.606. A sexual
 1870 offender who is unable to secure or update a driver license or
 1871 identification card with the Department of Highway Safety and
 1872 Motor Vehicles as provided in subsection (3) and this subsection
 1873 shall also report any change in the sexual offender's permanent,
 1874 temporary, or transient residence or change in the offender's
 1875 name by reason of marriage or other legal process within 48
 1876 hours after the change to the sheriff's office in the county
 1877 where the offender resides or is located and provide
 1878 confirmation that he or she reported such information to the
 1879 Department of Highway Safety and Motor Vehicles.

1880 (b)1. A sexual offender who vacates a permanent,
 1881 temporary, or transient residence and fails to establish or
 1882 maintain another permanent, temporary, or transient residence
 1883 shall, within 48 hours after vacating the permanent, temporary,
 1884 or transient residence, report in person to the sheriff's office
 1885 of the county in which he or she is located. The sexual offender
 1886 shall specify the date upon which he or she intends to or did
 1887 vacate such residence. The sexual offender must provide or
 1888 update all of the registration information required under
 1889 paragraph (2)(b). The sexual offender must provide an address
 1890 for the residence or other place that he or she is or will be
 1891 located during the time in which he or she fails to establish or
 1892 maintain a permanent or temporary residence.

1893 2. A sexual offender shall report in person at the

1894 sheriff's office in the county in which he or she is located
 1895 within 48 hours after establishing a transient residence and
 1896 thereafter must report in person every 30 days to the sheriff's
 1897 office in the county in which he or she is located while
 1898 maintaining a transient residence. The sexual offender must
 1899 provide the addresses and locations where he or she maintains a
 1900 transient residence. Each sheriff's office shall establish
 1901 procedures for reporting transient residence information and
 1902 provide notice to transient registrants to report transient
 1903 residence information as required in this subparagraph.
 1904 Reporting to the sheriff's office as required by this
 1905 subparagraph does not exempt registrants from any reregistration
 1906 requirement. The sheriff may coordinate and enter into
 1907 agreements with police departments and other governmental
 1908 entities to facilitate additional reporting sites for transient
 1909 residence registration required in this subparagraph. The
 1910 sheriff's office shall, within 2 business days, electronically
 1911 submit and update all information provided by the sexual
 1912 offender to the department.

1913 (c) A sexual offender who remains at a permanent,
 1914 temporary, or transient residence after reporting his or her
 1915 intent to vacate such residence shall, within 48 hours after the
 1916 date upon which the offender indicated he or she would or did
 1917 vacate such residence, report in person to the agency to which
 1918 he or she reported pursuant to paragraph (b) for the purpose of
 1919 reporting his or her address at such residence. When the sheriff

1920 receives the report, the sheriff shall promptly convey the
 1921 information to the department. An offender who makes a report as
 1922 required under paragraph (b) but fails to make a report as
 1923 required under this paragraph commits a felony of the second
 1924 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1925 775.084.

1926 (d) The failure of a sexual offender who maintains a
 1927 transient residence to report in person to the sheriff's office
 1928 every 30 days as required in subparagraph (b)2. is punishable as
 1929 provided in subsection (9).

1930 (e) A sexual offender shall register all electronic mail
 1931 addresses and Internet identifiers with the department before
 1932 using such electronic mail addresses and Internet identifiers.
 1933 The department shall establish an online system through which
 1934 sexual offenders may securely access and update all electronic
 1935 mail address and Internet identifier information.

1936 (5) This section does not apply to a sexual offender who
 1937 is also a sexual predator, as defined in s. 775.21. A sexual
 1938 predator must register as required under s. 775.21.

1939 Section 52. For the purpose of incorporating the
 1940 amendments made by this act to sections 775.21 and 943.0435,
 1941 Florida Statutes, in references thereto, paragraph (a) of
 1942 subsection (4) and subsection (9) of section 944.607, Florida
 1943 Statutes, are reenacted to read:

1944 944.607 Notification to Department of Law Enforcement of
 1945 information on sexual offenders.-

1946 (4) A sexual offender, as described in this section, who
 1947 is under the supervision of the Department of Corrections but is
 1948 not incarcerated shall register with the Department of
 1949 Corrections within 3 business days after sentencing for a
 1950 registrable offense and otherwise provide information as
 1951 required by this subsection.

1952 (a) The sexual offender shall provide his or her name;
 1953 date of birth; social security number; race; sex; height;
 1954 weight; hair and eye color; tattoos or other identifying marks;
 1955 all electronic mail addresses and Internet identifiers required
 1956 to be provided pursuant to s. 943.0435(4)(e); all home telephone
 1957 numbers and cellular telephone numbers; the make, model, color,
 1958 vehicle identification number (VIN), and license tag number of
 1959 all vehicles owned; permanent or legal residence and address of
 1960 temporary residence within the state or out of state while the
 1961 sexual offender is under supervision in this state, including
 1962 any rural route address or post office box; if no permanent or
 1963 temporary address, any transient residence within the state; and
 1964 address, location or description, and dates of any current or
 1965 known future temporary residence within the state or out of
 1966 state. The sexual offender shall also produce his or her
 1967 passport, if he or she has a passport, and, if he or she is an
 1968 alien, shall produce or provide information about documents
 1969 establishing his or her immigration status. The sexual offender
 1970 shall also provide information about any professional licenses
 1971 he or she has. The Department of Corrections shall verify the

1972 address of each sexual offender in the manner described in ss.
 1973 775.21 and 943.0435. The department shall report to the
 1974 Department of Law Enforcement any failure by a sexual predator
 1975 or sexual offender to comply with registration requirements.

1976 (9) A sexual offender, as described in this section, who
 1977 is under the supervision of the Department of Corrections but
 1978 who is not incarcerated shall, in addition to the registration
 1979 requirements provided in subsection (4), register and obtain a
 1980 distinctive driver license or identification card in the manner
 1981 provided in s. 943.0435(3), (4), and (5), unless the sexual
 1982 offender is a sexual predator, in which case he or she shall
 1983 register and obtain a distinctive driver license or
 1984 identification card as required under s. 775.21. A sexual
 1985 offender who fails to comply with the requirements of s.
 1986 943.0435 is subject to the penalties provided in s. 943.0435(9).

1987 Section 53. For the purpose of incorporating the
 1988 amendments made by this act to sections 775.21 and 944.607,
 1989 Florida Statutes, in references thereto, subsection (7) of
 1990 section 944.608, Florida Statutes, is reenacted to read:

1991 944.608 Notification to Department of Law Enforcement of
 1992 information on career offenders.—

1993 (7) A career offender who is under the supervision of the
 1994 department but who is not incarcerated shall, in addition to the
 1995 registration requirements provided in subsection (3), register
 1996 in the manner provided in s. 775.261(4)(c), unless the career
 1997 offender is a sexual predator, in which case he or she shall

1998 register as required under s. 775.21, or is a sexual offender,
 1999 in which case he or she shall register as required in s.
 2000 944.607. A career offender who fails to comply with the
 2001 requirements of s. 775.261(4) is subject to the penalties
 2002 provided in s. 775.261(8).

2003 Section 54. For the purpose of incorporating the amendment
 2004 made by this act to section 775.21, Florida Statutes, in
 2005 references thereto, subsection (4) of section 944.609, Florida
 2006 Statutes, is reenacted to read:

2007 944.609 Career offenders; notification upon release.—

2008 (4) The department or any law enforcement agency may
 2009 notify the community and the public of a career offender's
 2010 presence in the community. However, with respect to a career
 2011 offender who has been found to be a sexual predator under s.
 2012 775.21, the Department of Law Enforcement or any other law
 2013 enforcement agency must inform the community and the public of
 2014 the career offender's presence in the community, as provided in
 2015 s. 775.21.

2016 Section 55. For the purpose of incorporating the
 2017 amendments made by this act to sections 775.21 and 943.0435,
 2018 Florida Statutes, in references thereto, paragraph (c) of
 2019 subsection (2) and subsections (10) and (12) of section
 2020 947.1405, Florida Statutes, are reenacted to read:

2021 947.1405 Conditional release program.—

2022 (2) Any inmate who:

2023 (c) Is found to be a sexual predator under s. 775.21 or

2024 former s. 775.23,
 2025
 2026 shall, upon reaching the tentative release date or provisional
 2027 release date, whichever is earlier, as established by the
 2028 Department of Corrections, be released under supervision subject
 2029 to specified terms and conditions, including payment of the cost
 2030 of supervision pursuant to s. 948.09. Such supervision shall be
 2031 applicable to all sentences within the overall term of sentences
 2032 if an inmate's overall term of sentences includes one or more
 2033 sentences that are eligible for conditional release supervision
 2034 as provided herein. Effective July 1, 1994, and applicable for
 2035 offenses committed on or after that date, the commission may
 2036 require, as a condition of conditional release, that the
 2037 releasee make payment of the debt due and owing to a county or
 2038 municipal detention facility under s. 951.032 for medical care,
 2039 treatment, hospitalization, or transportation received by the
 2040 releasee while in that detention facility. The commission, in
 2041 determining whether to order such repayment and the amount of
 2042 such repayment, shall consider the amount of the debt, whether
 2043 there was any fault of the institution for the medical expenses
 2044 incurred, the financial resources of the releasee, the present
 2045 and potential future financial needs and earning ability of the
 2046 releasee, and dependents, and other appropriate factors. If any
 2047 inmate placed on conditional release supervision is also subject
 2048 to probation or community control, resulting from a probationary
 2049 or community control split sentence within the overall term of

2050 sentences, the Department of Corrections shall supervise such
 2051 person according to the conditions imposed by the court and the
 2052 commission shall defer to such supervision. If the court revokes
 2053 probation or community control and resentsences the offender to a
 2054 term of incarceration, such revocation also constitutes a
 2055 sufficient basis for the revocation of the conditional release
 2056 supervision on any nonprobationary or noncommunity control
 2057 sentence without further hearing by the commission. If any such
 2058 supervision on any nonprobationary or noncommunity control
 2059 sentence is revoked, such revocation may result in a forfeiture
 2060 of all gain-time, and the commission may revoke the resulting
 2061 deferred conditional release supervision or take other action it
 2062 considers appropriate. If the term of conditional release
 2063 supervision exceeds that of the probation or community control,
 2064 then, upon expiration of the probation or community control,
 2065 authority for the supervision shall revert to the commission and
 2066 the supervision shall be subject to the conditions imposed by
 2067 the commission. A panel of no fewer than two commissioners shall
 2068 establish the terms and conditions of any such release. If the
 2069 offense was a controlled substance violation, the conditions
 2070 shall include a requirement that the offender submit to random
 2071 substance abuse testing intermittently throughout the term of
 2072 conditional release supervision, upon the direction of the
 2073 correctional probation officer as defined in s. 943.10(3). The
 2074 commission shall also determine whether the terms and conditions
 2075 of such release have been violated and whether such violation

2076 warrants revocation of the conditional release.

