



Criminal Justice Subcommittee

**Monday, March 16, 2015
4:00 PM - 6:00 PM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Carlos Trujillo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Criminal Justice Subcommittee

Start Date and Time: Monday, March 16, 2015 04:00 pm
End Date and Time: Monday, March 16, 2015 06:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 369 Human Trafficking by Transportation & Ports Subcommittee, Kerner, Spano
HB 523 Notaries Public by Kerner
HB 649 Surveillance by a Drone by Metz
HB 755 Convenience Business Security by Stone
HB 783 Charging Youths as Adults in Criminal Proceedings by Edwards
HB 845 Sexting by DuBose
HB 963 Controlled Substances by Burgess
HB 967 Trespass on Airport Property by Cortes, B.
HB 1015 Public Records/Law Enforcement Personnel, State Attorneys, & Statewide Prosecutors by Latvala
HB 1037 Electronic Monitoring Devices by Torres
HB 1069 Defendants in Specialized Courts by Perry
HB 4045 Repeal of a Prohibition on Cohabitation by Rehwinkel Vasilinda

Consideration of the following proposed committee substitute(s):

PCS for HB 151 -- Sexual Cyberharassment

Consideration of the following proposed committee bill(s):

PCB CRJS 15-04 -- Pub.Rec./Juvenile Criminal History Records
PCB CRJS 15-05 -- Expunging and Sealing Criminal History Records
PCB CRJS 15-06 -- Pub.Rec./Expunging and Sealing Criminal History Records

NOTICE FINALIZED on 03/12/2015 16:08 by Denson.Karan

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 369 Human Trafficking
SPONSOR(S): Transportation & Ports Subcommittee; Kerner; Spano and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 534

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|----------------|--|
| 1) Transportation & Ports Subcommittee | 12 Y, 0 N, As CS | Johnson | Vickers |
| 2) Criminal Justice Subcommittee | | Aziz <i>PA</i> | Cunningham <i>sw</i> |
| 3) Appropriations Committee | | | |
| 4) Economic Affairs Committee | | | |

SUMMARY ANALYSIS

The National Human Trafficking Resource Center (NHTRC) is a national hotline number funded by the United States Department of Health and Human Services. The NHTRC provides service referrals to victims of human trafficking, tips to law enforcement, information to the public, training, and technical assistance.

Currently, 25 states require or encourage the NHTRC hotline number to be posted or promoted within the state. Florida law currently does not require or encourage the posting of the hotline number.

The bill permits the Department of Transportation (DOT) to display public awareness signs at its facilities, such as rest areas, turnpike service plazas, weigh stations and welcome centers. The bill also encourages businesses to display the public awareness signs in conspicuous locations to both employees and the public. The public awareness sign instructs anyone who is being forced to engage in an activity and is being held against their will to call or text the NHTRC to access help and services. The bill provides legislative findings that the exploitation and trade of human beings is the equivalent of erstwhile practices of captivity, and as such, is an equally lucrative industry.

The bill requires the Attorney General to approve the form and content of the authorized signs. The bill provides for a minimum size for the signs and minimum font size.

Finally, the bill authorizes the Attorney General to adopt rules implementing human trafficking public awareness signs.

There may be a negative fiscal impact on DOT and businesses who choose to put up human trafficking awareness signs. However, the cost is expected to be minimal.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law defines human trafficking as "soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person."¹ Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.² Trafficking often subjects victims to force, fraud, and coercion.³

There are no definitive statistics on the extent of human trafficking. The U.S. Department of State estimates that as many as 27 million victims are being trafficked worldwide at any given time. They also estimate that there were approximately 40,000 victims being trafficked in the United States in 2012.⁴ Florida is estimated to have the third highest rate of human trafficking in the United States, following New York and California.⁵ Victims of human trafficking are transported around the United States by a variety of means-cars, buses, vans, trucks, or planes-and are often provided counterfeit identification to use in the event of arrest.

The National Human Trafficking Resource Center (NHTRC) is a national hotline number funded by the United States Department of Health and Human Services.⁶ It has been operated by Polaris since 2007. Polaris is a non-profit, non-governmental organization, which works exclusively on the issue of human trafficking. It is not a government entity, law enforcement agency, or an immigration authority.⁷

The NHTRC provides service referrals to victims of human trafficking, tips to law enforcement, information to the public, training, and technical assistance. The NHTRC's "mission is to provide human trafficking victims and survivors with access to critical support and services to get help and stay safe, and to equip the anti-trafficking community with the tools to effectively combat all forms of human trafficking."⁸

The toll-free hotline is available to answer calls from anywhere in the United States, 24 hours a day, seven days a week, every day of the year. It has the capabilities to answer calls in more than 200 languages. In 2014, the hotline received 1,428 phone calls and reported 364 human trafficking cases in Florida.⁹

Currently, 25 states require or encourage the NHTRC hotline number to be posted or promoted within the state.¹⁰

Florida law currently does not require or encourage the posting of the hotline number.

¹ s. 787.06(2)(d), F.S.

² s. 787.06(1)(a), F.S.

