APPROPRIATIONS COMMITTEE

Monday, February 22, 2016
3:00 PM – 5:00 PM
212 Knott Building

Meeting Packet

Steve Crisafulli
Speaker

Richard Corcoran
Chair

The Florida House of Representatives

Appropriations Committee

Steve Crisafulli
Speaker

Richard Corcoran
Chair

AGENDA

Monday, February 22, 2016
212 Knott Building
3:00 PM – 5:00 PM

I. Call to Order/Roll Call/Opening Remarks

II. **Consideration of the following bills:**

CS/HB 207 Driver Licenses by Highway & Waterway Safety Subcommittee, Rouson, Steube, Young

CS/CS/HB 559 Self-service Storage Facilities by Regulatory Affairs Committee, Business & Professions Subcommittee, La Rosa

CS/HB 889 Contraband Forfeiture by Criminal Justice Subcommittee, Metz, Caldwell

CS/HB 1083 Agency for Persons with Disabilities by Health & Human Services Committee, Renner

HB 1341 State-owned Motor Vehicles by Young

III. Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 207 Driver Licenses
SPONSOR(S): Highway & Waterway Safety Subcommittee, Rouson, Steube, Young and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 7046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee	13 Y, 0 N, As CS	Johnson	Smith
2) Appropriations Committee		Cobb	Leznoff
3) Judiciary Committee			

SUMMARY ANALYSIS

In general, the bill relates to driver licenses, with a primary focus on revising driver license suspensions for non-driving related reasons. In summary, the bill:

- Revises the application for obtaining a public defender in a criminal case.
- Revises provisions regarding payment plans for court related fines and other monetary penalties, fees, charges, and costs.
- Requires clerks of court wishing to pursue collections using a collection agent or private attorney to competitively bid the contract and accept the bidder with the lowest percentage surcharge.
- Requires traffic citations to contain language regarding payment plans and community service for noncriminal traffic infractions.
- Requires the court to inquire about a person's ability to pay at the time a civil penalty is ordered for a noncriminal traffic infraction.
- Revises the driver license period of revocation, extension of a revocation or suspension, or withholding the issuance of a driver license for persons convicted of certain drug offenses from one year to six months.
- Repeals the discretionary revocation or suspension of a driver license for certain persons who provide alcohol to persons under 21 years of age.
- Repeals school attendance requirements for minors to be eligible for a driver license.
- Provides that a driver license may not be suspended solely for failure to pay a penalty or court obligation if the person demonstrates that he or she is unable to pay.
- Repeals the driver license suspension for a third or subsequent violation within 12 weeks of the first violation for possession, or the misrepresentation of age or military service to purchase tobacco products or the possession of nicotine or nicotine dispensing products for persons under 18 years of age.
- Repeals the driver license suspension for minor placing graffiti on public or private property.
- Repeals the suspension of a driver license for persons found guilty of theft.
- Repeals the suspension of a driver license in a worthless check case.

The Revenue Estimating Conference (REC) met on January 14, 2016, regarding SB 7046 which contains the same fiscal implications of this bill, and determined that the bill would have a significant, negative revenue impact of $600,000 to the General Revenue Fund, $700,000 to the Highway Safety Operating Trust Fund (HSOTF), and $100,000 to counties and local governments. Additionally, the Department of Highway Safety and Motor Vehicles estimates that editing the uniform traffic citation form will cost $1.4 million in new inventory. See fiscal comments for additional detail.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Driver license suspensions[1] and revocations[2] take away a person's privilege to drive. Although originally intended as a sanction to address poor driving behavior, driver's license suspensions and revocations are now used as a means to punish individuals engaged in non-driving related behavior.

OPPAGA Report

According to a February 2014 Office of Program Policy Analysis & Government Accountability (OPPAGA) report entitled "Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons," in fiscal year 2012-2013, the DHSMV suspended or revoked approximately 1.3 million driver licenses. Of this amount, more than 167,000 were for non-driving-related reasons.[3] These reasons included the failure to pay child support, failure to pay court financial obligations, conviction of drug-related offenses, non-compliance with school attendance (truancy), failure to appear in court for a worthless check offense, and conviction of misdemeanor theft offenses.[4]

The table below lists various reasons for driver license suspensions for non-driving related reasons and the number of suspensions for calendar year 2014:[5]

Reason	Number of Suspensions
Violation of a Controlled Substance	19,168
Worthless Check	906
Theft	508
Tobacco	205

Alternatives

As a result of its findings, OPPAGA provided the following Legislative alternatives to modify the use of driver license sanctions for non-driving-related reasons:

- Leave driver license suspension for failure to appear in court on a worthless check, and for a conviction of misdemeanor theft offense charge, at the court's discretion.
- Explore modifying or opting out of Florida's implementation of the federal mandate requiring driver license suspension for drug convictions.
- Codify Department of Revenue (DOR) child support enforcement practices regarding the use of driver license suspensions.
- Evaluate the effectiveness of driver license suspension for school truancy.[6]

Drug Offenses

In 1992, Congress amended the Federal Highway Apportionment Act to encourage states to enact and enforce driver license suspensions or revocations for drug offenders.[7] The law withholds a portion of federal highway funds from any state that fails to adopt a law that enforces driver license suspensions

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[1] Section 322.01(40), F.S., defines "suspension" as "the temporary withdrawal of a licensee's privilege to drive a motor vehicle."
[2] Section 322.01(36), F.S., defines "revocation" as "termination of a licensee's privilege to drive."
[3] The OPPAGA report (January 2014), *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons, at page 2*. This document is on file with the Highway & Waterway Safety Subcommittee..
[4] Id.
[5] DHSMV, PowerPoint Presentation to the Florida Senate Committee on Transportation (Sep. 16, 2015). *available at:* http://www.flsenate.gov/PublishedContent/Committees/2014-2016/TR/MeetingRecords/MeetingPacket_3156_2.pdf at p. 35
[6] The OPPAGA report (January 2014), *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons, at pages 9-11*. This document is on file with the Highway & Waterway Safety Subcommittee.
[7] Title 23 U.S.C. § 159 and 23 CFR Part 192.

or revocations for drug offenders.[8] The federal law requires participating states to provide a suspension or revocation of at least six months.[9] However, a governor may submit written certification to the Secretary of the United States Department of Transportation that she or he opposes the revocation or suspension of driver licenses for certain drug offenses and that the state legislature has adopted a resolution expressing opposition to this law and still qualify for full federal funding.[10]

Child Support Enforcement

The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 enacted s. 466(a)(16) of the Social Security Act, requiring states to have (and use in appropriate cases) the authority to withhold, suspend or restrict the use of driver licenses of individuals owning past-due child support. The United States Department of Health and Human Services Office of Child Support Enforcement (OCSE) is a federal-state program that provides funding to child support agencies in states to help develop, manage and operate their programs effectively and according to federal law.[11] Florida's Child Support Program is administered by the Department of Revenue (DOR), who provides services under the federally required program in 65 counties and through contracts in two counties.[12]

Driver License Reinstatement Fees

A person who applies for reinstatement the following suspension or revocation of his or her driver license must pay a service fee of $45 following a suspension, and $75 following a revocation, in addition to the fee for a license.[13] Of the $45 fee, DHSMV is required to deposit $15 into General Revenue (GR) and $30 into the Highway Safety Operating Trust Fund (HSOTF). Of the $75 fee, DHSMV is required to deposit $35 into GR and $40 into the HSOTF. In addition, county tax collectors are required to charge a service fee of $6.25 for driver license services, including driver license reinstatements.[14]

2014 Legislative Changes

In 2014, the Legislature passed CS/CS/HB 7005,[15] which among other things, revised provisions related to driver license suspensions and revocations for non-driving-related reasons. Specifically, the bill addresses suspension practices resulting from criminal violations, and several practices resulting from child support enforcement policies. In summary the bill:

- Authorized the court to suspend the driver license of a person who fails to appear in court for a worthless check charge only when the person is a previous offender;
- Authorized, rather than required, the court to suspend the driver license of a person guilty of any offense of misdemeanor theft;
- Reduced the length of driver license revocation for drug related convictions from two years to one year;
- Required a court that orders a driver license suspension or revocation for a drug related offense to determine whether the issuance of a business purposes only driver license is appropriate in each case;
- Authorized the issuance of a business purpose only driver license for persons who have had their driver license suspended for violations related to selling, giving, or serving alcohol to minors, or for misdemeanor theft;
- Allowed a child support obligor to avoid the suspension of his or her driver license or motor vehicle registration if extenuating circumstances can be proven;

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[8] Id., at Part 192.9.
[9] Id., at Part 192.4(a)(1)(i).
[10] Id., at Part 192.4(c)(2).
[11] See additional information on the federal Child Support Enforcement Program, at http://www.acf.hhs.gov/programs/css/about. (Last visited December 14, 2015).
[12] Florida Department of Revenue, http://dor.myflorida.com/dor/childsupport/about_us.html (Last visited December 10, 2015). Miami-Dade County cases are handled by the state attorney's office, and Manatee County cases are handled by the Manatee County Clerk of Court.
[13] Section 322.21(8), F.S.
[14] Section 322.135(1)(c), F.S.
[15] Chapter 2014-216, F.S. CS/CS/HB 7005 was an omnibus bill related to transportation.

- Provided that if a child support obligor who seeks to satisfy the extenuating circumstances conditions does not provide applicable documentation or proof to the depository or clerk of court within 20 days after the date the delinquency notice is mailed, DOR or the clerk of court may file notice with DHSMV to suspend his or her driver license or motor vehicle registration.

PCS for HB 207

Determination of Indigent Status (Section 1)

Current Situation
In general, s. 27.52, F.S., relates to the determination of indigent status for the purpose of obtaining a public defender. Specifically, s. 27.52(1), F.S., relates to provisions regarding the application to the clerk of the court regarding indigent status. The statute provides that a person seeking appointment of a public defender[16] based upon an inability to pay is required to apply to the clerk of the court for a determination of indigent status using an application form developed by the Florida Clerk of Courts Operations Corporation with final approval from the Florida Supreme Court. The application, at a minimum, is required to include, the following financial information:

- Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.
- Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, reemployment assistance or unemployment compensation, dividends, interest, rent, trusts, and gifts.
- Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.
- All liabilities and debts.
- If applicable, the amount of any bail paid for the applicant's release from incarceration and the source of the funds.

Proposed Changes
The bill creates s. 27.52(1)(a)6., F.S., providing that the financial information on the application for indigent status is required to include the election or refusal of the option to fulfill any court ordered financial obligations associated with the case by completing community service as ordered by the court.

Payment of Court Related Fines and Fees (Section 2)

Current Situation
In general, s. 28.246, F.S., relates to the payment of court-related fines and fees. Specifically, s. 28.246(4), F.S., requires the clerk of the circuit court to accept partial payments for court-related fees, service charges, costs, and fines in accordance with the terms of an established payment plan. An individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court under any provision of general law is required to apply to the clerk of the circuit court for enrollment in a payment plan. The clerk of the circuit court is required to enter into a payment plan with an individual who the court determines is indigent for costs. A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed two percent of the person's annual net income,[17] divided by 12. The court may review the reasonableness of the payment plan.

Section 28.246(6), F.S., provides that a clerk of court is required to pursue the collection of any fees, service charges, fines, court costs, and liens for the payment of attorney fees and costs pursuant to s.

[16] The appointment of a public defender is pursuant to s. 27.51, F.S.
[17] Annual net income is defined in s. 27.52(1), F.S.

938.29, F.S.,[18] which remain unpaid after 90 days by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to Ch. 559, F.S.[19] In pursuing the collection of unpaid financial obligations through a private attorney or collection agent, the clerk of the court must have attempted to collect the unpaid amount through a collection court, collections docket, or other collections process, if any, established by the court, find this to be cost-effective and follow any applicable procurement practices. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent retained by the clerk may be added to the balance owed in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection.

Proposed Changes
The bill amends s. 28.246(4), F.S., removing a provision requiring the clerk of court to enter into a payment plan with an individual whom the court determines is indigent for costs. The bill also provides that the monthly payment amount **may not exceed** two percent of the person's annual net income, divided by 12, without the consent of the applicant.

The bill amends s. 28.246(6), F.S., making permissive, rather than mandatory, the authorization for the clerk of court to pursue the collection of certain unpaid fees and removes the provision allowing a collection fee of up to 40 percent being added to the balance owed.

The bill adds new provisions to s. 28.246(6), F.S., providing that if a clerk of court wishes to pursue collection by referring an account to a collection agent or private attorney, the clerk of court at least every two years is required to competitively bid a contract and shall accept the bidder with the **lowest percentage surcharge** added to the referred account. The bill also prohibits the clerk of court from assessing any collections transfer surcharge and the collection agency or private attorney from imposing any additional fees or surcharges other than their contractually agreed upon surcharge.

Traffic Citations (Section 3)

Current Situation
In general, s. 316.650, F.S., relates to traffic citations. Specifically, s. 316.650(1)(a), F .S., requires DHSMV to prepare and supply to every traffic enforcement agency an appropriate traffic citation form that contains a notice to appear, is issued in prenumbered books, meets the requirements of the Florida Uniform Traffic Control Law[20] or any Florida laws regulating traffic, and is consistent with the state traffic court rules and the procedures established by DHSMV.

Proposed Changes
The bill creates a new s. 316.650(1)(b), F.S., requiring the traffic citation form to include language indicating that a person may enter into a payment plan with the clerk of court to pay a penalty. The traffic citation form is also required to indicate that a person ordered to pay a penalty for a noncriminal traffic infraction who is unable to comply due to demonstrable financial hardship will be allowed by the court to satisfy payment by participating in community service.[21]

Failure to Comply with Civil Penalty or to Appear (Section 4)

Current Situation
Section 318.15, F.S., provides penalties for failure to comply with civil penalties or failure to appear as it relates to traffic infractions. The statute provides that if a person fails to comply with the civil penalties[22] within the time period specified,[23] fails to enter into or comply with the terms of a penalty payment plan

[18] Section 938.29, F.S., relates to legal assistance; lien for payment of attorney's fees or costs.
[19] Chapter 559, F.S., relates to the regulation of trade, commerce, and investments.
[20] Chapter 316, F.S.
[21] The participation in community service is pursuant to s. 318.18(8)(b), F.S.
[22] Civil penalties for traffic infractions are provided for in s. 318.18, F.S.
[23] The time period is specified in s. 318.14(4), F.S.

with the clerk of the court,[24] fails to attend driver improvement school, or fails to appear at a scheduled hearing, the clerk of the court is required to notify DHSMV of such failure within 10 days after such failure. Upon receiving such notice, DHSMV is required to immediately issue an order suspending the driver license and privilege to drive of such person effective 20 days after the date the order of suspension is mailed.[25] Any such suspension of the driving privilege[26] which has not been reinstated, including a similar suspension imposed outside Florida, remains on the records of DHSMV for a period of seven years from the date imposed and shall be removed from the records after the expiration of seven years from the date it is imposed. DHSMV may not accept the resubmission of such suspension.[27]

However, a person who elects to attend driver improvement school and has paid the civil penalty,[28] but who subsequently fails to attend the driver improvement school within the time specified by the court shall be deemed to have admitted the infraction and shall be adjudicated guilty. The clerk of the court is required to notify the DHSMV of the person's failure to attend driver improvement school and points shall be assessed.[29,30]

A person who is charged with a traffic infraction may request a hearing within 180 days after the date of the violation, regardless of any action taken by the court or DHSMV to suspend the person's driving privilege, and, upon request, the clerk of the court is required to set the case for hearing. The person is required to be given a form for requesting that his or her driving privilege be reinstated. If the 180th day falls on a Saturday, Sunday, or legal holiday, the person who is charged is required to request a hearing within 177 days after the date upon which the violation occurred; however, the court may grant a request for a hearing made more than 180 days after the date upon which the violation occurred. This does not affect the assessment of late fees as otherwise provided in Ch. 318, F.S.[31]

After the suspension of a person's driver license and privilege to drive, the driver license and driving privilege may not be reinstated until the person complies with the terms of a periodic payment plan or a revised payment plan with the clerk of the court or with all obligations and penalties[32] and presents to a driver license office a certificate of compliance issued by the court, together with a nonrefundable service charge of $60[33] or presents a certificate of compliance and pays the service charge to the clerk of the court or a driver licensing agent[34] clearing such suspension. Of the service charge collected, $22.50 is remitted to DOR to be deposited into the Highway Safety Operating Trust Fund. Such person must also be in compliance with requirements related to driver licenses[35] before reinstatement.[36]

The clerk of court is required to notify DHSMV of persons who were mailed a notice of violation related to traffic infraction detectors[37] pursuant to the Mark Wandall Traffic Safety Program,[38] and failed to enter into, or comply with the terms of, a penalty payment plan, or order with the clerk to the local hearing officer, or failed to appear at a scheduled hearing within 10 days after such failure, and must reference the person's driver license number, or in the case of a business entity, vehicle registration number.

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[24] Penalty payment plans with the clerk of court are in accordance with ss. 318.14 and 28.246, F.S.
[25] The order of suspension is mailed in accordance with ss. 322.251(1), (2), and (6), F.S.
[26] The terms "driver license" and "driving privilege" appear to be used interchangeably throughout the statutes.
[27] Section 318.15(1)(a), F.S.
[28] The civil penalty is provided in s. 318.14(9), F.S.
[29] Points are assessed pursuant to s. 322.27, F.S.
[30] Section 318.15(1)(b), F.S.
[31] Section 318.15(1)(c), F.S.
[32] Obligations and penalties are imposed under s. 318.18, F.S.
[33] The service charge is imposed under s. 322.29, F.S.
[34] Driver licensing agents are authorized under s. 322.135, F.S.
[35] Chapter 322, F.S.
[36] Section 318.15(2), F.S.
[37] Section 316.074(1) or 316.075(1)(c)1., F.S.
[38] Section 316.0083, F.S.

- Upon receipt of such notice, DHSMV, or an authorized agent thereof, may not issue a license plate or revalidation sticker for any motor vehicle owned or co-owned by that person[39] until the amounts assessed have been fully paid.
- After the issuance of the person's license plate or revalidation sticker is withheld,[40] the person may challenge the withholding of the license plate or revalidation sticker only on the basis that the outstanding fines and civil penalties have been paid.[41]

Proposed Changes

The bill creates s. 318.15(4), F.S., providing that notwithstanding any other law, a person's driver license **may not** be suspended solely for failure to pay a penalty if the person demonstrates to the court that he or she is unable to pay, as evidenced by the person providing documentation to the appropriate clerk of court that:

- The person receives reemployment assistance[42] or unemployment compensation[43] pursuant to Ch. 443, F.S.;
- The person is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income program or Social Security Disability Insurance program;
- The person receives temporary cash assistance pursuant to Ch. 414, F.S.;
- The person is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code;[44]
- The person has been placed on a payment plan or payment plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan pursuant to s. 28.246(4), F.S.; or
- The person has been determined to be indigent after filing an application with the clerk of court in accordance with. s. 27.52, F.S.,[45] or s. 57.082, F.S.[46]

Amount of Penalties for Traffic Infractions (Section 5)

Current Situation

In general, s. 318.18, F.S., provides penalties for the disposition of noncriminal and criminal traffic infractions. Specifically, s. 318.18(8)(b), F.S., provides that if a person has been ordered to pay a civil penalty for a noncriminal traffic infraction, and the person is unable to comply with the court's order due to demonstrable financial hardship, the court is required to allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid.[47]

Proposed Changes

The bill creates a new s. 318.18(8)(b)1.b., F.S., requiring the court to inquire regarding the person's ability to pay at the time the civil penalty is ordered.

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[39] This is pursuant to s. 320.03(8), F.S.

[40] The withholding of the license plate or revalidation sticker is pursuant to s. 318.15(2)(a), F.S.

[41] Section 318.15(3), F.S.

[42] Section 443.036(37), F.S., defines 'reemployment assistance" as cash benefits payable to individuals with respect to their unemployment pursuant to the provisions of this chapter. Where the context requires, reemployment assistance also means cash benefits payable to individuals with respect to their unemployment pursuant to 5 U.S.C. ss. 8501-8525, 26 U.S.C. ss. 3301-3311, 42 U.S.C. ss. 501-504, 1101-1110, and 1321-1324, or pursuant to state laws which have been certified pursuant to 26 U.S.C. s. 3304 and 42 U.S.C. s. 503. Any reference to reemployment assistance shall mean compensation payable from an unemployment fund as defined in 26 U.S.C. s. 3306(f).

[43] Section 443.051(1)(a), F.S., defines "reemployment assistance" or "unemployment compensation" means any compensation payable under state law, including amounts payable pursuant to an agreement under any federal law providing for compensation, assistance, or allowances for unemployment.

[44] 11 U.S.C. ss. 101 et seq.

[45] Section 27.52, F.S., relates to the determination of indigent status in criminal proceedings.

[46] Section 57.082, F.S., relates to the determination of civil indigent status.

[47] Section 318.18(8)(b)1a, F.S.

Revocation or suspension of, or delay of eligibility for, driver license for persons 18 years of age or older convicted of certain drug offenses (Section 6)

Current Situation

Section 322.055, F.S., provides that notwithstanding s. 322.28, F.S.,[48] upon the conviction of a person 18 years of age or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court is required to direct DHSMV to revoke the driver license or driving privilege of the person. The period of such revocation is **one year,** or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families (DCF). However, the court may, in its sound discretion, direct the DHSMV to issue a license for driving privilege restricted to business[49] or employment purposes only[50], if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under s. 322.055, F.S., or s. 322.056, F.S.,[51] may, upon the expiration of six months, petition DHSMV for restoration of the driving privilege on a restricted or unrestricted basis depending on length of suspension or revocation. In no case shall a restricted license be available until six months of the suspension or revocation period has expired.[52]

If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is eligible by reason of age for a driver license or privilege, the court is required to direct the DHSMV to withhold issuance of such person's driver license or driving privilege for a period of **one year** after the date the person was convicted or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the DCF. However, the court may, in its sound discretion, direct DHSMV to issue a license for driving privilege restricted to business or employment purposes only, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under s. 322.055, F.S. or s. 322.056, F.S., may, upon the expiration of six months, petition DHSMV for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until six months of the suspension or revocation period has expired.[53]

If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, and such person's driver license or driving privilege is already under suspension or revocation for any reason, the court is required to direct DHSMV to extend the period of such suspension or revocation by an additional period of **one year** or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the DCF. However, the court may, in its sound discretion, direct DHSMV to issue a license for driving privilege restricted to business or employment purposes only, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under s. 322.055, F.S., or s. 322.056, F.S., may, upon the expiration of six months, petition DHSMV for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until six months of the suspension or revocation period has expired.[54]

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[48] Section 322.28, F.S., relates to the period of driver license suspension or revocation.

[49] Section 322.271(1)(c)1., F.S., defines "a driving privilege restricted to business purposes only" as "a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes."

[50] Section 322.271(1)(c)2., F.S., defines "a driving privilege restricted to employment purposes only" as "a driving privilege that is limited to driving to and from work and any necessary on-the-job driving required by an employer or occupation."

[51] Section 322.056, F.S. relates to the mandatory revocation or suspension of, or delay of eligibility for, driver license for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses; prohibition.

[52] Section 322.055(1), F.S.

[53] Section 322.055(2), F.S.

[54] Section 322.055(3), F.S.

If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is ineligible by reason of age[55] for a driver license or driving privilege, the court is required to direct DHSMV to withhold issuance of such person's driver license or driving privilege for a period of **one year** after the date that he or she would otherwise have become eligible or until he or she becomes eligible by reason of age for a driver license and is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by DCF. However, the court may, in its sound discretion, direct DHSMV to issue a license for driving privilege restricted to business or employment purposes only if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under s. 322.055, F.S., or s. 322.056, F.S., may, upon the expiration of six months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until six months of the suspension or revocation period has expired.[56]

Proposed Changes

The bill amends s. 322.055(1) through (4), F.S., changing the period of suspension or revocation for each of the circumstances provided above from one year to six months.

Mandatory revocation or suspension of, or delay of eligibility for, driver license for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses; prohibition (Section 7)

Current Situation

Section 322.056, F.S., provides that notwithstanding the provisions of s. 322.055, F.S., if a **person under 18 years of age** is found guilty of or delinquent for a violation of certain drug and alcohol and tobacco offenses and:

- The person is eligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to revoke or to withhold issuance of his or her driver license or driving privilege for a period of:
  - Not less than six months and not more than one year for the first violation.
  - Two years, for a subsequent violation.
- The person's driver license or driving privilege is under suspension or revocation for any reason, the court is required to direct DHSMV to extend the period of suspension or revocation by an additional period of:
  - Not less than six months and not more than one year for the first violation.
  - Two years, for a subsequent violation.
- The person is ineligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to withhold issuance of his or her driver license or driving privilege for a period of:
  - Not less than six months and not more than one year after the date on which he or she would otherwise have become eligible, for the first violation.
  - Two years after the date on which he or she would otherwise have become eligible, for a subsequent violation.

However, the court may, in its sound discretion, direct DHSMV to issue a license for driving privileges restricted to business or employment purposes only if the person is otherwise qualified for such a license.[57]

If a **person under 18 years of age** is found by the court to have committed a noncriminal violation of certain drug, alcohol, or tobacco offenses, and that person has failed to comply with statutorily

[55] Section 322.05, F.S., prohibits DHSMV from issuing a license to a person under age 16, except that a learner's driver license may be issued to a person at least 15 years of age who meets certain requirements.
[56] Section 322.055(4), F.S.
[57] Section 322.056(1), F.S.

established procedures by failing to fulfill community service requirements, failing to pay the applicable fine, or failing to attend a locally available school-approved anti-tobacco program, and:

- The person is eligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to revoke or to withhold issuance of his or her driver license or driving privilege as follows:
  - For the first violation, for 30 days.
  - For the second violation within 12 weeks of the first violation, for 45 days.
- The person's driver license or driving privilege is under suspension or revocation for any reason, the court is required to direct DHSMV to extend the period of suspension or revocation by an additional period as follows:
  - For the first violation, for 30 days.
  - For the second violation within 12 weeks of the first violation, for 45 days.
- The person is ineligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to withhold issuance of his or her driver license or driving privilege as follows:
  - For the first violation, for 30 days.
  - For the second violation within 12 weeks of the first violation, for 45 days.

Any second violation for the same offense not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in this subsection.[58]

If a **person under 18 years of age** is found by the court to have committed a third violation of drug, alcohol, or tobacco offenses within 12 weeks of the first violation, the court is required to direct the DHSMV to suspend or withhold issuance of his or her driver license or driving privilege for 60 consecutive days. Any third violation of certain drug, alcohol, or tobacco offenses, not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in s. 322.056(2), F.S.[59]

A penalty imposed under s. 322.056, F.S., is in addition to any other penalty imposed by law.[60]

The suspension or revocation of a person's driver license imposed pursuant to s. 322.056(2) or (3), F.S., shall not result in or be cause for an increase of the convicted person's, or his or her parent's or legal guardian's, automobile insurance rate or premium or result in points assessed against the person's driving record.[61]

Proposed Changes

The bill amends s. 322.056, F.S., removing the mandatory revocation or suspension, or delay of eligibility for a driver license for persons under age 18 found guilty of certain alcohol or tobacco offenses. For persons found guilty of certain drug offenses, the bill provides for a loss in driving privilege for a period of six months. The bill also removes the court's discretion to issue a license for business or employment purposes only if the person otherwise qualifies for a driver license.

The bill also repeals s. 322.056(5), F.S., providing that the suspension or revocation of a person's driver license imposed under certain subsections of s. 322.056, F.S., shall not result in or cause an increase in automobile insurance rates or premium or points assessed a person's driving record.

Discretionary revocation or suspension of driver license for certain persons who provide alcohol to persons under 21 years of age (Section 8)

Current Situation

[58] Section 322.056(2), F S.
[59] Section 322.056(3), F.S.
[60] Section 322.056(4), F.S.
[61] Section 322.056(5),F .S.

Section 322.057, F.S., provides that notwithstanding s. 322.28, F.S.,[62] the court may order the DHSMV to withhold the issuance of, or suspend or revoke, the driver license of a person who is found guilty of selling or serving alcohol to a minor or permitting an underage person to consume alcohol on a licensed premises[63] for not less than three months and not more than six months for a first violation and for one year for any subsequent violation. Section 322.057(1), F.S., does not apply to a licensee who sells or serves alcohol to a minor or permitting an underage person to consume alcohol on a licensed premises while acting within the scope of his or her license or an employee or agent of a licensee who violates the alcohol statute while engaged within the scope of his or her employment or agency.[64]

The law authorizes the court to direct DHSMV to issue a driver license restricted to business or employment purposes only, to a person who is otherwise qualified for a license.[65]

Proposed Changes
The bill repeals s. 322.057, F.S., relating to the discretionary revocation or suspension of a driver license for certain persons who provide alcohol to persons under 21 years of age.

Application of minors; responsibility for negligence or misconduct of minor (Section 9)

Current Situation
In general, s. 322.09, F.S., provides for the application of any person under the age of 18 years for a driver license. Specifically, s. 322.09(3), F.S., provides that DHSMV may not issue a driver license or learner's driver license to any applicant under the age of 18 who is not in compliance with the school attendance requirements for obtaining a driver license.[66]

Proposed Changes
The bill repeals s. 322.09(3), F.S., which prohibits DHSMV from issuing a driver license or learner's driver license to any applicant under the age of 18 years who is not in compliance with the school attendance requirements to obtain a driver license.

School Attendance Requirements (Section 10)

Current Situation
Section 322.091, F.S., provides school attendance requirements for minors to receive a driver license. Current law provides that a minor is not eligible for driving privileges unless that minor:

- Is enrolled in a public school, nonpublic school, or home education program and satisfies relevant attendance requirements;
- Has received a high school diploma, a high school equivalency diploma, a special diploma, or a certificate of high school completion;
- Is enrolled in a study course in preparation for the high school equivalency examination and satisfies relevant attendance requirements;
- Is enrolled in other educational activities approved by the district school board and satisfies relevant attendance requirements;
- Has been issued a certificate of exemption;[67] or
- Has received a hardship waiver.

DHSMV may not issue a driver license or learner's driver license to, or must suspend the driver license or learner's driver license of, any minor concerning whom DHSMV receives notification of noncompliance with the requirements of s. 322.091, F.S.[68]

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[62] Section 322.28, F.S., relates to the period of driver license suspension or revocation.
[63] Section 562.11(1)(a), F.S.
[64] Section 322.057(1), F.S.
[65] Section 322.057(2), F.S.
[66] Section 322.091, F.S.
[67] A certificate of exemption is issued pursuant to s. 1003.21(3), F.S.
[68] Section 322.091(1), F.S.

Section 322.091, F.S., contains provisions regarding notifying the minor and the minor's parent or guardian of the intent to suspend the minor's driving privilege, provides for a hardship waiver and appeals process, provides for verification of compliance and reinstatement, and requires quarterly reporting from DHSMV to each school district.

Proposed Changes
The bill repeals s. 322.091, F.S., which provides school attendance requirements for a minor to receive a driver license.

Suspension of license upon failure of person charged with specified offense under Ch. 316, F.S., Ch. 320, F.S., or Ch. 322, F.S., to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in Ch. 61, F.S., or failure to pay any financial obligation in any other criminal case (Section 11)

Current Situation
In general, s. 322.245, F.S., provides for the suspension of a driver license for certain offenses, failure to comply with directives of traffic court, or failure to pay child support in certain cases, or failure to pay any financial obligation in any other criminal case.