2077 (10) Effective for a releasee whose crime was committed on
 2078 or after September 1, 2005, in violation of chapter 794, s.
 2079 800.04(4), (5), or (6), s. 827.071, or s. 847.0145, and the
 2080 unlawful activity involved a victim who was 15 years of age or
 2081 younger and the offender is 18 years of age or older or for a
 2082 releasee who is designated as a sexual predator pursuant to s.
 2083 775.21, in addition to any other provision of this section, the
 2084 commission must order electronic monitoring for the duration of
 2085 the releasee's supervision.

2086 (12) In addition to all other conditions imposed, for a
 2087 releasee who is subject to conditional release for a crime that
 2088 was committed on or after May 26, 2010, and who has been
 2089 convicted at any time of committing, or attempting, soliciting,
 2090 or conspiring to commit, any of the criminal offenses listed in
 2091 s. 943.0435(1)(a)1.a.(I), or a similar offense in another
 2092 jurisdiction against a victim who was under 18 years of age at
 2093 the time of the offense, if the releasee has not received a
 2094 pardon for any felony or similar law of another jurisdiction
 2095 necessary for the operation of this subsection, if a conviction
 2096 of a felony or similar law of another jurisdiction necessary for
 2097 the operation of this subsection has not been set aside in any
 2098 postconviction proceeding, or if the releasee has not been
 2099 removed from the requirement to register as a sexual offender or
 2100 sexual predator pursuant to s. 943.04354, the commission must
 2101 impose the following conditions:

2102 (a) A prohibition on visiting schools, child care
 2103 facilities, parks, and playgrounds without prior approval from
 2104 the releasee's supervising officer. The commission may also
 2105 designate additional prohibited locations to protect a victim.
 2106 The prohibition ordered under this paragraph does not prohibit
 2107 the releasee from visiting a school, child care facility, park,
 2108 or playground for the sole purpose of attending a religious
 2109 service as defined in s. 775.0861 or picking up or dropping off
 2110 the releasee's child or grandchild at a child care facility or
 2111 school.

2112 (b) A prohibition on distributing candy or other items to
 2113 children on Halloween; wearing a Santa Claus costume, or other
 2114 costume to appeal to children, on or preceding Christmas;
 2115 wearing an Easter Bunny costume, or other costume to appeal to
 2116 children, on or preceding Easter; entertaining at children's
 2117 parties; or wearing a clown costume without prior approval from
 2118 the commission.

2119 Section 56. For the purpose of incorporating the
 2120 amendments made by this act to sections 782.04, 775.21,
 2121 943.0435, and 944.607, Florida Statutes, in references thereto,
 2122 subsection (4) and paragraphs (b), (c), and (d) of subsection
 2123 (8) of section 948.06, Florida Statutes, are reenacted to read:

2124 948.06 Violation of probation or community control;
 2125 revocation; modification; continuance; failure to pay
 2126 restitution or cost of supervision.—

2127 (4) Notwithstanding any other provision of this section, a

2128 felony probationer or an offender in community control who is
 2129 arrested for violating his or her probation or community control
 2130 in a material respect may be taken before the court in the
 2131 county or circuit in which the probationer or offender was
 2132 arrested. That court shall advise him or her of the charge of a
 2133 violation and, if such charge is admitted, shall cause him or
 2134 her to be brought before the court that granted the probation or
 2135 community control. If the violation is not admitted by the
 2136 probationer or offender, the court may commit him or her or
 2137 release him or her with or without bail to await further
 2138 hearing. However, if the probationer or offender is under
 2139 supervision for any criminal offense proscribed in chapter 794,
 2140 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a
 2141 registered sexual predator or a registered sexual offender, or
 2142 is under supervision for a criminal offense for which he or she
 2143 would meet the registration criteria in s. 775.21, s. 943.0435,
 2144 or s. 944.607 but for the effective date of those sections, the
 2145 court must make a finding that the probationer or offender is
 2146 not a danger to the public prior to release with or without
 2147 bail. In determining the danger posed by the offender's or
 2148 probationer's release, the court may consider the nature and
 2149 circumstances of the violation and any new offenses charged; the
 2150 offender's or probationer's past and present conduct, including
 2151 convictions of crimes; any record of arrests without conviction
 2152 for crimes involving violence or sexual crimes; any other
 2153 evidence of allegations of unlawful sexual conduct or the use of

2154 | violence by the offender or probationer; the offender's or
 2155 | probationer's family ties, length of residence in the community,
 2156 | employment history, and mental condition; his or her history and
 2157 | conduct during the probation or community control supervision
 2158 | from which the violation arises and any other previous
 2159 | supervisions, including disciplinary records of previous
 2160 | incarcerations; the likelihood that the offender or probationer
 2161 | will engage again in a criminal course of conduct; the weight of
 2162 | the evidence against the offender or probationer; and any other
 2163 | facts the court considers relevant. The court, as soon as is
 2164 | practicable, shall give the probationer or offender an
 2165 | opportunity to be fully heard on his or her behalf in person or
 2166 | by counsel. After the hearing, the court shall make findings of
 2167 | fact and forward the findings to the court that granted the
 2168 | probation or community control and to the probationer or
 2169 | offender or his or her attorney. The findings of fact by the
 2170 | hearing court are binding on the court that granted the
 2171 | probation or community control. Upon the probationer or offender
 2172 | being brought before it, the court that granted the probation or
 2173 | community control may revoke, modify, or continue the probation
 2174 | or community control or may place the probationer into community
 2175 | control as provided in this section. However, the probationer or
 2176 | offender shall not be released and shall not be admitted to
 2177 | bail, but shall be brought before the court that granted the
 2178 | probation or community control if any violation of felony
 2179 | probation or community control other than a failure to pay costs

2180 or fines or make restitution payments is alleged to have been
 2181 committed by:

2182 (a) A violent felony offender of special concern, as
 2183 defined in this section;

2184 (b) A person who is on felony probation or community
 2185 control for any offense committed on or after the effective date
 2186 of this act and who is arrested for a qualifying offense as
 2187 defined in this section; or

2188 (c) A person who is on felony probation or community
 2189 control and has previously been found by a court to be a
 2190 habitual violent felony offender as defined in s. 775.084(1)(b),
 2191 a three-time violent felony offender as defined in s.
 2192 775.084(1)(c), or a sexual predator under s. 775.21, and who is
 2193 arrested for committing a qualifying offense as defined in this
 2194 section on or after the effective date of this act.

2195 (8)

2196 (b) For purposes of this section and ss. 903.0351,
 2197 948.064, and 921.0024, the term "violent felony offender of
 2198 special concern" means a person who is on:

2199 1. Felony probation or community control related to the
 2200 commission of a qualifying offense committed on or after the
 2201 effective date of this act;

2202 2. Felony probation or community control for any offense
 2203 committed on or after the effective date of this act, and has
 2204 previously been convicted of a qualifying offense;

2205 3. Felony probation or community control for any offense

2206 committed on or after the effective date of this act, and is
 2207 found to have violated that probation or community control by
 2208 committing a qualifying offense;

2209 4. Felony probation or community control and has
 2210 previously been found by a court to be a habitual violent felony
 2211 offender as defined in s. 775.084(1)(b) and has committed a
 2212 qualifying offense on or after the effective date of this act;

2213 5. Felony probation or community control and has
 2214 previously been found by a court to be a three-time violent
 2215 felony offender as defined in s. 775.084(1)(c) and has committed
 2216 a qualifying offense on or after the effective date of this act;
 2217 or

2218 6. Felony probation or community control and has
 2219 previously been found by a court to be a sexual predator under
 2220 s. 775.21 and has committed a qualifying offense on or after the
 2221 effective date of this act.

2222 (c) For purposes of this section, the term "qualifying
 2223 offense" means any of the following:

2224 1. Kidnapping or attempted kidnapping under s. 787.01,
 2225 false imprisonment of a child under the age of 13 under s.
 2226 787.02(3), or luring or enticing a child under s. 787.025(2)(b)
 2227 or (c).

2228 2. Murder or attempted murder under s. 782.04, attempted
 2229 felony murder under s. 782.051, or manslaughter under s. 782.07.

2230 3. Aggravated battery or attempted aggravated battery
 2231 under s. 784.045.

2232 4. Sexual battery or attempted sexual battery under s.
2233 794.011(2), (3), (4), or (8)(b) or (c).

2234 5. Lewd or lascivious battery or attempted lewd or
2235 lascivious battery under s. 800.04(4), lewd or lascivious
2236 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious
2237 conduct under s. 800.04(6)(b), lewd or lascivious exhibition
2238 under s. 800.04(7)(b), or lewd or lascivious exhibition on
2239 computer under s. 847.0135(5)(b).

2240 6. Robbery or attempted robbery under s. 812.13,
2241 carjacking or attempted carjacking under s. 812.133, or home
2242 invasion robbery or attempted home invasion robbery under s.
2243 812.135.

2244 7. Lewd or lascivious offense upon or in the presence of
2245 an elderly or disabled person or attempted lewd or lascivious
2246 offense upon or in the presence of an elderly or disabled person
2247 under s. 825.1025.

2248 8. Sexual performance by a child or attempted sexual
2249 performance by a child under s. 827.071.

2250 9. Computer pornography under s. 847.0135(2) or (3),
2251 transmission of child pornography under s. 847.0137, or selling
2252 or buying of minors under s. 847.0145.

2253 10. Poisoning food or water under s. 859.01.

2254 11. Abuse of a dead human body under s. 872.06.

2255 12. Any burglary offense or attempted burglary offense
2256 that is either a first degree felony or second degree felony
2257 under s. 810.02(2) or (3).

- 2258 13. Arson or attempted arson under s. 806.01(1).
 2259 14. Aggravated assault under s. 784.021.
 2260 15. Aggravated stalking under s. 784.048(3), (4), (5), or
 2261 (7).
 2262 16. Aircraft piracy under s. 860.16.
 2263 17. Unlawful throwing, placing, or discharging of a
 2264 destructive device or bomb under s. 790.161(2), (3), or (4).
 2265 18. Treason under s. 876.32.
 2266 19. Any offense committed in another jurisdiction which
 2267 would be an offense listed in this paragraph if that offense had
 2268 been committed in this state.
 2269 (d) In the case of an alleged violation of probation or
 2270 community control other than a failure to pay costs, fines, or
 2271 restitution, the following individuals shall remain in custody
 2272 pending the resolution of the probation or community control
 2273 violation:
 2274 1. A violent felony offender of special concern, as
 2275 defined in this section;
 2276 2. A person who is on felony probation or community
 2277 control for any offense committed on or after the effective date
 2278 of this act and who is arrested for a qualifying offense as
 2279 defined in this section; or
 2280 3. A person who is on felony probation or community
 2281 control and has previously been found by a court to be a
 2282 habitual violent felony offender as defined in s. 775.084(1)(b),
 2283 a three-time violent felony offender as defined in s.

2284 775.084(1)(c), or a sexual predator under s. 775.21, and who is
 2285 arrested for committing a qualifying offense as defined in this
 2286 section on or after the effective date of this act.