³ *Id.*

⁴ U.S. Department of State, *Trafficking in Persons Report 2013*, <http://www.state.gov/j/tip/rls/tiprpt/2013/> (last visited March 10, 2015).

⁵ Healthy Families Subcommittee Presentation by Professor Terry Coonan, FSU Human Rights Center, January 14, 2014.

⁶ Information on the National Human Trafficking Resource Center is available at <http://traffickingresourcecenter.org/> (last visited March 10, 2015).

⁷ Polaris, *NHTRC and BeFree Hotlines*, <http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtrc/overview> (last visited March 10, 2015).

⁸ National Human Trafficking Resource Center, *Mission*, <http://traffickingresourcecenter.org/mission> (last visited March 10, 2015)

⁹ National Human trafficking Resource Center, *Florida*, <http://traffickingresourcecenter.org/state/florida> (last visited March 10, 2015).

¹⁰ Polaris, *Posting the National Human Trafficking Resource Center Hotline*, <http://www.polarisproject.org/what-we-do/policy-advocacy/assisting-victims/posting-the-national-human-trafficking-resource-center-hotline> (last visited March 10, 2015).

Effect of the Bill

The bill provides legislative findings that the exploitation and trade of human beings is the equivalent of erstwhile practices of captivity, and as such, is an equally lucrative industry. Human beings are not to be traded or bonded for forced labor or sexual exploitation. The bill estimates that more than four million people fall prey to trafficking every year. Women and children are the most vulnerable victims of trafficking, though increasingly, men are also being trafficked to work as unskilled labor in factories.

The bill authorizes the Department of Transportation (DOT) to display human trafficking public awareness signs at any rest area, turnpike service plaza, weigh station, and welcome center that is open to the public.

The bill encourages any business owner to display, at their establishment, a human trafficking public awareness sign near the public entrance of the establishment or in another conspicuous location clearly visible to both the public and employees.

The bill requires the Attorney General to approve the form and content of the human trafficking awareness signs.

The bill requires public awareness signs to be at least 8.5 inches by 11 inches in size, and may include, but is not limited to the following in English, Spanish, or any other language approved by the Attorney General:

If you or someone you know is being forced to engage in an activity and is being held against their will, whether it is housework, farm work, factory work, retail work, restaurant work, or any other activity, call the National Human Trafficking Resource Center at [insert number] or text INFO or HELP to [insert number] to access help and services. Victims of human trafficking are protected under United States and Florida law.

The bill authorizes the Attorney General to adopt rules regarding the display of human trafficking awareness signs.

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

B. SECTION DIRECTORY:

Section 1 Creates s. 787.08, F.S., relating to human trafficking public awareness signs.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

If DOT decides to post human trafficking awareness signs at its facilities, it will incur an insignificant impact associated with placing the signs. DOT may place signs at up to 84 facilities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses who decide to display human trafficking awareness signs will incur minimum expense associated with obtaining the signs.

D. FISCAL COMMENTS:

None.

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 authorizes Attorney General to adopt rules regarding human trafficking awareness signs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DOT, in cooperation with the Attorney General's office, it already provides information regarding human trafficking at its rest areas.¹¹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2015, the Transportation & Ports Subcommittee adopted a Proposed Committee Substitute. The substance of the Proposed Committee Substitute is reflected in this analysis.

¹¹ Florida Department of Transportation, Bill Analysis for HB 369 (2015). Copy on file with the Transportation & Ports Subcommittee.

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A bill to be entitled
 An act relating to human trafficking; creating s.
 787.08, F.S.; providing legislative findings;
 authorizing the Department of Transportation and
 business owners to display human trafficking public
 awareness signs at specified locations; requiring the
 Attorney General to approve the form and content of
 such signs; providing sign description; authorizing
 rulemaking; providing an effective date.

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

Section 1. Section 787.08, Florida Statutes, is created to
 read:

787.08 Human trafficking public awareness signs.—

(1) The Legislature finds that the exploitation and trade
 of human beings is the equivalent of erstwhile practices of
 human captivity and, as such, is an equally lucrative industry.
 Human beings are not to be traded for bonded or forced labor or
 sexual exploitation. It is estimated that more than 4 million
 people fall prey to trafficking every year. Women and children
 are the most vulnerable victims of trafficking, although,
 increasingly, men are also being trafficked to work as unskilled
 labor in factories.

(2) The Department of Transportation may display a public
 awareness sign developed under subsection (4) at a rest area,

27 turnpike service plaza, weigh station, and welcome center in the
 28 state that is open to the public.

29 (3) A business owner may display at his or her
 30 establishment a public awareness sign developed under subsection
 31 (4) near the public entrance of the establishment or in another
 32 conspicuous location that is clearly visible to both the public
 33 and employees of the establishment.

34 (4) (a) The Attorney General shall approve the form and
 35 content of a sign authorized by this section.