For child support enforcement, in non-IV-D cases, if a person fails to pay child support,[69] and the obligee so requests, the depository[70] or the clerk of the court is required to mail a notice specified in s. 61.13016, F.S.,[71] notifying him or her that if he or she does not comply with the requirements of s. 61.13016, F.S., and pay a delinquency fee of $25 to the depository or the clerk of the court, his or her driver license and motor vehicle registration will be suspended. The delinquency fee may be retained by the depository or the office of the clerk of the court to defray the operating costs of the office.[72]

If the person in a non-IV-D case, fails to comply with the requirements of s. 61.13016, F.S., within time the period, the depository or the clerk of the court is required to electronically notify DHSMV of such failure within 10 days. Upon electronic receipt of the notice, DHSMV is required to immediately issue an order suspending the person's driver license and privilege to drive effective 20 days after the date the order of suspension is mailed.[73,74]

After suspension of the driver license of a person pursuant to s. 322.245(1), (2), or (3), F.S., the driver license may not be reinstated until the person complies with all court directives imposed upon him or her, including payment of the delinquency fee,[75] and presents certification of such compliance to a driver licensing office and complies with the statutory requirements relating to driver license,[76] or, in the case of a license suspended for nonpayment of child support in non-IV-D cases, until the person complies with the reinstatement provisions of s. 322.058, F.S.[77] and makes payment of the delinquency fee.[78, 79]

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[69] Child support is provided for in Ch. 61, F.S.
[70] Section 61.046(4), F.S., defines "depository" as "the central governmental depository established pursuant to s. 61.181, created by special act of the Legislature or other entity established before June 1, 1985, to perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle alimony and child support payments not otherwise required to be processed by the State Disbursement Unit."
[71] Section 61.13016, F.S., relates to the suspension of driver license and motor vehicle registrations for non-payment of child support.
[72] Section 322.245(2), F.S.
[73] The order of suspension is mailed in accordance with s. 322.251(1), (2), and (6), F.S.
[74] Section 322.245(3), F.S.
[75] The delinquency fee is imposed by s. 322.245(1), F.S.
[76] Chapter 322, F.S.
[77] Section 322.058, F.S., relates to the suspension of driving privilege due to support delinquency; reinstatement.
[78] The delinquency fee is imposed by s. 322.245(2), F.S.
[79] Section 322.245(4), F.S.

DHSMV is required to reinstate the driving privilege when the clerk of the court provides an affidavit to DHSMV stating that:

- The person has satisfied the financial obligation in full or made all payments currently due under a payment plan;
- The person has entered into a written agreement for payment of the financial obligation if not presently enrolled in a payment plan; or
- A court has entered an order granting relief to the person ordering the reinstatement of the license.[80]

DHSMV is not liable for any license suspension resulting from the discharge of its duties under s. 322.245, F.S.[81]

Proposed Changes

The bill creates s. 322.245(6), F.S., providing that notwithstanding any other law, a person's driver license may not be suspended solely for failure to pay a penalty or court obligation if the person demonstrates to the court that he or she is unable to pay the penalty or court obligation. A person is considered unable to pay if the person provides documentation to the appropriate clerk of court evidencing that:

- The person receives reemployment assistance or unemployment compensation pursuant to Ch. 443, F.S.;[82]
- The person is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income program or the Social Security Disability Insurance Program;
- The person receives temporary cash assistance pursuant to Ch. 414, F.S.;[83]
- The person is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code;
- The person has been placed on a payment plan or payment plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan pursuant to s. 28.246(4), F.S.; or
- The person has been determined to be indigent after filing an application with the clerk of court in accordance with s. 27.52, F.S., or s. 57.082, F.S.

Notice of cancellation, suspension, revocation, or disqualification of license (Section 12)

Current Situation

In general, s. 322.251, F.S., provides for the notice of cancellation, suspension, revocation, or disqualification of a driver license.

Specifically, s. 322.251(7), F.S., provides that a person whose driving privilege is suspended or revoked in a worthless check case[84] is required to be notified, and the notification is required to direct the person to surrender himself or herself to the sheriff who entered the warrant to satisfy the conditions of the warrant. A person whose driving privilege is suspended or revoked under s. 322.251(7), F.S., shall not have his or her driving privilege reinstated for any reason other than:

- Full payment of any restitution, court costs, and fees incurred as a result of a warrant or capias being issued pursuant to s. 832.09; F.S.;
- The cancellation of the warrant or capias from the Department of Law Enforcement (FDLE) recorded by the entering agency; and
- The payment of an additional fee of $10 to DHSMV to be paid into the Highway Safety Operating Trust Fund; or

[80] Section 322.245(5)(b), F.S.
[81] Section 322.245(5)(c),F .S.
[82] Chapter 443, F.S., relates to Reemployment Assistance.
[83] Chapter 414, F.S., relates to Family Self-Sufficiency.
[84] Worthless check cases are pursuant to s. 832.09, F.S.,

- DHSMV has modified the suspension or revocation of the license pursuant to s. 322.271, F.S.,[85] restoring the driving privilege solely for business or employment purposes.[86]

FDLE is required to provide DHSMV with for the purpose of identifying any person who is the subject of an outstanding warrant or capias for passing worthless bank checks.[87]

Proposed Changes
The bill repeals s. 322.251(7), F.S., which relates to the suspension or revocation of driving privilege in worthless check cases.

Authority to modify revocation, cancellation, or suspension order (Section 13)

Current Situation
In general, s. 322.271, F.S., provides DHSMV with the authority to modify driver license revocation, cancellation, or suspension orders under specified circumstances.

Proposed Changes
The bill creates s. 322.271(8), F.S., providing that a person whose driver license or privilege to drive has been suspended under s. 318.15, F.S.,[88] or s. 322.245, F.S.,[89] may have his or her driver license or driving privilege reinstated on a restricted basis by DHSMV in accordance with s. 322.271, F.S.

Driving while license suspended, revoked, canceled, or disqualified (Section 14)

Current Situation
In general, s. 322.34, F.S., provides penalties for driving while a license is suspended, revoked, canceled, or disqualified, and provides various penalties for different circumstances.

Section 322.34(10), F.S., provides that notwithstanding any other provision of s. 322.34, F.S., if a person does not have a prior forcible felony[90] conviction, the penalties provided in s. 322.34(10)(b), F.S., apply if a person's driver license or driving privilege is canceled, suspended, or revoked for:
- Failing to pay child support as provided in s. 322.245, F.S., or s. 61.13016, F.S.;
- Failing to pay any other financial obligation as provided in s. 322.245, F.S., other than those specified in s. 322.245(1), F.S.;
- Failing to comply with a civil penalty required in s. 318.15, F,S.;
- Failing to maintain vehicular financial responsibility as required by Ch. 324, F.S.;
- Failing to comply with attendance or other requirements for minors as set forth in s. 322.091, F.S., or
- Having been designated as a habitual traffic offender under s. 322.264(1)(d), F.S., as a result of suspensions of his or her driver license or driver privilege for any underlying violation listed above.[91]

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[85] Section 322.271, F.S., relates to the authority to modify revocation, cancellation, or suspension order.
[86] Section 322.251(7)(a), F.S.
[87] Section 322.251(7)(b), F.S.
[88] Section 318.15, F.S., relates to failure to comply with a civil penalty as it relates to traffic violations.
[89] Section 322.245, F.S., relates to the suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or chapter 322 to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.
[90] Section 776.08, F.S., defines "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.
[91] Section 322.34(10)(a), F.S.

Upon a first conviction for knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed above, a person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.[92]

Upon a second or subsequent conviction for the same offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed above a person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.[93]

Proposed Changes

The bill amends s. 322.34(10)(a), F.S., removing a portion of the failure to pay financial obligation and school attendance requirements as items for whom someone's driver license may be suspended or revoked. The bill also makes conforming changes to s. 322.34(10)(b), F.S.

Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties (Section 15)

Current Situation

Section 562.11(1)(a), F.S., provides that a person may not sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or permit a person under 21 years of age to consume such beverages on the licensed premises. A person who violates this provision commits a misdemeanor of the second degree. A person who violates this provision a second or subsequent time within one year after a prior conviction commits a misdemeanor of the first degree.[94]

In addition to any other penalty imposed for a violation of s. 562.11(1)(a)1., F.S., the court may order DHSMV to withhold the issuance of, or suspend or revoke, the driver license or driving privilege, as provided in s. 322.057, F.S.,[95] of any person who violates s. 562.11(1)(a)1., F.S. Section 562.11(1)(a)2., F.S., does not apply to a licensee,[96] who violates s. 562.11(1)(a)1., F.S., while acting within the scope of his or her license or an employee or agent of a licensee who violates s. 562.11(1)(a)1, F.S., while engaged within the scope of his or her employment or agency.[97]

A court that withholds the issuance of, or suspends or revokes, the driver license or driving privilege of a person pursuant to s. 562.11(1)(a)2., F.S., may direct the DHSMV to issue the person a license for driving privilege restricted to business purposes only if he or she is otherwise qualified.[98]

Proposed Changes

The bill repeals ss. 532.11(1)(a)2. and 3., F.S., removing the authority for the court to order DHSMV to withhold the issuance of, suspend or revoke the driver license or driving privilege of a person selling, giving, serving, or permitting to be served alcohol to persons under 21 years of age or permitting a person under 21 years of age to consume an alcoholic beverage on a licensed premises. The bill also removes the authorization that under these circumstances the court may direct DHSMV to issue a business purposes only driver licenses.

Possession of alcoholic beverages by persons under age 21 prohibited (Section 16)

Current Situation

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[92] Section 322.34(10)(b)1., F.S.
[93] Section 322.34(10)(b)2., F.S.
[94] Section 562.11(1)(a)1., F.S.
[95] Section 322.057, F.S., relates to the discretionary revocation or suspension of driver license for certain persons who provide alcohol to persons under 21 years of age.
[96] Section 561.01(14), F.S., defines "licensee" as "a legal or business entity, person, or persons that hold a license issued by the division and meet the qualifications set forth in s. 561.15, F.S."
[97] Section 562.11(1)(a)2., F.S.
[98] Section 562.11(1)(a)3., F.S.

In general, s. 562.111, F.S., provides that it is unlawful for any person under the age of 21 to have possession of an alcoholic beverage. The statute also provides certain exceptions to the law.

Section 562.111(3), F.S., provides that in addition to any other penalty imposed for a violation of the alcoholic beverage statute by persons under the age of 21, the court is required to direct DHSMV to withhold issuance of, or suspend or revoke, the violator's driver license or driving privilege, as provided in s. 322.056, F.S.[99]

Proposed Changes
The bill repeals s. 562.111(3), F.S., which requires the court to direct the DHSMV to withhold the issuance of, suspend, or revoke the driver license of those convicted of the possession of alcohol by those under the age of 21.

Possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 18 years of age prohibited; penalties; jurisdiction; disposition of fines (Section 17)

Current Situation
In general, s. 569.11, F.S., provides that it is unlawful for any person under 18 years of age to knowingly possess any tobacco product and provides penalties for violation.

Specifically, s. 569.11(1), F.S., provides that it is unlawful for any person under 18 years of age to knowingly possess a tobacco product. Any person under 18 years of age who violates the provisions of this subsection commits a noncriminal violation punishable by:

- For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available;
- For a second violation within 12 weeks of the first violation, a $25 fine; or
- For a third violation within 12 weeks of the first violation, the court is required to direct the DHSMV to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056, F.S.

A subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

Section 569.11(2), F.S., provides that it is unlawful for any person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or to purchase, or attempt to purchase, any tobacco product from a person or a vending machine. Any person under 18 years of age who violates a provision of this subsection commits a noncriminal violation punishable by:

- For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available;
- For a second violation within 12 weeks of the first violation, a $25 fine; or
- For a third violation within 12 weeks of the first violation, the court is required to direct the DHSMV to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

Section 569.11(5)(a), F.S., provides that if a person under 18 years of age is found by the court to have committed a noncriminal violation s. 569.11, F.S., and that person has failed to complete community service, pay the fine or attend a school-approved anti-tobacco program, if locally available, the court must direct DHSMV to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.[100]

[99] Section 562.111(3), F.S.
[100] Section 562.11(5)(a), F.S.

Section 569.11(5)(b), F.S., provides that if a person under 18 years of age is found by the court to have committed a noncriminal violation under s. 569.11, F.S., and that person has failed to pay the applicable fine, the court must direct DHSMV to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

Proposed Changes

The bill repeals ss. 569.11(1)(c) and (2)(c), F.S., removing the provision that for a third or subsequent violation within 12 weeks of the first violation, the court is required to direct DHSMV to suspend or revoke a person's driver license or driving privilege. The bill also adds "or subsequent" to ss. 569.11(1)(b) and (2)(b), F.S., providing that the penalty for a subsequent violation within a 12 week period carries the same penalty as a second violation.

The bill also amends ss. 569.11(5)(a) and (b), F.S., allowing, instead of requiring, the court to direct DHSMV to withhold the issuance or suspend the driver license of a person who committed a noncriminal violation under s. 569.11, F.S., and failed to meet certain conditions required by the court.

Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties (Section 18)

Current Situation

In general, s. 790.22, F.S., contains provisions regarding the use of various types of firearms by minors. Specifically, s. 790.22(3), F.S., provides that a minor under 18 years of age may not possess a firearm, other than an unloaded firearm at his or her home, unless:

- The minor is engaged in a lawful hunting activity and is:
  - At least 16 years of age; or
  - Under 16 years of age and supervised by an adult.
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:
  - At least 16 years of age; or
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from an event authorized above.

Section 790.22(5), F.S., provides that a minor who violates s. 792.22(3), F.S., commits a misdemeanor of the first degree; for a first offense, may serve a period of detention of up to 3 days in a secure detention facility; and, in addition to any other penalty provided by law, shall be required to perform 100 hours of community service; and:

- If the minor is eligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to revoke or to withhold issuance of the minor's driver license or driving privilege for up to one year.
- If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court is required to direct DHSMV to extend the period of suspension or revocation by an additional period of up to one year.
- If the minor is ineligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to withhold issuance of the minor's driver license or driving privilege for up to one year after the date on which the minor would otherwise have become eligible.[101]

For a second or subsequent offense, a minor who violates s. 790.22(3), F.S., commits a felony of the third degree, and is required to serve a period of detention of up to 15 days in a secure detention facility and perform not less than 100 nor more than 250 hours of community service, and:

[101] Section 790.22(5)(a), F.S.

- If the minor is eligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to revoke or to withhold issuance of the minor's driver license or driving privilege for up to two years.
- If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court is required to direct DHSMV to extend the period of suspension or revocation by an additional period of up to two years.
- If the minor is ineligible by reason of age for a driver license or driving privilege, the court is required to direct the DHSMV to withhold issuance of the minor's driver license or driving privilege for up to two years after the date on which the minor would otherwise have become eligible.[102]

Notwithstanding s. 985.245, F.S.,[103] if the minor is found to have committed an offense that involves the use or possession of a firearm, other than a violation of s. 790.22(3), F.S., or an offense during the commission of which the minor possessed a firearm, and the minor is not committed to a residential commitment program of the Department of Juvenile Justice (DJJ), in addition to any other punishment provided by law, the court is required to order:

- For a first offense, that the minor is required to serve a minimum period of detention of 15 days in a secure detention facility; and
    - Perform 100 hours of community service; and may
    - Be placed on community control or in a nonresidential commitment program.
- For a second or subsequent offense, that the minor is required to serve a mandatory period of detention of at least 21 days in a secure detention facility; and
    - Perform not less than 100 nor more than 250 hours of community service; and may
    - Be placed on community control or in a nonresidential commitment program.

If a minor is found to have committed an offense under s. 790.22(9), F.S., the court is required to impose the following penalties in addition to any penalty imposed under s. 790.22(9)(a), F.S. or s. 790.22(9)(b), F.S.:

- For a first offense:
    - If the minor is eligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to revoke or to withhold issuance of the minor's driver license or driving privilege for up to one year.
    - If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court is required to direct DHSMV to extend the period of suspension or revocation by an additional period for up to one year.
    - If the minor is ineligible by reason of age for a driver license or driving privilege, the court is required to direct the DHSMV to withhold issuance of the minor's driver license or driving privilege for up to one year after the date on which the minor would otherwise have become eligible.
- For a second or subsequent offense:
    - If the minor is eligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to revoke or to withhold issuance of the minor's driver license or driving privilege for up to two years.
    - If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court is required to direct DHSMV to extend the period of suspension or revocation by an additional period for up to two years.
    - If the minor is ineligible by reason of age for a driver license or driving privilege, the court is required to direct the DHSMV to withhold issuance of the minor's driver license or driving privilege for up to two years after the date on which the minor would otherwise have become eligible.[104]

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[102] Section 790.22(5)(b), F.S.
[103] Section 985.245, F.S., provides a risk assessment instrument.
[104] Section 790.22(10), F.S.

Proposed Changes
The bill repeals ss. 790.22(5)(a)1. through 3. and (5)(b) 1. through 3., F.S, relating to the revocation, suspension or revocation or the withholding of the issuance of a minor's driver license for a minor possessing a loaded firearm in his or her home under certain circumstances. The bill also repeals s. 790.22(10), F.S., regarding the revocation, suspension, or withholding of a driver license for a minor convicted an offense involving the use or possession of a firearm.

Criminal mischief; penalties; penalty for minor (Section 19)

Current Situation
In general, s. 806.13, F.S., provides that a person commits the offense of criminal mischief if he or she willfully and maliciously injures or damages, by any means, any real or personal property belonging to another, including, but not limited to, the placement of graffiti or other acts of vandalism.[105]

Section 806.13(7), F.S., provides that in addition to any other penalty provided by law, if a minor is found to have committed a delinquent act for placing graffiti on any public property or private property, and:

- The minor is eligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to revoke or withhold issuance of the minor's driver license or driving privilege for not more than one year.
- The minor's driver license or driving privilege is under suspension or revocation for any reason, the court is required to direct DHSMV to extend the period of suspension or revocation by an additional period of not more than one year.
- The minor is ineligible by reason of age for a driver license or driving privilege, the court is required to direct DHSMV to withhold issuance of the minor's driver license or driving privilege for not more than one year after the date on which he or she would otherwise have become eligible.[106]

A minor whose driver license or driving privilege is revoked, suspended, or withheld pursuant to s. 806.13(7), F.S., may elect to reduce the period of revocation, suspension, or withholding by performing community service at the rate of one day for each hour of community service performed. In addition, if the court determines that due to a family hardship, the minor's driver license or driving privilege is necessary for employment or medical purposes of the minor or a member of the minor's family, the court is required to order the minor to perform community service[107] and reduce the period of revocation, suspension, or withholding at the rate of one day for each hour of community service performed.[108]

Proposed Changes
The bill repeals ss. 806.13(7) and (8), F.S., which relates to the suspension of driver licenses for placing graffiti on public or private property.

Suspension of driver license following an adjudication of guilt for theft (Section 20)

Current Situation
Section 812.0155, F.S., provides that except as provided in ss. 812.0155(2) and (3), F.S., the court may order the suspension of the driver license of each person adjudicated guilty of any misdemeanor theft,[109] regardless of the value of the property stolen. Upon ordering the suspension of the driver license of the person adjudicated guilty, the court shall forward the driver license of the person

[105] Section 806.13(1)(a), F .S.
[106] Section 806.13(7), F.S.
[107] For purposes of s. 806.13(7), F.S., "community service" means "cleaning graffiti from public property."
[108] Section 806.13(8), F.S.
[109] Sections 812.014 and 812.015, F.S.

adjudicated guilty to the DHSMV.[110] The first suspension of a driver license under shall be for a period of up to six months.[111] A second or subsequent suspension of a driver license under this subsection shall be for one year.[112]

The court may revoke, suspend, or withhold issuance of a driver license of a person less than 18 years of age who is adjudicated guilty of theft, as an alternative to sentencing the person to:

- Probation[113] or commitment to DJJ, if the person is adjudicated delinquent for such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.
- Probation commitment to DJJ, probation[114] community control, or incarceration, if the person is convicted as an adult of such violation and has not previously been convicted of or adjudicated delinquent for any criminal offense, regardless of whether adjudication was withheld.[115]

A court that revokes, suspends, or withholds issuance of a driver license under s. 812.0155(2), F.S., is required to:

- If the person is eligible by reason of age for a driver license or driving privilege, direct the DHSMV to revoke or withhold issuance of the person's driver license or driving privilege for not less than six months and not more than one year;
- If the person's driver license is under suspension or revocation for any reason, direct DHSMV to extend the period of suspension or revocation by not less than six months and not more than one year; or
- If the person is ineligible by reason of age for a driver license or driving privilege, direct the DHSMV to withhold issuance of the person's driver license or driving privilege for not less than six months and not more than one year after the date on which the person would otherwise become eligible.[116]

Sections 812.0155(2) and (3), F.S., do not preclude the court from imposing any sanction specified or not specified in section 812.0155(2) or (3), F.S.[117]

A court that suspends a driver license pursuant to s. 812.0155(1), F.S., may direct DHSMV to issue the person a license for driving privilege restricted to business purposes only if he or she is otherwise qualified.[118]

Proposed Changes

The bill repeals s. 812.0155, F.S., which relates to the suspension of driver license following the adjudication of guilt for theft.

Suspension of driver license after warrant or capias is issued in worthless check case (Section 21)

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[110] Section 812.0155(1), F.S.
[111] Section 812.0155(1)(a), F.S.
[112] Section 812.0155(1)(b), F.S.
[113] Section 985.03(41), F.S., defines "probation" as "the legal status of probation created by law and court order in cases involving a child who has been found to have committed a delinquent act. Probation is an individualized program in which the freedom of the child is limited and the child is restricted to noninstitutional quarters or restricted to the child's home in lieu of commitment to the custody of the department. Youth on probation may be assessed and classified for placement in day-treatment probation programs designed for youth who represent a minimum risk to themselves and public safety and do not require placement and services in a residential setting."
[114] Section 948.001(8), F.S., defines "probation" as "a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.."
[115] Section 812.0155(2), F.S.
[116] Section 812.0155(3), F.S.
[117] Section 812.0155(4), F.S.
[118] Section 812.0155(5), F.S.

Current Situation
Section 832.09, F.S., provides that the court may order the suspension or revocation of the driver license of a person who is being prosecuted for passing a worthless check who fails to appear before the court and against whom a warrant or capias for failure to appear is issued by the court if the person has previously been adjudicated guilty of a violation of s. 832.05, F.S.[119]

Within five working days after the court orders the suspension of a driver license pursuant to s. 832.09(1), F.S., the clerk of the court in the county where the warrant or capias is issued shall notify the DHSMV by the most efficient method available of the action of the court.[120]

Proposed Changes
The bill repeals s. 832.09, F.S., which relates to the suspension of a driver license after a warrant or capias is issued in a worthless check case.

Nicotine products and nicotine dispensing devices; prohibitions for minors; penalties; civil fines; signage requirements; preemption (Section 22)

Current Situation
In general, s. 877.112, F.S., prohibits the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age and prohibits those persons from purchasing or possessing those products. Specifically, s. 877.112(6), F.S., provides that it is unlawful for any person under 18 years of age to knowingly possess any nicotine product or a nicotine dispensing device. Any person under 18 years of age who violates this subsection commits a noncriminal violation[121] punishable by:

- For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person is required to attend a school-approved anti-tobacco and nicotine program, if locally available;
- For a second violation within 12 weeks of the first violation, a $25 fine; or
- For a third or subsequent violation within 12 weeks of the first violation, the court is required to direct DHSMV to withhold issuance of or suspend or revoke the person's driver license or driving privilege.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.[122]

Section 877.112(7), F.S., provides that it is unlawful for any person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a retailer of nicotine products or nicotine dispensing devices or an agent or employee of such retailer to sell, give, barter, furnish, or deliver any nicotine product or nicotine dispensing device, or to purchase, or attempt to purchase, any nicotine product or nicotine dispensing device from a person or a vending machine. Any person under 18 years of age who violates this subsection commits a noncriminal violation punishable by:

- For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person is required to attend a school-approved anti-tobacco and nicotine program, if available;
- For a second violation within 12 weeks of the first violation, a $25 fine; or
- For a third or subsequent violation within 12 weeks of the first violation, the court is required to direct the DHSMV to withhold issuance of or suspend or revoke the person's driver license or driving privilege.

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[119] Section 832.09(1), F.S.
[120] Section 832.09(2), F.S.
[121] Section 775.08(3), F.S., defines "noncriminal violation" as "any offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense. The term "noncriminal violation" shall not mean any conviction for any violation of any municipal or county ordinance. Nothing contained in this code shall repeal or change the penalty for a violation of any municipal or county ordinance."
[122] Section 877.112(6), F.S.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.[123]

Section 877.112(8)(c), F.S., provides that if a person under 18 years of age is found by the court to have committed a noncriminal violation under s. 877.112, F.S., and that person has failed to complete community service, pay the fine as required by s. 877.112(6)(a) or (7)(a), F.S., or attend a school-approved anti-tobacco and nicotine program, if locally available, the court is required to direct the DHSMV to withhold issuance of or suspend the driver license or driving privilege of that person for 30 consecutive days.[124]

Section 877.112(8)(d), F.S., provides that if a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by s. 877.112(6)(b) or (7)(b), F.S., the court is required to direct DHSMV to withhold issuance of or suspend the driver license or driving privilege of that person for 45 consecutive days.[125]

Proposed Changes
The bill amends s. 877.112, F.S., relating to the prohibition of minors to possess nicotine products and nicotine dispensing devices. Specifically, the bill amends ss. 877.112(6) and (7), F.S., removing the requirement that the court, for a third or subsequent violation of the statute within a 12 week period, direct DHSMV to withhold the issuance of, suspend, or revoke the person's driver license or driving privilege. Additionally, the current penalty of a $25 fine for a subsequent violation, now becomes the penalty for a second, or subsequent violation.

The bill also amends ss. 877.112(8)(c) and (d), F.S., making it permissive, rather than mandatory, that a court direct DHSMV to withhold issuance of or suspend the driver license or driving privilege for failure to comply with certain penalties provided in s. 877.112, F.S.

Financial obligations in criminal cases; supplementary proceedings (Section 23)

Current Situation
Section 938.30, F.S., provides that any person liable for payment of any financial obligation in any criminal case is subject to the provisions of s. 938.30, F.S. Courts operating under the provisions of s. 938.30, F.S., have jurisdiction over such financial obligations to ensure compliance.[126]

The court may require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation. The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service, subject to the provisions of s. 318.18(8), F.S., after examining a person under oath and determining the person's inability to pay. Any person who fails to attend a hearing may be arrested on warrant or capias issued by the clerk upon order of the court.[127]

Proposed Changes
The bill amends s. 938.30(2), F.S., providing that determining a person's ability to pay financial obligations in a criminal case may be by reliance on information provided under s. 27.52(1)(a)6., F.S., relating to the election or refusal of the option to fulfill any court-ordered financial obligation associated with the case by the completion of community service as ordered by the court.

Court procedure and penalties-School Attendance (Section 24)

[123] Section 877.112(7), F.S.
[124] Section 877.112(8)(c), F.S.
[125] Section 877.112(8)(d), F.S.
[126] Section 938.30(1), F.S.
[127] Section 938.30(2), F.S.

Current Situation
Section 1003.27, F.S., provides the court procedure and penalties for the enforcement of the provisions of part II of Ch. 1003, F.S., relating to compulsory school attendance.

Section 1003.27(2)(b), F.S., requires each public school principal or the principal's designee to notify the district school board of each minor student under its jurisdiction who accumulates 15 unexcused absences in a period of 90 calendar days. Each designee of the governing body of each private school, and each parent whose child is enrolled in a home education program, may provide the DHSMV with the legal name, sex, date of birth, and social security number of each minor student under his or her jurisdiction who fails to satisfy relevant attendance requirements and who fails to otherwise satisfy the requirements of s. 322.091, F.S. The district school superintendent must provide the DHSMV the legal name, sex, date of birth, and social security number of each minor student who has been reported who fails to otherwise satisfy the requirements of s. 322.091, F.S. DHSMV may not issue a driver license or learner's driver license to, and shall suspend any previously issued driver license or learner's driver license of, any such minor student, pursuant to the provisions of s. 322.091.[128]

Proposed Changes
The bill repeals s. 1003.27(2)(b), F.S., which relates to school attendance penalties.

Noncriminal traffic infractions; exception; procedures (Section 25)

Current Situation
In general, s. 318.14, F.S., provides certain procedures regarding noncriminal traffic infractions. Section 318.14(10)(a), F.S., provides that any person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for an offense listed under s. 318.14(10), F.S., may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In such case, adjudication shall be withheld; however, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may not make more than three elections under this subsection. This subsection applies to the following offenses:

- Operating a motor vehicle without a valid driver license in violation of s. 322.03, F.S., s. 322.065, F.S., or s. 322.15(1), F.S., or operating a motor vehicle with a license that has been suspended for failure to appear, failure to pay civil penalty, or failure to attend a driver improvement course pursuant to s. 322.291, F.S.
- Operating a motor vehicle without a valid registration in violation of s. 320.0605, F.S., s. 320.07, F.S., or s. 320.131, F.S.
- Operating a motor vehicle in violation of s. 316.646, F.S.
- Operating a motor vehicle with a license that has been suspended under s. 61.13016, F.S., or s. 322.245, F.S., for failure to pay child support or for failure to pay any other financial obligation as provided in s. 322.245; F.S.; however, this does not apply if the license has been suspended pursuant to s. 322.245(1), F.S.
- Operating a motor vehicle with a license that has been suspended under s. 322.091, F.S., for failure to meet school attendance requirements.[129]

Proposed Changes
The bill repeals s. 318.14(10)(a)5., F.S., which removes the applicability of that subsection to the offense of operating a motor vehicle without a license that has been suspended for failure to meet school attendance requirements.

Persons not to be Licensed (Section 26)

[128] Section 1003.27(2)(b),F.S.
[129] Section 318.14(10)(a), F.S.

The bill amends ss. 322.05, F.S., to conform a cross-reference.

Authority of DHSMV to suspend or revoke driver license or identification card (Section 27)
The bill amends s. 322.27, F.S., to conform a cross-reference.

Treatment and Sanctions (Section 28)

Current Situation
Section 397.951, provides that the Legislature recognizes that the integration of treatment and sanctions greatly increases the effectiveness of substance abuse treatment. The statute provides that the Department of Children and Families shall ensure that substance abuse treatment providers employ any and all appropriate available sanctions necessary to engage, motivate, and maintain a child in treatment, including, but not limited to, provisions in law that:

- Provide for parental participation in treatment for involuntary admission to treatment, as provided in part IV of Ch. 397, F.S.[130]
- Provide for law enforcement authorities to assume custody of a child who is substance abuse impaired and allow placement of a child into the care of a hospital, substance abuse detoxification facility, or addiction receiving facility, as specified in part V of this chapter.
- Provide parental authority to involuntarily admit a child for assessment to an addiction receiving facility, as specified in part V of Ch. 397, F.S.[131]
- Provide parents and substance abuse providers with civil involuntary procedures to secure court-ordered assessment and treatment for children, as specified in part V of Ch. 397, F.S.
- Authorize the court or any criminal justice authority with jurisdiction over a child charged or convicted of a crime to require that the delinquent or offender receive substance abuse services under part VII of this Ch. 397, F.S.[132]
- Provide authority of the court and contempt powers to require parental participation in the treatment of a delinquent or offender pursuant to s. 397.706, F.S.
- Authorize the court to mandate services for children and their families in dependency proceedings under Ch. 39, F.S., and children and families in need of services under Ch. 984, F.S.
- Provide that the use, possession, or sale of controlled substances, as defined in Ch. 893, F.S., or possession of electronic telephone pagers, by any student while such student is upon school property or in attendance at a school function is grounds for disciplinary action by the school and may also result in criminal penalties being imposed pursuant to ss. 1006.09(1) through (4), F.S.
- Provide that, pursuant to s. 322.056, F.S., for any person under 18 years of age who is found guilty of or delinquent for a violation of s. 562.11(2), F.S., s. 562.111, F.S., or Ch. 893, F.S., and is eligible by reason of age for a driver license or driving privilege, the court shall direct the DHSMV to revoke or to withhold issuance of his or her driver license or driving privilege for a period of:
    - Not less than six months and not more than one year for the first violation.
    - Two years, for a subsequent violation.[133]

Proposed Changes
The bill amends s. 397.951(2)(i), F.S, removing some cross references, and providing for a six month suspension or withholding the issuance of a driver license for violation of certain statutes.