2287
 2288 The court shall not dismiss the probation or community control
 2289 violation warrant pending against an offender enumerated in this
 2290 paragraph without holding a recorded violation-of-probation
 2291 hearing at which both the state and the offender are
 2292 represented.

2293 Section 57. For the purpose of incorporating the
 2294 amendments made by this act to sections 775.21, 943.0435, and
 2295 944.607, Florida Statutes, in references thereto, section
 2296 948.063, Florida Statutes, is reenacted to read:

2297 948.063 Violations of probation or community control by
 2298 designated sexual offenders and sexual predators.-

2299 (1) If probation or community control for any felony
 2300 offense is revoked by the court pursuant to s. 948.06(2)(e) and
 2301 the offender is designated as a sexual offender pursuant to s.
 2302 943.0435 or s. 944.607 or as a sexual predator pursuant to s.
 2303 775.21 for unlawful sexual activity involving a victim 15 years
 2304 of age or younger and the offender is 18 years of age or older,
 2305 and if the court imposes a subsequent term of supervision
 2306 following the revocation of probation or community control, the
 2307 court must order electronic monitoring as a condition of the
 2308 subsequent term of probation or community control.

2309 (2) If the probationer or offender is required to register

2310 as a sexual predator under s. 775.21 or as a sexual offender
 2311 under s. 943.0435 or s. 944.607 for unlawful sexual activity
 2312 involving a victim 15 years of age or younger and the
 2313 probationer or offender is 18 years of age or older and has
 2314 violated the conditions of his or her probation or community
 2315 control, but the court does not revoke the probation or
 2316 community control, the court shall nevertheless modify the
 2317 probation or community control to include electronic monitoring
 2318 for any probationer or offender not then subject to electronic
 2319 monitoring.

2320 Section 58. For the purpose of incorporating the amendment
 2321 made by this act to section 775.21, Florida Statutes, in a
 2322 reference thereto, subsection (4) of section 948.064, Florida
 2323 Statutes, is reenacted to read:

2324 948.064 Notification of status as a violent felony
 2325 offender of special concern.—

2326 (4) The state attorney, or the statewide prosecutor if
 2327 applicable, shall advise the court at each critical stage in the
 2328 judicial process, at which the state attorney or statewide
 2329 prosecutor is represented, whether an alleged or convicted
 2330 offender is a violent felony offender of special concern; a
 2331 person who is on felony probation or community control for any
 2332 offense committed on or after the effective date of this act and
 2333 who is arrested for a qualifying offense; or a person who is on
 2334 felony probation or community control and has previously been
 2335 found by a court to be a habitual violent felony offender as

2336 defined in s. 775.084(1)(b), a three-time violent felony
 2337 offender as defined in s. 775.084(1)(c), or a sexual predator
 2338 under s. 775.21, and who is arrested for committing a qualifying
 2339 offense on or after the effective date of this act.

2340 Section 59. For the purpose of incorporating the amendment
 2341 made by this act to section 775.21, Florida Statutes, in a
 2342 reference thereto, subsection (3) of section 948.12, Florida
 2343 Statutes, is reenacted to read:

2344 948.12 Intensive supervision for postprison release of
 2345 violent offenders.—It is the finding of the Legislature that the
 2346 population of violent offenders released from state prison into
 2347 the community poses the greatest threat to the public safety of
 2348 the groups of offenders under community supervision. Therefore,
 2349 for the purpose of enhanced public safety, any offender released
 2350 from state prison who:

2351 (3) Has been found to be a sexual predator pursuant to s.
 2352 775.21,

2353
 2354 and who has a term of probation to follow the period of
 2355 incarceration shall be provided intensive supervision by
 2356 experienced correctional probation officers. Subject to specific
 2357 appropriation by the Legislature, caseloads may be restricted to
 2358 a maximum of 40 offenders per officer to provide for enhanced
 2359 public safety as well as to effectively monitor conditions of
 2360 electronic monitoring or curfews, if such was ordered by the
 2361 court.

2362 Section 60. For the purpose of incorporating the
 2363 amendments made by this act to sections 775.21 and 943.0435,
 2364 Florida Statutes, in references thereto, paragraph (b) of
 2365 subsection (3) and subsection (4) of section 948.30, Florida
 2366 Statutes, are reenacted to read:

2367 948.30 Additional terms and conditions of probation or
 2368 community control for certain sex offenses.—Conditions imposed
 2369 pursuant to this section do not require oral pronouncement at
 2370 the time of sentencing and shall be considered standard
 2371 conditions of probation or community control for offenders
 2372 specified in this section.

2373 (3) Effective for a probationer or community controllee
 2374 whose crime was committed on or after September 1, 2005, and
 2375 who:

2376 (b) Is designated a sexual predator pursuant to s. 775.21;
 2377 or

2378
 2379 the court must order, in addition to any other provision of this
 2380 section, mandatory electronic monitoring as a condition of the
 2381 probation or community control supervision.

2382 (4) In addition to all other conditions imposed, for a
 2383 probationer or community controllee who is subject to
 2384 supervision for a crime that was committed on or after May 26,
 2385 2010, and who has been convicted at any time of committing, or
 2386 attempting, soliciting, or conspiring to commit, any of the
 2387 criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a

2388 similar offense in another jurisdiction, against a victim who
 2389 was under the age of 18 at the time of the offense; if the
 2390 offender has not received a pardon for any felony or similar law
 2391 of another jurisdiction necessary for the operation of this
 2392 subsection, if a conviction of a felony or similar law of
 2393 another jurisdiction necessary for the operation of this
 2394 subsection has not been set aside in any postconviction
 2395 proceeding, or if the offender has not been removed from the
 2396 requirement to register as a sexual offender or sexual predator
 2397 pursuant to s. 943.04354, the court must impose the following
 2398 conditions:

2399 (a) A prohibition on visiting schools, child care
 2400 facilities, parks, and playgrounds, without prior approval from
 2401 the offender's supervising officer. The court may also designate
 2402 additional locations to protect a victim. The prohibition
 2403 ordered under this paragraph does not prohibit the offender from
 2404 visiting a school, child care facility, park, or playground for
 2405 the sole purpose of attending a religious service as defined in
 2406 s. 775.0861 or picking up or dropping off the offender's
 2407 children or grandchildren at a child care facility or school.

2408 (b) A prohibition on distributing candy or other items to
 2409 children on Halloween; wearing a Santa Claus costume, or other
 2410 costume to appeal to children, on or preceding Christmas;
 2411 wearing an Easter Bunny costume, or other costume to appeal to
 2412 children, on or preceding Easter; entertaining at children's
 2413 parties; or wearing a clown costume; without prior approval from

2414 the court.

2415 Section 61. For the purpose of incorporating the
 2416 amendments made by this act to sections 775.21, 943.0435,
 2417 944.606, and 944.607, Florida Statutes, in references thereto,
 2418 section 948.31, Florida Statutes, is reenacted to read:

2419 948.31 Evaluation and treatment of sexual predators and
 2420 offenders on probation or community control.—The court may
 2421 require any probationer or community controllee who is required
 2422 to register as a sexual predator under s. 775.21 or sexual
 2423 offender under s. 943.0435, s. 944.606, or s. 944.607 to undergo
 2424 an evaluation, at the probationer or community controllee's
 2425 expense, by a qualified practitioner to determine whether such
 2426 probationer or community controllee needs sexual offender
 2427 treatment. If the qualified practitioner determines that sexual
 2428 offender treatment is needed and recommends treatment, the
 2429 probationer or community controllee must successfully complete
 2430 and pay for the treatment. Such treatment must be obtained from
 2431 a qualified practitioner as defined in s. 948.001. Treatment may
 2432 not be administered by a qualified practitioner who has been
 2433 convicted or adjudicated delinquent of committing, or
 2434 attempting, soliciting, or conspiring to commit, any offense
 2435 that is listed in s. 943.0435(1)(a)1.a.(I).

2436 Section 62. For the purpose of incorporating the
 2437 amendments made by this act to sections 775.21, 943.0435,
 2438 944.606, and 944.607, Florida Statutes, in references thereto,
 2439 paragraph (b) of subsection (6) of section 985.04, Florida

2440 Statutes, is reenacted to read:

2441 985.04 Oaths; records; confidential information.—

2442 (6)

2443 (b) Sexual offender and predator registration information
 2444 as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481,
 2445 and 985.4815 is a public record pursuant to s. 119.07(1) and as
 2446 otherwise provided by law.

2447 Section 63. For the purpose of incorporating the
 2448 amendments made by this act to sections 775.21 and 943.0435,
 2449 Florida Statutes, in references thereto, subsection (9) of
 2450 section 985.4815, Florida Statutes, is reenacted to read:

2451 985.4815 Notification to Department of Law Enforcement of
 2452 information on juvenile sexual offenders.—

2453 (9) A sexual offender, as described in this section, who
 2454 is under the care, jurisdiction, or supervision of the
 2455 department but who is not incarcerated shall, in addition to the
 2456 registration requirements provided in subsection (4), register
 2457 in the manner provided in s. 943.0435(3), (4), and (5), unless
 2458 the sexual offender is a sexual predator, in which case he or
 2459 she shall register as required under s. 775.21. A sexual
 2460 offender who fails to comply with the requirements of s.
 2461 943.0435 is subject to the penalties provided in s. 943.0435(9).

2462 Section 64. For the purpose of incorporating the
 2463 amendments made by this act to sections 775.21 and 943.0435,
 2464 Florida Statutes, in references thereto, paragraph (b) of
 2465 subsection (1) of section 92.55, Florida Statutes, is reenacted

2466 to read:

2467 92.55 Judicial or other proceedings involving victim or
 2468 witness under the age of 16, a person who has an intellectual
 2469 disability, or a sexual offense victim or witness; special
 2470 protections; use of registered service or therapy animals.-

2471 (1) For purposes of this section, the term:

2472 (b) "Sexual offense" means any offense specified in s.
 2473 775.21(4)(a)1. or s. 943.0435(1)(a)1.a.(I).