36 (b) The public awareness sign must be at least 8.5 inches
 37 by 11 inches in size, must be printed in at least a 16-point
 38 type, and may include, but is not limited to, the following in
 39 English, Spanish, or any other language approved by the Attorney
 40 General:

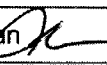
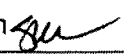
41 "If you or someone you know is being forced to engage in an
 42 activity and is being held against your or his or her will,
 43 whether it is housework, farm work, factory work, retail
 44 work, restaurant work, or any other activity, call the
 45 National Human Trafficking Resource Center at [insert
 46 number] or text INFO or HELP to [insert number] to access
 47 help and services. Victims of human trafficking are
 48 protected under United States and Florida law."

49 (5) The Attorney General may adopt rules to implement this
 50 section.

51 Section 2. This act shall take effect January 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 523 Notaries Public
SPONSOR(S): Kerner
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 526

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|--|--|
| 1) Economic Development & Tourism Subcommittee | 12 Y, 0 N | Collins | Duncan |
| 2) Criminal Justice Subcommittee | | Keegan  | Cunningham  |
| 3) Business & Professions Subcommittee | | | |
| 4) Economic Affairs Committee | | | |

SUMMARY ANALYSIS

Currently, law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers and traffic infraction enforcement officers are authorized to perform the notarial act of administering oaths when performing official duties. Such officers are not currently authorized to verify official documents.

The bill authorizes law enforcement officers, correctional officers, correctional probation officers, traffic accident investigation officers, or traffic infraction enforcement officers to:

- Verify documents pursuant to s. 92.525, F.S., when performing official duties; and
- Administer oaths by reliable electronic means or in the physical presence of the affiant.

The bill defines the term "reliable electronic means" to mean the signing and transmission of a document through means compliant with criminal justice information system security measures.

The bill amends s. 117.05, F.S., providing that when notarizing an electronic signature as part of the administration of an oath, the signer need not appear before a law enforcement officer, correctional officer, correctional probation officer, traffic accident investigation officer, or traffic infraction enforcement officer.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Notaries Public in Florida

A notary public (notary or notaries) is a public officer appointed and commissioned by the Governor whose function is to administer oaths; to take acknowledgements of deeds and other instruments; to attest to or certify photocopies of certain documents; and to perform other duties specified by law.¹

Chapter 117, F.S., provides requirements and guidelines for notaries and authorizes the Governor to appoint as many notaries as necessary. A notary must be at least 18 years of age, maintain legal residence in the state throughout the commission, and possess the ability to read, write, and understand English.² The application for appointment must include a \$25 fee, a \$10 commission fee required by s. 113.01, F.S., and a \$4 surcharge, appropriated to the Executive Office of the Governor to be used for notary education and assistance.³

Once appointed, a notary serves a four-year term.⁴ During the term of office, a notary must post and maintain a \$7,500 bond payable to any individual harmed as a result of a notary's breach of duty. The bond must be approved and filed with the Department of State (DOS) and executed by a surety company that is authorized to transact business within the state. If a surety company pays an individual harmed by the notary for breach of duty, the company must notify the Governor of the payment and the underlying circumstances.⁵ No person may be automatically reappointed as a notary. The application process must be completed regardless of whether an applicant has previously served as a notary.⁶

A notary is authorized by law to perform six functions:⁷

- Administer oaths or affirmations;⁸
- Take acknowledgements of deeds and other instruments of writing for record;⁹
- Attest to photocopies of certain documents;¹⁰
- Solemnize marriage;¹¹
- Verify vehicle identification numbers;¹² and
- Certify the contents of a safe-deposit box.¹³

Electronic Notarization

Any document requiring notarization may be notarized electronically.¹⁴ In performing a notarial act electronically, a notary public must use an electronic signature that is:¹⁵

- Unique to the notary public;
- Capable of independent verification;

¹ *Governor's Reference Manual for Notaries*; State of Florida, November 1, 2001 ed., p. 6, available at http://www.flgov.com/notary_ref_manual/ (last visited March 10, 2015).

² Section 117.01(1), F.S.

³ Section 117.01(2), F.S.

⁴ Section 117.01(1), F.S.

⁵ Section 117.01(8), F.S.

⁶ Section 117.01(6), F.S.

⁷ See *supra* note 1 at 12.

⁸ Section 117.03, F.S.

⁹ Section 117.04, F.S.

¹⁰ Section 117.05(12)(a), F.S.

¹¹ Section 117.045, F.S.

¹² Section 319.23(3)(a)2., F.S.

¹³ Section 655.94(1), F.S.

¹⁴ Section 117.021(1), F.S.

¹⁵ Section 117.021(2)(a)-(d), F.S.

- Retained under the notary public's sole control; and
- Attached to or logically associated with the electronic document in a manner that any subsequent alteration to the electronic document displays evidence of alteration.

When a signature is required to be accompanied by a notary public seal, the following information must be included in an electronic signature:¹⁶

- The full name of the notary public exactly as provided on the notary public's application for commission;
- The words "Notary Public State of Florida";
- The date of expiration of the commission of the notary public; and
- The notary public's commission number.