Definitions-Public K-12 Education (Section 29)
The bill amends s. 1003.01(9), F.S., conforming a cross-reference.

[130] Part IV of Ch. 397, F.S., relates to voluntary admissions procedures.
[131] Part V of Ch. 397, F.S., relates to involuntary admissions procedures.
[132] Part VII of Ch. 397, F.S., relates to offender referrals.
[133] Section 397.951(2), F.S.

Effective Date (Section 30)
The bill has an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1 Amends s. 27.52, F.S., relating to the determination of indigent status.

Section 2 Amends s. 28.246, F.S., relating to the payment of court related fines and other monetary penalties, charges, and costs; partial payments; distribution of funds.

Section 3 Amends s. 316.650, F.S., relating to traffic citations.

Section 4 Amends s. 318.15, F.S., relating to failure to comply with civil penalties or to appear; penalty.

Section 5 Amends s. 318.18, F.S., relating to amount of penalties.

Section 6 Amends s. 322.055, F.S., relating to revocation or suspension of, or delay of eligibility for, driver license for persons 18 years of age or older convicted of certain drug offenses.

Section 7 Amends s. 322.056, F.S., relating to mandatory revocation or suspension of, or delay of eligibility for, driver license for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses; prohibition.

Section 8 Repeals s. 322.057. F.S., relating to discretionary revocation or suspension of driver license for certain persons who provide alcohol to persons under 21 years of age.

Section 9 Amends s. 322.09, F.S., relating to the application to minors; responsibility for negligence or misconduct of minor.

Section 10 Repeals s. 322.091, F.S., relating to attendance requirements.

Section 11 Amends s. 322.215, F.S., relating to suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.

Section 12 Repeals s. 322.251(7), F.S., relating to notice of cancellation, suspension, revocation, or disqualification of license.

Section 13 Amends s. 322.271, F.S., relating to the authority to modify, revocation, cancellation, or suspension order.

Section 14 Amends s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.

Section 15 Amends s. 561.11, F.S., relating to selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.

Section 16 Repeals s. 562.111(3), F.S., relating to possession of alcoholic beverages by persons under age 21 prohibited.

Section 17 Amends s. 569.11, F.S., relating to possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 18 years of age prohibited; penalties; jurisdiction; disposition of fines.

Section 18 Amends s. 790.22, F.S., relating to use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.

Section 19 Amends s. 806.13, F.S., relating to criminal mischief; penalties; penalty for minor.

Section 20 Repeals s. 812.0155, F.S., relating to suspension of driver license following an adjudication of guilt for theft.

Section 21 Repeals s. 832.09, F.S., relating to suspension of driver license after warrant or capias is issued in worthless check case.

Section 22 Amends s. 877.112, F.S., relating to nicotine products and nicotine dispensing devices; prohibitions for minors; penalties; civil fines; signage requirements; preemption.

Section 23 Amends s. 938.30, F.S., relating to financial obligations in criminal cases; supplementary proceedings.

Section 24 Amends s. 1003.27, F.S, relating to court procedures and penalties.

Section 25 Amends s. 318.14, F.S., relating to noncriminal traffic infractions; exception; procedures.

Section 26 Amends s. 322.05, F.S., relating to persons not to be licensed.

Section 27 Amends s. 322.27, F.S., relating to the authority of the department to suspend or revoke driver license or identification card.

Section 28 Amends s. 397.951, F.S., relating to treatment and sanctions.

Section 29 Amends s. 1003.01, F.S., relating to definitions, conforming a cross-reference.

Section 30 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The REC estimates that there will be a recurring revenue loss in the amount of $600,000 to the General Revenue fund, and $700,000 to the HSOTF, as a result of removing the requirement, or option, to suspend or revoke a driver license for certain offenses. These sections pertain to offenses related to: alcohol and tobacco offenses for persons under 18, providing alcohol to persons under 21, school attendance requirements, worthless check cases, certain firearms offenses for persons under 18, graffiti offenses, and cases of theft.

The bill may increase access and awareness of the option to perform community service in lieu of paying a court ordered financial obligation; however, the extent to which this may negatively impact state revenues cannot be quantified.

There will also be an indeterminate, negative fiscal impact related to disallowing the suspension of a driver license if the individual's license is suspended solely for inability to pay a court ordered obligation if the individual provides proof that he or she is unable to pay the obligation.

2. Expenditures:

The Clerk of Court Operations Corporation and the Supreme Court may incur some expenses associated with updating and approving the application form for persons seeking indigent status as provided in the bill.

When the uniform traffic citation is updated, DHSMV is required to provide the updated form to local police departments, county sheriffs, and other traffic enforcement agencies. [134]DHSMV estimates editing the uniform traffic citation form will cost $1.4 million in new inventory, as well as an indeterminate amount of programming costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC estimates that there will be recurring revenue loss in the amount of $100,000 to counties and local governments as a result of removing the requirement, or option, to suspend or revoke a driver license for certain offenses. These sections pertain to offenses related to: alcohol and tobacco offenses for persons under 18, providing alcohol to persons under 21, school attendance requirements, worthless check cases, certain firearms offenses for persons under 18, graffiti offenses, and cases of theft.

The bill may increase access and awareness of the option to perform community service in lieu of paying a court ordered financial obligation; however, the extent to which this may negatively impact counties and local governments' revenues cannot be quantified.

There will also be an indeterminate, negative fiscal impact related to disallowing the suspension of a driver license if the individual's license is suspended solely for inability to pay a court ordered obligation if the individual provides proof that he or she is unable to pay the obligation.

2. Expenditures:

The bill may have an impact to clerks of court due to the requirement to competitively bid contracts with collection agencies or private attorneys every two years, and accept the bidder with the lowest surcharge. The significance of this impact is unquantifiable, and it is unknown whether the impact will be positive or negative.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons whose fees are referred to collections may receive a reduction in collections surcharges with the requirement that the collections contract go to the bidder with the lowest surcharge. The bill may increase access and awareness of the option to perform community service in lieu of paying a court ordered financial obligation.

The bill will significantly reduce the number persons having their driver licenses suspended or revoked due to non-driving related reasons. This will increase these persons ability to obtain and maintain employment. Additionally, these persons will not have to pay the fees associated with driver license reinstatement.

D. FISCAL COMMENTS:

[134] Section 316.650(1)(a), F.S.

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2015, the Highway & Waterway Safety Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The bill as originally filed:

- Provided that a driver license could not be suspended for nonpayment of fees;
- Provided for certain waivers of service fees;
- Removed the suspension of a driver license for possession of a controlled substance;
- Provided that the payment of certain reinstatement fees are not required to reinstate a driver license; however, there will be a hold on the issuance of a new license plate or revalidation sticker;
- Prohibited law enforcement officers from confiscating or withholding a valid driver license or state identification card in the course of a routine traffic stop; and
- Required license plates attached to any recovered motor vehicle must be returned within five days.

This analysis is written to the committee substitute as adopted by the Highway & Waterway Safety Subcommittee.

A bill to be entitled

An act relating to driver licenses; amending s. 27.52, F.S.; requiring certain information to be included on an application to the clerk of court for indigent status; amending s. 28.246, F.S.; revising requirements relating to the payment of court-related fines or other monetary penalties, fees, charges, and costs; authorizing, rather than requiring, a clerk of court to pursue collection of certain fees, charges, fines, costs, or liens under certain circumstances; requiring a clerk of court to competitively bid a contract with a collection agency or private attorney under certain circumstances, subject to certain requirements; prohibiting the clerk from assessing any collections transfer surcharge; prohibiting the collection agency or private attorney from imposing certain additional fees or surcharges; amending s. 316.650, F.S.; requiring traffic citation forms to include certain language relating to payment of a penalty; amending s. 318.15, F.S.; prohibiting the suspension of a person's driver license solely for failure to pay a penalty if the person demonstrates to the court that he or she is unable to pay such penalty; requiring the person to provide documentation meeting certain requirements to the appropriate clerk of court in order to be considered unable to pay;

amending s. 318.18, F.S.; requiring a court to inquire regarding a person's ability to pay at the time a certain civil penalty is ordered; amending s. 322.055, F.S.; decreasing the period for revocation or suspension of, or delay of eligibility for, driver licenses or driving privileges for certain persons convicted of certain drug offenses; amending s. 322.056, F.S.; decreasing the period for revocation or suspension of, or delay of eligibility for, driver licenses or driving privileges for certain persons found guilty of certain drug offenses; deleting requirements relating to the revocation or suspension of, or delay of eligibility for, driver licenses or driving privileges for certain persons found guilty of certain alcohol or tobacco offenses; repealing s. 322.057, F.S., relating to discretionary revocation or suspension of a driver license for certain persons who provide alcohol to persons under a specified age; amending s. 322.09, F.S.; deleting a provision prohibiting the issuance of a driver license or learner's driver license under certain circumstances; repealing s. 322.091, F.S., relating to school attendance requirements for driving privileges; amending s. 322.245, F.S.; prohibiting the suspension of a person's driver license solely for failure to pay a penalty if the person demonstrates to the court that

he or she is unable to pay such penalty; requiring the person to provide documentation meeting certain requirements to the appropriate clerk of court in order to be considered unable to pay; repealing s. 322.251(7), F.S., relating to notice of suspension or revocation of driving privileges, reasons for reinstatement of such driving privileges, and certain electronic access to identify a person who is the subject of an outstanding warrant or capias for passing worthless bank checks; amending s. 322.271, F.S.; providing that a person whose driver license or privilege to drive has been suspended may have his or her driver license or driving privilege reinstated on a restricted basis under certain circumstances; amending s. 322.34, F.S.; revising the underlying violations resulting in driver license or driving privilege cancellation, suspension, or revocation for which specified penalties apply; amending s. 562.11, F.S.; revising penalties for selling, giving, serving, or permitting to be served alcoholic beverages to a person under a specified age or permitting such person to consume such beverages on licensed premises; repealing s. 562.111(3), F.S., relating to withholding issuance of, or suspending or revoking, a driver license or driving privilege for possession of alcoholic beverages by persons under a specified age;

amending s. 569.11, F.S.; revising penalties for persons under a specified age who knowingly possess, misrepresent their age or military service to purchase, or purchase or attempt to purchase tobacco products; authorizing, rather than requiring, the court to direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend a person's driver license or driving privilege for certain violations; amending s. 790.22, F.S.; revising penalties relating to suspending, revoking, or withholding issuance of driver licenses or driving privileges for minors under a specified age who possess firearms under certain circumstances; deleting provisions relating to penalties for certain offenses involving the use or possession of a firearm by a minor under a specified age; amending s. 806.13, F.S.; deleting provisions relating to certain penalties for criminal mischief by a minor; repealing s. 812.0155, F.S., relating to suspension of a driver license following an adjudication of guilt for theft; repealing s. 832.09, F.S., relating to suspension of a driver license after warrant or capias is issued in worthless check cases; amending s. 877.112, F.S.; revising penalties for persons under a specified age who knowingly possess, misrepresent their age or military service to purchase, or purchase or attempt

to purchase any nicotine product or nicotine dispensing device; authorizing, rather than requiring, the court to direct the department to withhold issuance of or suspend a person's driver license or driving privilege for certain violations; amending s. 938.30, F.S.; authorizing a judge to convert certain statutory financial obligations into court-ordered obligations to perform community service by reliance upon specified information under certain circumstances; amending s. 1003.27, F.S.; deleting provisions relating to procedures and penalties for nonenrollment and nonattendance cases; amending ss. 318.14, 322.05, 322.27, 397.951, and 1003.01, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 27.52, Florida Statutes, is amended to read:

27.52 Determination of indigent status.—

(1) APPLICATION TO THE CLERK.—A person seeking appointment of a public defender under s. 27.51 based upon an inability to pay must apply to the clerk of the court for a determination of indigent status using an application form developed by the Florida Clerks of Court Operations Corporation with final

approval by the Supreme Court.

(a) The application must include, at a minimum, the following financial information:

1. Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.

2. Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, reemployment assistance or unemployment compensation, dividends, interest, rent, trusts, and gifts.

3. Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.

4. All liabilities and debts.

5. If applicable, the amount of any bail paid for the applicant's release from incarceration and the source of the funds.

6. The election or refusal of the option to fulfill any court-ordered financial obligation associated with the case by completing community service as ordered by the court.

The application must include a signature by the applicant which attests to the truthfulness of the information provided. The

application form developed by the corporation must include notice that the applicant may seek court review of a clerk's determination that the applicant is not indigent, as provided in this section.

Section 2. Subsections (4) and (6) of section 28.246, Florida Statutes, are amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(4) The clerk of the circuit court shall accept partial payments for court-related fees, service charges, costs, and fines in accordance with the terms of an established payment plan. An individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. ~~The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs.~~ A monthly payment amount, calculated based upon all fees and all anticipated costs, may ~~is presumed to correspond to the person's ability to pay if the amount does~~ not exceed 2 percent of the applicant's ~~person's~~ annual net income, as defined in s. 27.52(1), divided by 12, without the consent of the applicant. The court may review the reasonableness of the payment plan.

(6) A clerk of court may ~~shall~~ pursue the collection of any fees, service charges, fines, court costs, and liens for the

payment of attorney fees and costs pursuant to s. 938.29 which remain unpaid after 90 days by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559. In pursuing the collection of such unpaid financial obligations through a private attorney or collection agent, the clerk of the court must attempt ~~have attempted~~ to collect the unpaid amount through a collection court, collections docket, or other collections process, if any, established by the court, find this to be cost-effective and follow any applicable procurement practices. The collection fee, including any reasonable attorney ~~attorney's~~ fee, paid to any attorney or collection agent retained by the clerk may be added to the balance owed ~~in an amount not to exceed 40 percent of the amount owed~~ at the time the account is referred to the attorney or agent for collection.

(a) If a clerk of court wishes to pursue collection by referring an account to a collection agent or private attorney as provided in this subsection, the clerk, at least every 2 years, shall competitively bid a contract with a collection agency or private attorney and shall accept the bidder with the lowest percentage surcharge added to the referred account.

(b) The clerk may not assess any collections transfer surcharge.

(c) The collection agency or private attorney may not impose any additional fees or surcharges other than the agency's

or attorney's contractually agreed upon surcharge.

(d) The clerk shall give the private attorney or collection agent the application for the appointment of court-appointed counsel regardless of whether the court file is otherwise confidential from disclosure.

Section 3. Paragraphs (b), (c), and (d) of subsection (1) of section 316.650, Florida Statutes, are redesignated as paragraphs (c), (d), and (e), respectively, a new paragraph (b) is added to that subsection, and present paragraph (c) of that section is amended, to read:

316.650 Traffic citations.—

(1)

(b) The traffic citation form must include language indicating that a person may enter into a payment plan with the clerk of court to pay a penalty. The form must also indicate that a person ordered to pay a penalty for a noncriminal traffic infraction who is unable to comply due to demonstrable financial hardship will be allowed by the court to satisfy payment by participating in community service pursuant to s. 318.18(8)(b).

(d) ~~(c)~~ Notwithstanding paragraphs (a) and (c) ~~(b)~~, a traffic enforcement agency may produce uniform traffic citations by electronic means. Such citations must be consistent with the state traffic court rules and the procedures established by the department and must be appropriately numbered and inventoried. Affidavit-of-compliance forms may also be produced by electronic means.

Section 4. Subsection (4) is added to section 318.15, Florida Statutes, to read:

318.15 Failure to comply with civil penalty or to appear; penalty.—

(4) Notwithstanding any other law, a person's driver license may not be suspended solely for failure to pay a penalty if the person demonstrates to the court that he or she is unable to pay the penalty. A person is considered unable to pay if the person provides documentation to the appropriate clerk of court evidencing that:

(a) The person receives reemployment assistance or unemployment compensation pursuant to chapter 443;

(b) The person is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income program or Social Security Disability Insurance program;

(c) The person receives temporary cash assistance pursuant to chapter 414;

(d) The person is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq.;

(e) The person has been placed on a payment plan or payment plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan pursuant to s. 28.246(4); or

(f) The person has been determined to be indigent after

filing an application with the clerk in accordance with s. 27.52 or s. 57.082.

Section 5. Paragraph (b) of subsection (8) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(8)

(b)1.a. If a person has been ordered to pay a civil penalty for a noncriminal traffic infraction and the person is unable to comply with the court's order due to demonstrable financial hardship, the court shall allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid.

b. The court shall inquire regarding the person's ability to pay at the time the civil penalty is ordered.

c.~~b.~~ If a court orders a person to perform community service, the person shall receive credit for the civil penalty at the specified hourly credit rate per hour of community service performed, and each hour of community service performed shall reduce the civil penalty by that amount.

2.a. As used in this paragraph, the term "specified hourly credit rate" means the wage rate that is specified in 29 U.S.C. s. 206(a)(1) under the federal Fair Labor Standards Act of 1938, that is then in effect, and that an employer subject to such provision must pay per hour to each employee subject to such

provision.

b. However, if a person ordered to perform community service has a trade or profession for which there is a community service need, the specified hourly credit rate for each hour of community service performed by that person shall be the average prevailing wage rate for the trade or profession that the community service agency needs.

3.a. The community service agency supervising the person shall record the number of hours of community service completed and the date the community service hours were completed. The community service agency shall submit the data to the clerk of court on the letterhead of the community service agency, which must also bear the notarized signature of the person designated to represent the community service agency.

b. When the number of community service hours completed by the person equals the amount of the civil penalty, the clerk of court shall certify this fact to the court. Thereafter, the clerk of court shall record in the case file that the civil penalty has been paid in full.

4. As used in this paragraph, the term:

a. "Community service" means uncompensated labor for a community service agency.

b. "Community service agency" means a not-for-profit corporation, community organization, charitable organization, public officer, the state or any political subdivision of the state, or any other body the purpose of which is to improve the

quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions.

Section 6. Subsections (1) through (4) of section 322.055, Florida Statutes, are amended to read:

322.055 Revocation or suspension of, or delay of eligibility for, driver license for persons 18 years of age or older convicted of certain drug offenses.—

(1) Notwithstanding s. 322.28, upon the conviction of a person 18 years of age or older for possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance, the court shall direct the department to revoke the driver license or driving privilege of the person. The period of such revocation shall be 6 months ~~1 year~~ or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. However, the court may, in its sound discretion, direct the department to issue a license for driving privilege restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on length of suspension or

revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(2) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is eligible by reason of age for a driver license or privilege, the court shall direct the department to withhold issuance of such person's driver license or driving privilege for a period of 6 months ~~1 year~~ after the date the person was convicted or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. However, the court may, in its sound discretion, direct the department to issue a license for driving privilege restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(3) If a person 18 years of age or older is convicted for

the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person's driver license or driving privilege is already under suspension or revocation for any reason, the court shall direct the department to extend the period of such suspension or revocation by an additional period of 6 months ~~1 year~~ or until the person is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. However, the court may, in its sound discretion, direct the department to issue a license for driving privilege restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

(4) If a person 18 years of age or older is convicted for the possession or sale of, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance and such person is ineligible by reason of age for a driver license or driving privilege, the court shall direct the department to

withhold issuance of such person's driver license or driving privilege for a period of 6 months ~~1 year~~ after the date that he or she would otherwise have become eligible or until he or she becomes eligible by reason of age for a driver license and is evaluated for and, if deemed necessary by the evaluating agency, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. However, the court may, in its sound discretion, direct the department to issue a license for driving privilege restricted to business or employment purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. A driver whose license or driving privilege has been suspended or revoked under this section or s. 322.056 may, upon the expiration of 6 months, petition the department for restoration of the driving privilege on a restricted or unrestricted basis depending on the length of suspension or revocation. In no case shall a restricted license be available until 6 months of the suspension or revocation period has expired.

Section 7. Section 322.056, Florida Statutes, is amended to read:

322.056 Mandatory revocation or suspension of, or delay of eligibility for, driver license for persons under age 18 found guilty of ~~certain alcohol,~~ drug~~, or tobacco~~ offenses; prohibition.—

(1) Notwithstanding ~~the provisions of~~ s. 322.055, if a

person under 18 years of age is found guilty of or delinquent for a violation of ~~s. 562.11(2), s. 562.111, or~~ chapter 893, and:

(a) The person is eligible by reason of age for a driver license or driving privilege, the court shall direct the department to revoke or to withhold issuance of his or her driver license or driving privilege for a period of 6 months~~:~~

~~1. Not less than 6 months and not more than 1 year for the first violation.~~

~~2. Two years, for a subsequent violation~~.

(b) The person's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the department to extend the period of suspension or revocation by an additional period of 6 months~~:~~

~~1. Not less than 6 months and not more than 1 year for the first violation.~~

~~2. Two years, for a subsequent violation~~.

(c) The person is ineligible by reason of age for a driver license or driving privilege, the court shall direct the department to withhold issuance of his or her driver license or driving privilege for a period of~~:~~

~~1. Not less than~~ 6 months ~~and not more than 1 year~~ after the date on which he or she would otherwise have become eligible~~, for the first violation~~.

~~2. Two years after the date on which he or she would otherwise have become eligible, for a subsequent violation.~~

~~However, the court may, in its sound discretion, direct the department to issue a license for driving privileges restricted to business or employment purposes only, as defined in s. 322.271, if the person is otherwise qualified for such a license.~~

~~(2) If a person under 18 years of age is found by the court to have committed a noncriminal violation under s. 569.11 or s. 877.112(6) or (7) and that person has failed to comply with the procedures established in that section by failing to fulfill community service requirements, failing to pay the applicable fine, or failing to attend a locally available school-approved anti-tobacco program, and:~~

~~(a) The person is eligible by reason of age for a driver license or driving privilege, the court shall direct the department to revoke or to withhold issuance of his or her driver license or driving privilege as follows:~~

~~1. For the first violation, for 30 days.~~

~~2. For the second violation within 12 weeks of the first violation, for 45 days.~~

~~(b) The person's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the department to extend the period of suspension or revocation by an additional period as follows:~~

~~1. For the first violation, for 30 days.~~

~~2. For the second violation within 12 weeks of the first~~

~~violation, for 45 days.~~

~~(c) The person is ineligible by reason of age for a driver license or driving privilege, the court shall direct the department to withhold issuance of his or her driver license or driving privilege as follows:~~

~~1. For the first violation, for 30 days.~~

~~2. For the second violation within 12 weeks of the first violation, for 45 days.~~

~~Any second violation of s. 569.11 or s. 877.112(6) or (7) not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in this subsection.~~

~~(3) If a person under 18 years of age is found by the court to have committed a third violation of s. 569.11 or s. 877.112(6) or (7) within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to suspend or withhold issuance of his or her driver license or driving privilege for 60 consecutive days. Any third violation of s. 569.11 or s. 877.112(6) or (7) not within the 12-week period after the first violation will be treated as a first violation and in the same manner as provided in subsection (2).~~

(2)~~(4)~~ A penalty imposed under this section shall be in addition to any other penalty imposed by law.

~~(5) The suspension or revocation of a person's driver~~

~~license imposed pursuant to subsection (2) or subsection (3), shall not result in or be cause for an increase of the convicted person's, or his or her parent's or legal guardian's, automobile insurance rate or premium or result in points assessed against the person's driving record.~~

Section 8. Section 322.057, Florida Statutes, is repealed.

Section 9. Subsection (3) of section 322.09, Florida Statutes, is amended to read:

322.09 Application of minors; responsibility for negligence or misconduct of minor.—

~~(3) The department may not issue a driver license or learner's driver license to any applicant under the age of 18 years who is not in compliance with the requirements of s. 322.091.~~

Section 10. Section 322.091, Florida Statutes, is repealed.

Section 11. Subsection (6) is added to section 322.245, Florida Statutes, to read:

322.245 Suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.—

(6) Notwithstanding any other law, a person's driver license may not be suspended solely for failure to pay a penalty

or court obligation if the person demonstrates to the court that he or she is unable to pay the penalty or court obligation. A person is considered unable to pay if the person provides documentation to the appropriate clerk of court evidencing that:

(a) The person receives reemployment assistance or unemployment compensation pursuant to chapter 443;

(b) The person is disabled and incapable of self-support or receives benefits under the federal Supplemental Security Income program or Social Security Disability Insurance program;

(c) The person receives temporary cash assistance pursuant to chapter 414;

(d) The person is making payments in accordance with a confirmed bankruptcy plan under chapter 11, chapter 12, or chapter 13 of the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq.;

(e) The person has been placed on a payment plan or payment plans with the clerk of court which in total exceed what is determined to be a reasonable payment plan pursuant to s. 28.246(4); or

(f) The person has been determined to be indigent after filing an application with the clerk in accordance with s. 27.52 or s. 57.082.

Section 12. Subsection (7) of section 322.251, Florida Statutes, is repealed.

Section 13. Subsection (8) is added to section 322.271, Florida Statutes, to read:

322.271 Authority to modify revocation, cancellation, or suspension order.—

(8) A person whose driver license or driving privilege is suspended under s. 318.15 or s. 322.245 may have his or her driver license or driving privilege reinstated on a restricted basis by the department in accordance with this section.

Section 14. Subsection (10) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(10)(a) Notwithstanding any other provision of this section, if a person does not have a prior forcible felony conviction as defined in s. 776.08, the penalties provided in paragraph (b) apply if a person's driver license or driving privilege is canceled, suspended, or revoked for:

1. Failing to pay child support as provided in s. 322.245 or s. 61.13016;

2. Failing to pay any other financial obligation as provided in s. 322.245 ~~other than those specified in s. 322.245(1)~~;

3. Failing to comply with a civil penalty required in s. 318.15;

4. Failing to maintain vehicular financial responsibility as required by chapter 324;

~~5. Failing to comply with attendance or other requirements for minors as set forth in s. 322.091;~~ or

5.~~6.~~ Having been designated a habitual traffic offender under s. 322.264(1)(d) as a result of suspensions of his or her driver license or driving ~~driver~~ privilege for any underlying violation listed in subparagraphs 1.-4. ~~1.-5.~~

(b)1. Upon a first conviction for knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed in subparagraphs (a)1.-5. ~~(a)1.-6.~~, a person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

2. Upon a second or subsequent conviction for the same offense of knowingly driving while his or her license is suspended, revoked, or canceled for any of the underlying violations listed in subparagraphs (a)1.-5. ~~(a)1.-6.~~, a person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 15. Paragraph (a) of subsection (1) of section 562.11, Florida Statutes, is amended to read:

562.11 Selling, giving, or serving alcoholic beverages to person under age 21; providing a proper name; misrepresenting or misstating age or age of another to induce licensee to serve alcoholic beverages to person under 21; penalties.—

(1)(a)~~1.~~ A person may not sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or permit a person under 21 years of age to consume such beverages on the licensed premises. A person who violates this paragraph ~~subparagraph~~ commits a misdemeanor of the second

degree, punishable as provided in s. 775.082 or s. 775.083. A person who violates this paragraph ~~subparagraph~~ a second or subsequent time within 1 year after a prior conviction commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

~~2. In addition to any other penalty imposed for a violation of subparagraph 1., the court may order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver license or driving privilege, as provided in s. 322.057, of any person who violates subparagraph 1. This subparagraph does not apply to a licensee, as defined in s. 561.01, who violates subparagraph 1. while acting within the scope of his or her license or an employee or agent of a licensee, as defined in s. 561.01, who violates subparagraph 1. while engaged within the scope of his or her employment or agency.~~

~~3. A court that withholds the issuance of, or suspends or revokes, the driver license or driving privilege of a person pursuant to subparagraph 2. may direct the Department of Highway Safety and Motor Vehicles to issue the person a license for driving privilege restricted to business purposes only, as defined in s. 322.271, if he or she is otherwise qualified.~~

Section 16. Subsection (3) of section 562.111, Florida Statutes, is repealed.

Section 17. Subsections (1), (2), and (5) of section 569.11, Florida Statutes, are amended to read:

569.11 Possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 18 years of age prohibited; penalties; jurisdiction; disposition of fines.—

(1) A ~~It is unlawful for any~~ person under 18 years of age may not ~~to~~ knowingly possess any tobacco product. A ~~Any~~ person under 18 years of age who violates ~~the provisions of~~ this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or

(b) For a second or subsequent violation within 12 weeks after ~~of~~ the first violation, a $25 fine.~~; or~~

~~(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.~~

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(2) A ~~It is unlawful for any~~ person under 18 years of age may not ~~to~~ misrepresent his or her age or military service for

the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or ~~to~~ purchase, or attempt to purchase, any tobacco product from a person or a vending machine. A ~~Any~~ person under 18 years of age who violates ~~a provision of~~ this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available; or

(b) For a second or subsequent violation within 12 weeks after ~~of~~ the first violation, a $25 fine~~; or~~

~~(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056~~.

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(5)(a) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1)(a) or

paragraph (2)(a), or attend a school-approved anti-tobacco program, if locally available, the court may ~~must~~ direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may ~~must~~ direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

Section 18. Subsections (5) and (10) of section 790.22, Florida Statutes, are amended to read:

790.22 Use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.—

(5)(a) A minor who violates subsection (3) commits a misdemeanor of the first degree; for a first offense, may serve a period of detention of up to 3 days in a secure detention facility; and, in addition to any other penalty provided by law, shall be required to perform 100 hours of community service.~~;~~ ~~and:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to~~

~~withhold issuance of the minor's driver license or driving privilege for up to 1 year.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of up to 1 year.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.~~

(b) For a second or subsequent offense, a minor who violates subsection (3) commits a felony of the third degree and shall serve a period of detention of up to 15 days in a secure detention facility and shall be required to perform not less than 100 or ~~nor~~ more than 250 hours of community service.~~, and:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to~~

~~extend the period of suspension or revocation by an additional period of up to 2 years.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.~~

For the purposes of this subsection, community service shall be performed, if possible, in a manner involving a hospital emergency room or other medical environment that deals on a regular basis with trauma patients and gunshot wounds.

~~(10) If a minor is found to have committed an offense under subsection (9), the court shall impose the following penalties in addition to any penalty imposed under paragraph (9)(a) or paragraph (9)(b):~~

~~(a) For a first offense:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 1 year.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to~~

~~extend the period of suspension or revocation by an additional period for up to 1 year.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 1 year after the date on which the minor would otherwise have become eligible.~~

~~(b) For a second or subsequent offense:~~

~~1. If the minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of the minor's driver license or driving privilege for up to 2 years.~~

~~2. If the minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period for up to 2 years.~~

~~3. If the minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for up to 2 years after the date on which the minor would otherwise have become eligible.~~

Section 19. Subsections (7) and (8) of section 806.13,

Florida Statutes, are amended to read:

806.13 Criminal mischief; penalties; penalty for minor.—

~~(7) In addition to any other penalty provided by law, if a minor is found to have committed a delinquent act under this section for placing graffiti on any public property or private property, and:~~

~~(a) The minor is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or withhold issuance of the minor's driver license or driving privilege for not more than 1 year.~~

~~(b) The minor's driver license or driving privilege is under suspension or revocation for any reason, the court shall direct the Department of Highway Safety and Motor Vehicles to extend the period of suspension or revocation by an additional period of not more than 1 year.~~

~~(c) The minor is ineligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to withhold issuance of the minor's driver license or driving privilege for not more than 1 year after the date on which he or she would otherwise have become eligible.~~

~~(8) A minor whose driver license or driving privilege is revoked, suspended, or withheld under subsection (7) may elect to reduce the period of revocation, suspension, or withholding by performing community service at the rate of 1 day for each~~

~~hour of community service performed. In addition, if the court determines that due to a family hardship, the minor's driver license or driving privilege is necessary for employment or medical purposes of the minor or a member of the minor's family, the court shall order the minor to perform community service and reduce the period of revocation, suspension, or withholding at the rate of 1 day for each hour of community service performed. As used in this subsection, the term "community service" means cleaning graffiti from public property.~~

Section 20. Section 812.0155, Florida Statutes, is repealed.