2474 Section 65. For the purpose of incorporating the amendment
 2475 made by this act to section 943.0435, Florida Statutes, in a
 2476 reference thereto, paragraph (a) of subsection (2) of section
 2477 394.9125, Florida Statutes, is reenacted to read:

2478 394.9125 State attorney; authority to refer a person for
 2479 civil commitment.-

2480 (2) A state attorney may refer a person to the department
 2481 for civil commitment proceedings if the person:

2482 (a) Is required to register as a sexual offender pursuant
 2483 to s. 943.0435;

2484 Section 66. For the purpose of incorporating the
 2485 amendments made by this act to sections 943.0435 and 944.607,
 2486 Florida Statutes, in references thereto, paragraph (d) of
 2487 subsection (5) and paragraph (c) of subsection (10) of section
 2488 775.21, Florida Statutes, are reenacted to read:

2489 775.21 The Florida Sexual Predators Act.-

2490 (5) SEXUAL PREDATOR DESIGNATION.-An offender is designated
 2491 as a sexual predator as follows:

2492 (d) A person who establishes or maintains a residence in
 2493 this state and who has not been designated as a sexual predator
 2494 by a court of this state but who has been designated as a sexual
 2495 predator, as a sexually violent predator, or by another sexual
 2496 offender designation in another state or jurisdiction and was,
 2497 as a result of such designation, subjected to registration or
 2498 community or public notification, or both, or would be if the
 2499 person was a resident of that state or jurisdiction, without
 2500 regard to whether the person otherwise meets the criteria for
 2501 registration as a sexual offender, shall register in the manner
 2502 provided in s. 943.0435 or s. 944.607 and shall be subject to
 2503 community and public notification as provided in s. 943.0435 or
 2504 s. 944.607. A person who meets the criteria of this section is
 2505 subject to the requirements and penalty provisions of s.
 2506 943.0435 or s. 944.607 until the person provides the department
 2507 with an order issued by the court that designated the person as
 2508 a sexual predator, as a sexually violent predator, or by another
 2509 sexual offender designation in the state or jurisdiction in
 2510 which the order was issued which states that such designation
 2511 has been removed or demonstrates to the department that such
 2512 designation, if not imposed by a court, has been removed by
 2513 operation of law or court order in the state or jurisdiction in
 2514 which the designation was made, and provided such person no
 2515 longer meets the criteria for registration as a sexual offender
 2516 under the laws of this state.

2517 (10) PENALTIES.—

2518 (c) Any person who misuses public records information
 2519 relating to a sexual predator, as defined in this section, or a
 2520 sexual offender, as defined in s. 943.0435 or s. 944.607, to
 2521 secure a payment from such a predator or offender; who knowingly
 2522 distributes or publishes false information relating to such a
 2523 predator or offender which the person misrepresents as being
 2524 public records information; or who materially alters public
 2525 records information with the intent to misrepresent the
 2526 information, including documents, summaries of public records
 2527 information provided by law enforcement agencies, or public
 2528 records information displayed by law enforcement agencies on
 2529 websites or provided through other means of communication,
 2530 commits a misdemeanor of the first degree, punishable as
 2531 provided in s. 775.082 or s. 775.083.

2532 Section 67. For the purpose of incorporating the
 2533 amendments made by this act to sections 943.0435, 944.606, and
 2534 944.607, Florida Statutes, in references thereto, subsection (2)
 2535 of section 775.24, Florida Statutes, is reenacted to read:

2536 775.24 Duty of the court to uphold laws governing sexual
 2537 predators and sexual offenders.-

2538 (2) If a person meets the criteria in this chapter for
 2539 designation as a sexual predator or meets the criteria in s.
 2540 943.0435, s. 944.606, s. 944.607, or any other law for
 2541 classification as a sexual offender, the court may not enter an
 2542 order, for the purpose of approving a plea agreement or for any
 2543 other reason, which:

2544 (a) Exempts a person who meets the criteria for
 2545 designation as a sexual predator or classification as a sexual
 2546 offender from such designation or classification, or exempts
 2547 such person from the requirements for registration or community
 2548 and public notification imposed upon sexual predators and sexual
 2549 offenders;

2550 (b) Restricts the compiling, reporting, or release of
 2551 public records information that relates to sexual predators or
 2552 sexual offenders; or

2553 (c) Prevents any person or entity from performing its
 2554 duties or operating within its statutorily conferred authority
 2555 as such duty or authority relates to sexual predators or sexual
 2556 offenders.

2557 Section 68. For the purpose of incorporating the
 2558 amendments made by this act to sections 775.21, 943.0435,
 2559 944.606 and 944.607, Florida Statutes, in references thereto,
 2560 subsection (2) of section 943.0436, Florida Statutes, is
 2561 reenacted to read:

2562 943.0436 Duty of the court to uphold laws governing sexual
 2563 predators and sexual offenders.—

2564 (2) If a person meets the criteria in chapter 775 for
 2565 designation as a sexual predator or meets the criteria in s.
 2566 943.0435, s. 944.606, s. 944.607, or any other law for
 2567 classification as a sexual offender, the court may not enter an
 2568 order, for the purpose of approving a plea agreement or for any
 2569 other reason, which:

2570 (a) Exempts a person who meets the criteria for
 2571 designation as a sexual predator or classification as a sexual
 2572 offender from such designation or classification, or exempts
 2573 such person from the requirements for registration or community
 2574 and public notification imposed upon sexual predators and sexual
 2575 offenders;

2576 (b) Restricts the compiling, reporting, or release of
 2577 public records information that relates to sexual predators or
 2578 sexual offenders; or

2579 (c) Prevents any person or entity from performing its
 2580 duties or operating within its statutorily conferred authority
 2581 as such duty or authority relates to sexual predators or sexual
 2582 offenders.

2583 Section 69. For the purpose of incorporating the amendment
 2584 made by this act to section 943.0435, Florida Statutes, in a
 2585 reference thereto, subsection (2) of section 775.0862, Florida
 2586 Statutes, is reenacted to read:

2587 775.0862 Sexual offenses against students by authority
 2588 figures; reclassification.-

2589 (2) The felony degree of a violation of an offense listed
 2590 in s. 943.0435(1)(a)1.a., unless the offense is a violation of
 2591 s. 794.011(4)(e)7. or s. 810.145(8)(a)2., shall be reclassified
 2592 as provided in this section if the offense is committed by an
 2593 authority figure of a school against a student of the school.

2594 Section 70. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 675 Federal Immigration Enforcement
SPONSOR(S): Civil Justice Subcommittee; Metz and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	9 Y, 4 N, As CS	Malcolm	Bond
2) Judiciary Committee		Malcolm	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Although the federal government has broad powers over immigration enforcement, federal immigration agencies rely on state and local law enforcement agencies to assist and cooperate in the enforcement of federal immigration laws. The bill creates the "Rule of Law Adherence Act" (Act) to require state and local governments and law enforcement agencies, including their officials and employees, to support and cooperate with federal immigration enforcement. Specifically, the bill:

- prohibits a state or local governmental entity or law enforcement agency from having a law, policy, practice, procedure, or custom which impedes a law enforcement agency from communicating or cooperating with a federal immigration agency on immigration enforcement;
- prohibits any restriction on a state or local governmental entity or law enforcement agency's ability to use, maintain, or exchange immigration information for certain enumerated purposes;
- requires a state or local governmental entity and law enforcement agency to comply with and support the enforcement of federal immigration law;
- authorizes a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer;
- requires an official or employee of a state or local governmental entity or law enforcement agency to report a violation of the Act to the Attorney General or state attorney, failure to report a violation may result in suspension or removal from office;
- authorizes the Attorney General or a state attorney to seek an injunction against a state or local governmental entity or law enforcement agency that violates the Act;
- requires a state or local governmental entity or law enforcement agency that violates the Act to pay a civil penalty of at least \$1,000 but no more than \$5,000 for each day the policy was in effect;
- creates a civil cause of action for a person injured by the conduct of an alien unlawfully present in the United States against a state or local governmental entity, law enforcement agency, or elected or appointed official whose violation of the Act contributed to the person's injury;
- prohibits the expenditure of public funds to reimburse or defend a public official or employee who violates the Act; and
- waives sovereign immunity for actions brought under the newly-created cause of action.

The bill may have an indeterminate impact on local government expenditures. The bill does not appear to have a fiscal impact on state government.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The federal government has “broad, undoubted power over the subject of immigration and the status of aliens,” and thus has established an “extensive and complex” set of rules governing the admission and removal of aliens, along with conditions for aliens’ continued presence within the United States.¹ While the federal government’s authority over immigration is well established, the Supreme Court has recognized that not “every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted” by the federal government.² The Tenth Amendment’s reservation of powers to the states includes traditional “police powers” concerning the promotion and regulation of safety, health, and welfare within the state.³ Pursuant to the exercise of these police powers, states and municipalities have frequently enacted measures which address aliens residing in their communities.⁴ The federal government’s power to preempt activity in the area of immigration may be further limited by the constitutional bar against directly “commandeering” state or local governments into the service of federal immigration agencies.⁵

Information-Sharing

United States Immigration and Customs Enforcement (ICE) relies heavily on local law enforcement sharing information regarding an arrestee or inmate to identify and apprehend aliens who are unlawfully present in the United States. Over the years, some states and localities have restricted government agencies or employees from sharing information with federal immigration agencies.⁶

In 1996, Congress sought to end these restrictions on information-sharing through the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)⁷ and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).⁸ Neither PRWORA nor IIRIRA require state or local government entities to share immigration-related information with federal authorities. Instead, they bar any restrictions that prevent state or local government entities or officials from voluntarily communicating with federal immigration agencies regarding a person’s immigration status.⁹

Immigration Detainers

An immigration detainer is a document by which ICE advises state and local law enforcement agencies of its interest in individual aliens whom those agencies are currently holding in relation to criminal violations.¹⁰ ICE issues a detainer in three situations:

- To notify a law enforcement agency that ICE intends to assume custody of an alien in the agency’s custody once the alien is no longer detained by the agency;
- To request information from a law enforcement agency about an alien’s impending release so ICE may assume custody before the alien is released from the agency’s custody; and

¹ *Arizona v. United States*, 132 S. Ct. 2492, 2497 (2012).

² *De Canas v. Bica*, 424 U.S. 351, 355 (1976); see *Arizona*, 132 S. Ct. 2492.

³ *Western Turf Ass’n v. Greenberg*, 204 U.S. 359, 363 (1907).

⁴ Congressional Research Service, *State and Local “Sanctuary” Policies Limiting Participation in Immigration Enforcement*, 3 (July 20, 2015).

⁵ See *Printz v. United States*, 521 U.S. 898 (1997); *New York v. United States*, 505 U.S. 144 (1992).

⁶ Congressional Research Service, *supra* note 4, at 9.

⁷ 8 U.S.C. §1644.

⁸ 8 U.S.C. §1373.

⁹ 8 U.S.C. §§ 1373, 1644.

¹⁰ See 8 U.S.C. ss. 1226 and 1357; Congressional Research Service, *supra* note 4, at 13.