Electronic Warrants

In 2013,¹⁷ the Legislature authorized judges to electronically sign a search or arrest warrant upon examination of an application or complaint and proof that it:

- bears the affiant's signature or electronic signature;
- is supported by an oath or affirmation administered by the judge or other person authorized by law to administer oaths; and
- if submitted electronically, is submitted by reliable electronic means.

The law also provided that a warrant is deemed issued when it is signed or electronically signed¹⁸ by a judge.

Verification of Documents

Currently, when it is authorized or required by law, by rule, or an administrative agency, or by order of court that a document be verified by a person, the verification may be accomplished:¹⁹

- Under oath or affirmation taken or administered before an officer authorized pursuant to s. 92.50, F.S.,²⁰ to administer oaths; or
- By signing a written declaration.²¹

While notaries are authorized to verify documents, law enforcement officers are not authorized to do so.

Law Enforcement and Correctional Officers

Currently, s. 117.10, F.S., provides that law enforcement officers, correctional officers, and correctional probation officers;²² and traffic accident investigation officers and traffic infraction enforcement officers²³ are authorized to administer oaths when engaged in the performance of official duties. Additionally, the

¹⁶ Section 117.021(3)(a)-(d), F.S.

¹⁷ Chapter 2013-247, Laws of Fla.

¹⁸ "Electronically signed" is defined by s. 933.40, F.S., as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

¹⁹ Section 92.525(1), F.S.

²⁰ Oaths, affidavits, and acknowledgments required or authorized under the laws of this state (except oaths to jurors and witnesses in court and such other oaths, affidavits and acknowledgments as are required by law to be taken or administered by or before particular officers) may be taken or administered by or before any judge, clerk, or deputy clerk of any court of record within this state, including federal courts, or before any United States commissioner or any notary public within this state. The jurat, or certificate of proof or acknowledgment, shall be authenticated by the signature and official seal of such officer or person taking or administering the same; however, when taken or administered before any judge, clerk, or deputy clerk of a court of record, the seal of such court may be affixed as the seal of such officer or person. Section 92.50(1), F.S.

²¹ "Written declaration" means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. Section 92.525(2), F.S.

²² See s. 943.10 (1)-(3), F.S.

²³ See s. 316.640, F.S.

law provides that ss. 117.01, 117.04, 117.045, 117.05, and 117.103, F.S., do not apply to the provisions of s.117.10, F.S., thereby exempting the previously listed officers from a number of the duties and responsibilities of notaries public.

Effect of Proposed Changes

The bill amends s. 92.525, F.S., to provide that when a document is required to be verified by a person, such verification may be performed under oath or affirmation taken before a law enforcement officer, correctional officer, correctional probation officer, traffic accident investigation officer, or traffic infraction enforcement officer who is engaged in the performance of official duties.

The bill amends s. 117.10, F.S., to authorize a law enforcement officer, correctional officer, correctional probation officer, traffic accident investigation officer, or traffic infraction enforcement officer to administer oaths by reliable electronic means or in the physical presence of the affiant. The bill defines the the term "reliable electronic means" to mean the "signing and transmission of a document through means compliant with criminal justice information system²⁴ security measures." Such signing and transmission must be made by an affiant under circumstances that indicate that the document was submitted by the affiant.

The bill amends s. 117.05, F.S., to provide that when notarizing an electronic signature as part of the administration of an oath, the signer need not appear before a law enforcement officer, correctional officer, correctional probation officer, traffic accident investigation officer, or traffic infraction enforcement officer.

B. SECTION DIRECTORY:

- Section 1: Amends s. 92.525, F.S., authorizing certain officers to verify documents.
- Section 2: Amends s. 117.05, F.S., providing an exception to the requirement that a signer personally appear before a notary public at the time of notarization.
- Section 3: Amends s. 117.10, F.S., authorizing specified officers to administer oaths by reliable electronic means when engaged in the performance of official duties.
- Section 4: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

²⁴ The Federal Bureau of Investigation's Criminal Justice Information Services division was established in 1992 to serve as the focal point and central depository for criminal justice information services in the FBI. Programs under the division's purview include the National Crime Information Center, Uniform Crime Reporting, and Fingerprint Identification.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure 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

None.

1 A bill to be entitled
 2 An act relating to notaries public; amending s.
 3 92.525, F.S.; revising the methods available for
 4 verifying documents; amending s. 117.05, F.S.;
 5 providing an exception to the requirement that a
 6 signer personally appear before a notary public at the
 7 time of notarization; amending s. 117.10, F.S.;
 8 defining the term "reliable electronic means";
 9 authorizing specified officers to administer oaths by
 10 reliable electronic means when engaged in the
 11 performance of official duties; providing an effective
 12 date.

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

15
 16 Section 1. Subsection (1) of section 92.525, Florida
 17 Statutes, is amended to read:

18 92.525 Verification of documents; perjury by false written
 19 declaration, penalty.—

20 (1) If ~~When it is~~ authorized or required by law, by rule
 21 of an administrative agency, or by rule or order of court that a
 22 document be verified by a person, the verification may be
 23 accomplished in the following manner:

24 (a) Under oath or affirmation taken or administered before
 25 an officer authorized under s. 92.50 or s. 117.10 to administer
 26 oaths; or

27 (b) By the signing of the written declaration prescribed
 28 in subsection (2).