Section 21. Section 832.09, Florida Statutes, is repealed.

Section 22. Subsections (6) and (7) and paragraphs (c) and (d) of subsection (8) of section 877.112, Florida Statutes, are amended to read:

877.112 Nicotine products and nicotine dispensing devices; prohibitions for minors; penalties; civil fines; signage requirements; preemption.—

(6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES BY MINORS.—A ~~It is unlawful for any~~ person under 18 years of age may not ~~to~~ knowingly possess any nicotine product or ~~a~~ nicotine dispensing device. A ~~Any~~ person under 18 years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the

person must attend a school-approved anti-tobacco and nicotine program, if locally available; or

(b) For a second or subsequent violation within 12 weeks after ~~of~~ the first violation, a $25 fine.~~; or~~

~~(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.~~

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(7) PROHIBITION ON MISREPRESENTING AGE.—A ~~It is unlawful for any~~ person under 18 years of age may not ~~to~~ misrepresent his or her age or military service for the purpose of inducing a retailer of nicotine products or nicotine dispensing devices or an agent or employee of such retailer to sell, give, barter, furnish, or deliver any nicotine product or nicotine dispensing device, or ~~to~~ purchase, or attempt to purchase, any nicotine product or nicotine dispensing device from a person or a vending machine. A ~~Any~~ person under 18 years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition,

the person must attend a school-approved anti-tobacco and nicotine program, if available; or

(b) For a second or subsequent violation within 12 weeks after ~~of~~ the first violation, a $25 fine.~~; or~~

~~(c) For a third or subsequent violation within 12 weeks of the first violation, the court must direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend or revoke the person's driver license or driving privilege, as provided in s. 322.056.~~

Any second or subsequent violation not within the 12-week time period after the first violation is punishable as provided for a first violation.

(8) PENALTIES FOR MINORS.—

(c) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (6)(a) or paragraph (7)(a), or attend a school-approved anti-tobacco and nicotine program, if locally available, the court may ~~must~~ direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 30 consecutive days.

(d) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as

required by paragraph (6)(b) or paragraph (7)(b), the court may ~~must~~ direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for 45 consecutive days.

Section 23. Subsection (2) of section 938.30, Florida Statutes, is amended to read:

938.30 Financial obligations in criminal cases; supplementary proceedings.—

(2) The court may require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation. The judge may convert the statutory financial obligation into a court-ordered obligation to perform community service, subject to ~~the provisions of~~ s. 318.18(8), after examining a person under oath and determining the person's inability to pay, or by reliance upon information provided under s. 27.52(1)(a)6. A ~~Any~~ person who fails to attend a hearing may be arrested on warrant or capias issued by the clerk upon order of the court.

Section 24. Subsection (2) of section 1003.27, Florida Statutes, is amended to read:

1003.27 Court procedure and penalties.—The court procedure and penalties for the enforcement of the provisions of this part, relating to compulsory school attendance, shall be as follows:

(2) NONENROLLMENT AND NONATTENDANCE CASES.—

~~(a)~~ In each case of nonenrollment or of nonattendance upon

the part of a student who is required to attend some school, when no valid reason for such nonenrollment or nonattendance is found, the district school superintendent shall institute a criminal prosecution against the student's parent.

~~(b) Each public school principal or the principal's designee shall notify the district school board of each minor student under its jurisdiction who accumulates 15 unexcused absences in a period of 90 calendar days. Each designee of the governing body of each private school, and each parent whose child is enrolled in a home education program, may provide the Department of Highway Safety and Motor Vehicles with the legal name, sex, date of birth, and social security number of each minor student under his or her jurisdiction who fails to satisfy relevant attendance requirements and who fails to otherwise satisfy the requirements of s. 322.091. The district school superintendent must provide the Department of Highway Safety and Motor Vehicles the legal name, sex, date of birth, and social security number of each minor student who has been reported under this paragraph and who fails to otherwise satisfy the requirements of s. 322.091. The Department of Highway Safety and Motor Vehicles may not issue a driver license or learner's driver license to, and shall suspend any previously issued driver license or learner's driver license of, any such minor student, pursuant to the provisions of s. 322.091.~~

Section 25. Paragraph (a) of subsection (10) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(10)(a) Any person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for an offense listed under this subsection may, in lieu of payment of fine or court appearance, elect to enter a plea of nolo contendere and provide proof of compliance to the clerk of the court, designated official, or authorized operator of a traffic violations bureau. In such case, adjudication shall be withheld; however, a person may not make an election under this subsection if the person has made an election under this subsection in the preceding 12 months. A person may not make more than three elections under this subsection. This subsection applies to the following offenses:

1. Operating a motor vehicle without a valid driver license in violation of s. 322.03, s. 322.065, or s. 322.15(1), or operating a motor vehicle with a license that has been suspended for failure to appear, failure to pay civil penalty, or failure to attend a driver improvement course pursuant to s. 322.291.

2. Operating a motor vehicle without a valid registration in violation of s. 320.0605, s. 320.07, or s. 320.131.

3. Operating a motor vehicle in violation of s. 316.646.

4. Operating a motor vehicle with a license that has been suspended under s. 61.13016 or s. 322.245 for failure to pay

child support or for failure to pay any other financial obligation as provided in s. 322.245; however, this subparagraph does not apply if the license has been suspended pursuant to s. 322.245(1).

~~5. Operating a motor vehicle with a license that has been suspended under s. 322.091 for failure to meet school attendance requirements.~~

Section 26. Subsections (1) and (2) of section 322.05, Florida Statutes, are amended to read:

322.05 Persons not to be licensed.—The department may not issue a license:

(1) To a person who is under the age of 16 years, except that the department may issue a learner's driver license to a person who is at least 15 years of age and who meets the requirements of s. ~~ss. 322.091 and~~ 322.1615 and of any other applicable law or rule.

(2) To a person who is at least 16 years of age but is under 18 years of age unless the person ~~meets the requirements of s. 322.091 and~~ holds a valid:

(a) Learner's driver license for at least 12 months, with no moving traffic convictions, before applying for a license;

(b) Learner's driver license for at least 12 months and who has a moving traffic conviction but elects to attend a traffic driving school for which adjudication must be withheld pursuant to s. 318.14; or

(c) License that was issued in another state or in a

foreign jurisdiction and that would not be subject to suspension or revocation under the laws of this state.

Section 27. Paragraph (b) of subsection (5) of section 322.27, Florida Statutes, is amended to read:

322.27 Authority of department to suspend or revoke driver license or identification card.—

(5)

(b) If a person whose driver license has been revoked under paragraph (a) as a result of a third violation of driving a motor vehicle while his or her license is suspended or revoked provides proof of compliance for an offense listed in s. 318.14(10)(a)1.-4. ~~318.14(10)(a)1.-5.~~, the clerk of court shall submit an amended disposition to remove the habitual traffic offender designation.

Section 28. Paragraph (i) of subsection (2) of section 397.951, Florida Statutes, is amended to read:

397.951 Treatment and sanctions.—The Legislature recognizes that the integration of treatment and sanctions greatly increases the effectiveness of substance abuse treatment. It is the responsibility of the department and the substance abuse treatment provider to employ the full measure of sanctions available to require participation and completion of treatment to ensure successful outcomes for children in substance abuse treatment.

(2) The department shall ensure that substance abuse treatment providers employ any and all appropriate available

sanctions necessary to engage, motivate, and maintain a child in treatment, including, but not limited to, provisions in law that:

(i) Provide that, pursuant to s. 322.056, for any person under 18 years of age who is found guilty of or delinquent for a violation of ~~s. 562.11(2), s. 562.111, or~~ chapter 893, and is eligible by reason of age for a driver license or driving privilege, the court shall direct the Department of Highway Safety and Motor Vehicles to revoke or to withhold issuance of his or her driver license or driving privilege for a period of 6 months.~~:~~

~~1. Not less than 6 months and not more than 1 year for the first violation.~~

~~2. Two years, for a subsequent violation.~~

Section 29. Subsection (9) of section 1003.01, Florida Statutes, is amended to read:

1003.01 Definitions.—As used in this chapter, the term:

(9) "Dropout" means a student who meets any one or more of the following criteria:

(a) The student has voluntarily removed himself or herself from the school system before graduation for reasons that include, but are not limited to, marriage, or the student has withdrawn from school because he or she has failed the statewide student assessment test and thereby does not receive any of the certificates of completion;

(b) The student has not met the relevant attendance

requirements of the school district pursuant to State Board of Education rules, or the student was expected to attend a school but did not enter as expected for unknown reasons, or the student's whereabouts are unknown;

(c) The student has withdrawn from school, but has not transferred to another public or private school or enrolled in any career, adult, home education, or alternative educational program;

(d) The student has withdrawn from school due to hardship, ~~unless such withdrawal has been granted under the provisions of s. 322.091,~~ court action, expulsion, medical reasons, or pregnancy; or

(e) The student is not eligible to attend school because of reaching the maximum age for an exceptional student program in accordance with the district's policy.

The State Board of Education may adopt rules to implement ~~the provisions of~~ this subsection.

Section 30. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 559 Self-Service Storage Facilities
SPONSOR(S): Regulatory Affairs Committee; Business & Professions Subcommittee; La Rosa
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	8 Y, 2 N, As CS	Anderson	Anstead
2) Regulatory Affairs Committee	15 Y, 3 N, As CS	Anderson	Hamon
3) Appropriations Committee		Keith	Leznoff

SUMMARY ANALYSIS

The Florida Self-storage Facility Act (the Act) controls the relationship between the owner of a self-service storage facility and a tenant with whom the owner has entered into an agreement. The act controls the enforcement of an owner's lien upon all personal property located at the self-service storage facility for failure to pay rent.

Self-service storage facility owners are currently permitted to sell personal property in a tenant's storage unit if the tenant fails to pay rent. The facility owner is required to give notice to the tenant of the intent to sell the property before the sale. After the time provided in the notice expires, the facility owner must publish an advertisement of the sale in a newspaper of general circulation prior to the sale or disposition of the contents of the unit. If there is no newspaper of general circulation in the region, the owner can post the advertisement in at least three conspicuous places in the neighborhood.

The bill provides an alternative method for publishing advertisements for the sale of a tenant's property. The bill allows the advertisement to be published on an Internet website developed by the Department of Financial Services (DFS) for two consecutive weeks. The bill eliminates the option of posting notice of the sale in three conspicuous places in the neighborhood.

The bill provides that a lien sale may be conducted on a public website that typically conducts personal property auctions. The facility owner does not have to be licensed as an auctioneer to post property on such a website.

The bill limits the value of property contained in a storage unit if the value was limited in the rental agreement. This provision appears to be a restatement of current case law.

The bill authorizes a facility owner to have a motor vehicle or watercraft towed, without liability for damages, if a lien is claimed and if the tenant has failed to pay rent or other charges. The bill requires a facility owner to contact the Department of Highway Safety and Motor Vehicles, and the National Motor Vehicle Title Information System if necessary, for information regarding the property owner and any lienholders and requires the facility owner to send written notice to such persons. The facility owner is authorized to sell the motor vehicle or watercraft if the property owner or lienholder receives notice and does not satisfy the lien.

The bill requires the DFS and the CFO to develop and maintain an Internet website to provide public notice of the sale of a self-storage facility tenant's property. The bill provides requirements for the website and requires the DFS to establish, by rule, a fee to cover website development and operational costs for the service of posting notice on its website.

The bill has an indeterminate fiscal impact on state government revenues and a significant fiscal impact on state government expenditures of the DFS. The amount of self-service storage facility owners who would potentially utilize the website is currently unknown. Additionally, the DFS estimates that provisions of the bill will require one full-time equivalent position and additional expenditures of $145,723 in FY 2016-17 and $101,393 annually thereafter to develop, implement, and maintain the website prescribed in the bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation - Self-service storage facilities

Sections 83.801-83.809, F.S., comprise Florida's "Self-storage Facility Act" (the Act). The Act provides remedies for the owner of a self-service storage facility[1] in the event that a tenant does not pay rent. The Act gives the facility owner the ability to deny a tenant access to his or her property if the tenant is more than five days delinquent in paying rent.[2]

The Act provides that the owner of a self-service storage facility has a lien upon all personal property located at a self-service storage facility for rent, labor charges, or other charges in relation to the personal property and for the expenses necessary to preserve or dispose of the property.[3] The facility owner is required to take certain steps before satisfying the lien.

First, the tenant must be provided written notice prior to the sale of the property. The notice must be delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility. The notice must contain a statement showing the amount due, the date it became due, a description of the property, a demand for payment within 14 days, and a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

If the owner has not become current on the payments after the expiration of the time provided by the notice, the facility owner may advertise for a sale of the property. An advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility is located. If there is no such newspaper of general circulation, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility is located.[4] The advertisement must include a brief and general description of the property believed to be contained in the storage unit, the address of the facility, the name of the tenant, and the time, place, and manner of the sale or other disposition, which may not be sooner than 15 days after the first publication.[5]

The facility owner may then satisfy the lien from the proceeds of the sale. The balance, if any, is held by the facility owner for delivery on demand to the tenant. A notice of any balance must be delivered by the facility owner to the tenant in person or by certified mail. The balance is considered abandoned if the tenant does not claim it within two years.[6]

Current law also requires the facility owner to hold the sale proceeds for holders of liens against the property whose liens have priority over the facility owner's lien. The facility owner must provide notice of the amount of sale proceeds to such lienholders by either personal delivery or certified mail.[7]

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[1] "Self-service storage facility" is defined by s. 83.803(1), F.S, as any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property.
[2] s. 83.8055, F.S.
[3] s. 83.805, F.S.
[4] s. 83.806, F.S.
[5] s. 83.806(4)(a), F.S.
[6] s. 83.806(8), F.S.
[7] *Id.*

Current Situation - Department of Financial Services

The Department of Financial Services ("DFS") does not regulate or administer self-service storage facilities. The DFS consists of several divisions and specialized offices,[8] including the Division of Consumer Services and the Bureau of Unclaimed Property.

The Chief Financial Officer ("CFO") is the head of the DFS and is an elected member of the Cabinet, serves as the chief fiscal officer of the State of Florida[9] and is designated as the State Fire Marshal.[10] Additionally, the CFO is designated as the agent for service of process on insurers and other specific entities or persons licensed by the DFS and the Office of Insurance Regulation.[11]

The various departments of the executive branch receive their statutory powers, duties and functions either in a general grant of authority to either the department head or the department by name or by a specific grant with reference to a particular named unit. The department head has discretion when allocating or reallocating those powers, duties and functions that are assigned to them or their department in a general manner.

The Division of Consumer Services within the DFS is tasked with preparing and disseminating information to inform or assist consumers.[12] The Division of Consumer Services manages a Civil Remedy Notice website that provides notice as set forth in s. 624.155, F.S., which requires a party filing suit against an insurer to file notice with both the insurer and the DFS at least 60 days before bringing an action against the insurer.[13] Under ch. 17, F.S., the Bureau of Unclaimed Property (Bureau) within the DFS collects unclaimed property for custody and safekeeping.[14] The Bureau must attempt to locate property owners and return property or proceeds to the person.

Effect of the Bill

The bill provides an alternative method for publishing advertisements for the sale or disposition of the contents of a storage unit after proper notice to the unit owner. The facility owner is permitted to advertise the sale for two consecutive weeks on an Internet website developed by the DFS. The bill provides that the unit owner is responsible for providing notice and the CFO is not liable for technical failures during the 14-day notice period or for the content in the posted notice. The bill eliminates the method of advertising a sale by posting the advertisement in three conspicuous locations in the neighborhood.

The bill provides that a lien sale may be conducted on a public website that typically conducts personal property auctions and provides that the facility owner does not have to be licensed as an auctioneer to post property on such a website.

The bill creates s. 83.806(9), F.S., to limit the value of property that may be stored in a storage unit if the value is limited in the rental agreement. This limits the liability of the facility to the amount stated in the contract if the contents of the unit are damaged or stolen or if the facility owner wrongfully sells the tenant's property. This provision appears to be a restatement of current case law.[15]

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[8] s. 20.121, F.S.
[9] FLA. CONST. art. IV, s. 4.
[10] s. 633.104(1), F.S. Where applicable, references to the CFO in this bill analysis include the CFO's role as State Fire Marshal.
[11] ss. 48.151(1) and 48.151(3), F.S.
[12] s. 20.121(2)(h), F.S.
[13] Department of Financial Services Civil Remedy System, https://apps.fldfs.com/CivilRemedy/ (last visited Feb. 10, 2016).
[14] Ch. 87-105, Laws of Fla. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act (last visited Feb. 10, 2016); *see also* https://www.fltreasurehunt.org/, where DFS has a searchable database of currently unclaimed property.
[15] *Muns v. Shurgard Income Properties Fund 16-Limited Partnership*, 682 So.2d 166 (Fla. 4th DCA 1996).

The bill creates s. 83.806(10), F.S., to allow a facility owner to have the motor vehicle or watercraft towed without liability for damage to the vehicle or watercraft after it is towed. The bill requires a wrecker that takes possession of a motor vehicle or watercraft to comply with notification and sale requirements pursuant to s. 713.78, F.S. Alternatively, the facility owner may sell the motor vehicle or watercraft by public auction. Before the sale, the facility owner must contact the Department of Highway Safety and Motor Vehicles (DHSMV) to determine whether there are any lienholders and for contact information for the motor vehicle or watercraft owner. If the motor vehicle or watercraft is not titled in Florida, the unit owner must search the National Motor Vehicle Title Information System to determine ownership and whether there are any lienholders.

Within 10 days of receiving such information, the facility owner must send written notice to the lienholder and property owner by certified mail. If a motor vehicle or watercraft owner identified is the same as the tenant in default who has been notified pursuant to s. 83.806(1), F.S., the facility owner may send written notice to the property owner by first-class mail. The notice must state that: 1) the facility owner is holding the motor vehicle or watercraft, 2) a lien has attached, 3) payment is required within 30 days, and 4) the property may be sold if the lien is not satisfied. If an owner or lienholder receives notice of the sale and does not satisfy the lien, the facility owner may sell the motor vehicle or watercraft.

The bill creates s. 624.307(10), F.S., to require the DFS and the CFO to develop and maintain an Internet website to provide public notice of the sale of a self-storage facility tenant's property. The bill provides requirements for the website, including information that identifies the tenant; the location of the property; the type of property subject to sale; and the time, place, and manner of the sale. The bill requires the DFS to establish, by rule, a fee for the service of posting notice on its website. The fee must cover the development, implementation, and operational maintenance costs of the website and be deposited into the DFS's Administrative Trust Fund.

B. SECTION DIRECTORY:

Section 1: Amends s. 83.806, F.S., revising requirements for the advertisement of the sale or disposition of property held in a self-service storage facility and providing options and notice requirements for the disposition of motor vehicles or watercraft claimed to be subject to a lien.

Section 2: Amends s. 624.307, F.S., requiring DFS and the CFO to develop an Internet website to provide public notice of the sale of property belonging to a tenant of a self-service storage facility, providing requirements for the website, and authorizing rulemaking.

Section 3: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Effects of the bill have an indeterminate impact to revenues deposited into the Administrative Trust Fund of the DFS. Specifically, the bill directs the DFS to establish, by rule, a fee for the service of posting notice of a sale of property on its website. The fee is intended to provide revenues to the DFS to cover the development, implementation, and operational maintenance costs of the website. However, it is unknown how many self-service storage facility owners will potentially utilize the website and if the revenue generated will support the website's operations.

2. Expenditures:

According to the DFS, estimates for the development, implementation, and operational maintenance of the website prescribed in the bill will require one full-time equivalent position and

additional expenditures of $145,723 in FY 2016-17 and $101,393 annually thereafter.[16] Additionally, the bill requires the DFS to adopt rules regarding the administration, operation, and maintenance of the website; however, the rulemaking requirement has no known fiscal impact as the rule making process is part of the daily operations of the DFS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. If the fee to post on the new website created by the DFS is lower than the cost of placing an advertisement in a newspaper, a self-service storage facility owner that chooses to post an advertisement on the new website and not in a newspaper may see a decrease in the cost of selling property belonging to a tenant in default.

D. FISCAL COMMENTS:

Self-service storage facility owners may be able to more easily recoup losses from tenants who lapse on rent payments and may be able to recover more of the debt owed if they are able to use alternative and less expensive advertising methods. Newspapers of general circulation may experience a corresponding reduction in advertising revenue. The price of a newspaper advertisement for public auction varies widely statewide by publication and metropolitan area. The price also varies according to the day of the week and total run time of the advertisement. The cost per advertisement may not necessarily reflect the total cost per storage unit because a facility owner could purchase one advertisement for the public auction of multiple units.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the DFS to adopt rules regarding the administration, operation, and maintenance of the website.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DFS has indicated that it is taking a neutral position as to the proposed website and neither supports nor opposes the proposed legislation.

The limitation of the liability of the facility owner for the value of the tenant's property, as agreed to in the rental agreement, may have the effect of allowing for an actionable claim for damages by the tenant

[16] Florida Department of Financial Services, Agency Analysis of 2016 House Bill 559, p.1 (Feb. 10, 2016).

if the facility owner sells the property for less than the amount indicated in the contract. This provision could be clarified to indicate that the agreed upon limitation in the contract does not reflect fair market value and is not a determination of the value of the property.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Business & Professions Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that the sale of a tenant's property may be advertised on an Internet website for 2 consecutive weeks rather than in a "commercially reasonable" manner.
- Clarifies subsection (10) and requires a facility or unit owner to contact DHSMV for information regarding the property owner and lienholders before selling a motor vehicle or watercraft at public auction.

On February 4, 2016, the Regulatory Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Requires the Department of Financial Services and the Chief Financial Officer to develop and maintain an Internet website to provide public notice of the sale of a self-storage facility tenant's property and provides minimum guidelines for the website, requires a fee for posting notice, and authorizes rulemaking;
- Revises the alternative method for publishing advertisements to allow posts on the Internet website developed by the Department of Financial Services and limits liability of the Chief Financial Officer for technical failures or contents of notice;
- Requires a wrecker who takes possession of a motor vehicle or watercraft subject to lien to comply with certain notification and sale requirements;
- Requires a facility or unit owner to check the National Motor Vehicle Title Information System or an equivalent commercially available system before conducting a public auction and requires notice to a lienholder or owner to be provided by certified mail;
- Provides that notice can be provided by first-class mail if a motor vehicle or watercraft owner identified in a title search is the same person as the self-service storage facility tenant in default; and
- Conforms terminology.

This analysis is drafted to the committee substitute as passed by the Regulatory Affairs Committee.

A bill to be entitled

An act relating to self-service storage facilities; amending s. 83.806, F.S.; providing that advertisement of a sale or disposition of property may be advertised on a website developed by the Department of Financial Services and the Chief Financial Officer; limiting the liability of the Chief Financial Officer; providing that a lien sale may be conducted on certain websites; providing that a self-service storage facility owner is not required to have a license to post property for online sale; deleting a required alternative form of advertisement; providing limits for the maximum valuation of property under certain circumstances; providing options for the disposition of motor vehicles or watercraft claimed to be subject to a lien; requiring specified notice to lienholders and owners of motor vehicles or watercraft subject to a lien; amending s. 624.307, F.S.; requiring the department and the Chief Financial Officer to develop, operate, and maintain an Internet website to provide public notice of the sale of property belonging to a tenant of a self-service storage facility; providing requirements for the website; providing for the establishment and deposit of fees to cover the cost of the website; providing rulemaking authority; providing an effective date.

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

Section 1. Subsection (4) of section 83.806, Florida Statutes, is amended, and subsections (9) and (10) are added to that section, to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located or advertised for 14 consecutive days on the Internet website developed pursuant to s. 624.307(10). Responsibility for providing notice pursuant to this section rests solely with the owner. The Chief Financial Officer is not liable for technical failures or any other cause that may interfere with or interrupt the required 14-day notice or for the content of or any defects in the notice posted on the website.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to be licensed to post property online for sale pursuant to this subsection. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to dispose of property at any one

sale.

(b) ~~(a)~~ The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 15 days after the first publication or advertisement.

~~(b) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.~~

(9) If the rental agreement contains a limit on the value of property stored in the tenant's storage space, the limit is deemed to be the maximum value of the property stored in that space.

(10) If a lien is claimed on property that is a motor vehicle or a watercraft and rent and other charges related to the property remain unpaid or unsatisfied for 60 days after the

maturity of the obligation to pay the rent and other charges, the facility or unit owner may do one of the following:

(a) The facility or unit owner may have the property towed. If a motor vehicle or watercraft is towed, the facility or unit owner is not liable for the motor vehicle or watercraft or any damages to the motor vehicle or watercraft once a wrecker takes possession of the property. Such wrecker must comply with all notification and sale requirements of s. 713.78.

(b) The facility or unit owner may sell the motor vehicle or watercraft by public auction if an owner or lienholder who receives notice pursuant to this paragraph does not satisfy the lien. Before the public auction, the facility or unit owner must search the Department of Highway Safety and Motor Vehicles' database to determine the existence and identity of any lienholder and the name and address of the owner of the motor vehicle or watercraft. If the motor vehicle or watercraft is not titled in this state, the facility or unit owner must search the National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration, the existence and identity of any lienholder, and the name and address of the owner of the motor vehicle or watercraft. Within 10 days after receipt of such information, the facility or unit owner must send written notice to the lienholder and the owner, by certified mail, stating that:

1. Such motor vehicle or watercraft is being held by the facility or unit owner;

2. A lien has attached;

3. Payment must be made within 30 days after notification to satisfy the lien and take possession of the motor vehicle or watercraft; and

4. The facility or unit owner may sell the motor vehicle or watercraft by public auction if the lien is not satisfied.

(c) If an owner identified as part of a search conducted pursuant to paragraph (b) is the same as the tenant in default who has been notified pursuant to subsection (1), the facility or unit owner may send written notice to the owner by first-class mail to satisfy the notice requirements of paragraph (b).

Section 2. Subsection (10) is added to section 624.307, Florida Statutes, to read:

624.307 General powers; duties.—

(10)(a) The department and the Chief Financial Officer shall develop, operate, and maintain an Internet website to provide public notice of the sale of property belonging to a tenant of a self-service storage facility, as defined in s. 83.803.

(b) The website must, at a minimum, include information concerning the identity of the tenant, the location of the property, the type of property subject to sale, and the time, place, and manner of sale.

(c) The department shall establish by rule a fee for the service of posting notice of the sale of property on behalf of a self-service storage facility owner. The fee must cover the cost

of building, maintaining, and operating the website and shall be deposited into the Department of Financial Services Administrative Trust Fund.

(d) The department may adopt rules for the administration, operation, and maintenance of the website.

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	_____	

Committee/Subcommittee hearing bill: Appropriations Committee
Representative La Rosa offered the following:

Amendment (with title amendment)

Remove lines 41-135 and insert:

pursuant to s. 25.3861, F.S. Responsibility for providing notice pursuant to this section rests solely with the owner. The Office of the State Courts Administrators is not liable for technical failures or any other cause that may interfere with or interrupt the required 14-day notice or for the content of or any defects in the notice posted on the website.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to be licensed to post property online for sale pursuant to this subsection. Inasmuch as any sale may involve property of more than one tenant, a single

advertisement may be used to dispose of property at any one sale.

(b) ~~(a)~~ The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 15 days after the first publication or advertisement.

~~(b) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in not fewer than three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.~~

(9) If the rental agreement contains a limit on the value of property stored in the tenant's storage space, the limit is deemed to be the maximum value of the property stored in that space.

(10) If a lien is claimed on property that is a motor vehicle or a watercraft and rent and other charges related to

the property remain unpaid or unsatisfied for 60 days after the maturity of the obligation to pay the rent and other charges, the facility or unit owner may do one of the following:

(a) The facility or unit owner may have the property towed. If a motor vehicle or watercraft is towed, the facility or unit owner is not liable for the motor vehicle or watercraft or any damages to the motor vehicle or watercraft once a wrecker takes possession of the property. Such wrecker must comply with all notification and sale requirements of s. 713.78.

(b) The facility or unit owner may sell the motor vehicle or watercraft by public auction if an owner or lienholder who receives notice pursuant to this paragraph does not satisfy the lien. Before the public auction, the facility or unit owner must search the Department of Highway Safety and Motor Vehicles' database to determine the existence and identity of any lienholder and the name and address of the owner of the motor vehicle or watercraft. If the motor vehicle or watercraft is not titled in this state, the facility or unit owner must search the National Motor Vehicle Title Information System or an equivalent commercially available system to determine the state of registration, the existence and identity of any lienholder, and the name and address of the owner of the motor vehicle or watercraft. Within 10 days after receipt of such information, the facility or unit owner must send written notice to the lienholder and the owner, by certified mail, stating that:

1. Such motor vehicle or watercraft is being held by the facility or unit owner;

2. A lien has attached;

3. Payment must be made within 30 days after notification to satisfy the lien and take possession of the motor vehicle or watercraft; and

4. The facility or unit owner may sell the motor vehicle or watercraft by public auction if the lien is not satisfied.

(c) If an owner identified as part of a search conducted pursuant to paragraph (b) is the same as the tenant in default who has been notified pursuant to subsection (1), the facility or unit owner may send written notice to the owner by first class mail to satisfy the notice requirements of paragraph (b).

Section 2. Section 25.3861, Florida Statutes, is created to read:

25.3861 Electronic notice of the sale of property.-

(1)(a) The Office of the State Courts Administrators shall develop, operate, and maintain an Internet website to provide public notice of the sale of property belonging to a tenant of a self-service storage facility, as defined in s. 83.803.

(b) The website must, at a minimum, include information concerning the identity of the tenant, the location of the property, the type of property subject to sale, and the time, place, and manner of sale.

Section 3. For the 2016-2017 fiscal year, the recurring sum of $101,393 and the nonrecurring sum of $44,330 from the General

Revenue Fund is appropriated to the Office of the State Courts Administrators, and one full-time equivalent position with associated salary rate of 60,000 is authorized, for the purpose of implementing this act.

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

Remove lines 5-25 and insert:

on a website developed by the Office of the State Courts Administrators; limiting the liability of the Office of the State Courts Administrators; providing that a lien sale may be conducted on certain websites; providing that a self-service storage facility owner is not required to have a license to post property for online sale; deleting a required alternative form of advertisement; providing limits for the maximum valuation of property under certain circumstances; providing options for the disposition of motor vehicles or watercraft claimed to be subject to a lien; requiring specified notice to lienholders and owners of motor vehicles or watercraft subject to alien; creating s. 25.3861, F.S.; requiring the Office of the State Courts Administrators to develop, operate, and maintain an Internet website to provide public notice of the sale of property belonging to a tenant of a self-service storage facility; providing requirements for the website; providing appropriations; providing

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 889 Contraband Forfeiture
SPONSOR(S): Criminal Justice Subcommittee; Metz and Caldwell
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	9 Y, 2 N, As CS	Keegan	White
2) Appropriations Committee		Smith	Leznoff
3) Judiciary Committee			

SUMMARY ANALYSIS

Sections 932.701-932.706, F.S., comprise the Florida Contraband Forfeiture Act (hereafter the "Act"), which provides for the seizure and civil forfeiture of property related to criminal and noncriminal violations of law. The forfeiture procedure advances primarily by a two-step process: the seizure or other initial restraint on the property is applied; and the forfeiture itself occurs once it is determined in court that the property can be legally forfeited.