- To request that a law enforcement agency maintain custody of an otherwise releasable alien for no longer than 48 hours to allow ICE to assume custody.¹¹

The federal courts and the federal government have characterized an ICE detainer as a request that does not require the receiving local law enforcement agency to comply with the detainer.¹² The federal courts have held any purported requirement that states hold aliens for ICE may run afoul of the anti-commandeering principles of the Tenth Amendment. For example, in *Galarza v. Szalczyk*, the U.S. Court of Appeals for the Third Circuit noted that if states and localities were required to detain aliens for ICE pursuant to a detainer, they would have to “expend funds and resources to effectuate a federal regulatory scheme,” something found to be impermissible in prior Supreme Court decisions regarding commandeering.¹³

Additionally, a number of recent federal courts have held that ICE detainers requesting that local law enforcement detain (as opposed to notify) an otherwise releasable individual must specify that there is sufficient probable cause to detain that individual.¹⁴

“Sanctuary cities”

A number of states and municipalities have adopted formal or informal policies which prohibit or limit police cooperation with federal immigration enforcement efforts.¹⁵ Municipalities that have adopted such policies are sometimes referred to as “sanctuary cities,” though there is no consensus as to the meaning of this term. The term “sanctuary” jurisdiction is not defined by federal law, though it has been used by the Office of the Inspector General at the U.S. Department of Justice to reference “jurisdictions that may have [laws, ordinances, or policies] limiting the role of local law enforcement agencies and officers in the enforcement of immigration laws.”¹⁶ Examples of such policies include: not asking an arrested or incarcerated person his or her immigration status, not informing ICE about an alien in custody, not alerting ICE before releasing an alien from custody, not transporting an undocumented criminal alien to the nearest ICE location, and declining to honor an immigration detainer.¹⁷

It appears that there are seven local government entities in Florida that have adopted policies limiting cooperation with ICE specifically by placing conditions on honoring immigration detainers: Hernando, Pasco, Hillsborough, Pinellas, Palm Beach, Broward, and Miami-Dade.¹⁸ In each of these counties

¹¹ Law Enforcement Systems and Analysis, Department of Homeland Security, *Declined Detainer Outcome Report*, October 8, 2014 (redacted public version), at 3.

¹² See, e.g., *Garza v. Szalczyk*, 745 F. 3d 643, 641-44 (3d Cir. 2014) (noting that all Courts of Appeals that have commented on the character of ICE detainers refer to them as “requests” or as part of an “informal procedure.”); *Ortega v. U.S. Immigration & Customs Enforcement*, 737 F. 3d 435, 438 (6th Cir. 2013); *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305, slip op. (D. Oregon April 11, 2014); Memorandum from R. A. Cuevas, Jr. to Board of County Commissioners of Miami-Dade County, RE: Resolution directing the Mayor to implement policy on responding to detainer requests from the United States Department of Homeland Security Immigration Enforcement, Resolution R-1008-13, p 14 (Dec. 3, 2013) (containing correspondence from David Ventura, Assistant Director, U.S. Immigration and Customs Enforcement to Miguel Marquez, County Counsel, County of Santa Clara re: U.S. Immigration and Customs Enforcement Secure Communities Initiative).

¹³ 745 F. 3d at 644.

¹⁴ *Morales v. Chadburn*, 793 F. 3d 208, 214-217 (1st Cir. 2015); *Miranda-Olivares*, slip op. at 9-11; *Mendoza v. Osterberg*, 2014 WL 3784141 (D. Neb. 2014); *Uroza v. Salt Lake County*, 2013 WL 653968 (D. Utah 2013); *Galarza v. Szalczyk*, 2012 WL 1080020 (E.D.Pa. Mar.30, 2012) *rev'd on other grounds*, 745 F.3d 634 (3d Cir.2014).

¹⁵ See Congressional Research Service, *supra* note 4, at 7-20 (providing examples of various types of “sanctuary” policies used across the country).

¹⁶ U.S. Dep’t of Justice, Office of the Inspector General, Audit Division, *Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States*, January 2007 (redacted public version), at vii, n.44 (defining “sanctuary” policies for purposes of study).

¹⁷ *Id.* at 11-17.

¹⁸ Law Enforcement Systems and Analysis, *supra* note 11, at 10, 13-14, 26; Frank Cerabino, *PBSO quietly changes policy on fed detainee requests*, PALM BEACH POST, July 15, 2015, <http://www.mypalmbeachpost.com/news/news/crime-law/cerabino-pbso-quietly-changes-policy-on-fed-detain/nmzTT/> (last visited Jan. 4, 2016); Center for Immigration

except Miami-Dade, the policy was enacted by the Sheriff's Office. In Miami-Dade, the policy was enacted by the county commission.

In the six counties where the policy was enacted by the Sheriff's Office, an ICE detainer will not be honored unless it is supported by probable cause, such as a warrant from a federal judge or an order of deportation.¹⁹ These policies appear to have been enacted after a Florida Sheriffs Association bulletin highlighted recent federal court decisions²⁰ relating to ICE detainees and explained that "sheriffs should be aware that any detention of an ICE detainee without probable cause may subject the sheriff's office to liability for an unlawful seizure."²¹ The policy adopted by the county commission in Miami-Dade provides that an ICE detainer will only be honored if the federal government agrees to reimburse the county for costs incurred in complying with the detainer and the inmate subject to the detainer has a previous conviction for a forcible felony or the inmate has pending charges for a non-bondable offense.²²

Effect of Proposed Changes

The bill creates ch. 908, F.S., consisting of ss. 908.001-908.0010, F.S., to create the "Rule of Law Adherence Act." The Act requires state and local governments and law enforcement agencies to support and cooperate with federal immigration enforcement.

Legislative Findings and Intent

The bill creates s. 908.001, F.S., to provide legislative findings regarding immigration enforcement. The bill states it is an important state interest that state agencies, local governments, and their officials owe an affirmative duty to assist the Federal Government with enforcement of federal immigration laws within this state, including complying with federal immigration detainers. It is also an important state interest that in the interest of public safety and adherence to federal law, this state must ensure that efforts to enforce immigration laws are not impeded or thwarted by state or local laws, policies, practices, procedures, or customs. Accordingly, state agencies, local governments, and their officials who encourage persons unlawfully present in the United States to locate within this state or who shield such persons from responsibility for their actions breach this duty and should be held accountable.

Prohibition against Sanctuary Policies

The bill creates s. 908.003, F.S., to prohibit a state or local governmental entity, or a law enforcement agency²³ from adopting or having in effect a sanctuary policy. A "sanctuary policy" is defined in the bill as a law, policy, practice, procedure, or custom adopted or permitted by a state entity, law enforcement agency, or local governmental entity which contravenes 8 U.S.C. s. 1373(a) or (b)²⁴, or which knowingly prohibits or impedes a law enforcement agency from communicating or cooperating with a federal immigration agency with respect to immigration enforcement" Examples of prohibited sanctuary

Studies, Map: Sanctuary Cities, Counties and State (July 2015), <http://www.cis.org/Sanctuary-Cities-Map> (last visited Jan. 4, 2015).

¹⁹ Julie B. Maglio, *HCSO Policy on Illegal Immigrant Detainment*, HERNANDO SUN, 2015, http://hernandosun.com/illegal_immigrant (last visited Jan. 4, 2015); Elizabeth Behrman, *Fla. sheriffs deny claims of 'sanctuary' cities in state*, The Tampa Tribune, July 19, 2015, <http://www.tbo.com/news/crime/fla-sheriffs-deny-claims-of-sanctuary-cities-in-state-20150718/> (last visited Jan. 4, 2016); Broward County Sheriff's Office, *Legal Bulletin, Updated Immigration Detainers: Probable Cause Required*, July 17, 2014; Cerabino, *supra* note 18.

²⁰ *Galarza* 745 F. 3d 634; *Miranda-Olivares*, 2014 WL 1414305.

²¹ Florida Sheriffs Association, *Legal Alert: ICE Detainers* (on file with the Civil Justice Subcommittee).

²² Resolution No. R-1008-13, Board of County Commissioners, Miami-Dade County, Florida (Dec. 3, 2010).

²³ The definitions of "state entity," "local governmental entity," and "law enforcement agency" in the bill include officials, persons holding public office, representatives, agents, and employees of those entities or agencies.

²⁴ 8 U.S.C. s. 1373(a) and (b) generally bar any restrictions that prevent state or local government entities or officials from voluntarily communicating with federal immigration agencies regarding a person's immigration status. See also

Congressional Research Service, supra note 4, at 10.

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policies include limiting or preventing a state or local governmental entity or law enforcement agency from:

- complying with an immigration detainer²⁵;
- providing a federal immigration agency access to an inmate for interview;
- initiating an immigration status investigation; or
- providing a federal immigration agency with the incarceration status or release date of an inmate.

Cooperation with Federal Immigration Authorities

The bill creates s. 908.004, F.S., to prohibit any restriction on a state or local governmental entity or law enforcement agency's ability to:

- send information regarding a person's immigration status to, or requesting or receiving such information from, a federal immigration agency.
- maintain immigration information for purposes of the Act.
- exchange immigration information with a federal immigration agency, or governmental entity, or law enforcement agency.
- use immigration information to determine eligibility for a public benefit, service, or license.
- use immigration information to verify a claim of residence or domicile if such a determination of is required under federal or state law, local government ordinance or regulation, or pursuant to a court order.
- use immigration information to confirm the identity of an individual who is detained by a law enforcement agency.

The bill requires a state or local governmental entity and a law enforcement agency to fully comply with and support the enforcement of federal immigration law. This requirement only applies with regard to an official, representative, agent, or employee of such entity or agency when he or she is acting within the scope of his or her official duties or employment.

Additionally, the bill provides that a law enforcement agency that has received verification from a federal immigration official that an alien in the agency's custody is unlawfully present in the United States, the agency may transport the alien to a federal facility in this state or to a point of transfer to federal custody outside the jurisdiction of the agency. However, the law enforcement agency must obtain judicial authorization before transporting the alien to a point of transfer outside of this state.

The cooperation and support requirements in newly-created s. 908.004, F.S., do not require a state or local governmental entity or law enforcement agency to provide a federal immigration agency with information related to a victim or witness to a criminal offense, if the victim or witness cooperates in the investigation or prosecution of the crime. A victim or witness's cooperation pursuant to this exemption must be documented in the entity or agency's investigative records, and the entity or agency must retain the records for at least 10 years for the purposes of audit, verification, or inspection by the Auditor General.

²⁵ "Immigration detainer" is defined in the bill as "a written request issued by a federal immigration agency to another law enforcement agency to provide notice of release and to detain a person based on an inquiry into the person's immigration status or an alleged violation of a civil immigration law, including detainers issued pursuant to 8 U.S.C. ss. 1226 and 1357."

Reimbursement of Costs for Complying with an Immigration Detainer

The bill creates s. 908.005, F.S., to authorize a board of county commissioners to adopt an ordinance requiring any individual detained pursuant to a lawful and valid immigration detainer to reimburse the county for any expenses incurred in detaining the individual. However, an individual is not liable under an ordinance enacted pursuant to this provision if a federal immigration agency determines that the immigration detainer was improperly issued.

Duty to Report

The bill creates s. 908.006, F.S., to require an official or employee of a state or local governmental entity or law enforcement agency to promptly report a known or probable violation of the Act to the Attorney General or the state attorney. An official or employee's willful and knowing failure to report a violation may result in his or her suspension or removal from office pursuant to general law and the Florida Constitution.²⁶

The bill provides protections under the Whistle-blower's Act²⁷ to any official or employee of a state or local governmental entity or law enforcement agency who is retaliated against by the entity or agency or denied employment because he or she complied with the duty to report in s. 908.005, F.S.

Enforcement of Violations of the Act

The bill creates s. 908.007, F.S., to provide for the enforcement of violations of the Act and establish penalties for such violations. The Attorney General or a state attorney may institute proceedings in circuit court to enjoin a state or local governmental entity or law enforcement agency that violates the Act. The court must expedite the action, including setting a hearing at the earliest practicable date.