29 Section 2. Paragraph (c) of subsection (4) of section
 30 117.05, Florida Statutes, is amended to read:

31 117.05 Use of notary commission; unlawful use; notary fee;
 32 seal; duties; employer liability; name change; advertising;
 33 photocopies; penalties.-

34 (4) When notarizing a signature, a notary public shall
 35 complete a jurat or notarial certificate in substantially the
 36 same form as those found in subsection (13). The jurat or
 37 certificate of acknowledgment shall contain the following
 38 elements:

39 (c) That the signer personally appeared before the notary
 40 public at the time of the notarization. This paragraph does not
 41 apply to the administration of an oath by a law enforcement
 42 officer, correctional officer, correctional probation officer,
 43 traffic accident investigation officer, or traffic infraction
 44 enforcement officer through reliable electronic means as
 45 authorized by s. 117.10.

46 Section 3. Section 117.10, Florida Statutes, is amended to
 47 read:

48 117.10 Law enforcement and correctional officers;
 49 administration of oaths.-

50 (1) For purposes of this section, the term "reliable
 51 electronic means" means the signing and transmission of a
 52 document through means compliant with criminal justice

53 information system security measures. Such signing and
 54 transmission must be made by an affiant to an officer authorized
 55 to administer oaths under subsection (2) under circumstances
 56 that indicate that the document was submitted by the affiant.

57 (2) Law enforcement officers, correctional officers, and
 58 correctional probation officers, as defined in s. 943.10, and
 59 traffic accident investigation officers and traffic infraction
 60 enforcement officers, as described in s. 316.640, are authorized
 61 to administer oaths by reliable electronic means or in the
 62 physical presence of an affiant when engaged in the performance
 63 of official duties. Sections 117.01, 117.04, 117.045, 117.05,
 64 and 117.103 do not apply to ~~the provisions of~~ this section. An
 65 officer may not notarize his or her own signature.

66 (3) An oath administered pursuant to this section is an
 67 acceptable method of verification as provided under s. 92.525.

68 Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 649 Surveillance by a Drone
SPONSOR(S): Metz and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 766

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|--------|-----------------|--|
| 1) Criminal Justice Subcommittee | | Weber <i>WJ</i> | Cunningham <i>SC</i> |
| 2) Civil Justice Subcommittee | | | |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

In 2013, the Legislature enacted the Freedom from Unwarranted Surveillance Act (Act). The Act regulates the use of drones by law enforcement agencies, provides a civil remedy for an aggrieved party to obtain relief in the event the Act is violated, and prohibits the use of evidence in court if it was obtained or collected in violation of the Act.

The bill amends the Freedom from Unwarranted Surveillance Act to prohibit a person, state agency, or political subdivision from using a drone equipped with an imaging device to:

- Record an image of privately owned or occupied real property or the owner, tenant, or occupant of such property;
- With the intent to conduct surveillance on the individual or property in violation of such person's reasonable expectation of privacy; and
- Without that individual's written consent.

The bill creates a presumption that a person has a reasonable expectation of privacy on his or her privately owned or occupied real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

The bill creates a civil remedy authorizing an aggrieved party to seek compensatory damages and injunctive relief against a person, state agency, or political subdivision that violates the above described prohibition. The prevailing party in such civil actions is entitled to recover reasonable attorney fees from the nonprevailing party.

Additionally, the bill gives an aggrieved party the ability to seek punitive damages against a person (not a state agency or political subdivision) who violates the above described prohibition.

The bill authorizes an aggrieved party to initiate a civil action against a state agency or political subdivision that violates the bill's prohibitions on using drones to obtain compensatory damages or injunctive relief to prevent future violations. This remedy could result in monetary damages, which would have a negative fiscal impact on state and local government.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Drones

Drones are unmanned aircraft that can be flown by remote control or on a predetermined flight path.¹ The size of a drone varies—it can be as small as an insect or as large as a commercial airliner.² Drones can be equipped with various devices such as infrared cameras,³ devices used to intercept electronic transmissions,⁴ and devices that can intercept cellular phone message and crack Wi-Fi passwords.⁵ It has been reported that the U.S. Army contracted with two corporations in 2011 to develop facial recognition and behavior recognition technologies for drone use.⁶

There are three major markets for drones: military, civil government, and commercial.⁷ The majority of drones are operated by the military and have an insignificant impact on U.S. airspace.⁸ However, drone use in this country is increasing because of technological advances. In 2011, the Federal Aviation Administration (FAA) estimated that there will be 30,000 drones in U.S. airspace by 2030.⁹

Non-Military Drone Use

The FAA, which first allowed drones in U.S. airspace in 1990, is in charge of overseeing the integration of drones into U.S. airspace.¹⁰ In doing so, it must balance the integration of drones with the safety of the nation's airspace.¹¹ Since 1990, the FAA has allowed limited use of drones for important public missions such as firefighting, disaster relief, search and rescue, law enforcement, border patrol, scientific research, and testing and evaluation.¹² Recently, the FAA limited the type of airspace where drones may operate. For example, the FAA prohibits drone operations over major urban areas.¹³

Flying model aircraft/drones for a hobby or recreational purpose does not require FAA approval.¹⁴ The FAA authorizes non-recreational drone operations on a case-by-case basis, and there are several ways to gain FAA approval.