The bill amends the requirements that apply to seizure, the review of seizures, and forfeiture procedures in a number of ways, as follows:

- Property seizure is unauthorized until the arrest of the property owner for a criminal violation that renders the property a contraband article.
- If at least 90 days has elapsed since the property owner's arrest and the seizing agency has failed to locate the owner, the property becomes contraband and may be forfeited.
- The court shall order the seized property forfeited to the seizing agency upon clear and convincing evidence that:
    - The property has been used in violation of a criminal law that renders the property a contraband article;
    - The claimant is the owner of the property; and
    - The owner was prosecuted for the criminal violation that formed the basis for the forfeiture proceeding, and the case has been discharged by any of the enumerated means.
- If the court finds that a perfected security interest applies to the property or the criminal case that formed the basis for the forfeiture proceeding was discharged by acquittal, dismissal, or nolle prosequi, the seizing agency shall return the property to the owner within five days.
- Specified parties in seizing agencies must review forfeiture settlements, perform annual seizure reviews, and review seizures for legal sufficiency. Agencies must address deficiencies raised by a review and create written policies promoting releasing property.
- Law enforcement officer's employment and compensation may not depend on seizure quotas.
- Specified law enforcement officers must receive training on seizure and forfeiture.
- The percentage of proceeds that must be donated to specified causes increases from 15 percent to 25 percent for qualifying agencies that acquire at least $15,000 through the Act during a fiscal year.
- Any law enforcement agency that does not comply with the reporting requirements is subject to a civil fine up to $5,000.

The bill would have an indeterminate fiscal impact to state and local revenue.

The bill would have an indeterminate fiscal impact to local expenditures.

This bill would have an insignificant fiscal impact to state expenditures.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Contraband Forfeiture Act

Sections 932.701-932.706, F.S., comprise the Florida Contraband Forfeiture Act (hereafter the "Act"), which provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law. Contraband and other property may be seized when utilized during or for the purpose of violating the Act. Property constituting a "contraband article" includes:

- A controlled substance as defined in ch. 893, F.S., or a substance, device, paraphernalia, or currency or other means of exchange that was used, attempted, or intended to be used in violation of ch. 893, F.S.;[1]
- Gambling paraphernalia, lottery tickets, money, currency, or other means of exchange which was used, attempted, or intended to be used in violation of Florida gambling laws;
- Equipment, liquid or solid, which was used, attempted, or intended to be used, in violation of Florida beverage or tobacco laws;
- Motor fuel upon which the motor fuel tax has not been paid;
- Personal property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds obtained from a violation of the Act;
- Real property that was used or attempted to be used as an instrumentality in, or to aid or abet the commission of, any felony, or which is acquired by proceeds from a violation of the Act;
- Any personal property in the possession of or belonging to any person who takes aquaculture products in violation of s. 812.014(2)(c), F.S.;
- A motor vehicle offered for sale in violation of s. 320.28, F.S.;
- A motor vehicle used in the course of committing a violation of s. 322.34(9)(a), F.S.;
- Photographs, films, or other recorded images, recorded in violation of s. 810.145, F.S., and possessed for amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person;
- Real property which is acquired by the proceeds of Medicaid fraud under ss. 409.920, F.S., or 409.9201, F.S.;
- Personal property in the possession of, or belonging to, any person which is acquired by the proceeds of Medicaid fraud under ss. 409.920, F.S., or 409.9201, F.S.; and
- Personal property that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of s. 509.144, F.S.[2]

Under the Act, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of the Act or in, upon, or by the means of which a violation of the Act has or is taking place, may be seized.[3] The following criminal and noncriminal acts are specifically prohibited under the Act:

- To transport, carry, or convey any contraband article in, upon, or by means of any vessel, motor vehicle, or aircraft.
- To conceal or possess any contraband article.
- To use any vessel, motor vehicle, aircraft, other personal property, or real property to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article.

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[1] The totality of the facts presented by the State must clearly establish probable cause to believe that a nexus exists between the article seized and the narcotics activity. s. 932.701(2)(a)1., F.S.

[2] s. 932.701(2)(a), F.S.

[3] s. 932.703(1), F.S.

- To conceal, or possess, or use any contraband article as an instrumentality in the commission of or in aiding or abetting in the commission of any felony or violation of the Florida Contraband Forfeiture Act.
- To acquire real or personal property by the use of proceeds obtained in violation of the Florida Contraband Forfeiture Act.[4]

The forfeiture procedure advances primarily by a two-step process: the seizure or other initial restraint on the property is applied; and the forfeiture itself occurs once it is determined in court that the property can be legally forfeited.[5]

Seizure

As mentioned above, the property specified in the Act may be seized and forfeited when the property has been used in violation of the Act, or in, upon, or by means of which a violation of the Act has or is taking place.[6] Personal property may be seized when the violation occurs or after the violation, if the person entitled to be notified[7] is notified at the time of the seizure or by certified mail.[8] Real property can only be seized by the process of *lis pendens*[9] after a violation of the Act has occurred, and prior to when the person entitled to notice has been given the opportunity to attend a preseizure adversarial hearing[10] to determine the validity of the seizure.[11] As soon as a seizure takes place, all rights to, interest in, and title to contraband articles used in violation of the Act shall immediately vest[12] in the law enforcement agency that performed the seizure.[13]

Adversarial preliminary hearings are conducted before or after a seizure to determine whether there is probable cause to believe that the property was used, is being used, was attempted to the used, or was intended to be used in violation of the Act.[14] If the court determines that probable cause is established, the court shall authorize the seizure or continued seizure of the subject contraband.[15]

Forfeiture Proceedings

The seizing agency must promptly proceed[16] against the property by filing a complaint[17] in the circuit court in the jurisdiction where the seizure or the offense occurred.[18] Forfeiture proceedings must be decided by a jury trial unless the claimant waives that right.[19] Unlike the probable cause standard used in adversarial preliminary hearings, property may not be forfeited unless the seizing agency proves by a preponderance of the evidence[20] that the owner either knew, or should have known that the property

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[4] s. 932.702, F.S.
[5] *Dept. of Law Enforcement v. Real Property*, 588 So. 2d 957 (Fla. 1991).
[6] s. 932.703(1), F.S.
[7] A person entitled to notice includes any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry. s. 932.701(2)(e), F.S.
[8] s. 932.703(2)(a), F.S.
[9] Lis pendens is Latin for "a suit pending." In modern usage it means a written notice that a lawsuit has been filed to decide the title to, or property interest in, real property. THE FREE DICTIONARY, *Lis Pendens*, http://legal-dictionary.thefreedictionary.com/lis+pendens (last visited Jan. 21, 2016).
[10] Preseizure adversarial hearings are provided under s. 932.703(2)(c) and (d), F.S., discussed in further detail under the Forfeiture section, herein.
[11] s. 932.703(2)(b), F.S.
[12] "Vested" means "[a]ccrued; fixed; settled; absolute; having the character or giving the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. THE LAW DICTIONARY, *Vested*, http://thelawdictionary.org/vested/ (last visited Jan. 11, 2016).
[13] s. 932.703(c), F.S.
[14] s. 932.703(2)(c), F.S.
[15] *Id.*
[16] s. 932.701(2)(c), F.S.
[17] A "complaint" is a petition for forfeiture filed in the civil division of the circuit court by the seizing agency requesting the court to issue a judgment of forfeiture. s. 932.701(2)(d), F.S.
[18] s. 932.704(4), F.S.
[19] s. 932.704(3), F.S.; *Dept. of Law Enforcement v. Real Property*, 588 So. 2d 967.
[20] "Preponderance of the evidence" is a legal standard that means the evidence presented in court is more convincing of a point or position than other evidence that is presented to the contrary. THE LAW DICTIONARY, *Preponderance of Evidence*, http://thelawdictionary.org/preponderance-of-evidence/ (last visited Jan. 11, 2016).

was being used or was likely to be used for criminal activity.[21] Upon clear and convincing evidence that the contraband article was being used in violation of the Act, the court shall order the seized property forfeited to the seizing agency.[22] Once this occurs, the right, title, and interest in and to such property shall be perfected in the seizing agency, subject only to the rights of bona fide lienholders.[23]

Use and Disposition of Forfeited Assets

Once a seizing agency has been awarded a final judgment granting forfeiture of property, the agency may do any of the following:

- Retain the property for agency use;
- Sell the property at public auction or by sealed bid to the highest bidder, except for real property, which must be sold in a commercially reasonable manner; or
- Salvage, trade, or transfer the property to any public or nonprofit organization.[24]

When the forfeited property has a lien attached to it that is preserved by the court,[25] the agency must either sell the property and apply the proceeds toward satisfying the lien, or satisfy the lien before disposing of the property in one of the ways described above.[26]

Should the seizing agency choose to sell forfeited property, the proceeds may not be used to meet normal operating expenses of the agency.[27] Rather, the proceeds must be distributed with the following priority:

- Satisfaction of any liens preserved by the court during forfeiture proceedings.
- Payment of the cost incurred to the seizing agency for storage, maintenance, security and forfeiture of the property.
- Payment of the court costs incurred from the forfeiture proceeding.
- For the 2015-2016 fiscal year only, the funds in a special law enforcement trust fund established by a municipality may be used to reimburse the general fund of the municipality for advances from the general fund to the special law enforcement trust fund prior to October 1, 2001.[28]

When the seizing agency is a county or municipal agency, the remaining proceeds from a sale of forfeited goods shall be deposited into a special law enforcement trust fund that may be used only for specific expenses.[29] The funds may be expended in accordance with the following requirements:

- The funds may only be used for school resource officer, crime prevention, safe neighborhood programs, drug abuse education, drug prevention programs, or other approved law enforcement purposes.[30]
- The funds may not be used to meet normal operating needs of the law enforcement agency.[31]
- Any local law enforcement agency that acquires at least $15,000 through the Act within one fiscal year must donate at least 15 percent of the proceeds for the support of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer programs.[32]

Effect of the Bill

The bill restricts the methods by which a seizing agency may seize and forfeit property.

- A seizure cannot occur until or after the arrest of the owner of the property for a violation of a criminal law that renders the property a contraband article.

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[21] s. 932.703(6)(a), F.S.
[22] s. 932.704(8), F.S.
[23] *Id.*
[24] s. 932.7055, F.S.
[25] s. 932.703(6)(b), F.S.
[26] s. 932.7055(3)(a) and (b), F.S.
[27] s. 932.7055(5)(a), F.S.
[28] s. 932.7055(4)(a), F.S.
[29] s. 932.7055(5)(a), F.S.
[30] s. 932.7055(5)(c)1., F.S.
[31] s. 932.7055(5)(c)2., F.S.
[32] s. 932.7055(5)(c)3., F.S.

- If at least 90 days has elapsed since the arrest of the owner of the property, and the seizing agency has failed to locate the owner of the property after a diligent search, the property may be deemed contraband and forfeited.
- The court shall order the seized property forfeited only upon clear and convincing evidence that:
    - The property has been used in violation of a criminal law that renders the property a contraband article;
    - The claimant is the owner of the property; and
    - The owner was prosecuted for the criminal violation that formed the basis for the forfeiture proceeding, and has been placed into a pretrial intervention program, a diversion program, a confidential informants program, entered a plea of guilty or nolo contendere, or has been found guilty at trial, regardless of adjudication of guilt.
- If the court determines that a perfected security interest applies to the property or the criminal case that formed the basis for the forfeiture proceeding was discharged by acquittal, dismissal, or nolle prosequi, the seizing agency shall return the property to the owner within five days.

The bill amends the reporting and review requirements that apply to property seizure and forfeiture, as follows:

- The head of the seizing agency or a subordinate must review all forfeiture settlements.
- Seizing agencies must review the seizures annually, at a minimum.
- If a review reveals deficiencies, the seizing agency must take prompt action to comply with the Act.
- The employment, salary, promotion, or other compensation of a law enforcement officer may not depend on seizure quotas.
- A supervisor must promptly review the probable cause supporting a seizure. The legal counsel for the seizing agency must be notified of all seizures as soon as possible and must review the seizure for legal sufficiency.
- Seizing agencies shall adopt and implement written policies and procedures promoting the prompt release of seized property in specified circumstances and review each claim of interest in seized property.
- The settlement of any forfeiture action must be consistent with the Act and the seizing agency's policy.
- Law enforcement officers that perform property seizures must receive training and continuing education as required by the Act, and each seizing agency must retain records of compliance.

The bill increases the percentage of proceeds that must be donated from 15 percent to 25 percent for local law enforcement agencies that acquire at least $15,000 through the Act within one fiscal year.

The bill requires law enforcement agencies to submit reports to the Florida Department of Law Enforcement (FDLE) as follows:

- All law enforcement agencies must submit annual reports to FDLE regarding whether the agency has seized or forfeited property under the Act.
- All law enforcement agencies that received or expended forfeited property or proceeds of forfeited property must submit an annual report by October 10 documenting the receipts and expenditures.
- The report must specify the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended.

Any law enforcement agency that does not comply with the reporting requirements is subject to a civil fine up to $5,000. The fine will not apply to agencies that substantially comply with the requirements within 60 days of receipt of the notice of noncompliance from FDLE.

The bill requires FDLE to submit an annual report to the Office of Program Policy Analysis and Government Accountability (OPPAGA) compiling the data in the annual reports submitted by the law enforcement agencies.

The bill corrects statutory references and reenacts a section of statute to reflect the changes made by the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 932.701, F.S., relating to short title; definitions.

Section 2. Amends s. 932.703, F.S., relating to forfeiture of contraband article; exceptions.

Section 3. Amends s. 932.704, F.S., relating to forfeiture proceedings.

Section 4. Amends s. 932.7055, F.S., relating to disposition of liens and forfeited property.

Section 5. Creates s. 932.7061, F.S., relating to reporting seized property for forfeiture.

Section 6. Creates s. 732.7062, F.S., relating to penalty for noncompliance with reporting.

Section 7. Amends s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.

Section 8. Amends s. 323.001, F.S., relating to wrecker operator storage facilities; vehicle holds.

Section 9. Amends s. 328.07, F.S., relating to hull identification number required.

Section 10. Amends s. 817.625, F.S., relating to use of scanning device or reencoder to defraud.

Section 11. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The state could receive revenue from civil fines assessed upon law enforcement agencies, payable to the General Revenue Fund, if law enforcement agencies fail to comply with new forfeiture reporting requirements. The number of law enforcement agencies which may fail to comply cannot be accurately determined.

2. Expenditures:

   This bill increases reporting requirements for FDLE and other state law enforcement agencies. According to the FDLE, 1 FTE would be needed for an additional Government Analyst position, at the expense of $64,118 in the first year, and $60,119 annually afterward.[33]

   This expense can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Law enforcement agencies could lose funds which would be payable to the General Revenue Fund as civil fines, if law enforcement agencies fail to comply with new forfeiture reporting requirements.

[33] FDLE, *"FDLE Legislative Bill Analysis: HB 889"*, January 22, 2016, On file with the House appropriations Committee.

The bill limits the circumstances in which a seizing agency may gain title to property through the Florida Contraband Forfeiture Act. In FY 13-14, there were 4,210 seizures reported under the Act throughout the state.[34] Approximately 36% of the occurrences resulted in the owner's forfeiture of all seized assets, and 34% resulted in the partial forfeiture of assets, totaling $18,871,997.[35] This bill could have a significant impact on certain law enforcement agencies which generate a large amount of revenue annually from forfeitures. The precise impact of the bill cannot be accurately determined at this time.

2. Expenditures:

Law enforcement agencies which fail to comply with the forfeiture reporting requirements in the bill would be assessed a civil fine of $5,000 payable to the state General Revenue Fund. The number of law enforcement agencies which may fail to comply cannot be accurately determined.

This bill increases reporting requirements for local law enforcement agencies. To the extent that the increased reporting requirements expend additional resources, the bill may have a minimal fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires county and municipal governments to develop policies and procedures governing asset forfeiture, and expands existing reporting requirements. This may result in an indeterminate positive fiscal impact; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[34] OPPAGA. Civil Asset Forfeiture in Florida: Policies and Practices, November 2015, Tallahassee: OPPAGA, http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1510rpt.pdf, Accessed: February 11, 2016.
[35] *Id.*

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2016, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all:

- Prohibits seizure of any property until the owner of the property has been arrested for a criminal violation that renders the property a contraband article.
- Permits seized property to be deemed a contraband article subject to forfeiture under the Act if at least 90 days has elapsed since the arrest of the property owner and the seizing agency is unable to locate the owner thereafter.
- Requires the court to order the seized property forfeited only upon clear and convincing evidence that:
    - The property has been used in violation of a criminal law that renders the property a contraband article;
    - The claimant is the owner of the property; and
    - The owner was prosecuted for the criminal violation that formed the basis for the forfeiture proceeding, and has been placed into a pretrial intervention program; been placed into a diversion program; been placed into a program for confidential informants, as defined in s. 914.28, F.S.; entered a plea of guilty; entered a plea of nolo contendere; or been found guilty at trial, regardless of adjudication of guilt.
- Requires the court to order the return of seized property to the owner within five days of making a finding that a perfected security interest applies to the property or that the criminal case that formed the basis for the forfeiture proceeding was discharged by acquittal, dismissal, or nolle prosequi.

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

A bill to be entitled

An act relating to contraband forfeiture; amending s. 932.701, F.S.; conforming provisions to changes made by the act; amending s. 932.703, F.S.; specifying that property may be seized only upon the arrest of the owner of the property for a violation of a criminal law that renders the property a contraband article; requiring that specified persons approve a settlement; specifying the nature of title interest in seized property; providing circumstances when property may be deemed contraband; amending s. 932.704, F.S.; specifying the circumstances when a court shall order the forfeiture of seized property; providing circumstances for return of seized property to the owner; requiring an agency seizing property to be responsible for costs in specified circumstances; requiring various review procedures for seizure records held by a seizing agency; prohibiting the compensation of law enforcement officers from being dependent on meeting a seizure quota; requiring the adoption and implementation of written policies, procedures, and training; requiring training for personnel involved in property seizure; amending s. 932.7055, F.S.; conforming provisions to changes made by the act; creating s. 932.7061, F.S.; providing reporting requirements for seized property for

forfeiture; creating s. 932.7062, F.S.; providing penalties for noncompliance with reporting requirements; amending ss. 322.34, 323.001, 328.07, and 817.625, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (1) of section 932.701, Florida Statutes, is amended to read:

932.701 Short title; definitions.—

(1) Sections 932.701-932.7062 ~~932.706~~ shall be known and may be cited as the "Florida Contraband Forfeiture Act."

Section 2. Subsections (1), (2), and (6) of section 932.703, Florida Statutes, are amended to read:

932.703 Forfeiture of contraband article; exceptions.—

(1)(a) A ~~Any~~ contraband article, vessel, motor vehicle, aircraft, other personal property, or real property ~~used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place,~~ may be seized only upon the arrest of the owner of the property for a violation of a criminal law that renders the property a contraband article ~~and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act~~.

(b) Once property is seized pursuant to the Florida

Contraband Forfeiture Act, regardless of whether the civil complaint has been filed, all settlements must be personally approved by the head of the law enforcement agency making the seizure. If the agency head is unavailable and a delay would adversely affect the settlement, approval may be given by a subordinate of the agency head who is designated to grant such authority ~~Notwithstanding any other provision of the Florida Contraband Forfeiture Act, except the provisions of paragraph (a), contraband articles set forth in s. 932.701(2)(a)7. used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, shall be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act~~.

(c)1. At the time of seizure of property or entry of a restraining order, the state acquires provisional title to the property that is seized or subject to the restraining order. A forfeiture under the Florida Contraband Forfeiture Act is not final, and title or other indicia of ownership, other than provisional title, do not pass to a seizing agency until the title to the seized property is perfected in accordance with the Florida Contraband Forfeiture Act ~~All rights to, interest in, and title to contraband articles used in violation of s. 932.702 shall immediately vest in the seizing law enforcement agency upon seizure~~.

2. If at least 90 days have elapsed since the arrest of

the owner of the property and the seizing agency has failed to locate the owner after making a diligent effort, the seized property is deemed a contraband article that is subject to forfeiture under the Florida Contraband Forfeiture Act.

(d) The seizing agency may not use the seized property for any purpose until the rights to, interest in, and title to the seized property are perfected in accordance with the Florida Contraband Forfeiture Act. This section does not prohibit use or operation necessary for reasonable maintenance of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value.

(2)(a) Personal property may be seized at the time the property owner is arrested ~~of the violation~~ or subsequent to the arrest ~~violation~~, if the person entitled to notice is notified at the time of the seizure or by certified mail, return receipt requested, that there is a right to an adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property has been or is being used in violation of a criminal law that renders the property a contraband article ~~the Florida Contraband Forfeiture Act~~. Seizing agencies shall make a diligent effort to notify the person entitled to notice of the seizure. Notice provided by certified mail must be mailed within 5 working days after the seizure and must state that a person entitled to notice may request an adversarial preliminary hearing within 15 days after receiving such notice. When a postseizure, adversarial

preliminary hearing as provided in this section is desired, a request must be made in writing by certified mail, return receipt requested, to the seizing agency. The seizing agency shall set and notice the hearing, which must be held within 10 days after the request is received or as soon as practicable thereafter.

(b) Real property may not be seized or restrained, other than by lis pendens, subsequent to the arrest of the owner of the property for a violation of a criminal law that renders the property a contraband article ~~the Florida Contraband Forfeiture Act~~ until the persons entitled to notice are afforded the opportunity to attend the preseizure adversarial preliminary hearing. A lis pendens may be obtained by any method authorized by law. Notice of the adversarial preliminary hearing shall be by certified mail, return receipt requested. The purpose of the adversarial preliminary hearing is to determine whether probable cause exists to believe that such property has been used in violation of a criminal law that renders the property a contraband article ~~the Florida Contraband Forfeiture Act~~. The seizing agency shall make a diligent effort to notify any person entitled to notice of the seizure. The preseizure adversarial preliminary hearing provided herein shall be held within 10 days after ~~of~~ the filing of the lis pendens or as soon as practicable.

(c) When an adversarial preliminary hearing is held, the court shall review the verified affidavit and any other

supporting documents and take any testimony to determine whether there is probable cause to believe that the owner of the property violated a criminal law that renders the property a contraband article ~~property was used, is being used, was attempted to be used, or was intended to be used in violation of the Florida Contraband Forfeiture Act~~. If probable cause is established, the court shall authorize the seizure or continued seizure of the subject contraband. A copy of the findings of the court shall be provided to any person entitled to notice.

(d) If the court determines that probable cause exists to believe that the owner of the property violated a criminal law that renders the property a contraband article ~~such property was used in violation of the Florida Contraband Forfeiture Act~~, the court shall order the property restrained by the least restrictive means to protect against disposal, waste, or continued illegal use of such property pending disposition of the forfeiture proceeding. The court may order the claimant to post a bond or other adequate security equivalent to the value of the property.

(6) ~~(a) Property may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the property was being employed or was likely to be employed in criminal activity.~~

(a) ~~(b)~~ A bona fide lienholder's interest that has been

perfected in the manner prescribed by law prior to the seizure may not be forfeited under the Florida Contraband Forfeiture Act ~~unless the seizing agency establishes by a preponderance of the evidence that the lienholder had actual knowledge, at the time the lien was made, that the property was being employed or was likely to be employed in criminal activity~~. If a lienholder's interest is not subject to forfeiture under the requirements of this section, such interest shall be preserved by the court by ordering the lienholder's interest to be paid as provided in s. 932.7055.

(b) ~~(c)~~ Property titled or registered between husband and wife jointly by the use of the conjunctives "and," "and/or," or "or," in the manner prescribed by law prior to the seizure, may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the coowner either knew or had reason to know, after reasonable inquiry, that such property was employed or was likely to be employed in criminal activity.

(c) ~~(d)~~ A vehicle that is rented or leased from a company engaged in the business of renting or leasing vehicles, which vehicle was rented or leased in the manner prescribed by law prior to the seizure, may not be forfeited under the Florida Contraband Forfeiture Act, and no fine, penalty, or administrative charge, other than reasonable and customary charges for towing and storage, shall be imposed by any governmental agency on the company which rented or leased the

vehicle~~, unless the seizing agency establishes by preponderance of the evidence that the renter or lessor had actual knowledge, at the time the vehicle was rented or leased, that the vehicle was being employed or was likely to be employed in criminal activity~~. When a vehicle that is rented or leased from a company engaged in the business of renting or leasing vehicles is seized under the Florida Contraband Forfeiture Act, upon learning the address or phone number of the company, the seizing law enforcement agency shall, as soon as practicable, inform the company that the vehicle has been seized and is available for the company to take possession upon payment of the reasonable and customary charges for towing and storage.

Section 3. Subsections (8), (9), and (11) of section 932.704, Florida Statutes, are amended to read:

932.704 Forfeiture proceedings.—

(8)(a) ~~Upon clear and convincing evidence that the contraband article was being used in violation of the Florida Contraband Forfeiture Act,~~ The court shall order the seized property forfeited to the seizing law enforcement agency upon clear and convincing evidence that:

1. The property has been or is being used in violation of a criminal law that renders the property a contraband article.

2. The claimant is the owner of the property.

3. The owner was prosecuted for the criminal violation that formed the basis for the forfeiture proceeding, and has:

a. Been placed into a pretrial intervention program;

b. Been placed into a diversion program;

c. Been placed into a program for confidential informants, as defined in s. 914.28;

d. Entered a plea of guilty;

e. Entered a plea of nolo contendere; or

f. Been found guilty at trial, regardless of adjudication of guilt.

(b) The final order of forfeiture by the court shall perfect in the law enforcement agency right, title, and interest in and to such property, subject only to the rights and interests of bona fide lienholders, and shall relate back to the date of seizure.

(9)(a) When the claimant prevails at the conclusion of the forfeiture proceeding, if the seizing agency decides not to appeal, the seized property shall be released immediately to the person entitled to possession of the property as determined by the court. If the court finds that a perfected security interest applies to the property or the criminal case that formed the basis for the forfeiture proceeding was discharged by acquittal, dismissal, or nolle prosequi, the seizing agency shall return the property to the owner within 5 days thereafter ~~Under such circumstances, the seizing agency shall not assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant with respect to the seized property or the forfeiture proceeding~~.

(b) When the claimant prevails at the conclusion of the

forfeiture proceeding, any decision to appeal must be made by the chief administrative official of the seizing agency, or his or her designee. The trial court shall require the seizing agency to pay to the claimant the reasonable loss of value of the seized property when the claimant prevails at trial or on appeal and the seizing agency retained the seized property during the trial or appellate process. The trial court shall also require the seizing agency to pay to the claimant any loss of income directly attributed to the continued seizure of income-producing property during the trial or appellate process. If the claimant prevails under this subsection ~~on appeal~~, the seizing agency shall immediately release the seized property to the person entitled to possession of the property as determined by the court, pay any cost as assessed by the court, and may not assess any towing charges, storage fees, administrative costs, or maintenance costs against the claimant with respect to the seized property or the forfeiture proceeding.

(11)(a) The Department of Law Enforcement, in consultation with the Florida Sheriffs Association and the Florida Police Chiefs Association, shall develop guidelines and training procedures to be used by state and local law enforcement agencies and state attorneys in implementing the Florida Contraband Forfeiture Act. At least annually, each state or local law enforcement agency that seizes property for the purpose of forfeiture shall ~~periodically~~ review such seizures ~~of assets made by the agency's law enforcement officers~~, any

settlements, and any forfeiture proceedings initiated by the law enforcement agency~~,~~ to determine whether they ~~such seizures, settlements, and forfeitures~~ comply with the Florida Contraband Forfeiture Act and the guidelines adopted under this subsection. If the review suggests deficiencies, the state or local law enforcement agency shall promptly take action to comply with the Florida Contraband Forfeiture Act.

(b) The determination as to ~~of~~ whether an agency will file a civil forfeiture action is ~~must be~~ the sole responsibility of the head of the agency or his or her designee.

(c) ~~(b)~~ The determination as to ~~of~~ whether to seize currency must be made by supervisory personnel. The agency's legal counsel must be notified as soon as possible after a determination is made.

(d) The employment, salary, promotion, or other compensation of any law enforcement officer may not be dependent on the ability of the officer to meet a quota for seizures.

(e) A seizing agency shall adopt and implement written policies, procedures, and training to ensure compliance with all applicable legal requirements regarding seizing, maintaining, and the forfeiture of property under the Florida Contraband Forfeiture Act.

(f) When property is seized for forfeiture, the probable cause supporting the seizure must be promptly reviewed by supervisory personnel. The seizing agency's legal counsel must be notified as soon as possible of all seizures and shall

conduct a review to determine whether there is legal sufficiency to proceed with a forfeiture action.

(g) Each seizing agency shall adopt and implement written policies and procedures promoting the prompt release of seized property as may be required by the act or by agency determination when there is no legitimate basis for holding seized property. To help ensure that property is not wrongfully held after seizure, each law enforcement agency must adopt written policies and procedures ensuring that all asserted claims of interest in seized property are promptly reviewed for potential validity.

(h) The settlement of any forfeiture action must be consistent with the Florida Contraband Forfeiture Act and the policy of the seizing agency.

(i) Law enforcement agency personnel involved in the seizure of property for forfeiture shall receive basic training and continuing education as required by the Florida Contraband Forfeiture Act. Each agency shall maintain records demonstrating each law enforcement officer's compliance with this requirement. Among other things, the training must address the legal aspects of forfeiture, including, but not limited to, search and seizure and other constitutional considerations.

Section 4. Subsection (3) and paragraph (c) of subsection (5) of section 932.7055, Florida Statutes, are amended to read:

932.7055 Disposition of liens and forfeited property.—

(3) If the forfeited property is subject to a lien

preserved by the court as provided in s. 932.703(6)(a) ~~932.703(6)(b)~~, the agency shall:

(a) Sell the property with the proceeds being used towards satisfaction of any liens; or

(b) Have the lien satisfied prior to taking any action authorized by subsection (1).

(5)

(c) An agency or organization, other than the seizing agency, that wishes to receive such funds shall apply to the sheriff or chief of police for an appropriation and its application shall be accompanied by a written certification that the moneys will be used for an authorized purpose. Such requests for expenditures shall include a statement describing anticipated recurring costs for the agency for subsequent fiscal years. An agency or organization that receives money pursuant to this subsection shall provide an accounting for such moneys and shall furnish the same reports as an agency of the county or municipality that receives public funds. Such funds may be expended in accordance with the following procedures:

1. Such funds may be used only for school resource officer, crime prevention, safe neighborhood, drug abuse education, or drug prevention programs or such other law enforcement purposes as the board of county commissioners or governing body of the municipality deems appropriate.

2. Such funds shall not be a source of revenue to meet normal operating needs of the law enforcement agency.

3. ~~After July 1, 1992, and during every fiscal year thereafter,~~ Any local law enforcement agency that acquires at least $15,000 pursuant to the Florida Contraband Forfeiture Act within a fiscal year must expend or donate no less than 25 ~~15~~ percent of such proceeds for the support or operation of any drug treatment, drug abuse education, drug prevention, crime prevention, safe neighborhood, or school resource officer program or programs ~~program(s)~~. The local law enforcement agency has the discretion to determine which program or programs ~~program(s)~~ will receive the designated proceeds.