Upon adjudication by the court or as provided in a consent decree declaring that a state or local governmental entity or law enforcement agency has violated the Act, the court must enjoin the unlawful policy or practice and order that the entity or agency pay a civil penalty of at least \$1,000 but not more than \$5,000 for each day the policy or practice was in effect. The court may award court costs and reasonable attorney fees to the prevailing party.

A state or local governmental entity or law enforcement agency ordered to pay a civil penalty must remit payment to the Chief Financial Officer for appropriation as provided in the General Appropriations Act, or if not provided for in the General Appropriations Act, such funds will revert to the General Revenue Fund.

The bill also prohibits the expenditure of public funds to defend or reimburse any sanctuary policy maker or any official, representative, agent, or employee of a state entity, local governmental entity, or law enforcement agency who knowingly and willfully violates the Act.

Complaint by a Private Individual

The bill creates s. 908.008, F.S., to require that the Attorney General provide a form on the Department of Legal Affairs' website for a person to submit a complaint alleging a violation of the Act. A person may still file an anonymous complaint or a complaint different than the prescribed format.

²⁶ Section 7, Art. IV of the Florida Constitution provides that the governor may suspend "any state officer not subject to impeachment . . . or any county officer for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor." The senate then "may. . . remove from office or reinstate the suspended official . . ."

²⁷ s. 112.3187, F.S.

Cause of Action against State or Local Governmental Entity, Law Enforcement Agency, and any Sanctuary Policymaker

The bill creates s. 908.009, F.S., to provide a civil cause of action for a person injured by (or the personal representative of a person killed by) the tortious conduct of an alien unlawfully present in the United States against any state or local governmental entity or law enforcement agency in violation of newly-created ss. 908.003 and 908.004, F.S., and any sanctuary policymaker of the entity or agency. To prevail in the new cause of action, the plaintiff must prove by the greater weight of the evidence:

- The existence of a sanctuary policy; and
- Failure to comply with any provision of newly-created s. 908.004, F.S., resulting in the alien having access to the person injured or killed when the tortious conduct occurred.

A “sanctuary policymaker” is defined in the bill as “a state or local elected official, or an appointed official of a local governmental entity governing body, who has voted for, allowed to be implemented, or voted against repeal or prohibition of a sanctuary policy.”

A cause of action pursuant to this section may not be brought against a public official or employee of a state or local government or law enforcement agency, unless he or she is a sanctuary policymaker.

The parties in an action brought under this section have the right to trial by jury. Additionally, the bill waives sovereign immunity for the state, its political subdivisions, and any sanctuary policymaker under the Florida Constitution and current law²⁸ for actions brought under this section.

Additional Provisions

The bill also creates s. 908.0010, F.S., to provide that the Act be implemented to the fullest extent permitted by federal immigration law and the legislative findings and intent declared in s. 908.001, F.S.

The bill provides that it will take effect on July 1, 2016.

B. SECTION DIRECTORY:

Section 1 creates a short title.

Section 2 creates ch. 908, F.S., consisting of ss. 908.001-908.0010, F.S., entitled “Federal Immigration Enforcement.”

Section 3 provides an effective date of July 1, 2016.

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:

See "Expenditures" section below.

2. Expenditures:

The bill requires a local government or law enforcement agency to honor an ICE immigration detainer. Any costs incurred by a local government or law enforcement agency in holding an individual pursuant to an immigration detainer are not reimbursed by ICE.²⁹ However, the bill authorizes a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer.³⁰ Accordingly, the bill may have an indeterminate negative impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

It is unknown how much it costs local governments to comply with immigration detainers. According to the Board of County Commissioners in Miami-Dade County, compliance with immigration detainers in 2011 and 2012 cost the county \$1,002,700 and \$667,076, respectively.³¹

As noted above, recent federal courts have determined that a local law enforcement agency is not required to honor an ICE detainer because such detainers are simply requests to detain.³² Federal courts have also held that an ICE detainer must be supported by probable cause.³³ Based on these two lines of federal cases, it appears that a law enforcement agency that voluntarily complies with an ICE detainer that is not supported by probable cause may be subject to a federal civil rights action.³⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to require a county or municipality to spend funds or take an action requiring the expenditure of funds as described in article VII, section 18 of the Florida Constitution, specifically by requiring the county or municipality to comply with an immigration detainer. However, the bill contains legislative findings that state and local government assistance and cooperation with federal immigration enforcement fulfills an important state interest, and it authorizes a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer.³⁵

2. Other:

None.

²⁹ Resolution No. R-1008-13, *supra* note 22.

³⁰ See "Reimbursement of Costs for Complying with an Immigration Detainer" section above.

³¹ Resolution No. R-1008-13, *supra* note 22.

³² See "Immigration Detainers" section above.

³³ *Id.*

³⁴ See *Legal Alert*, *supra* note 21.

³⁵ See "Legislative Findings and Intent" and "Reimbursement of Costs for Complying with an Immigration Detainer" sections above.

B. RULE-MAKING AUTHORITY:

Newly-created s. 908.008, F.S., in the bill requires the Attorney General to prescribe and provide through the Department of Legal Affairs' website a form for a person to submit a complaint alleging a violation of the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- limiting the duty of an official or employee of a governmental entity or law enforcement agency to support immigration to only apply when the official or employee is acting within the scope of his or her official duties or employment;
- requiring a governmental entity or law enforcement agency to retain for at least 10 years any documents that record the cooperation provided by a victim or witness of a crime if the victim or witness is not reported to federal immigration official;
- authorizing a board of county commissioners to enact an ordinance to recover costs for complying with an immigration detainer;
- providing whistle-blower protections for an official or employee of a governmental entity or law enforcement agency who complies with his or her duty to report violations of the Act;
- prohibiting the expenditure of public funds to reimburse or defend a public official or employee who violates the Act; and
- making grammatical, technical, and stylistic improvements to the Act.

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

27 Attorney General to prescribe the format for
 28 submitting complaints; providing a cause of action for
 29 personal injury or wrongful death attributed to a
 30 sanctuary policy; providing that a trial by jury is a
 31 matter of right; waiving sovereign immunity for such
 32 actions; providing for implementation; providing an
 33 effective date.

34
 35 Be It Enacted by the Legislature of the State of Florida:

36
 37 Section 1. Short title.—This act may be cited as the "Rule
 38 of Law Adherence Act."

39 Section 2. Chapter 908, Florida Statutes, consisting of
 40 sections 908.001-908.0010, is created to read:

41 CHAPTER 908

42 FEDERAL IMMIGRATION ENFORCEMENT

43 908.001 Legislative findings and intent.—The Legislature
 44 finds it is an important state interest that state agencies,
 45 local governments, and their officials owe an affirmative duty
 46 to all citizens and other persons lawfully within the United
 47 States to assist the Federal Government with enforcement of
 48 federal immigration laws within this state, including complying
 49 with federal immigration detainers. The Legislature further
 50 finds it is an important state interest that, in the interest of
 51 public safety and adherence to federal law, this state support
 52 federal immigration enforcement efforts and ensure that such

53 efforts are not impeded or thwarted by state or local laws,
 54 policies, practices, procedures, or customs. State agencies,
 55 local governments, and their officials who encourage persons
 56 unlawfully present in the United States to locate within this
 57 state or who shield such persons from personal responsibility
 58 for their unlawful actions breach this duty and should be held
 59 accountable.

60 908.002 Definitions.—As used in this chapter, the term:

61 (1) "Federal immigration agency" means the United States
 62 Department of Homeland Security, or its successor agency, and
 63 any of its divisions, including United States Immigration and
 64 Customs Enforcement, United States Customs and Border
 65 Protection, or any other federal agency charged with the
 66 enforcement of immigration law. The term includes an official or
 67 employee of such agency.

68 (2) "Immigration detainer" means a written request issued
 69 by a federal immigration agency to another law enforcement
 70 agency to provide notice of release and to detain a person based
 71 on an inquiry into the person's immigration status or an alleged
 72 violation of a civil immigration law, including detainers issued
 73 pursuant to 8 U.S.C. ss. 1226 and 1357.

74 (3) "Inmate" means a person in the custody of a law
 75 enforcement agency.

76 (4) "Law enforcement agency" means an agency in this state
 77 charged with enforcement of state, county, municipal, or federal
 78 laws or with managing custody of detained persons in the state

79 and includes municipal police departments, sheriff's offices,
 80 state police departments, campus police departments, and the
 81 Department of Corrections. The term includes an official or
 82 employee of such agency.

83 (5) "Local governmental entity" means any county,
 84 municipality, or other political subdivision of this state. The
 85 term includes a person holding public office or having official
 86 duties as a representative, agent, or employee of such entity.

87 (6) "Sanctuary policy" means a law, policy, practice,
 88 procedure, or custom adopted or permitted by a state entity, law
 89 enforcement agency, or local governmental entity which
 90 contravenes 8 U.S.C. s. 1373(a) or (b), or which knowingly
 91 prohibits or impedes a law enforcement agency from communicating
 92 or cooperating with a federal immigration agency with respect to
 93 federal immigration enforcement, including, but not limited to,
 94 limiting or preventing a state entity, local governmental
 95 entity, or law enforcement agency from:

96 (a) Complying with an immigration detainer;

97 (b) Providing a federal immigration agency access to an
 98 inmate for interview;

99 (c) Initiating an immigration status investigation; or

100 (d) Providing a federal immigration agency with an
 101 inmate's incarceration status or release date.

102 (7) "Sanctuary policymaker" means a state or local elected
 103 official, or an appointed official of a local governmental
 104 entity governing body, who has voted for, allowed to be

105 implemented, or voted against repeal or prohibition of a
 106 sanctuary policy.

107 (8) "State entity" means the state or any office, board,
 108 bureau, commission, department, branch, division, or institution
 109 thereof. The term includes a person holding public office or
 110 having official duties as a representative, agent, or employee
 111 of such entity.

112 908.003 Sanctuary policies prohibited.—A state entity, law
 113 enforcement agency, or local governmental entity may not adopt
 114 or have in effect a sanctuary policy.

115 908.004 Cooperation with federal immigration authorities.—

116 (1) Except as otherwise expressly prohibited by federal
 117 law, a state entity, local governmental entity, or law
 118 enforcement agency may not prohibit or in any way restrict
 119 another state entity, local governmental entity, or law
 120 enforcement agency from taking any of the following actions with
 121 respect to information regarding a person's immigration status:

122 (a) Sending such information to or requesting or receiving
 123 such information from a federal immigration agency for purposes
 124 of this chapter.

125 (b) Maintaining such information for purposes of this
 126 chapter.

127 (c) Exchanging such information with a federal immigration
 128 agency or another state entity, local governmental entity, or
 129 law enforcement agency for purposes of this chapter.

130 (d) Using such information to determine eligibility for a

131 public benefit, service, or license pursuant to federal or state
 132 law or an ordinance or regulation of a local governmental
 133 entity.