¹ Richard M. Thompson II, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, www.fas.org/sgp/crs/natsec/R42701.pdf (last visited Mar. 12, 2015).

² Jeremiah Gertler, *U.S. Unmanned Aerial Systems*, Congressional Research Service, January 3, 2012, www.fas.org/sgp/crs/natsec/R42136.pdf (last visited Mar. 12, 2015).

³ See, DSLRPros, Nighthawk Thermal P2 Aerial Kit, <http://www.dslrpros.com/dslrpros-products/thermal-aerial-drone-kit.html> (last visited Mar. 12, 2015).

⁴ Greg Miller, *CIA flew stealth drones into Pakistan to monitor bin Laden house*, The Washington Post (May 17, 2011), http://www.washingtonpost.com/world/national-security/cia-flew-stealth-drones-into-pakistan-to-monitor-bin-laden-house/2011/05/13/AF5dW55G_story.html.

⁵ Any Greenberg, *Flying Drone Can Crack Wi-Fi Networks, Snoop on Cell Phones*, Forbes (July 28, 2011), <http://www.forbes.com/sites/andygreenberg/2011/07/28/flying-drone-can-crack-wifi-networks-snoop-on-cell-phones/>.

⁶ Clay Dillow, *Army Developing Drones that can Recognize Your Face from a Distance and Even Recognize Your Intentions*, Popular Science (Sept. 28, 2011), <http://www.popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind>.

⁷ *FAA Aerospace Forecast: Fiscal Years 2011-2031*, Federal Aviation Administration 49 (2011).

⁸ *Id.*

⁹ *Id.*

¹⁰ FAA Modernization and Reform Act of 2002, Public Law No. 112-95, 126 Stat. 11 (2012).

¹¹ Fact Sheet—Unmanned Aircraft Systems (UAS), FEDERAL AVIATION ADMINISTRATION (Feb. 15, 2015), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297 (last visited Mar. 12, 2015).

¹² *Id.*

¹³ Fact Sheet—Unmanned Aircraft Systems (UAS), FEDERAL AVIATION ADMINISTRATION (Jan. 6, 2014), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153 (last visited Mar. 12, 2015).

¹⁴ All model aircraft/drone operators must fly in accordance with the law Fact Sheet—Unmanned Aircraft Systems (UAS), FEDERAL AVIATION ADMINISTRATION (Feb. 15, 2015), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=18297 (last visited Mar. 12, 2015).

Currently, private sector manufacturers and technology developers can obtain a Special Airworthiness Certificate in the experimental category to conduct research and development. Commercial firms that fly drones may also do so under a FAA Restricted Category Type Certificate, which allows limited operations such as wildlife conservation flights, aerial surveying, and oil/gas pipeline patrols.¹⁵ Additionally, commercial entities are able to petition the FAA for exemptions under Section 333 of Public Law 112-95 to permit non-recreational drone operations.¹⁶

The FAA also may issue a Certificate of Waiver of Authorization (COA), which allows public entities, including governmental agencies, to fly drones in civil airspace.¹⁷ An agency seeking a COA must apply online and detail the proposed operation for the drone.¹⁸ If the FAA issues a COA, it contains a stated time period (usually two years), a certain block of airspace for the drone, and other special provisions unique to the specific operation.¹⁹ In 2013, the FAA issued 423 COAs.²⁰

Drone Use in Florida

According to the FAA's Freedom of Information Act responses, the Miami-Dade Police Department, the Orange County Sheriff's Office, the Polk County Sheriff's Office, and the University of Florida each held a COA to operate an unmanned aircraft system between November 2006 and June 30, 2011.²¹ Additionally, it has been reported that the Daytona Beach Police Department was issued a COA.²²

- The Miami-Dade Police Department released a COA issued to the department that was effective from July 1, 2011, to June 30, 2012.²³ However, as recently at 2013, the department was using drones in training drills.²⁴
- The Orange County Sheriff's Office COA that was released to the public was effective from January 28, 2011, to January 27, 2012.²⁵ The Sheriff's Office purchased two drones.²⁶
- The Polk County Sheriff's Office purchased a quadcopter in 2010, and as of October 2014, reported using it eight times in SWAT situations.²⁷

Florida Law

In 2013, the Legislature passed the Freedom from Unwarranted Surveillance Act (Act). The Act created section 934.50, F.S., which limits the use of drones by law enforcement agencies. The Act defines a drone as a powered, aerial vehicle that does not carry a human operator, uses aerodynamic forces to

¹⁵ *Id.* As of October 2014, the FAA has only approved operations using two certificated drones. *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ FEDERAL AVIATION ADMINISTRATION, *Freedom of Information Act Responses*, https://www.faa.gov/uas/public_operations/foia_responses/ (last visited Mar. 12, 2015). Whether these entities have renewed their COAs or whether other Florida state or local agencies have obtained COAs is unknown at this time.