Notwithstanding the drug abuse education, drug treatment, drug prevention, crime prevention, safe neighborhood, or school resource officer minimum expenditures or donations, the sheriff and the board of county commissioners or the chief of police and the governing body of the municipality may agree to expend or donate such funds over a period of years if the expenditure or donation of such minimum amount in any given fiscal year would exceed the needs of the county or municipality for such program or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The minimum requirement for expenditure or donation of forfeiture proceeds ~~in excess of the minimum amounts~~ established in this subparagraph does not preclude expenditures or donations in excess of that amount ~~herein~~.

Section 5. Section 932.7061, Florida Statutes, is created to read:

932.7061 Reporting seized property for forfeiture.—

(1) Every law enforcement agency shall submit an annual report to the Department of Law Enforcement indicating whether the agency has seized or forfeited property under the Florida Contraband Forfeiture Act. A law enforcement agency receiving or expending forfeited property or proceeds from the sale of forfeited property in accordance with the Florida Contraband Forfeiture Act shall submit a completed annual report by October 10 documenting the receipts and expenditures. The report shall be submitted in an electronic form, maintained by the Department of Law Enforcement in consultation with the Office of Program Policy Analysis and Government Accountability, to the entity that has budgetary authority over such agency and to the Department of Law Enforcement. The annual report must, at a minimum, specify the type, approximate value, court case number, type of offense, disposition of property received, and amount of any proceeds received or expended.

(2) The Department of Law Enforcement shall submit an annual report to the Office of Program Policy Analysis and Government Accountability compiling the information and data in the annual reports submitted by the law enforcement agencies. The annual report shall also contain a list of law enforcement agencies that have failed to meet the reporting requirements and a summary of any action taken against the noncomplying agency by the office of Chief Financial Officer.

(3) The law enforcement agency and the entity having

budgetary control over the law enforcement agency may not anticipate future forfeitures or proceeds therefrom in the adoption and approval of the budget for the law enforcement agency.

Section 6. Section 932.7062, Florida Statutes, is created to read:

932.7062 Penalty for noncompliance with reporting requirements.—A seizing agency that fails to comply with the reporting requirements in s. 932.7061 is subject to a civil fine of $5,000, to be determined by the Chief Financial Officer and payable to the General Revenue Fund. However, such agency is not subject to the fine if, within 60 days after receipt of written notification from the Department of Law Enforcement of noncompliance with the reporting requirements of the Florida Contraband Forfeiture Act, the agency substantially complies with those requirements. The Department of Law Enforcement shall submit any substantial noncompliance to the office of Chief Financial Officer, which shall be responsible for the enforcement of this section.

Section 7. Paragraphs (a) and (c) of subsection (9) of section 322.34, Florida Statutes, are amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(9)(a) A motor vehicle that is driven by a person under the influence of alcohol or drugs in violation of s. 316.193 is subject to seizure and forfeiture under ss. 932.701-932.7062

~~932.706~~ and is subject to liens for recovering, towing, or storing vehicles under s. 713.78 if, at the time of the offense, the person's driver license is suspended, revoked, or canceled as a result of a prior conviction for driving under the influence.

(c) Notwithstanding ~~s. 932.703(1)(c) or~~ s. 932.7055, when the seizing agency obtains a final judgment granting forfeiture of the motor vehicle under this section, 30 percent of the net proceeds from the sale of the motor vehicle shall be retained by the seizing law enforcement agency and 70 percent shall be deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program. In a forfeiture proceeding under this section, the court may consider the extent that the family of the owner has other public or private means of transportation.

Section 8. Paragraph (a) of subsection (4) of section 323.001, Florida Statutes, is amended to read:

323.001 Wrecker operator storage facilities; vehicle holds.—

(4) The requirements for a written hold apply when the following conditions are present:

(a) The officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act, ss. 932.701-932.7062 ~~932.706~~;

Section 9. Paragraph (b) of subsection (3) of section

328.07, Florida Statutes, is amended to read:

328.07 Hull identification number required.—

(3)

(b) If any of the hull identification numbers required by the United States Coast Guard for a vessel manufactured after October 31, 1972, do not exist or have been altered, removed, destroyed, covered, or defaced or the real identity of the vessel cannot be determined, the vessel may be seized as contraband property by a law enforcement agency or the division, and shall be subject to forfeiture pursuant to ss. 932.701-932.7062 ~~932.706~~. Such vessel may not be sold or operated on the waters of the state unless the division receives a request from a law enforcement agency providing adequate documentation or is directed by written order of a court of competent jurisdiction to issue to the vessel a replacement hull identification number which shall thereafter be used for identification purposes. No vessel shall be forfeited under the Florida Contraband Forfeiture Act when the owner unknowingly, inadvertently, or neglectfully altered, removed, destroyed, covered, or defaced the vessel hull identification number.

Section 10. Paragraph (c) of subsection (2) of section 817.625, Florida Statutes, is amended to read:

817.625 Use of scanning device or reencoder to defraud; penalties.—

(2)

(c) Any person who violates subparagraph (a)1. or

subparagraph (a)2. shall also be subject to the provisions of ss. 932.701-932.7062 ~~932.706~~.

Section 11. 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	_____

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Metz offered the following:

Amendment (with title amendment)

Remove lines 40-228 and insert:

Section 2. Subsections (1), (2), (6), and (7) of section 932.703, Florida Statutes, are amended to read:

932.703 Forfeiture of contraband article; exceptions.—

(1)(a) A ~~Any~~ contraband article, vessel, motor vehicle, aircraft, other personal property, or real property ~~used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place,~~ may be seized only upon the arrest of the owner of the property for a violation of a criminal law that renders the property a contraband article, or when the property was used in violation of a criminal law that renders the property a contraband article

and ~~shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act.~~:

1. The owner of the contraband article cannot be identified and located after a diligent search;

2. The person in possession of the contraband article denies ownership and the owner of the property cannot be readily identified by reasonable means that are available to the employee or agent of the seizing agency at the time of the seizure;

3. The owner of the contraband article is a fugitive from justice or is deceased, and probable cause exists that the owner committed a violation of a criminal law that renders the property a contraband article; or

4. There are two or more owners of the contraband article and at least one owner is arrested for a violation of a criminal law that renders the property a contraband article.

(b) When seizure of a contraband article is made without an arrest pursuant to paragraph (1)(a), the seizing agency shall submit a written petition to the court requesting a finding of probable cause that the property was lawfully seized pursuant to paragraph (1)(a). The petition shall be filed within 10 days of the seizure and the filing deadline shall be calculated in accordance with the Florida Rules of Civil Procedure.

1. Upon a written finding of probable cause, the seized property may be held by the seizing agency pending the

completion of forfeiture proceedings according to the Florida Contraband Forfeiture Act.

2. Upon a finding that probable cause does not exist, any forfeiture hold, lien, lis pendens, or other civil encumbrance shall be released within 5 days thereafter.

3. Upon a finding of good cause, the court shall seal any portion of the petition and the record of any related proceeding that is exempt or confidential and exempt from s. 119.07(1) and s. 24(a) Art. I of the Florida Constitution.

(c) ~~(b)~~ Once property is seized pursuant to the Florida Contraband Forfeiture Act, regardless of whether the civil complaint has been filed, all settlements must be personally approved by the head of the law enforcement agency making the seizure. If the agency head is unavailable and a delay would adversely affect the settlement, approval may be given by a subordinate of the agency head who is designated to grant such approval ~~Notwithstanding any other provision of the Florida Contraband Forfeiture Act, except the provisions of paragraph (a), contraband articles set forth in s. 932.701(2)(a)7. used in violation of any provision of the Florida Contraband Forfeiture Act, or in, upon, or by means of which any violation of the Florida Contraband Forfeiture Act has taken or is taking place, shall be seized and shall be forfeited subject to the provisions of the Florida Contraband Forfeiture Act~~.

(d) ~~(c)~~ At the time of seizure of property or entry of a restraining order, the state acquires provisional title to the

property that is seized or subject to the restraining order. A forfeiture under the Florida Contraband Forfeiture Act is not final, and title or other indicia of ownership, other than provisional title, do not pass to a seizing agency until the title to the seized property is perfected in accordance with the Florida Contraband Forfeiture Act ~~All rights to, interest in, and title to contraband articles used in violation of s. 932.702 shall immediately vest in the seizing law enforcement agency upon seizure~~.

(e) ~~(d)~~ The seizing agency may not use the seized property for any purpose until the rights to, interest in, and title to the seized property are perfected in accordance with the Florida Contraband Forfeiture Act. This section does not prohibit use or operation necessary for reasonable maintenance of seized property. Reasonable efforts shall be made to maintain seized property in such a manner as to minimize loss of value.

(2)(a) Personal property may be seized at the time of the property owner's arrest, ~~of the violation or~~ subsequent to the arrest, or when seizure of a contraband article is made without an arrest pursuant to paragraph (1)(a) ~~violation~~, if the person entitled to notice is notified at the time of the seizure or by certified mail, return receipt requested, that there is a right to an adversarial preliminary hearing after the seizure to determine whether probable cause exists to believe that such property was lawfully seized pursuant to paragraph (1)(a) ~~has been or is being used in violation of the Florida Contraband~~

~~Forfeiture Act~~. Seizing agencies shall make a diligent effort to notify the person entitled to notice of the seizure. Notice provided by certified mail must be mailed within 5 working days after the seizure and must state that a person entitled to notice may request an adversarial preliminary hearing within 15 days after receiving such notice. When a postseizure, adversarial preliminary hearing as provided in this section is desired, a request must be made in writing by certified mail, return receipt requested, to the seizing agency. The seizing agency shall set and notice the hearing, which must be held within 10 days after the request is received or as soon as practicable thereafter.

(b) Real property may only ~~not~~ be seized or restrained pursuant to paragraph (1)(a)~~, other than~~ by lis pendens, ~~subsequent to a violation of the Florida Contraband Forfeiture Act~~ until the persons entitled to notice are afforded the opportunity to attend the preseizure adversarial preliminary hearing. A lis pendens may be obtained by any method authorized by law. Notice of the adversarial preliminary hearing shall be by certified mail, return receipt requested. The purpose of the adversarial preliminary hearing is to determine whether probable cause exists to believe that such property has been lawfully seized pursuant to paragraph (1)(a) ~~used in violation of the Florida Contraband Forfeiture Act~~. The seizing agency shall make a diligent effort to notify any person entitled to notice of the seizure. The preseizure adversarial preliminary hearing provided

herein shall be held within 10 days after ~~of~~ the filing of the lis pendens or as soon as practicable.

(c) When an adversarial preliminary hearing is held, the court shall review the verified affidavit and any other supporting documents and take any testimony to determine whether there is probable cause to believe that the property was lawfully seized pursuant to paragraph (1)(a) ~~used, is being used, was attempted to be used, or was intended to be used in violation of the Florida Contraband Forfeiture Act~~. If probable cause is established, the court shall authorize the seizure or continued seizure of the subject contraband. A copy of the findings of the court shall be provided to any person entitled to notice.

(d) If the court determines that probable cause exists to believe that the property was lawfully seized pursuant to paragraph (1)(a) ~~such property was used in violation of the Florida Contraband Forfeiture Act~~, the court shall order the property restrained by the least restrictive means to protect against disposal, waste, or continued illegal use of such property pending disposition of the forfeiture proceeding. The court may order the claimant to post a bond or other adequate security equivalent to the value of the property.

(6) ~~(a) Property may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the~~

~~property was being employed or was likely to be employed in criminal activity.~~

(a) ~~(b)~~ A bona fide lienholder's interest that has been perfected in the manner prescribed by law prior to the seizure may not be forfeited under the Florida Contraband Forfeiture Act ~~unless the seizing agency establishes by a preponderance of the evidence that the lienholder had actual knowledge, at the time the lien was made, that the property was being employed or was likely to be employed in criminal activity~~. If a lienholder's interest is not subject to forfeiture under the requirements of this section, such interest shall be preserved by the court by ordering the lienholder's interest to be paid as provided in s. 932.7055.

(b) ~~(c)~~ Property titled or registered between husband and wife jointly by the use of the conjunctives "and," "and/or," or "or," in the manner prescribed by law prior to the seizure, may not be forfeited under the Florida Contraband Forfeiture Act unless the seizing agency establishes by clear and convincing evidence ~~a preponderance of the evidence~~ that the coowner either knew or acted with reckless disregard for the fact ~~had reason to know, after reasonable inquiry,~~ that such property was employed or was likely to be employed in criminal activity.

(c) ~~(d)~~ A vehicle that is rented or leased from a company engaged in the business of renting or leasing vehicles, which vehicle was rented or leased in the manner prescribed by law prior to the seizure, may not be forfeited under the Florida

Contraband Forfeiture Act, and no fine, penalty, or administrative charge, other than reasonable and customary charges for towing and storage, shall be imposed by any governmental agency on the company which rented or leased the vehicle~~, unless the seizing agency establishes by preponderance of the evidence that the renter or lessor had actual knowledge, at the time the vehicle was rented or leased, that the vehicle was being employed or was likely to be employed in criminal activity~~. When a vehicle that is rented or leased from a company engaged in the business of renting or leasing vehicles is seized under the Florida Contraband Forfeiture Act, upon learning the address or phone number of the company, the seizing law enforcement agency shall, as soon as practicable, inform the company that the vehicle has been seized and is available for the company to take possession upon payment of the reasonable and customary charges for towing and storage.

(7) Any interest in, title to, or right to property titled or registered jointly by the use of the conjunctives "and," "and/or," or "or" held by a coowner, other than property held jointly between husband and wife, may not be forfeited unless the seizing agency establishes by clear and convincing evidence ~~a preponderance of the evidence~~ that the coowner either knew, or acted with reckless disregard for the fact ~~had reason to know, after reasonable inquiry,~~ that the property was employed or was likely to be employed in criminal activity. When the interests of each culpable coowner are forfeited, any remaining coowners

shall be afforded the opportunity to purchase the forfeited interest in, title to, or right to the property from the seizing law enforcement agency. If any remaining coowner does not purchase such interest, the seizing agency may hold the property in coownership, sell its interest in the property, liquidate its interest in the property, or dispose of its interest in the property in any other reasonable manner.

Section 3. Subsections (8), (9), and (11) of section 932.704, Florida Statutes, are amended to read:

932.704 Forfeiture proceedings.—

(8)(a) ~~Upon clear and convincing evidence that the contraband article was being used in violation of the Florida Contraband Forfeiture Act,~~ The court shall order the seized property forfeited to the seizing law enforcement agency upon clear and convincing evidence that:

1. The property has been or is being used in violation of a criminal law that renders the property a contraband article.

2. The claimant is the owner of the property.

3. The owner was arrested and prosecuted for the criminal violation that formed the basis for the forfeiture proceeding, and has:

a. Been placed into a pretrial intervention program;

b. Been placed into a diversion program;

c. Been placed into a program for confidential informants, as defined in s. 914.28;

d. Entered a plea of guilty;

e. Entered a plea of nolo contendere;

f. Been found guilty at trial, regardless of adjudication of guilt;

g. Become deceased; or

h. Become a fugitive from justice.

(b) When the seizure of a contraband article is made without an arrest pursuant to s. 932.703(1)(a) the court shall order the seized property forfeited to the seizing law enforcement agency upon clear and convincing evidence that:

1. The property was used in violation of a criminal law that renders the property a contraband article; and

2. The owner of the property cannot be identified and located after a diligent search;

3. The owner of the property is deceased; or

4. The owner of the property is a fugitive from justice.

(c) The final order of forfeiture by the court shall perfect in the law enforcement agency right, title, and interest in and to such property, subject only to the rights and interests of bona fide lienholders, and shall relate back to the date of seizure.

(9)(a) When the claimant prevails at the conclusion of the forfeiture proceeding, if the seizing agency decides not to appeal, the seized property shall be released immediately to the person entitled to possession of the property as determined by the court. If the court finds that a perfected security interest applies to the property or the criminal case that formed the

basis for the forfeiture proceeding was discharged by acquittal, dismissal, or nolle prosequi, not resulting from successful completion of a pretrial diversion program, pretrial intervention program, or program for confidential informants as defined in s. 914.28, the seizing agency shall return

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

Remove lines 3-11 and insert:

932.701, F.S.; conforming provisions to changes made by the act; amending s. 932.703, F.S.; specifying that property may be seized only upon specified circumstances; specifying a procedure for seizure of property without an arrest; authorizing the court to seal specified records; requiring that specified persons approve a settlement; specifying the nature of title interest in seized property; providing circumstances when property may be deemed contraband; specifying requirements for forfeiture of jointly owned property; amending s. 932.704, F.S.;

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Metz offered the following:

Amendment

Remove line 426 and insert:

the seizing law enforcement agency. The remaining 70 percent of the proceeds shall first be applied to payment of court costs, fines, and fees remaining due, and any remaining balance of proceeds ~~and 70 percent~~ shall be

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1083 Agency for Persons with Disabilities
SPONSOR(S): Health & Human Services Committee; Renner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 7054

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N	Brazzell	Brazzell
2) Health Care Appropriations Subcommittee	11 Y, 0 N	Fontaine	Pridgeon
3) Health & Human Services Committee	14 Y, 0 N, As CS	Brazzell	Calamas
4) Appropriations Committee		Fontaine	Leznoff

SUMMARY ANALYSIS

Individuals with specified developmental disabilities who meet Medicaid eligibility requirements may receive services in the community through the state's Medicaid Home and Community-Based Services (HCBS) waiver (known as iBudget Florida), or in an institutional setting known as an Intermediate Care Facility for the Developmentally Disabled (ICF/DD).

Currently, due to demand exceeding available funding, individuals with developmental disabilities who wish to receive iBudget Florida HCBS services administered by the Agency for Persons with Disabilities (APD) are placed on a wait list for services in priority categories of need, unless they are in a crisis.

The bill amends s. 393.065(5), F.S., to make permanent the FY 2015-16 implementing bill's temporary changes related to the waiver waiting list prioritization categories. The bill allows individuals with developmental disabilities needing both waiver and extended foster care child welfare services to be prioritized in Category 2 and, when enrolled on the waiver, to be served by both APD and community-based care organizations. The bill permits waiver enrollment without first being placed on the waiting list for individuals who were on an HCBS waiver in another state and whose parent or guardian is an active-duty military servicemember transferred into the state. The bill provides that individuals remaining on the waiting list after other individuals are added are not substantially affected by agency action and not entitled to a hearing under s. 393.125, F.S., or administrative proceeding under chapter 120, F.S. and permits rulemaking to specify tools for prioritizing waiver enrollment within categories. Additional changes the bill makes that were not in the FY 2015-16 implementing bill include adding additional individuals to Categories 3 and 5 and requiring APD to send a letter to individuals on the wait list requesting updated information. The bill allows increases in funding for waiver enrollees' services if they have a significant need for transportation to waiver-funded adult day training or employment services and have no other reasonable transportation options.

Section 393.067, F.S., requires APD to license comprehensive transitional education programs (CTEP's). The FY 2015-16 implementing bill amended s. 393.067, F.S., to remove a requirement that APD must contract for residential services with facilities licensed prior to October 1, 1989. The FY 2015-16 implementing bill also amended s. 393.18, F.S., to delete language restricting APD's ability to license new CTEP providers. These two provisions operated to create a monopoly for one provider, prior to the implementing bill. The amendments to these statutes will expire and revert to the original language on July 1, 2016. The bill repeals those expiration and reversion clauses, allowing the amended language of ss. 393.067 and 393.18, F.S., from Chapter 2015-222, Laws of Florida, to remain law.

Section 393.11, F.S., authorizes involuntary admission of persons with intellectual disabilities and autism that require residential services. However, a 2015 federal court ruling found that s. 393.11, F.S., is constitutionally infirm in not requiring periodic review of continued involuntary admission by a decision-maker with the duty to consider and authority to order release. CS/HB 1083 amends s. 393.11, F.S., to require such a review.

The bill requires contracted waiver services providers to use any APD data management systems to document service provision to APD clients and to have required hardware and software for doing so; they must also comply APD's requirements for provider staff training and professional development. ICF/DD's must also cooperate with agency staff conducting utilization reviews.

CS/HB 1083 also adds Down syndrome to the definition of "developmental disability." Such individuals already are eligible for HCBS waiver services under that diagnosis and also may qualify for services due to intellectual disability.

The bill provides a $623,200 nonrecurring appropriation from the General Revenue Fund to implement the provisions of the bill.

The bill takes effect July 1, 2016, except as otherwise provided in the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Agency for Persons with Disabilities

The Agency for Persons with Disabilities (APD) provides services to persons with developmental disabilities. A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.[1]

While Down syndrome is not among the disabilities included in the definition of "developmental disability", it is specifically included as a qualifying disability for eligibility for Home and Community-Based (HCBS) waiver services provided by APD.[2] Down syndrome is a chromosomal condition that is associated with intellectual disability, a characteristic facial appearance, and weak muscle tone (hypotonia) in infancy. All affected individuals experience cognitive delays and so may qualify for APD services due to their intellectual disability (though the intellectual disability is usually mild to moderate).[3] Individuals with a primary diagnosis of Down syndrome comprise about 1% of APD's clients.[4]

The HCBS waiver, known as iBudget Florida, offers 27 supports and services delivered by contracted service providers to assist individuals to live in their community. Examples of waiver services enabling children and adults to live in their own home, a family home, or in a licensed residential setting are residential habilitation, behavioral services, companion, adult day training, employment services, and physical therapy.[5]

While the majority of individuals served by APD live in the community, a small number live and receive services in Intermediate Care Facilities for the Developmentally Disabled (ICF/DD). ICF/DD's are defined in s. 393.063(22), F.S., as residential facilities licensed and certified by the Agency for Health Care Administration (AHCA) pursuant to part VIII of ch. 400. ICF/DD's are considered institutional placements.

Home- and Community-Based Services Waiver

iBudget Florida Program

APD administers iBudget Florida pursuant to s. 393.0662, F.S. iBudget Florida uses an algorithm, or formula, to set individuals' funding allocations for waiver services. The statute authorizes APD to give individuals additional funding under certain conditions (such as a temporary or permanent change in need, or an extraordinary need that the algorithm does not address).[6] APD phased in the

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[1] S. 393.063(9), F.S.

[2] S. 393.0662(1) , F.S., provides eligibility for individuals with a diagnosis of Down syndrome.

[3] Rule 65G-4.014, F.A.C. requires that qualifying under an intellectual disability diagnosis requires "significantly subaverage general intellectual functioning evidenced by an Intelligence Quotient (IQ) two or more standard deviations below the mean on an individually administered standardized intelligence test, and significant deficits in adaptive functioning in one or more" domains such as communication skills, self-care and home living.

[4] *Overview of the Agency for Persons with Disabilities*, presentation at the House Children, Families, and Seniors Subcommittee, Jan. 7, 2015.

[5] Agency for Persons with Disabilities, Quarterly Report on Agency Services to Floridians with Developmental Disabilities and Their Costs: First Quarter Fiscal Year 2015-16, November 2015.

[6] S. 393.0662(1)(b), F.S.

implementation of iBudget Florida, with the final areas transitioned from the previous tiered waiver system on July 1, 2013.[7]

However, the iBudget Florida program has been the subject of litigation. In September 2014, after a 1st District Court of Appeal ruling regarding the program's rules, APD reset approximately 14,000 individuals' budget allocations to higher amounts.[8] APD began rulemaking to adopt new rules to replace the previous ones.[9] APD, in collaboration with stakeholders, developed a revised algorithm. APD has filed to adopt rules including this revised algorithm and related funding calculation methods.[10]

iBudget statutes were amended by the FY 2015-16 General Appropriations Act implementing bill to permit additional funding beyond that allocated by the algorithm for transportation to a waiver-funded adult day training program or to employment under certain conditions.[11]

Waiver Enrollment Prioritization

As of December 14, 2015, 31,665 individuals were enrolled on the iBudget Florida waiver.[12] The majority of waiver enrollees live in a family home with a parent, relative, or guardian.

The Legislature appropriated $994,793,906 for Fiscal Year 2015-2016 to provide services through the HCBS waiver program, including federal match of $601,153,957.[13] However, this funding is insufficient to serve all persons desiring waiver services. To enable APD to remain within legislative appropriations, waiver enrollment is limited. Accordingly, APD maintains a wait list for waiver services. Prioritization for the wait list is provided in s. 393.065(5), F.S., and also in the FY 15-16 implementing bill.[14]

As part of the wait list prioritization process, clients are assigned to one of seven categories. The underlying statute prioritizes need as follows:

- Category 1 – Clients deemed to be in crisis.
- Category 2 – Children from the child welfare system with an open case in the Department of Children and Families' statewide child welfare information system.
- Category 3 – Includes, but is not limited to, clients:
    - Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within the next 12 months and for whom a caregiver is required but no alternate caregiver is available;
    - Who are at substantial risk of incarceration or court commitment without supports;
    - Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or
    - Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available.
- Category 4 – Includes, but is not limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternate caregiver is available;
- Category 5 – Includes, but is not limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain or maintain competitive

[7] *Supra,* note 5.
[8] Agency for Persons with Disabilities, iBudget Florida, http://apd.myflorida.com/ibudget/ (last visited December 15, 2015).
[9] Department of State, Florida Administrative Register, Vol. 40, No. 207, Oct. 23, 2014, pg. 4703-4706.
[10] These rules have been challenged as well. *G. B.; Z. L., through his guardian K. L.; J. H.; and M. R. v. the Agency for Persons with Disabilities*, Case No. 15-005803RP (Fla. DOAH).
[11] S. 21, Ch. 2015-222, Laws of Florida.
[12] E-mail from Caleb Hawkes, Deputy Legislative Affairs Director, Agency for Persons with Disabilities. RE: Requested information for bill analysis for APD agency bill (Dec. 14, 2015). On file with Children, Families and Seniors Subcommittee.
[13] Line 251, Ch. 2015-221, Laws of Florida.
[14] S. 20, Ch. 2015-222, Laws of Florida

employment, or to pursue an accredited program of postsecondary education to which they have been accepted.
- Category 6 – Clients 21 years of age or older who do not meet the criteria for categories 1-5.
- Category 7 – Clients younger than 21 years of age who do not meet the criteria for categories 1-4.[15]

As of November 1, 2015, there were 21,459 people on the wait list for HCBS waiver program services. A majority of people on the wait list have been on the list for more than 5 years, though some are children receiving services through the school system and others are individuals who have been offered waiver services previously but refused them and chose to remain on the wait list.[16]

APD HCBS Length of Wait		
Length of Wait	#	%
1 year or less	1,886	8.8
1+ to 2 years	1,534	7.1
2+ to 3 years	1,229	5.7
3+ to 4 years	1,460	6.8
4+ to 5 years	1,522	7.1
5+ to 6 years	1,617	7.5
6+ to 7 years	1,709	8.0
7+ to 8 years	1,634	7.6
8+ to 9 years	1,774	8.3
9+ to 10 years	1,797	8.4
10+ years	5,297	24.7

For several years, while APD experienced significant deficits, APD was limited to newly enrolling on the waiver only individuals determined to be in crisis. Only since FY 2013-14, when APD has remained within budget, has the Legislature provided funding to APD to serve individuals from the wait list who were not in crisis but had a high priority for service needs. Since July 1, 2013, APD has enrolled 2,392 such individuals[17].

The statutory wait list prioritization has been changed in the past two legislative sessions via the implementing bill. The FY 2014-15 implementing bill allowed individuals who are receiving home and community-based waiver services in other states to be enrolled immediately on the waiver if their parent or guardian is on active military duty and transfers to Florida.[18] The FY 2015-16 implementing bill also allowed immediate waiver enrollment for servicemembers' dependents previously on a waiver. Since July 1, 2014, 10 such individuals have enrolled on the waiver.[19]

The FY 2014-15 implementing bill limited the individuals in Category 2 to children with an open case in the child welfare system who were at the time of finalization of an adoption with placement in a family home, reunification with family members with placement in a family home, or permanent placement with a relative in a family home. The FY 2015-16 implementing bill maintained the 2014-15 changes but added to Category 2 those youth with developmental disabilities who are in extended foster care to be served by both the waiver and the child welfare system. The FY 2015-16 implementing bill also specified the services that APD and the community-based care lead agencies providing foster care

[15] S. 393.065(5), F.S.
[16] Supra, note 5.
[17] *Id.*
[18] S. 9, Ch. 2014-58, L.O.F.
[19] *Supra*, note 12.

services must provide these enrollees. Since July 1, 2015, 30 individuals in extended foster care have enrolled on the waiver.

Both the FY 2014-15 and 2015-16 implementing bills also specified that:

- After individuals formerly on the waiting list are enrolled on the waiver, those remaining on the waiting list are not substantially affected by agency action and not entitled to a hearing under s. 393.125, F.S., or administrative proceeding under chapter 120, F.S.
- APD must use a prioritization tool for prioritizing individuals for waiver enrollment within categories certain categories.

Client Data Management System

APD must manage data to meet federal requirements for administering the iBudget HCBS waiver, such as tracking, measuring, reporting, and providing quality improvement processes for 32 specific program performance measures. However, APD relies heavily on manual processes and disparate systems to collect, analyze, and report data, which is inefficient and error-prone.

The Legislature appropriated funding in FY 2015-16 for APD to develop a client data management system for verifying service delivery by providers, billing waiver services, and processing claims.[20] This system will also be used for program quality improvement purposes. APD contracted with a vendor to configure a commercial off-the-shelf product to APD business processes, and anticipates providers will need to begin using the system during FY 2016-2017. Providers will need standard software and technology in order to log into the system.[21]

Provider Staff Training and Professional Development

Pursuant to the waiver agreement with the federal government, APD must coordinate, develop, and provide specialized training for providers and their employees to promote health and well-being of individuals served.[22] These requirements are currently in the Developmental Disabilities Individual Budgeting Waiver Services Coverage and Limitations Handbook. For example, the handbook outlines required basic and in-service training and continuing education for direct service providers on topics such as person-centered planning, maintaining health and safety, reporting to the abuse hotline, and first aid. Providers of certain services such as supported employment or supported living must have additional pre-service certification training. Training is typically offered through several modalities, such as the internet, DVD, and live classroom training.[23]

Residential Facilities

Persons with developmental disabilities live in various types of residential settings. Some individuals with developmental disabilities live with family, some live in their own homes, while others may live in community-based residential facilities.[24] Pursuant to s. 393.067, F.S., APD is charged with licensing community-based residential facilities that serve and assist individuals with developmental disabilities; these include foster care facilities, group home facilities, residential habilitation centers, and comprehensive transitional education programs.[25]

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[20] SB 2500A, line 265.
[21] Agency for Persons with Disabilities, Agency Analysis of 2016 Act Relating to the Agency for Persons with Disabilities.
[22] *Id.*
[23] Rule 59G-13.070, F.A.C. The handbook may be accessed at http://apd.myflorida.com/ibudget/.
[24] S. 393.063(28) defines residential facility as a facility providing room and board and personal care for persons who have developmental disabilities.
[25] Agency for Persons with Disabilities, *Planning Resources*, accessible at: http://apd.myflorida.com/planning-resources/ (last accessed 11/11/15).