134 (e) Using such information to verify a claim of residence
 135 or domicile if a determination of residence or domicile is
 136 required under federal or state law, an ordinance or regulation
 137 of any local governmental entity, or a judicial order issued
 138 pursuant to a civil or criminal proceeding in this state.

139 (f) Using such information to confirm the identity of a
 140 person who is detained by a law enforcement agency.

141 (2) A state entity, local governmental entity, or law
 142 enforcement agency shall fully comply with and, to the full
 143 extent permitted by law, support the enforcement of federal
 144 immigration law. This subsection is only applicable to an
 145 official, representative, agent, or employee of such entity or
 146 agency when he or she is acting within the scope of his or her
 147 official duties or within the scope of his or her employment.

148 (3) Notwithstanding any other provision of law, if a law
 149 enforcement agency has received verification from a federal
 150 immigration agency that an alien in the law enforcement agency's
 151 custody is unlawfully present in the United States, the law
 152 enforcement agency may securely transport such alien to a
 153 federal facility in this state or to another point of transfer
 154 to federal custody outside the jurisdiction of the law
 155 enforcement agency. A law enforcement agency shall obtain
 156 judicial authorization before securely transporting such alien

157 to a point of transfer outside of this state.

158 (4) This section does not require a state entity, local
 159 governmental entity, or law enforcement agency to provide a
 160 federal immigration agency with information related to a victim
 161 of or a witness to a criminal offense if such victim or witness
 162 timely and in good faith responds to the entity's or agency's
 163 request for information and cooperation in the investigation or
 164 prosecution of such offense.

165 (5) A state entity, local governmental entity, or law
 166 enforcement agency that, pursuant to subsection (4), withholds
 167 information regarding the immigration information of a victim of
 168 or witness to a criminal offense shall document such victim's or
 169 witness's cooperation in the entity's or agency's investigative
 170 records related to the offense and shall retain such records for
 171 at least 10 years for the purpose of audit, verification, or
 172 inspection by the Auditor General.

173 908.005 Reimbursement of costs for complying with an
 174 immigration detainer.—A board of county commissioners may adopt
 175 an ordinance requiring a person detained pursuant to a lawful
 176 and valid immigration detainer to reimburse the county for any
 177 expenses incurred in detaining the person pursuant to the
 178 immigration detainer. A person detained pursuant to an
 179 immigration detainer is not liable under this section if a
 180 federal immigration agency determines that the immigration
 181 detainer was improperly issued.

182 908.006 Duty to report.—

183 (1) An official, representative, agent, or employee of a
 184 state entity, local governmental entity, or law enforcement
 185 agency shall promptly report a known or probable violation of
 186 this chapter to the Attorney General or the state attorney
 187 having jurisdiction over the entity or agency.

188 (2) An official, representative, agent, or employee of a
 189 state entity, local governmental entity, or law enforcement
 190 agency who willfully and knowingly fails to report a known or
 191 probable violation of this chapter may be suspended or removed
 192 from office pursuant to general law and s. 7, Art. IV of the
 193 State Constitution.

194 (3) A state entity, local governmental entity, or law
 195 enforcement agency may not dismiss, discipline, take any adverse
 196 personnel action as defined in s. 112.3187(3) against, or take
 197 any adverse action described in s. 112.3187(4)(b) against, an
 198 official, representative, agent, or employee for complying with
 199 subsection (1).

200 (4) Section 112.3187 of the Whistle-blower's Act applies
 201 to an official, representative, agent, or employee of a state
 202 entity, local governmental entity, or law enforcement agency who
 203 is dismissed, disciplined, subject to any adverse personnel
 204 action as defined in s. 112.3187(3) or any adverse action
 205 described in s. 112.3187(4)(b), or denied employment because he
 206 or she complied with subsection (1).

207 908.007 Enforcement; penalties.-

208 (1) The Attorney General or a state attorney may institute

209 proceedings in circuit court to enjoin a state entity, local
 210 governmental entity, or law enforcement agency found to be in
 211 violation of this chapter. The court shall expedite an action
 212 under this section, including setting a hearing at the earliest
 213 practicable date.

214 (2) Upon adjudication by the court or as provided in a
 215 consent decree declaring that a state entity, local governmental
 216 entity, or law enforcement agency has violated this chapter, the
 217 court shall enjoin the unlawful policy or practice and order
 218 that such entity or agency pay a civil penalty to the state of
 219 at least \$1,000 but not more than \$5,000 for each day that the
 220 policy or practice was in effect before the injunction was
 221 granted. The court shall have continuing jurisdiction over the
 222 parties and subject matter and may enforce its orders with
 223 imposition of additional civil penalties as provided for in this
 224 section and contempt proceedings as provided by law.

225 (3) A state entity, local governmental entity, or law
 226 enforcement agency ordered to pay a civil penalty pursuant to
 227 subsection (2) shall remit payment to the Chief Financial
 228 Officer for appropriation as provided in the General
 229 Appropriations Act or, if not provided for in the General
 230 Appropriations Act, such funds shall revert to the General
 231 Revenue Fund.

232 (4) The court may award court costs and reasonable
 233 attorney fees to the prevailing party in an action brought
 234 pursuant to this section.

235 (5) Except as required by applicable law, public funds may
 236 not be used to defend or reimburse a sanctuary policymaker or an
 237 official, representative, agent, or employee of a state entity,
 238 local governmental entity, or law enforcement agency who
 239 knowingly and willfully violates this chapter.

240 908.008 Resident complaint; penalties.—The Attorney
 241 General shall prescribe and provide through the Department of
 242 Legal Affairs' website the format for a person to submit a
 243 complaint alleging a violation of this chapter. This section
 244 does not prohibit the filing of an anonymous complaint or a
 245 complaint not submitted in the prescribed format.

246 908.009 Civil cause of action for personal injury or
 247 wrongful death attributed to a sanctuary policy; trial by jury;
 248 waiver of sovereign immunity.—

249 (1) A person injured by the tortious acts or omissions of
 250 an alien unlawfully present in the United States, or the
 251 personal representative of a person killed by the tortious acts
 252 or omissions of an alien unlawfully present in the United
 253 States, has a cause of action for damages against a state
 254 entity, local governmental entity, or law enforcement agency in
 255 violation of s. 908.003 and s. 908.004, and any sanctuary
 256 policymaker of any such entity or agency, upon proof by the
 257 greater weight of the evidence of:

258 (a) The existence of a sanctuary policy in violation of s.
 259 908.003; and

260 (b) A failure to comply with any provision of s. 908.004

261 resulting in such alien's having access to the person injured or
 262 killed when the tortious acts or omissions occurred.

263 (2) A cause of action brought pursuant to subsection (1)
 264 may not be brought against any person who holds public office,
 265 or has official duties as a representative, agent, or employee
 266 of a state entity, local governmental entity, or law enforcement
 267 agency, unless such person is a sanctuary policymaker.

268 (3) Trial by jury is a matter of right in an action
 269 brought under this section.

270 (4) In accordance with s. 13, Art. X of the State
 271 Constitution, the state, for itself and its political
 272 subdivisions, waives sovereign immunity for actions brought
 273 under this section. In addition, s. 768.28(9) does not apply to
 274 a sanctuary policymaker in a claim brought pursuant to this
 275 section.

276 908.0010 Implementation.—This chapter shall be implemented
 277 to the fullest extent permitted by federal law regulating
 278 immigration and the legislative findings and intent declared in
 279 s. 908.001.

280 Section 3. This act shall take effect July 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Metz offered the following:

Amendment

Remove lines 68-100 and insert:

6 (2) "Immigration detainer" means a facially sufficient
7 written or electronic request issued by a federal immigration
8 agency using that agency's official form to request another law
9 enforcement agency detain a person based on an inquiry into the
10 person's immigration status or an alleged violation of a civil
11 immigration law, including detainers issued pursuant to 8 U.S.C.
12 ss. 1226 and 1357. For the purposes of this subsection, an
13 immigration detainer is deemed "facially sufficient":

14 (a) When the request is complete and indicates on its face
15 that the federal immigration official has reason to believe that
16 the person to be detained may not have been lawfully admitted to



Amendment No. 1

17 the United States or otherwise is not lawfully present in the
18 United States; or

19 (b) When the federal immigration agency's official form is
20 incomplete and fails to indicate on its face that the federal
21 immigration official has reason to believe that the person to be
22 detained may not have been lawfully admitted to the United
23 States or otherwise is not lawfully present in the United
24 States, but is supported by an accompanying affidavit or order
25 that indicates the federal immigration official has reason to
26 believe that the person to be detained may not have been
27 lawfully admitted to the United States or otherwise is not
28 lawfully present in the United States.

29 (3) "Inmate" means a person in the custody of a law
30 enforcement agency.

31 (4) "Law enforcement agency" means an agency in this state
32 charged with enforcement of state, county, municipal, or federal
33 laws or with managing custody of detained persons in the state
34 and includes municipal police departments, sheriff's offices,
35 state police departments, campus police departments, and the
36 Department of Corrections. The term includes an official or
37 employee of such agency.

38 (5) "Local governmental entity" means any county,
39 municipality, or other political subdivision of this state. The
40 term includes a person holding public office or having official
41 duties as a representative, agent, or employee of such entity.



Amendment No. 1

42 (6) "Sanctuary policy" means a law, policy, practice,
43 procedure, or custom adopted or permitted by a state entity, law
44 enforcement agency, or local governmental entity which
45 contravenes 8 U.S.C. s. 1373(a) or (b), or which knowingly
46 prohibits or impedes a law enforcement agency from communicating
47 or cooperating with a federal immigration agency with respect to
48 federal immigration enforcement, including, but not limited to,
49 limiting or preventing a state entity, local governmental
50 entity, or law enforcement agency from:

51 (a) Complying with an immigration detainer;

52 (b) Complying with a request from a federal immigration
53 agency to notify the agency prior to the release of an inmate or
54 detainee in the state entity, local government entity, or law
55 enforcement agency's custody.

56 (c) Providing a federal immigration agency access to an
57 inmate for interview;

58 (d) Initiating an immigration status investigation; or

59 (e) Providing a federal immigration agency with an



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: Judiciary Committee
 2 Representative Metz offered the following:

Amendment

5 Remove line 114 and insert:
 6 or have in effect a sanctuary policy. Any sanctuary policy in
 7 effect on the effective date of this Act must be repealed within
 8 90 days from that date.



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Metz offered the following:

Amendment

Remove lines 208-235 and insert:

6 (1) The state attorney for the county in which a state
 7 entity is headquartered, or in which a local governmental entity
 8 or law enforcement agency is located, shall have primary
 9 responsibility and authority for investigating credible reports
 10 of any violation of this chapter. The results of any
 11 investigation by a state attorney shall be provided to the
 12 Attorney General in a timely manner.

13 (2) The Attorney General, the state attorney that
 14 conducted the investigation, or a state attorney ordered by the
 15 Governor pursuant to s. 27.14, may institute proceedings in
 16 circuit court to enjoin a state entity, local governmental
 17 entity, or law enforcement agency found to be in violation of



Amendment No. 3

18 this chapter. The court shall expedite an action under this
19 section, including setting a hearing at the earliest practicable
20 date.