²² Shawn Musgrave, *Finally, Here's Every Organization Allowed to Fly Drones in the US*, Motherboard (Oct. 6, 2014), <http://motherboard.vice.com/read/every-organization-flying-drones-in-the-us> (last visited Mar. 12, 2015). In a public records request, the FAA released COA requests submitted between November 2012 and June 2014. *Id.* According to the information released, the Daytona Beach Police Department obtained two COA waivers. *Id.*

²³ ELECTRONIC FRONTIER FOUNDATION, *Miami-Dade PD Drone Certificate of Authorization*, <https://www.eff.org/document/miami-dade-pd-drone-certificate-authorization> (last visited Mar. 12, 2015).

²⁴ David Sutta, *Unmanned Drones Now Patrolling South Florida Skies*, CBS Miami (May 9, 2013), <http://miami.cbslocal.com/2013/05/09/unmanned-drones-now-patrolling-south-florida-skies/>.

²⁵ ELECTRONIC FRONTIER FOUNDATION, *Orange County Sheriff Drone Records*, <https://www.eff.org/document/orange-county-sheriff-drone-records> (last visited Mar. 12, 2015).

²⁶ *Drone Spotted at Orange County Standoff Scene Raises Questions*, NEWS96.5.COM (July 24, 2014), <http://www.news965.com/news/news/local/drone-spotted-orange-county-standoff-scene-raises-ngmj/>.

²⁷ Howard Altman, *Socom, Polk County Sheriff's Office Among Those with Drone Permits*, THE TAMPA TRIBUNE (Oct. 7, 2014), <http://tbo.com/list/military-news/socom-polk-county-sheriffs-office-among-those-with-drone-permits-20141007/>.

provide vehicle life, can fly autonomously or be piloted remotely, can be expendable or recoverable, and can carry a lethal or nonlethal payload.²⁸

Current law prohibits a law enforcement agency from using a drone to gather evidence or other information. However, the act does not prohibit the use of a drone:

- To counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk;
- If the law enforcement agency first obtains a search warrant signed by a judge authorizing the use of a drone; or
- If the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.²⁹

Effect of the Bill

The bill amends s. 934.50, F.S., to prohibit a person, state agency,³⁰ or political subdivision³¹ from using a drone equipped with an imaging device³² to:

- Record an image³³ of privately owned or occupied real property or the owner, tenant, or occupant of such property;
- With the intent to conduct surveillance on the individual or property in violation of such person's reasonable expectation of privacy; and
- Without that individual's written consent.

The bill creates a presumption that a person has a reasonable expectation of privacy on his or her privately owned or occupied real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

The bill creates a civil remedy authorizing an aggrieved party to seek compensatory damages and injunctive relief against a person, state agency, or political subdivision that violates the above described prohibition. The prevailing party in such civil actions is entitled to recover reasonable attorney fees from the nonprevailing party.³⁴

Additionally, the bill gives an aggrieved party the ability to seek punitive damages against a person (not a state agency or political subdivision) who violates the above described prohibition.

²⁸ s. 934.50(2)(a), F.S.

²⁹ s. 934.50(3) & (4), F.S.

³⁰ Section 11.45(1)(j), F.S., defines "state agency" as a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

³¹ Section 11.45(1)(i), F.S., defines "political subdivision" as separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

³² The bill defines the term "imaging device" as a mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting an image.

³³ The bill defines the term "image" as a record of thermal, infrared, ultraviolet, visible light, or other electromagnetic waves; sound waves; odors; or other physical phenomena which captures conditions existing on or about real property or an individual located on that property.

³⁴ The bill specifies that reasonable attorney fees are based on the actual and reasonable time expended by a plaintiff's attorney billed at an appropriate hourly rate and, in cases in which the payment of such a fee is contingent on the outcome, without a multiplier, unless the action is tried to verdict, in which case a multiplier of up to twice the actual value of the time expended may be awarded in the discretion of the trial court.

B. SECTION DIRECTORY:

Section 1. Amends s. 934.50, relating to searches and seizure using a drone.

Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action against a state agency or political subdivision that violates the bill's prohibitions on using drones to obtain compensatory damages or injunctive relief to prevent future violations. This remedy could result in monetary damages, which would have a negative fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action against a political subdivision that violates the bill's prohibitions on using drones to obtain compensatory damages or injunctive relief to prevent future violations. This remedy could result in monetary damages, which would have a negative fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes an aggrieved party to initiate a civil action against a person who violates the bill's prohibitions on using drones to obtain compensatory damages or injunctive relief to prevent future violations. Additionally, the bill authorizes an aggrieved party to seek punitive damages against a person who commits a violation. The remedies could result in monetary damages, which would have a negative fiscal impact on the private sector.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting

As drafted, the bill's newly-created civil remedy applies to all violations of s. 934.50, F.S. – not just the subsection prohibiting persons, state agencies, etc., from using drones to record images with the intent to conduct surveillance. It appears that the civil remedy provisions should be restructured to ensure that they apply solely to this prohibition.