In addition to its regulatory duties, APD contracts with licensed community-based residential facilities to provide services under the Medicaid Home and Community-Based Waiver (waiver). Prior to enactment of the 2015 General Appropriations Act Implementing Bill (Chapter 2015-222, Laws of Florida), APD was statutorily required to contract for residential services with residential facilities licensed prior to October 1, 1989, if those facilities complied with all provisions of s. 393.067, F.S.[26, 27] This requirement was placed in statute as a response to residential facilities that were concerned about their continued business with APD after the waiver was enacted.[28]

In order to implement Specific Appropriation 251 of the 2015-2016 General Appropriations Act, Chapter 2015-222, Laws of Florida, amended s. 393.067, F.S. to remove this statutory procurement requirement with an expiration and reversion clause set for July 1, 2016.

Comprehensive Transitional Education Programs

A Comprehensive Transitional Education Program (CTEP) is a group of jointly operating centers or units that provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors.[29]

CTEPs serve individuals with developmental disabilities with the most intensive of behavioral needs.[30] A CTEP is designed to provide services to such individuals with the ultimate objective of allowing them to return to other less intensive settings within their own communities.[31] There are presently two CTEPs licensed in Florida, and both licenses are held by the same organization, Advoserv Inc., which operates the Carlton Palms Educational Center in Lake County.[32,33]

Previously, pursuant to s. 393.18, F.S., APD was authorized to license CTEPs that were already in operation by July 1, 1989, or owned real property zoned and registered with APD to operate a CTEP by July 1, 1989. Each residential unit within the CTEP could not exceed a capacity of 15 persons. The statute also authorized licensure of facilities that provided residential services for children if those children had developmental disabilities needing special behavioral services, and the residential facility served children with an open case in the child welfare system as of July 1, 2010. APD has interpreted this as a prohibition against licensing newer facilities.

In order to implement Specific Appropriation 251 of the 2015-2016 General Appropriations Act, Chapter 2015-222, Laws of Florida, amended s. 393.18, F.S., to delete the paragraphs detailing the licensing requirements that has restricted APD's ability to license new CTEP providers, and moved the 15 resident cap for residential units within a CTEP to s. 393.18(4), F.S. The amendment also includes an expiration and reversion clause for these amendments set for July 1, 2016.

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[26] S. 393.067(15), F.S., (2014)
[27] Ch. 89-308, Laws of Fla.
[28] Email from Caleb Hawkes, Deputy Legislative Affairs Director, Agency for Persons with Disabilities, RE: Residential Facility Contracting Language (Nov. 13, 2015)(on file with Health and Human Services Committee staff).
[29] S. 393.18, F.S.
[30] Agency for Persons with Disabilities, *2016 Agency Legislative Bill Analysis for HB 4037*, November 9, 2015 (on file with Children, Families, and Seniors Subcommittee staff).
[31] Id.
[32] Id.
[33] Carlton Palms has an extensive history of complaints and regulatory action. APD has filed 4 administrative complaints against the facility since 2011, detailing inadequate training of staff, physical violence, inadequate care, and inadequate supervision of residents while in the care and custody of Carlton Palms. APD has twice sought moratoria on new admissions to the facility, once in 2012 and most recently in September of 2014. In this most recent administrative complaint, DOAH Case No: 14-004853, APD sought the maximum fine allowed by law, $10,000, as well as a moratorium on new admissions. APD has settled each of these administrative complaints without the imposition of a moratorium. Due to the inability to license other providers, APD has no licensed facilities to place persons requiring this level of care if a moratorium were imposed or transfer residents if the facility were closed.

Involuntary Admission to Residential Services

Section 393.11, F.S., creates the statutory framework for the involuntary admission of persons with intellectual disabilities that require residential services. Residential services include the care, treatment, habilitation, and rehabilitation the person is alleged to need.

A petitioning commission may file a petition for involuntary admission to residential services.[34] The petitioning commission must file the petition in the circuit court of the developmentally disabled person's residence. Once this petition is filed, the circuit court appoints a committee to examine the person being considered for involuntary admission. This examining committee must file a report with the court, to include, but not limited to:

- The degree of the person's intellectual disability and whether the person is eligible for agency services;
- Whether the person either:
    - Lacks sufficient capacity to consent for services from APD and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary to avoid a real and present threat of substantial harm; or
    - Is likely to physically injure others if allowed to remain at liberty;
- Purpose to be served by the residential care;
- A recommendation on the type of residential placement that would be most appropriate and least restrictive; and
- The appropriate care, habilitation, and treatment.[35]

After this examining committee files their report with the court, the court holds a hearing to allow the person alleged to need involuntary admission to present evidence and cross-examine all witnesses. The person alleged to need involuntary admission is entitled to representation by counsel at all stages of this proceeding.[36]

The court may not enter an order for involuntary admission unless it finds, by clear and convincing evidence, that:

- The person alleged to need involuntary admission is intellectually disabled or autistic;
- Placement in a residential setting is the least restrictive and most appropriate alternative to meet the person's needs, and;
- Because of the person's intellectual disability or autism, the person either:
    - Lacks sufficient capacity to consent for services from APD and lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary to avoid a real and present threat of substantial harm; or
    - Is likely to physically injure others if allowed to remain at liberty.[37]

This order for involuntary admission is of indeterminate duration and the person who has been involuntarily admitted to residential services may not be released from such order except by further order of the circuit court.[38] The statute does not provide for any review of orders entered for involuntary admission. However, the statute does provide that any person involuntarily admitted to residential services may file a petition for writ of habeas corpus to challenge their involuntary admittance.[39]

[34] S. 393.11(2)(a) and (b), F.S., one of these persons must be a licensed physician in Florida.
[35] S. 393.11(5), F.S.
[36] S. 393.11(6), F.S.
[37] S. 393.11(8), F.S.
[38] S. 393..11(11), F.S.
[39] S. 39.11(13), F.S.

Involuntary Admission for Those Found Incompetent to Proceed to Trial

For individuals charged with a crime but found incompetent to proceed to trial due to an intellectual disability or autism, pursuant to s. 916.303, F.S., the process of involuntary admission is slightly different. If an individual remains incompetent for two years the charges shall be dismissed. If the charges have been dismissed, and the individual is considered to lack sufficient capacity to apply for services or lacks the basic survival and self-care skills to provide for his or her well-being or is likely to injure others if allowed to remain at liberty, a petition to involuntarily admit the individual to residential services, pursuant to s. 393.11, F.S., shall be filed.[40]

Once a petition for involuntary admission to residential services is filed, all of the same procedures under s. 393.11, F.S., are followed. However, because this person has been found incompetent by a criminal court, there is the added ability to place the individual in a secure facility if there is a substantial likelihood that the individual will injure another person or continues to present a danger of escape. If the committing court places the individual in a secure facility, that placement must be reviewed annually to determine whether the individual continues to meet the criteria for placement.[41]

J.R. v. Palmer

In 2004, J.R. was involuntarily admitted to nonsecure residential services under s. 393.11, F.S. The involuntary admission order did not include an end date for the involuntary admission.[42] In 2011, J.R. filed a federal lawsuit claiming his constitutional due process rights had been violated because s. 393.11, F.S., does not provide periodic review of his continued involuntary confinement by a decision-maker that has the authority to release him.[43] APD argued that within the annual review of the individual's support plan, under s. 393.0651, F.S., there is an implicit obligation to review the circumstances and petition the court if the circumstances have changed to the point that involuntary admission was no longer appropriate.[44]

In May 2015, the Supreme Court of Florida, in an answer to two certified questions from the U.S. Court of Appeals for the Eleventh Circuit, ruled that:

- The annual support plan review, pursuant to s. 393.0651, F.S., does not contain an implicit requirement for APD to consider the continued propriety of an involuntary admission, under s. 393.11, F.S.
- There is no implicit requirement for APD to petition the circuit court for a person's release from involuntary admission under ss. 393.11 or 393.0651, F.S.

In October 2015, the U.S. Court of Appeals for the Eleventh Circuit ruled that s. 393.11, F.S., is constitutionally infirm because it does not require periodic review of continued involuntary commitment by a decision-maker with the duty to consider and authority to order release, and that such a statutory scheme is unconstitutional on its face.[45]

Guardians

Individuals with intellectual disabilities and autism may benefit from decisionmaking support due to the nature of those disabilities. Accordingly, chapter 393 provides authority for guardians to be involved in a variety of interactions APD has with clients. However, the term "guardian" is not expressly defined in ch. 393.

[40] S. 916.303(2), F.S.
[41] S. 916.303(3), F.S.
[42] *J.R. v. Palmer*, 175 So.3d 710 (2015).
[43] Id. at 712
[44] Id. at 715
[45] *J.R. v. Hansen*, 803 F.3d 1315 (11th Cir. Oct. 15, 2015).

Utilization Review of ICF/DD's

While most individuals served by APD live in the community, a small number live in ICF/DD's. ICF/DD's are defined in s. 393.063(22), F.S., as residential facilities licensed and certified by AHCA pursuant to part VIII of ch. 400. There are approximately 2,866 private and public ICF/DD beds in Florida.[46]

ICF/DD's are considered institutional placements rather than community placements. Accordingly, the federal government requires routine utilization reviews for individuals in ICF/DD's to ensure that they are not inappropriately institutionalized. Utilization reviews must be conducted by a group of professionals referred to as the Utilization Review Committee, which must include at least one physician and one individual knowledgeable in the treatment of intellectual disabilities.

The Medicaid state plan approved by the federal government states that APD will conduct utilization reviews. APD performs this function through an interagency agreement with AHCA.[47] There is no express statutory requirement or authorization for APD to conduct utilization reviews.

Severe Self-Injurious Behavior (SIB) program

The Severe Self-Injurious Behavior (SIB) program was located at Tacachale, one of the APD developmental disabilities centers, beginning in 1986. The program was initially funded by a grant from National Institute of Health, then by the Florida Council on Developmental Disabilities and later by the Department of Children and Families. The program moved from Tacachale to other locations in 2008. The agency currently serves individuals with self-injurious behaviors in the community in licensed homes that are specifically for intensive behavior issues. These services are funded under the iBudget waiver program. Accordingly, there is no longer a need to define this program in Chapter 393.

Effect of Proposed Changes

Definitional Changes

The bill also adds Down syndrome to the definition of "developmental disability." APD already serves individuals with a diagnosis of Down syndrome due to their statutory eligibility under that diagnosis for HCBS waiver services. Individuals with Down syndrome currently may also qualify for APD services due to the presence of an intellectual disability.[48]

CS/HB 1083 also defines the term "guardian" to have the same meaning as in s. 744.102, F.S. In that section, "guardian" means a person who has been appointed by the court to act on behalf of a ward's person or property, or both.

Home and Community-Based Services Waiver

iBudget Florida Program

CS/HB 1083 clarifies the process for calculation of individual's iBudgets (their budget allocations) by defining the terms "algorithm" and "allocation methodology" and making conforming changes in s. 393.0662, F.S. The bill also deleted language regarding the transition to the iBudget system from the previous tiered waiver system which is obsolete now that the transition is complete.

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[46] *Supra*, note 21.
[47] *Id.*
[48] Rule 65G-4.014 F.A.C.

The bill also makes permanent the Fiscal Year 2015-16 appropriations implementing bill language that adds transportation needs to the list of the circumstances that may qualify individuals to receive additional funding beyond that calculated through the algorithm. Specifically, APD may grant a funding increase to individuals whose iBudget allocations are insufficient to pay for transportation services to a waiver-funded adult day training program or employment services and who have no other reasonable transportation options. This would allow such individuals to purchase transportation services to attend adult day programs or access employment services.

Waiver Enrollment Prioritization

CS/HB 1083 makes permanent the FY 2015-16 implementing bill's temporary changes related to the waiver waiting list prioritization categories. The bill requires APD to prioritize, in Category 2, children in the child welfare system being reunified with their families or being placed permanently with an adoptive family or relatives and youth with developmental disabilities in extended foster care who must be served by both APD and the community-based care (CBC) organizations. The bill also delineates the responsibilities of the different entities providing services to these youth; specifically, APD must provide waiver services, including residential habilitation that supports individuals living in congregate settings, and the CBC lead agency must fund room and board at the prevailing foster care rate as well as provide case management and related services.

A second implementing bill changes made permanent by CS/HB 1083 are allowing waiver enrollment without first being placed on the waiting list for individuals who were on an HCBS waiver in another state and whose parent or guardian is an active-duty military servicemember transferred into the state. This means active-duty servicemembers' dependents previously on a waiver are not placed in a waiting list category but are immediately enrolled on the waiver. Third, CS/HB 1083 also specifies that after individuals formerly on the waiting list are enrolled on the waiver, those remaining on the waiting list are not substantially affected by agency action and not entitled to a hearing under s. 393.125, F.S., or administrative proceeding under chapter 120, F.S. Fourth, the bill permits rulemaking to specify tools for prioritizing waiver enrollment within categories.

Additional changes that CS/HB 1083 makes to provisions relating to the wait list that were not in the implementing bill are:

- Adding to Category 3 individuals whose caregivers are unable to provide the care needed and to Category 5 individuals who are graduating from secondary school and need support to obtain a meaningful day activity.
- Requiring APD to send a letter annually to individuals on the waiting list requesting updated information; this letter would be sent instead of the annual report required pursuant to s. 393.0651, F.S.

Client Data Management System and Direct Provider Staff Training

The bill requires APD service providers to use APD data management systems to document service provision to agency clients. Providers would need to have the hardware and software necessary to use these systems, as established by APD. The bill also requires providers to ensure any staff directly serving clients meet APD requirements for training and professional development.

Residential Facilities

CS/HB 1083 repeals ss. 24 and 26 of chapter 2015-222, Laws of Florida (2015 General Appropriations Implementing Bill) that set the expiration and reversion of amendments to ss. 393.067(15) and 393.18, F.S., for July 1, 2016.

The bill reenacts s. 393.067(15) as amended in s. 23 of chapter 2015-222, Laws of Florida, which deletes obsolete language, and specifies that APD is not required to contract with residential facilities it licenses under s. 393.067, F.S., including foster care facilities, group home facilities, residential habilitation centers, and CTEPs.

The bill reenacts s. 393.18(4) as amended in s. 25 of chapter 2015-222, Laws of Florida, to include the requirement that each unit within the component centers may not exceed 15 residents, unless authorized prior to July 1, 2015.

The bill provides for an effective date of June 30, 2016, or upon becoming law after that date and operating retroactively to June 30, 2016.

Involuntary Admission to Residential Services

CS/HB 1083 amends s. 393.11, F.S., to require annual reviews for persons involuntarily admitted to residential services. The bill requires APD to employ or contract with a "qualified evaluator" to conduct the reviews, unless otherwise ordered, to determine the propriety of the continued involuntary admission. The bill also defines a "qualified evaluator" as a licensed psychiatrist or psychologist who has demonstrated to the court an expertise in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities. The bill requires APD to provide the completed annual review to the court.

The bill requires the court to conduct an annual review hearing, unless a shorter review period was ordered at a previous hearing. The court must review the report and determine whether the involuntary admission is still required and, if so, whether the person is receiving adequate care, treatment, habilitation, and rehabilitation in the residential setting.

The bill requires APD to provide a copy of the review and give reasonable notice of the hearing to the state's attorney, if applicable, the person's attorney and guardian or guardian advocate, if appointed.

The bill also addresses the statute's inconsistency in including autism as a qualifying diagnosis by making conforming changes to include autism as a qualifying diagnosis throughout the section.

Utilization Review of Intermediate Care Facilities for the Developmentally Disabled

The bill requires APD to conduct utilization reviews for ICF/DD's and requires ICF/DD's to cooperate with these reviews, including requests for information, documentation, and inspection. This will ensure that Florida continues to meet federal requirements for conducting utilization reviews pursuant to the approved Medicaid state plan.

Severe Self-Injurious Behavior program

The bill also repeals the statutory authority for the program for the prevention and treatment of severe self-injurious behavior. This program has been moved out of APD and now is operating independently in the community.[49]

B. SECTION DIRECTORY:

Section 1: Amends s. 393.063, F.S., relating to definitions.
Section 2: Repeals s. 393.0641, F.S., relating to program for the prevention and treatment of severe self-injurious behavior.
Section 3: Amends s. 393.065, F.S., relating to application and eligibility determination.
Section 4: Amends s. 393.066, F.S., relating to community services and treatment.

[49] *Supra,* note 30.

Section 5: Amends s. 393.0662, F.S., relating to individual budgets for delivery of home and community-based services; iBudget system established.
Section 6: Creates s. 393.0679, F.S., relating to utilization review.
Section 7: Amends s. 393.11, F.S., relating to involuntary admission to residential services.
Section 8: Repeals ss. 24 and 26 of chapter 2015-222, Laws of Florida.
Section 9: Reenacts s. 393.067, F.S. relating to facility licensure.
Section 10: Reenacts s. 393.18, F.S., relating to comprehensive transitional education program.
Section 11: Amends s. 383.141, F.S., relating to prenatally diagnosed conditions; patient to be provided information; definitions; information clearinghouse; advisory council.
Section 12: Amends s. 1002.385, F.S., relating to Florida personal learning scholarship accounts.
Section 13: Provides an appropriation.
Section 14: Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   APD estimates that it will cost $623,200 to evaluate all persons currently involuntarily admitted to residential services. APD estimates there are 1,558 individuals that will need to be evaluated at a cost of $400 per evaluation. The bill provides a $623,200 nonrecurring appropriation from the General Revenue Fund to implement the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact on the private sector is indeterminate. APD will have to establish requirements for training and career development of direct care provider staff and for hardware and software required for providers to use the new APD client data management system. If APD chooses to maintain the training and career development provisions that are presently required by the waiver program and requires hardware and software currently possessed by providers, the bill will have no direct economic impact on providers. It is unknown what training and career development requirements or hardware and software requirements APD will establish, or the extent to which providers will have to acquire hardware and software to meet those requirements.

D. FISCAL COMMENTS:

The Legislature determines the funding available for HCBS waiver services for individuals with developmental disabilities through the appropriations process. APD then serves individuals previously enrolled on the waiver and newly enrolls additional individuals to the extent that funding permits.

APD is currently administering the waiver program in accordance with the waiver enrollment and iBudget allocation requirements of CS/HB 1083, since those provisions are current law through the FY 2015-16 implementing bill. CS/HB 1083 will make these requirements permanent rather than reverting to the underlying statutory language.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   The U.S. Court of Appeals for the Eleventh Circuit ruled that s. 393.11, F.S., is constitutionally infirm because it does not require periodic review of continued involuntary commitment by a decision-maker with the duty to consider and authority to order release, and that such a statutory scheme is unconstitutional on its face.[50]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, the Health and Human Services Committee adopted one amendment. The amendment:

- Requires annual reviews of individuals involuntarily admitted to APD services to determine if involuntary admission is still appropriate.
- Removes requirements for APD to contract with certain licensed facilities and prohibitions on their ability to license additional facilities.
- Revises various definitions and amends language regarding involuntary admissions processes, waiver prioritization, and the iBudget Florida waiver program for clarity.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Health and Human Services Committee.

[50] *J.R. v. Hansen*, 803 F.3d 1315 (11th Cir. Oct. 15, 2015).

A bill to be entitled

An act relating to the Agency for Persons with Disabilities; amending s. 393.063, F.S.; revising and defining terms; repealing s. 393.0641, F.S., relating to a program for the prevention and treatment of severe self-injurious behavior; amending s. 393.065, F.S.; providing for the assignment of priority to clients waiting for waiver services; requiring an agency to allow a certain individual to receive such services if the individual's parent or legal guardian is an active-duty military servicemember; requiring the agency to send an annual letter to clients and their guardians or families; providing that certain agency action does not establish a right to a hearing or an administrative proceeding; amending s. 393.066, F.S.; providing for the use of an agency data management system; providing requirements for persons or entities under contract with the agency; amending s. 393.0662, F.S.; adding client needs that qualify as extraordinary needs, which may result in the approval of an increase in a client's allocated funds; revising duties of the Agency for Health Care Administration relating to the iBudget system; creating s. 393.0679, F.S.; requiring the Agency for Persons with Disabilities to conduct a certain utilization review; requiring certain intermediate care facilities to

comply with certain requests and inspections by the agency; amending s. 393.11, F.S.; providing for annual reviews for persons involuntarily admitted to residential services provided by the agency; requiring the agency to contract with a qualified evaluator; providing requirements for annual reviews; requiring a hearing to be held to consider the results of an annual review; requiring the agency to provide a copy of the review to certain persons; providing a definition; repealing ss. 24 and 26 of chapter 2015-222, Laws of Florida, and reenacting ss. 393.067(15) and 393.18, F.S.; abrogating the scheduled expiration and reversion of amendments to ss. 393.067(15) and 393.18, F.S., relating to a provision specifying that the agency is not required to contract with certain licensed facilities and the capacity of comprehensive transitional education programs and the residential units of their component centers; providing for contingent retroactive operation; amending ss. 383.141 and 1002.385, F.S.; conforming cross-references to changes made by the act; providing an appropriation; providing effective dates.

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

Section 1. Section 393.063, Florida Statutes, is amended

to read:

393.063 Definitions.—For the purposes of this chapter, the term:

(1)~~(2)~~ "Adult day training" means training services that ~~which~~ take place in a nonresidential setting, separate from the home or facility in which the client resides, and~~;~~ are intended to support the participation of clients in daily, meaningful, and valued routines of the community. Such training~~; and~~ may be provided in ~~include~~ work-like settings that do not meet the definition of supported employment.

(2)~~(1)~~ "Agency" means the Agency for Persons with Disabilities.

(3) "Algorithm" means the mathematical formula used by the agency to calculate budget amounts for clients which uses variables that have statistically validated relationships to clients' needs for services provided by the home and community-based services Medicaid waiver program.

(4) "Allocation methodology" is the process used to determine a client's iBudget by summing the amount generated by the algorithm, and, if applicable, any funding authorized by the agency for the client pursuant to s. 393.0662(1)(b).

(5)~~(3)~~ "Autism" means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment

in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

(6)~~(4)~~ "Cerebral palsy" means a group of disabling symptoms of extended duration which results from damage to the developing brain that may occur before, during, or after birth and that results in the loss or impairment of control over voluntary muscles. For the purposes of this definition, cerebral palsy does not include those symptoms or impairments resulting solely from a stroke.

(7)~~(5)~~ "Client" means any person determined eligible by the agency for services under this chapter.

(8)~~(6)~~ "Client advocate" means a friend or relative of the client, or of the client's immediate family, who advocates for the best interests of the client in any proceedings under this chapter in which the client or his or her family has the right or duty to participate.

(9)~~(7)~~ "Comprehensive assessment" means the process used to determine eligibility for services under this chapter.

(10)~~(8)~~ "Comprehensive transitional education program" means the program established in s. 393.18.

(11)~~(10)~~ "Developmental disabilities center" means a state-owned and state-operated facility, formerly known as a "Sunland Center," providing for the care, habilitation, and rehabilitation of clients with developmental disabilities.

(12)~~(9)~~ "Developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

(13)~~(11)~~ "Direct service provider" means a person 18 years of age or older who has direct face-to-face contact with a client while providing services to the client or has access to a client's living areas or to a client's funds or personal property.

(14)~~(12)~~ "Domicile" means the place where a client legally resides and~~,~~ which ~~place~~ is his or her permanent home. Domicile may be established as provided in s. 222.17. Domicile may not be established in Florida by a minor who has no parent domiciled in Florida, or by a minor who has no legal guardian domiciled in Florida, or by any alien not classified as a resident alien.

(15)~~(13)~~ "Down syndrome" means a disorder caused by the presence of an extra chromosome 21.

(16)~~(14)~~ "Express and informed consent" means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter to enable the person giving consent to make a knowing decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(17)~~(15)~~ "Family care program" means the program established in s. 393.068.

(18)~~(16)~~ "Foster care facility" means a residential facility licensed under this chapter which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility may not be more than three residents.

(19)~~(17)~~ "Group home facility" means a residential facility licensed under this chapter which provides a family living environment including supervision and care necessary to meet the physical, emotional, and social needs of its residents. The capacity of such a facility shall be at least 4 but not more than 15 residents.

(20) "Guardian" has the same meaning as in s. 744.102.

(21)~~(18)~~ "Guardian advocate" means a person appointed by a written order of the court to represent a person with developmental disabilities under s. 393.12.

(22)~~(19)~~ "Habilitation" means the process by which a client is assisted in acquiring and maintaining ~~to acquire and maintain~~ those life skills that ~~which~~ enable the client to cope more effectively with the demands of his or her condition and environment and to raise the level of his or her physical, mental, and social efficiency. It includes, but is not limited to, programs of formal structured education and treatment.

(23)~~(20)~~ "High-risk child" means, for the purposes of this chapter, a child from 3 to 5 years of age with one or more of the following characteristics:

(a) A developmental delay in cognition, language, or physical development.

(b) A child surviving a catastrophic infectious or traumatic illness known to be associated with developmental delay, when funds are specifically appropriated.

(c) A child with a parent or guardian with developmental disabilities who requires assistance in meeting the child's developmental needs.

(d) A child who has a physical or genetic anomaly associated with developmental disability.

(24) ~~(21)~~ "Intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purposes of this definition, the term:

(a) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

(b) "Significantly subaverage general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

For purposes of the application of the criminal laws and procedural rules of this state to matters relating to pretrial,

trial, sentencing, and any matters relating to the imposition and execution of the death penalty, the terms "intellectual disability" or "intellectually disabled" are interchangeable with and have the same meaning as the terms "mental retardation" or "retardation" and "mentally retarded" as defined in this section before July 1, 2013.

(25) ~~(22)~~ "Intermediate care facility for the developmentally disabled" ~~or "ICF/DD"~~ means a residential facility licensed and certified under part VIII of chapter 400.

(26) ~~(23)~~ "Medical/dental services" means medically necessary services that are provided or ordered for a client by a person licensed under chapter 458, chapter 459, or chapter 466. Such services may include, but are not limited to, prescription drugs, specialized therapies, nursing supervision, hospitalization, dietary services, prosthetic devices, surgery, specialized equipment and supplies, adaptive equipment, and other services as required to prevent or alleviate a medical or dental condition.

(27) ~~(24)~~ "Personal care services" means individual assistance with or supervision of essential activities of daily living for self-care, including ambulation, bathing, dressing, eating, grooming, and toileting, and other similar services that are incidental to the care furnished and essential to the health, safety, and welfare of the client if no one else is available to perform those services.

(28)~~(25)~~ "Prader-Willi syndrome" means an inherited condition typified by neonatal hypotonia with failure to thrive, hyperphagia or an excessive drive to eat which leads to obesity usually at 18 to 36 months of age, mild to moderate intellectual disability, hypogonadism, short stature, mild facial dysmorphism, and a characteristic neurobehavior.

(29)~~(26)~~ "Relative" means an individual who is connected by affinity or consanguinity to the client and who is 18 years of age or older.

(30)~~(27)~~ "Resident" means a person who has a developmental disability and resides at a residential facility, whether or not such person is a client of the agency.

(31)~~(28)~~ "Residential facility" means a facility providing room and board and personal care for persons who have developmental disabilities.

(32)~~(29)~~ "Residential habilitation" means supervision and training with the acquisition, retention, or improvement in skills related to activities of daily living, such as personal hygiene skills, homemaking skills, and the social and adaptive skills necessary to enable the individual to reside in the community.

(33)~~(30)~~ "Residential habilitation center" means a community residential facility licensed under this chapter which provides habilitation services. The capacity of such a facility may not be fewer than nine residents. After October 1, 1989, new residential habilitation centers may not be licensed and the

licensed capacity for any existing residential habilitation center may not be increased.

(34) ~~(31)~~ "Respite service" means appropriate, short-term, temporary care that is provided to a person who has a developmental disability in order to meet the planned or emergency needs of the person or the family or other direct service provider.

(35) ~~(32)~~ "Restraint" means a physical device, method, or drug used to control dangerous behavior.

(a) A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to an individual's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body.

(b) A drug used as a restraint is a medication used to control the person's behavior or to restrict his or her freedom of movement and is not a standard treatment for the person's medical or psychiatric condition. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding necessary for routine physical examinations and tests; for purposes of orthopedic, surgical, or other similar medical treatment; to provide support for the achievement of functional

body position or proper balance; or to protect a person from falling out of bed.

(36) ~~(33)~~ "Seclusion" means the involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For the purposes of this chapter, the term does not mean isolation due to the medical condition or symptoms of the person.

(37) ~~(34)~~ "Self-determination" means an individual's freedom to exercise the same rights as all other citizens, authority to exercise control over funds needed for one's own support, including prioritizing these funds when necessary, responsibility for the wise use of public funds, and self-advocacy to speak and advocate for oneself in order to gain independence and ensure that individuals with a developmental disability are treated equally.

(38) ~~(35)~~ "Specialized therapies" means those treatments or activities prescribed by and provided by an appropriately trained, licensed, or certified professional or staff person and may include, but are not limited to, physical therapy, speech therapy, respiratory therapy, occupational therapy, behavior therapy, physical management services, and related specialized equipment and supplies.

(39)~~(36)~~ "Spina bifida" means~~, for purposes of this chapter,~~ a person with a medical diagnosis of spina bifida cystica or myelomeningocele.

(40)~~(37)~~ "Support coordinator" means a person who is designated by the agency to assist individuals and families in identifying their capacities, needs, and resources, as well as finding and gaining access to necessary supports and services; coordinating the delivery of supports and services; advocating on behalf of the individual and family; maintaining relevant records; and monitoring and evaluating the delivery of supports and services to determine the extent to which they meet the needs and expectations identified by the individual, family, and others who participated in the development of the support plan.

(41)~~(38)~~ "Supported employment" means employment located or provided in an integrated work setting, with earnings paid on a commensurate wage basis, and for which continued support is needed for job maintenance.

(42)~~(39)~~ "Supported living" means a category of individually determined services designed and coordinated in such a manner as to provide assistance to adult clients who require ongoing supports to live as independently as possible in their own homes, to be integrated into the community, and to participate in community life to the fullest extent possible.

(43)~~(40)~~ "Training" means a planned approach to assisting a client to attain or maintain his or her maximum potential and

includes services ranging from sensory stimulation to instruction in skills for independent living and employment.

(44) ~~(41)~~ "Treatment" means the prevention, amelioration, or cure of a client's physical and mental disabilities or illnesses.

Section 2. Section 393.0641, Florida Statutes, is repealed.

Section 3. Subsections (3) and (5) of section 393.065, Florida Statutes, are amended, present subsections (6) and (7) are renumbered as subsections (7) and (9), respectively, and amended, and new subsections (6) and (8) are added to that section, to read:

393.065 Application and eligibility determination.—

(3) The agency shall notify each applicant, in writing, of its eligibility decision. Any applicant determined by the agency to be ineligible for ~~developmental~~ services has the right to appeal this decision pursuant to ss. 120.569 and 120.57.

(5) ~~Except as otherwise directed by law, beginning July 1, 2010,~~ The agency shall assign and provide priority to clients waiting for waiver services in the following order:

(a) Category 1, which includes clients deemed to be in crisis as described in rule, shall be given first priority in moving from the waiting list to the waiver.

(b) Category 2, which includes individuals on the waiting ~~children on the wait~~ list who are:

1. From the child welfare system with an open case in the Department of Children and Families' statewide automated child welfare information system and who are either:

a. Transitioning out of the child welfare system at the finalization of an adoption, a reunification with family members, a permanent placement with a relative, or a guardianship with a nonrelative; or

b. At least 18 years old but not yet 22 years old and who need both waiver services and extended foster care services; or

2. At least 18 years old but not yet 22 years old and who withdrew consent pursuant to s. 39.6251(5)(c) to remain in the extended foster care system.

For individuals who are at least 18 years old but not yet 22 years old and who are eligible under sub-subparagraph 1.b., the agency shall provide waiver services, including residential habilitation, and the community-based care lead agency shall fund room and board at the rate established in s. 409.145(4) and provide case management and related services as defined in s. 409.986(3)(e). Individuals may receive both waiver services and services under s. 39.6251. Services may not duplicate services available through the Medicaid state plan.