21 (3) Upon adjudication by the court or as provided in a
22 consent decree declaring that a state entity, local governmental
23 entity, or law enforcement agency has violated this chapter, the
24 court shall enjoin the unlawful policy or practice and order
25 that such entity or agency pay a civil penalty to the state of
26 at least \$1,000 but not more than \$5,000 for each day that the
27 policy or practice was in effect before the injunction was
28 granted. The court shall have continuing jurisdiction over the
29 parties and subject matter and may enforce its orders with
30 imposition of additional civil penalties as provided for in this
31 section and contempt proceedings as provided by law.

32 (4) A state entity, local governmental entity, or law
33 enforcement agency ordered to pay a civil penalty pursuant to
34 subsection (3) shall remit payment to the Chief Financial
35 Officer. The Chief Financial Officer shall deposit such payments
36 into the General Revenue Fund.

37 (5) The court may award court costs and reasonable
38 attorney fees to the prevailing party in an action brought
39 pursuant to this section.

40 (6) Except as required by applicable law, public funds may



Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Metz offered the following:

Amendment

5 Between lines 275 and 276, insert:

6 (5) This chapter does not create a private cause of action
 7 against a state entity, local governmental entity, or law
 8 enforcement agency that complies with this chapter.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7031 PCB CJS 16-01 Marketable Record Titles to Real Property
SPONSOR(S): Civil Justice Subcommittee, Passidomo
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	12 Y, 0 N	Bond	Bond
1) Judiciary Committee		Bond <i>VIB</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

The Marketable Record Title Act (MRTA) was enacted to simplify real estate transactions. In general, it provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. One effect of MRTA is that covenants and restrictions are extinguished 30 years after their creation.

Current law allows residential homeowners' associations to extend and renew their covenants, and provides a means by which expired covenants of a homeowners' association may be revived if previously extinguished by MRTA. The bill:

- creates an exception to the applicability of MRTA by which covenants and restrictions of a homeowners' association are not extinguished by operation of law; and
- provides that a property owners' association is treated as a homeowners' association under MRTA, that is, the covenants and restrictions of such an association are exempt from extinguishment and may similarly be extended or revived.

The bill may have a minimal positive fiscal impact on state government should the number of revitalizations decrease as anticipated. The bill does not appear to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.¹ In general, MRTA provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. Current law includes 9 exceptions to the applicability MRTA.²

One effect of MRTA is that homeowner association covenants can lose effect after 30 years unless the association timely files a renewal. A homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

- The board must give written notice to every parcel owner in a form set by statute;³
- The notice must include notice of a meeting of the board of directors including where the directors will decide whether to renew the covenants;⁴
- The board of directors of the association must approve the renewal by a two-thirds vote;⁵ and
- Notice of the renewal must be recorded in the Official Records of the county.⁶

Additionally, s. 712.06(3), F.S. requires that either the clerk of the court furnish (at the association's expense) notice by certified mail to each homeowner member of the association a copy of the notice, or a copy of the notice must be published once a week for 2 consecutive weeks in the form and manner as other legal notices are published.⁷

However, many homeowners' associations fail to timely file a renewal of their covenants. Formerly, MRTA would apply in such cases and accordingly the covenants and restrictions expired and were unenforceable. In 2004, part III of ch. 720, F.S., was enacted to provide a means by which covenants and restrictions of a mandatory homeowners' association may be revived.⁸ In 2007, nonmandatory homeowners' associations became eligible for revitalization.⁹ Revitalization requires the creation of an organizing committee, notice to all affected property owners, approval by a majority of the homeowners, approval by the Department of Economic Opportunity, and the recording of notice in the public records.¹⁰

There is a category of property owners who enact and enforce covenants and restrictions regarding their property and that of their neighbors who are impacted by MRTA, but have not been included in the laws regarding renewal or revival of their covenants and restrictions. These property owners are commercial landowners in office parks, industrial parks, and other commercial districts.

Effect of the Bill - Residential Homeowners' Associations

The bill amends s. 712.03, F.S., to add a new exception to MRTA to provide that the covenants and restrictions of a homeowners' association are not extinguished by operation of MRTA. The bill also

¹ *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).

² s. 712.03, F.S.

³ s. 712.06(1)(b), F.S.

⁴ s. 712.05(1), F.S.

⁵ *Id.*

⁶ s. 712.06(2), F.S.

⁷ s. 712.06(3)(b), F.S.

⁸ ch. 2004-345, L.O.F.

⁹ ch. 2007-173, L.O.F.

¹⁰ part III of ch. 720, F.S.

amends the renewal provisions of s. 712.05, F.S., to only apply where renewal is required by the terms of the association documents.

Effect of the Bill - Commercial Properties

This bill adds a new definition to s. 712.01, F.S. that defines the term "mandatory property owners' association" as

a Florida corporation responsible for the operation of property in which the voting membership is made up of the owners of property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the property. The term does not include a community development district or similar special taxing district created by law.

The bill provides that the covenants and restrictions of a mandatory property owners' association are, like those of a residential homeowners' association, not subject to expiration by operation of MRTA. Also, like a residential homeowners' association, the bill provides that a mandatory property owners' association may renew covenants and restrictions that are about to expire on their own terms and may revive covenants and restrictions that have expired.

B. SECTION DIRECTORY:

Section 1 amends s. 712.01, F.S., regarding definitions applicable to the Marketable Record Title Act.

Section 2 amends s. 712.03, F.S., regarding exceptions to marketability.

Section 3 amends s. 712.05, F.S., regarding effect of filing notice.

Section 4 amends s. 712.11, F.S., regarding covenant revitalization.

Section 5 provides an effective date of July 1, 2016.

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 may have a positive recurring fiscal impact on state expenditures should the number of covenant revitalizations decrease as expected. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The bill slightly expands the authority and duties of the Department of Economic Opportunity by expanding the number of communities that are currently eligible for covenant revitalization. On the other hand, the provision of the bill exempting homeowners' associations from future application of MRTA is likely to significantly lessen the number of revitalizations that will be filed in future years. It is anticipated that the net fiscal impact on the agency is positive.

The bill appears to impact the private sector in indirect means. The exemption from MRTA is likely to lower legal costs of associations, which will have a positive impact on the members of such associations. However, this may have a corresponding negative fiscal impact on the service providers that assist associations in revitalization efforts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to marketable record titles to real property; amending s. 712.01, F.S.; providing a definition; amending s. 712.03, F.S.; revising the exceptions to marketability by including homeowners' association and mandatory property owners' association covenants and restrictions; amending s. 712.05, F.S.; authorizing a mandatory property owners' association to file a notice to preserve a covenant or restriction; amending s. 712.11, F.S.; authorizing certain homeowners' associations and mandatory property owners' associations to revive certain covenants and restrictions that have lapsed; providing an effective date.

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

Section 1. Subsection (7) is added to section 712.01, Florida Statutes, to read:

712.01 Definitions.—As used in this law:

(7) The term "mandatory property owners' association" means a Florida corporation responsible for the operation of property in which the voting membership is made up of the owners of property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, and which is authorized to impose assessments that, if unpaid,

27 may become a lien on the property. The term does not include a
 28 community development district or similar special taxing
 29 district created by law.

30 Section 2. Subsection (10) is added to section 712.03,
 31 Florida Statutes, to read:

32 712.03 Exceptions to marketability.—Such marketable record
 33 title shall not affect or extinguish the following rights:

34 (10) A covenant or restriction of a homeowners'
 35 association or mandatory property owners' association.

36 Section 3. Subsection (1) of section 712.05, Florida
 37 Statutes, is amended to read:

38 712.05 Effect of filing notice.—

39 (1) A person claiming an interest in land or a homeowners'
 40 association or mandatory property owners' association that is
 41 desiring to preserve a covenant or restriction may preserve and
 42 protect the same from extinguishment by the operation of this
 43 act or by operation of the covenant or restriction by filing for
 44 record, during the 30-year period immediately following the
 45 effective date of the root of title, a written notice in
 46 accordance with this chapter. Such notice preserves such claim
 47 of right or such covenant or restriction or portion of such
 48 covenant or restriction for up to 30 years after filing the
 49 notice unless the notice is filed again as required in this
 50 chapter. A person's disability or lack of knowledge of any kind
 51 may not delay the commencement of or suspend the running of the
 52 30-year period. Such notice may be filed for record by the

53 claimant or by any other person acting on behalf of a claimant
 54 who is:
 55 (a) Under a disability;
 56 (b) Unable to assert a claim on his or her behalf; or
 57 (c) One of a class, but whose identity cannot be
 58 established or is uncertain at the time of filing such notice of
 59 claim for record.

60
 61 Such notice may be filed by a homeowners' association or a
 62 mandatory property owners' association only if the preservation
 63 of such covenant or restriction or portion of such covenant or
 64 restriction is approved by at least two-thirds of the members of
 65 the board of directors of an incorporated ~~homeowners'~~
 66 association at a meeting for which a notice, stating the
 67 meeting's time and place and containing the statement of
 68 marketable title action described in s. 712.06(1)(b), was mailed
 69 or hand delivered to members of the ~~homeowners'~~ association at
 70 least 7 days before such meeting. The ~~homeowners'~~ association or
 71 clerk of the circuit court is not required to provide additional
 72 notice pursuant to s. 712.06(3). The preceding sentence is
 73 intended to clarify existing law.

74 Section 4. Section 712.11, Florida Statutes, is amended to
 75 read:

76 712.11 Covenant and restriction revitalization.—A
 77 homeowners' association or mandatory property owners'
 78 association not otherwise subject to chapter 720 may use the

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79 | procedures ~~set forth~~ in ss. 720.403-720.407 to revive covenants
80 | and restrictions that have lapsed under the terms of this
81 | chapter.

82 | Section 5. This act shall take effect July 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Passidomo offered the following:

Amendment (with title amendment)

Remove lines 34-35 and insert:

6 (10) A covenant or restriction of a homeowners'
 7 association or of a mandatory property owners' association that
 8 is recorded in the public records. However, this subsection
 9 shall not apply:

10 (a) To a covenant or restriction that was extinguished by
 11 operation of this chapter prior to July 1, 2016;

12 (b) Where the terms of the covenant or restriction provide
 13 that the covenant or restriction as originally recorded, or
 14 subsequently amended, expires by its own terms;

15 (c) Where an affidavit by the property owner attests that
 16 the association no longer has responsibility under a government
 17 permit, that the association has been administratively



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18 dissolved, and that the extinguishment of the covenants will not
19 prejudice the rights of any other property owner; or

20 (d) To a covenant or restriction of an association where
21 the circuit court finds in a declaratory judgment action that
22 the association has been abandoned, no vote of the membership is
23 practical, continued enforcement of the covenant or restriction
24 is not equitable, and as a result thereof the covenant or
25 restriction is void, terminated or released.

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

29 Remove line 7 and insert:
30 covenants and restrictions; providing exceptions; amending s.
31 712.05, F.S.;