(c) Category 3, which includes, but is not required to be limited to, clients:

1. Whose caregiver has a documented condition that is expected to render the caregiver unable to provide care within

the next 12 months and for whom a caregiver is required but no alternate caregiver is available;

2. At substantial risk of incarceration or court commitment without supports;

3. Whose documented behaviors or physical needs place them or their caregiver at risk of serious harm and other supports are not currently available to alleviate the situation; or

4. Who are identified as ready for discharge within the next year from a state mental health hospital or skilled nursing facility and who require a caregiver but for whom no caregiver is available or whose caregiver is unable to provide the care needed.

(d) Category 4, which includes, but is not required to be limited to, clients whose caregivers are 70 years of age or older and for whom a caregiver is required but no alternate caregiver is available.

(e) Category 5, which includes, but is not required to be limited to, clients who are expected to graduate within the next 12 months from secondary school and need support to obtain a meaningful day activity, ~~or~~ maintain competitive employment, or ~~to~~ pursue an accredited program of postsecondary education to which they have been accepted.

(f) Category 6, which includes clients 21 years of age or older who do not meet the criteria for category 1, category 2, category 3, category 4, or category 5.

(g) Category 7, which includes clients younger than 21 years of age who do not meet the criteria for category 1, category 2, category 3, or category 4.

Within categories 3, 4, 5, 6, and 7, the agency shall maintain a waiting ~~wait~~ list of clients placed in the order of the date that the client is determined eligible for waiver services.

(6) The agency shall allow an individual who meets the eligibility requirements under subsection (1) to receive home and community-based services in this state if the individual's parent or legal guardian is an active-duty military servicemember and if at the time of the servicemember's transfer to this state, the individual was receiving home and community-based services in another state.

(7)~~(6)~~ The client, the client's guardian, or the client's family must ensure that accurate, up-to-date contact information is provided to the agency at all times. Notwithstanding s. 393.0651, the agency shall send an annual letter requesting updated information from the client, the client's guardian, or the client's family. The agency shall remove from the waiting ~~wait~~ list any individual who cannot be located using the contact information provided to the agency, fails to meet eligibility requirements, or becomes domiciled outside the state.

(8) Agency action that selects individuals to receive waiver services pursuant to this section does not establish a

right to a hearing or an administrative proceeding under chapter 120 for individuals remaining on the waiting list.

(9) ~~(7)~~ The agency and the Agency for Health Care Administration may adopt rules specifying application procedures, criteria associated with the waiting list ~~wait-list~~ categories, procedures for administering the waiting ~~wait~~ list, including tools for prioritizing waiver enrollment within categories, and eligibility criteria as needed to administer this section.

Section 4. Subsection (2) of section 393.066, Florida Statutes, is amended to read:

393.066 Community services and treatment.—

(2) Necessary ~~All~~ services ~~needed~~ shall be purchased, rather than ~~instead of~~ provided directly by the agency, when the purchase of services ~~such arrangement~~ is more cost-efficient than providing them ~~having those services provided~~ directly. All purchased services must be approved by the agency. Persons or entities under contract with the agency to provide services shall use agency data management systems to document service provision to clients. Contracted persons and entities shall meet the minimum hardware and software technical requirements established by the agency for the use of such systems. Such persons or entities shall also meet any requirements established by the agency for training and professional development of staff providing direct services to clients.

Section 5. Section 393.0662, Florida Statutes, is amended to read:

393.0662 Individual budgets for delivery of home and community-based services; iBudget system established.—The Legislature finds that improved financial management of the existing home and community-based Medicaid waiver program is necessary to avoid deficits that impede the provision of services to individuals who are on the waiting list for enrollment in the program. The Legislature further finds that clients and their families should have greater flexibility to choose the services that best allow them to live in their community within the limits of an established budget. Therefore, the Legislature intends that the agency, in consultation with the Agency for Health Care Administration, shall manage ~~develop and implement a comprehensive redesign of~~ the service delivery system using individual budgets as the basis for allocating the funds appropriated for the home and community-based services Medicaid waiver program among eligible enrolled clients. The service delivery system that uses individual budgets shall be called the iBudget system.

(1) The agency shall administer ~~establish~~ an individual budget, referred to as an iBudget, for each individual served by the home and community-based services Medicaid waiver program. The funds appropriated to the agency shall be allocated through the iBudget system to eligible, Medicaid-enrolled clients. For the iBudget system, eligible clients shall include individuals

with ~~a diagnosis of Down syndrome or~~ a developmental disability as defined in s. 393.063. The iBudget system shall ~~be designed to~~ provide for: enhanced client choice within a specified service package; appropriate assessment strategies; an efficient consumer budgeting and billing process that includes reconciliation and monitoring components; a ~~redefined~~ role for support coordinators that avoids potential conflicts of interest; a flexible and streamlined service review process; and ~~a methodology and process that ensures~~ the equitable allocation of available funds ~~to each client~~ based on the client's level of need, as determined by the ~~variables in the~~ allocation methodology ~~algorithm~~.

(a) In developing each client's iBudget, the agency shall use the allocation ~~an allocation algorithm and~~ methodology as defined in s. 393.063(4). ~~The algorithm shall use variables that have been determined by the agency to have a statistically validated relationship to the client's level of need for services provided through the home and community-based services Medicaid waiver program. The algorithm and methodology may consider individual characteristics, including, but not limited to, a client's age and living situation, information from a formal assessment instrument that the agency determines is valid and reliable, and information from other assessment processes.~~

~~(b)~~ The allocation methodology shall determine ~~provide the algorithm that determines~~ the amount of funds allocated to a client's iBudget.

(b) The agency may authorize funding ~~approve an increase in the amount of funds allocated, as determined by the algorithm,~~ based on a ~~the~~ client having one or more of the following needs that cannot be accommodated within the funding ~~as~~ determined by the algorithm and having no other resources, supports, or services available to meet the need:

1. An extraordinary need that would place the health and safety of the client, the client's caregiver, or the public in immediate, serious jeopardy unless the increase is approved. However, the presence of an extraordinary need in and of itself does not warrant authorized funding by the agency. An extraordinary need may include, but is not limited to:

a. A documented history of significant, potentially life-threatening behaviors, such as recent attempts at suicide, arson, nonconsensual sexual behavior, or self-injurious behavior requiring medical attention;

b. A complex medical condition that requires active intervention by a licensed nurse on an ongoing basis that cannot be taught or delegated to a nonlicensed person;

c. A chronic comorbid condition. As used in this subparagraph, the term "comorbid condition" means a medical condition existing simultaneously but independently with another medical condition in a patient; or

d. A need for total physical assistance with activities such as eating, bathing, toileting, grooming, and personal hygiene.

~~However, the presence of an extraordinary need alone does not warrant an increase in the amount of funds allocated to a client's iBudget as determined by the algorithm~~.

2. A significant need for one-time or temporary support or services that, if not provided, would place the health and safety of the client, the client's caregiver, or the public in serious jeopardy~~, unless the increase is approved~~. A significant need may include, but is not limited to, the provision of environmental modifications, durable medical equipment, services to address the temporary loss of support from a caregiver, or special services or treatment for a serious temporary condition when the service or treatment is expected to ameliorate the underlying condition. As used in this subparagraph, the term "temporary" means a period of fewer than 12 continuous months. However, the presence of such significant need for one-time or temporary supports or services <u>in and of itself</u> ~~alone~~ does not warrant <u>authorized funding by the agency</u> ~~an increase in the amount of funds allocated to a client's iBudget as determined by the algorithm~~.

3. A significant increase in the need for services after the beginning of the service plan year that would place the health and safety of the client, the client's caregiver, or the public in serious jeopardy because of substantial changes in the client's circumstances, including, but not limited to, permanent or long-term loss or incapacity of a caregiver, loss of services

authorized under the state Medicaid plan due to a change in age, or a significant change in medical or functional status which requires the provision of additional services on a permanent or long-term basis that cannot be accommodated within the client's current iBudget. As used in this subparagraph, the term "long-term" means a period of 12 or more continuous months. However, such significant increase in need for services of a permanent or long-term nature in and of itself ~~alone~~ does not warrant authorized funding by the agency ~~an increase in the amount of funds allocated to a client's iBudget as determined by the algorithm~~.

4. A significant need for transportation services to a waiver-funded adult day training program or to waiver-funded employment services when such need cannot be accommodated within a client's iBudget as determined by the algorithm without affecting the health and safety of the client, if public transportation is not an option due to the unique needs of the client or other transportation resources are not reasonably available.

The agency shall reserve portions of the appropriation for the home and community-based services Medicaid waiver program for adjustments required pursuant to this paragraph and may use the services of an independent actuary in determining the amount ~~of the portions~~ to be reserved.

(c) ~~A client's iBudget shall be the total of the amount determined by the algorithm and any additional funding provided pursuant to paragraph (b).~~ A client's annual expenditures for home and community-based ~~services~~ Medicaid waiver services may not exceed the limits of his or her iBudget. The total of all clients' projected annual iBudget expenditures may not exceed the agency's appropriation for waiver services.

(2) The Agency for Health Care Administration, in consultation with the agency, shall seek federal approval to amend current waivers, request a new waiver, and amend contracts as necessary to manage the iBudget system, improve services for eligible and enrolled clients, and improve the delivery of services ~~implement the iBudget system to serve eligible, enrolled clients~~ through the home and community-based services Medicaid waiver program and the Consumer-Directed Care Plus Program, including, but not limited to, enrollees with a dual diagnosis of a developmental disability and a mental health disorder.

~~(3) The agency shall transition all eligible, enrolled clients to the iBudget system. The agency may gradually phase in the iBudget system.~~

~~(a) While the agency phases in the iBudget system, the agency may continue to serve eligible, enrolled clients under the four-tiered waiver system established under s. 393.065 while those clients await transitioning to the iBudget system.~~

~~(b) The agency shall design the phase-in process to ensure that a client does not experience more than one-half of any expected overall increase or decrease to his or her existing annualized cost plan during the first year that the client is provided an iBudget due solely to the transition to the iBudget system.~~

(3)~~(4)~~ A client must use all available services authorized under the state Medicaid plan, school-based services, private insurance and other benefits, and any other resources that may be available to the client before using funds from his or her iBudget to pay for support and services.

~~(5) The service limitations in s. 393.0661(3)(f)1., 2., and 3. do not apply to the iBudget system.~~

(4)~~(6)~~ Rates for any or all services established under rules of the Agency for Health Care Administration must ~~shall~~ be designated as the maximum rather than a fixed amount for individuals who receive an iBudget, except for services specifically identified in those rules that the agency determines are not appropriate for negotiation, which may include, but are not limited to, residential habilitation services.

(5)~~(7)~~ The agency shall ensure that clients and caregivers have access to training and education that ~~to~~ inform them about the iBudget system and enhance their ability for self-direction. Such training and education must ~~shall~~ be offered in a variety of formats and, at a minimum, must ~~shall~~ address the policies

and processes of the iBudget system and~~,~~ the roles and responsibilities of consumers, caregivers, waiver support coordinators, providers, and the agency, and must provide~~,~~ information ~~available~~ to help the client make decisions regarding the iBudget system~~,~~ and examples of support and resources available in the community.

(6)~~(8)~~ The agency shall collect data to evaluate the implementation and outcomes of the iBudget system.

(7)~~(9)~~ The agency and the Agency for Health Care Administration may adopt rules specifying the allocation algorithm and methodology; criteria and processes for clients to access reserved funds for extraordinary needs, temporarily or permanently changed needs, and one-time needs; and processes and requirements for selection and review of services, development of support and cost plans, and management of the iBudget system as needed to administer this section.

Section 6. Section 393.0679, Florida Statutes, is created to read:

393.0679 Utilization review.—The agency shall conduct utilization review activities in intermediate care facilities for individuals with developmental disabilities, both public and private, as necessary to meet the requirements of the approved Medicaid state plan and federal law, and such facilities shall comply with any requests for information and documentation made by the agency and permit any agency inspections in connection with such activities.

Section 7. Effective upon this act becoming a law, subsection (1), paragraphs (a) and (b) of subsection (4), paragraphs (b), (e), (f), (g), and (h) of subsection (5), subsection (6), paragraph (d) of subsection (7), subsection (10), and paragraph (b) of subsection (12) of section 393.11, Florida Statutes, are amended, and subsection (14) is added to that section, to read:

393.11 Involuntary admission to residential services.—

(1) JURISDICTION.—If a person has an intellectual disability or autism and requires involuntary admission to residential services provided by the agency, the circuit court of the county in which the person resides has jurisdiction to conduct a hearing and enter an order involuntarily admitting the person in order for the person to receive the care, treatment, habilitation, and rehabilitation that the person needs. For the purpose of identifying intellectual disability or autism, diagnostic capability shall be established by the agency. Except as otherwise specified, the proceedings under this section are governed by the Florida Rules of Civil Procedure.

(4) AGENCY PARTICIPATION.—

(a) Upon receiving the petition, the court shall immediately order the ~~developmental services program of the~~ agency to examine the person being considered for involuntary admission to residential services.

(b) Following examination, the agency shall file a written report with the court at least 10 working days before the date

of the hearing. The report must be served on the petitioner, the person who has the intellectual disability or autism, and the person's attorney at the time the report is filed with the court.

(5) EXAMINING COMMITTEE.—

(b) The court shall appoint at least three disinterested experts who have demonstrated to the court an expertise in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities or autism. The committee must include at least one licensed and qualified physician, one licensed and qualified psychologist, and one qualified professional who, at a minimum, has a master's degree in social work, special education, or vocational rehabilitation counseling, to examine the person and to testify at the hearing on the involuntary admission to residential services.

(e) The committee shall prepare a written report for the court. The report must explicitly document the extent that the person meets the criteria for involuntary admission. The report, and expert testimony, must include, but not be limited to:

1. The degree of the person's intellectual disability or autism and whether, using diagnostic capabilities established by the agency, the person is eligible for agency services;

2. Whether, because of the person's degree of intellectual disability or autism, the person:

a. Lacks sufficient capacity to give express and informed consent to a voluntary application for services pursuant to s. 393.065 and~~,~~

~~b.~~ lacks basic survival and self-care skills to such a degree that close supervision and habilitation in a residential setting is necessary and, if not provided, would result in a ~~real and present~~ threat of substantial harm to the person's well-being; or

b.~~c.~~ Is likely to physically injure others if allowed to remain at liberty.

3. The purpose to be served by residential care;

4. A recommendation on the type of residential placement which would be the most appropriate and least restrictive for the person; and

5. The appropriate care, habilitation, and treatment.

(f) The committee shall file the report with the court at least 10 working days before the date of the hearing. The report must be served on the petitioner, the person who has the intellectual disability or autism, the person's attorney at the time the report is filed with the court, and the agency.

(g) Members of the examining committee shall receive a reasonable fee to be determined by the court. The fees shall be paid from the general revenue fund of the county in which the person who has the intellectual disability or autism resided when the petition was filed.

~~(h) The agency shall develop and prescribe by rule one or more standard forms to be used as a guide for members of the examining committee.~~

(6) COUNSEL; GUARDIAN AD LITEM.—

(a) The person who has the intellectual disability or autism must be represented by counsel at all stages of the judicial proceeding. If the person is indigent and cannot afford counsel, the court shall appoint a public defender at least 20 working days before the scheduled hearing. The person's counsel shall have full access to the records of the service provider and the agency. In all cases, the attorney shall represent the rights and legal interests of the person, regardless of who initiates the proceedings or pays the attorney ~~attorney's~~ fee.

(b) If the attorney, during the course of his or her representation, reasonably believes that the person who has the intellectual disability or autism cannot adequately act in his or her own interest, the attorney may seek the appointment of a guardian ad litem. A prior finding of incompetency is not required before a guardian ad litem is appointed pursuant to this section.

(7) HEARING.—

(d) The person who has the intellectual disability or autism must be physically present throughout the entire proceeding. If the person's attorney believes that the person's presence at the hearing is not in his or her best interest, the

person's presence may be waived once the court has seen the person and the hearing has commenced.

(10) COMPETENCY.—

(a) The issue of competency is separate and distinct from a determination of the appropriateness of involuntary admission to residential services due to intellectual disability or autism.

(b) The issue of the competency of a person who has an intellectual disability or autism for purposes of assigning guardianship shall be determined in a separate proceeding according to the procedures and requirements of chapter 744. The issue of the competency of a person who has an intellectual disability or autism for purposes of determining whether the person is competent to proceed in a criminal trial shall be determined in accordance with chapter 916.

(12) APPEAL.—

(b) The filing of an appeal by the person who has an intellectual disability or autism stays admission of the person into residential care. The stay remains in effect during the pendency of all review proceedings in Florida courts until a mandate issues.

(14) REVIEW OF CONTINUED INVOLUNTARY ADMISSION TO RESIDENTIAL SERVICES.—

(a) If a person is involuntarily admitted to residential services provided by the agency, the agency shall employ or, if necessary, contract with a qualified evaluator to conduct a

review annually, unless otherwise ordered, to determine the propriety of the person's continued involuntary admission to residential services based on the criteria in paragraph (8)(b). The review shall include an assessment of the most appropriate and least restrictive type of residential placement for the person.

(b) A placement resulting from an involuntary admission to residential services must be reviewed by the court at a hearing annually, unless a shorter review period is ordered at a previous hearing. The agency shall provide to the court the completed reviews by the qualified evaluator. The review and hearing must determine whether the person continues to meet the criteria in paragraph (8)(b) and, if so, whether the person still requires involuntary placement in a residential setting and whether the person is receiving adequate care, treatment, habilitation, and rehabilitation in the residential setting.

(c) The agency shall provide a copy of the review and reasonable notice of the hearing to the appropriate state attorney, if applicable, the person's attorney, and the person's guardian or guardian advocate, if appointed.

(d) For purposes of this section, the term "qualified evaluator" means a psychiatrist licensed under chapter 458 or chapter 459, or a psychologist licensed under chapter 490, who has demonstrated to the court an expertise in the diagnosis, evaluation, and treatment of persons who have intellectual disabilities.

Section 8. Effective June 30, 2016, or if this act fails to become law until after that date, operating retroactively to June 30, 2016, sections 24 and 26 of chapter 2015-222, Laws of Florida, are repealed.

Section 9. Subsection (15) of section 393.067, Florida Statutes, is reenacted to read:

393.067 Facility licensure.—

(15) The agency is not required to contract with facilities licensed pursuant to this chapter.

Section 10. Section 393.18, Florida Statutes, is reenacted to read:

393.18 Comprehensive transitional education program.—A comprehensive transitional education program is a group of jointly operating centers or units, the collective purpose of which is to provide a sequential series of educational care, training, treatment, habilitation, and rehabilitation services to persons who have developmental disabilities and who have severe or moderate maladaptive behaviors. However, this section does not require such programs to provide services only to persons with developmental disabilities. All such services shall be temporary in nature and delivered in a structured residential setting, having the primary goal of incorporating the principle of self-determination in establishing permanent residence for persons with maladaptive behaviors in facilities that are not associated with the comprehensive transitional education program. The staff shall include behavior analysts and teachers,

as appropriate, who shall be available to provide services in each component center or unit of the program. A behavior analyst must be certified pursuant to s. 393.17.

(1) Comprehensive transitional education programs shall include a minimum of two component centers or units, one of which shall be an intensive treatment and educational center or a transitional training and educational center, which provides services to persons with maladaptive behaviors in the following sequential order:

(a) Intensive treatment and educational center.—This component is a self-contained residential unit providing intensive behavioral and educational programming for persons with severe maladaptive behaviors whose behaviors preclude placement in a less restrictive environment due to the threat of danger or injury to themselves or others. Continuous-shift staff shall be required for this component.

(b) Transitional training and educational center.—This component is a residential unit for persons with moderate maladaptive behaviors providing concentrated psychological and educational programming that emphasizes a transition toward a less restrictive environment. Continuous-shift staff shall be required for this component.

(c) Community transition residence.—This component is a residential center providing educational programs and any support services, training, and care that are needed to assist persons with maladaptive behaviors to avoid regression to more

restrictive environments while preparing them for more independent living. Continuous-shift staff shall be required for this component.

(d) Alternative living center.—This component is a residential unit providing an educational and family living environment for persons with maladaptive behaviors in a moderately unrestricted setting. Residential staff shall be required for this component.

(e) Independent living education center.—This component is a facility providing a family living environment for persons with maladaptive behaviors in a largely unrestricted setting and includes education and monitoring that is appropriate to support the development of independent living skills.

(2) Components of a comprehensive transitional education program are subject to the license issued under s. 393.067 to a comprehensive transitional education program and may be located on a single site or multiple sites.

(3) Comprehensive transitional education programs shall develop individual education plans for each person with maladaptive behaviors who receives services from the program. Each individual education plan shall be developed in accordance with the criteria specified in 20 U.S.C. ss. 401 et seq., and 34 C.F.R. part 300.

(4) For comprehensive transitional education programs, the total number of residents who are being provided with services may not in any instance exceed the licensed capacity of 120

residents and each residential unit within the component centers of the program authorized under this section may not in any instance exceed 15 residents. However, a program that was authorized to operate residential units with more than 15 residents before July 1, 2015, may continue to operate such units.

Section 11. Paragraph (b) of subsection (1) of section 383.141, Florida Statutes, is amended to read:

383.141 Prenatally diagnosed conditions; patient to be provided information; definitions; information clearinghouse; advisory council.—

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

(b) "Developmental disability" includes Down syndrome and other developmental disabilities defined by s. 393.063(12) ~~s. 393.063(9)~~.

Section 12. Paragraph (d) of subsection (2) of section 1002.385, Florida Statutes, is amended to read:

1002.385 Florida personal learning scholarship accounts.—

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

(d) "Disability" means, for a 3- or 4-year-old child or for a student in kindergarten to grade 12, autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association; cerebral palsy, as defined in s. 393.063(6) ~~s. 393.063(4)~~; Down syndrome, as defined in s. 393.063(15) ~~s. 393.063(13)~~; an intellectual disability, as

defined in s. 393.063(24) ~~s. 393.063(21)~~; Prader-Willi syndrome, as defined in s. 393.063(28) ~~s. 393.063(25)~~; or spina bifida, as defined in s. 393.063(39) ~~s. 393.063(36)~~; for a student in kindergarten, being a high-risk child, as defined in s. 393.063(23)(a) ~~s. 393.063(20)(a)~~; muscular dystrophy; and Williams syndrome.

Section 13. For the 2016-2017 fiscal year, the sum of $623,200 in nonrecurring funds from the General Revenue Fund is appropriated to the Agency for Persons with Disabilities for the purpose of implementing this act.

Section 14. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, 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	____

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Renner offered the following:

Amendment

Remove lines 903-906 and insert:

Section. 13. Contingent upon HB 919 or similar legislation failing to become law during the 2016 Legislative Session, for the 2016-2017 fiscal year, the sum of $623,200 of nonrecurring funds from the General Revenue Fund is appropriated to the Agency for Persons with Disabilities to implement Section 7 of this act.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1341 State-owned Motor Vehicles
SPONSOR(S): Young
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 326

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Appropriations Committee		White C.C.W	Leznoff
2) State Affairs Committee			

SUMMARY ANALYSIS

One of the duties of the Department of Management Services (DMS) is to manage the purchase, operation, maintenance, and disposal of the state's fleet of motor vehicles.

The bill requires DMS to prepare a plan regarding the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles and to submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2016. In developing the plan, the DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

The bill has a significant negative fiscal impact on the Department of Management Services, as it requires DMS to prepare a plan but does not provide funding. There is no fiscal impact on local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Part II of chapter 287, F.S., governs the purchase of motor vehicles by state officers and employees. Section 287.15, F.S., does not allow any state agency to purchase, lease, or acquire any motor vehicle, watercraft, or aircraft of any type unless prior approval is obtained from the Department of Management Services (DMS). DMS approval is not required, however, for the lease for casual use of motor vehicles.

Section 287.16, F.S., gives the DMS the following powers, duties, and responsibilities:

- To obtain the most effective and efficient use of motor vehicles, watercraft, and aircraft for state purposes;
- To establish and operate central facilities for the acquisition, disposal, operation, maintenance, repair, storage, supervision, control, and regulation of all state-owned or state-leased aircraft, watercraft, and motor vehicles and to operate any state facilities for those purposes;
- In its discretion, to require every state agency to transfer its ownership, custody, and control of every aircraft and motor vehicle, and associated maintenance facilities and equipment, except those used principally for law enforcement, state fire marshal, or fire control purposes, to the Department of Management Services, including all right, title, interest, and equity therein;
- Upon requisition and showing of need, to assign suitable aircraft or motor vehicles, on a temporary (for a period up to and including one month) or permanent (for a period from one month up to and including one full year) basis, to any state agency;
- To allocate and charge fees to the state agencies to which aircraft or motor vehicles are furnished, based upon any reasonable criteria;
- To adopt and enforce rules and regulations for the efficient and safe use, operation, maintenance, repair, disposal, and replacement of all state-owned or state-leased aircraft, watercraft, and motor vehicles and to require the placement of appropriate stickers, decals, or other markings upon them;
- To contract for specialized maintenance services;
- To require any state agency to keep records and make reports regarding aircraft and motor vehicles to the department as may be required;
- To establish and operate central facilities to determine the mode of transportation to be used by state employees traveling on official state business and to schedule and coordinate use of state-owned or state-leased aircraft and passenger-carrying vehicles to assure maximum utilization of state aircraft, motor vehicles, and employee time by assuring that employees travel by the most practical and economical mode of travel;
- To calculate biennially the break-even mileage at which it becomes cost-effective for the state to provide assigned motor vehicles to employees; and
- To conduct, in coordination with the Department of Transportation, an analysis of fuel additive and biofuel use by the Department of Transportation through its central fueling facilities.

Current law gives DMS the authority for centralized fleet management, where DMS would control all aspects of fleet management from acquisition and maintenance to disposal. DMS has not operated this way, however, allowing for a decentralized approach where each state agency manages its own inventory of fleet. The DMS Bureau of Fleet and Federal Property Management:

- develops policies and procedures for effective and efficient purchase, assignment, use, maintenance, and disposal of motor vehicles and watercraft;
- determines the motor vehicles and watercraft included on state contracts, develop technical bid specifications and assist in evaluating the contracts;
- approves the purchase of motor vehicles and watercraft;

- develops equipment purchase approval guidelines;
- develops fleet replacement criteria;
- effectively and efficiently disposes of surplus motor vehicles, watercraft and heavy equipment to achieve the maximum feasible return from disposal; and
- provides the Florida Equipment Electronic Tracking (FLEET) system, which is used for fleet management and reporting.[1]

In the Fiscal Year (FY) 2013-2014 General Appropriations Act (chapter 2013-40, Laws of Florida), $224,000 was provided in Specific Appropriation 2734 for the DMS to procure contracted services to do a business case of the state's fleet management. DMS contracted with Mercury Associates, Inc. (Mercury) and completed a business case in December of 2013.

One of the recommendations Mercury made in the business case was for DMS to implement a new and much improved fleet management information system. In October 2014, DMS requested $1.4 million in funding in the FY 2015-16 Legislative Budget Request (LBR) for a new fleet management system; however, the Legislature did not fund the request. In October 2015, DMS requested $1.7 million in funding in the FY 2016-17 LBR for a new fleet management system. HB 5001, the House Proposed FY 2016-2017 General Appropriations Act, includes $1.7 million for a new fleet management system.

Effect of Proposed Changes

The bill requires DMS to prepare a plan regarding the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles and to submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2016.

The plan must provide a method for:

- Using break-even mileage in the assignment and administration of motor vehicles to state agencies and employees to determine when it becomes cost effective to the state to provide assigned motor vehicles to employees;
- Managing a fleet of motor vehicles for short-term use and shared-use motor vehicle pools;
- Developing a motor vehicle replacement plan and budget, which must take into account operating and maintenance costs of the centralized fleet;
- Purchasing motor vehicles necessary for the operation of the centralized fleet;
- Repairing and maintaining motor vehicles;
- Monitoring the use of motor vehicles and enforcing regulations regarding proper use;
- Maintaining records related to the operation and maintenance of motor vehicles and the administration of the fleet;
- Disposing of motor vehicles that are no longer needed or the use of which is not cost effective;
- Monitoring and managing motor vehicle disposal outcomes to determine the most cost-effective method of disposing fleet vehicles;
- Implementing a fuel management program and a standardized methodology for reporting fuel data;
- Determining when it would be cost-efficient to lease a motor vehicle from a third-party vendor instead of using a state-owned motor vehicle;
- Determining when it would be cost-efficient to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for fleet use; and
- Equipping fleet motor vehicles with real-time locational monitoring systems.

In developing the plan, the DMS must evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

[1] See http://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management (last visited January 18, 2016).

B. SECTION DIRECTORY:

Section 1. Requires the DMS to submit a centralized fleet management plan.

Section 2. Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill has a significant negative fiscal impact on the Department of Management Services, as it requires DMS to prepare a plan but does not provide funding. DMS was appropriated $224,000 in the Fiscal Year 2013-14 General Appropriations Act (chapter 2013-40, Laws of Florida) to complete a fleet management business case.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take any 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 create any additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to state-owned motor vehicles; requiring the Department of Management Services to prepare a plan regarding the centralized management of state-owned motor vehicles; requiring the department to submit the plan to the Governor and the Legislature by a specified date; prescribing requirements for the plan; requiring the department to conduct certain evaluations while developing the plan; providing an effective date.

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

Section 1. Centralized fleet management plan.—

(1) The Department of Management Services shall prepare a plan regarding the creation, administration, and maintenance of a centralized fleet of state-owned motor vehicles. By November 1, 2016, the department shall submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(2) The plan for centralizing all state-owned motor vehicles must provide a method for:

(a) Using break-even mileage in the assignment and administration of motor vehicles to state agencies and employees to determine when it becomes cost effective to the state to provide assigned motor vehicles to employees.

(b) Managing a fleet of motor vehicles for short-term use and shared-use motor vehicle pools.

(c) Developing a motor vehicle replacement plan and budget, which must take into account operating and maintenance costs of the centralized fleet.

(d) Purchasing motor vehicles necessary for the operation of the centralized fleet.

(e) Repairing and maintaining motor vehicles.

(f) Monitoring the use of motor vehicles and enforcing regulations regarding proper use.

(g) Maintaining records related to the operation and maintenance of motor vehicles and the administration of the fleet.

(h) Disposing of motor vehicles that are no longer needed or the use of which is not cost effective.

(i) Monitoring and managing motor vehicle disposal outcomes to determine the most cost-effective method of disposing fleet vehicles.

(j) Implementing a fuel management program and a standardized methodology for reporting fuel data.

(k) Determining when it would be cost-efficient to lease a motor vehicle from a third-party vendor instead of using a state-owned motor vehicle.

(l) Determining when it would be cost-efficient to use alternative fuel vehicles, electric vehicles, or extended-range electric vehicles or to lease or purchase such vehicles for

fleet use.

(m) Equipping fleet motor vehicles with real-time locational monitoring systems.

(3) In developing the plan, the department shall evaluate the costs and benefits of operating and maintaining a centralized motor vehicle fleet compared to the costs and benefits of contracting with a third-party vendor for the operation and maintenance of a centralized motor vehicle fleet.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Young offered the following:

Amendment

Between lines 60 and 61, insert:

(4) For the 2016-2017 fiscal year, the sum of $225,000 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Management Services to implement the provisions of this act.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee

Representative Young offered the following:

Amendment

Remove line 18 and insert:

1, 2017, the department shall submit to the Governor,