Definitions

The bill prohibits a person, state agency, or political subdivision from using a drone equipped with an imaging device to:

- Record an image of privately owned or occupied real property or the owner, tenant, or occupant of such property;
- With the intent to conduct surveillance on the individual or property in violation of such person's reasonable expectation of privacy; and
- Without that individual's written consent.

The bill does not define the term "surveillance." As such, it could be interpreted to prohibit state agencies and political subdivisions from using drones in appropriate ways and for legitimate purposes (e.g., it may be interpreted to prohibit the Department of Environmental Protection from using drones to identify sinkhole locations throughout Florida).

Presumption

The bill creates a presumption of a reasonable expectation of privacy. According to the bill, a person is presumed to have a reasonable expectation of privacy on his or her privately owned or occupied real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.

Despite this presumption, and depending on the facts of individual cases, the U.S. Supreme Court's³⁵ and Florida courts'³⁶ extensive case law regarding an individual's reasonable expectation of privacy would likely be applied in the event the use of a drone is challenged using the civil remedy created by this bill.

In *Katz v. U.S.*, Justice Harlan laid out in his concurring opinion a test to determine whether an individual had a reasonable expectation of privacy. First, the person needs to exhibit an actual

³⁵ See, e.g., *Katz v. U.S.*, 389 U.S. 347 (1967) and *Kyllo v. United States*, 533 U.S. 27 (2001) (holding that a thermal imaging device aimed at a private home from a public street in order to detect relative amounts of heat inside the home was an invasion of a reasonable expectation of privacy and constituted a search within the meaning of the Fourth Amendment). In *Kyllo*, the Court reasoned that "obtaining by sense-enhancing technology any information regarding the interior of the home that could not otherwise have been obtained without physical 'intrusion into a constitutionally protected area' constitutes a search . . ." *Kyllo v. United States*, 533 U.S. 27, 34-35 (2001) (quoting *Silverman v. United States*, 365 U.S. 505, 512 (1961)). Most recently, in *United States v. Jones*, 132 S.Ct. 945 (2012), the Court suggested that "[i]t may be that achieving the same result through electronic means, without an accompanying trespass is an unconstitutional invasion of privacy." *Jones*, 132 S.Ct. at 954.

³⁶ For example, under Florida case law, it is clear that a person does not harbor an expectation of privacy on a front porch where visitors may appear at any time. See *State v. Dellefson*, 335 So.2d 371 (Fla. 1st DCA 1976) and *State v. Belcher*, 317 So.2d 842 (Fla. 2d DCA 1975). An individual's privacy expectation in the backyard, when objects placed there are not visible from outside, is valid. *State v. Morsman*, 394 So.2d 408 (Fla. 1981). An unobstructed view from an individual's neighbor's yard into his or her yard evidences no expectation of privacy from that point. *Lightfoot v. State*, 356 So.2d 331 (Fla. 4th DCA 1978).

(subjective) expectation of privacy, and second, the expectation needs to be one that society is prepared to recognize as 'reasonable.'³⁷ The Supreme Court of the United States later adopted this test in *Smith v. Maryland*.³⁸ The Florida Supreme Court has a long history of applying this test to determine whether an individual had a reasonable expectation of privacy in various settings.³⁹ It is likely that such an analysis would be applied in the event the issue of whether an aggrieved party actually had a reasonable expectation of privacy sufficient to support a civil suit against a person, state agency, or political subdivision arose.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

³⁷ *Katz*, 389 U.S. at 361.

³⁸ *Smith v. Maryland*, 442 U.S. 735 (1979).

³⁹ *See, e.g., Tracey v. State*, 152 So.3d 504 (Fla. 2014), *State v. Titus*, 707 So.2d 706 (Fla. 1998), *State v. Morsman*, 394 So.2d 408 (Fla. 1981).

1 A bill to be entitled
 2 An act relating to surveillance by a drone; amending
 3 s. 934.50, F.S.; defining terms; prohibiting a person,
 4 state agency, or political subdivision from using a
 5 drone to capture an image of privately owned or
 6 occupied real property or of the owner, tenant, or
 7 occupant of such property with the intent to conduct
 8 surveillance without his or her written consent if a
 9 reasonable expectation of privacy exists; specifying
 10 when a reasonable expectation of privacy may be
 11 presumed; providing that the owner, tenant, or
 12 occupant may initiate a civil action for compensatory
 13 damages or seek injunctive relief against a violator;
 14 providing for the recovery of attorney fees and
 15 punitive damages; specifying that remedies provided by
 16 the act are cumulative to other existing remedies;
 17 providing an effective date.

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

20
 21 Section 1. Section 934.50, Florida Statutes, is amended to
 22 read:

23 934.50 Searches and seizure using a drone.—

24 (1) SHORT TITLE.—This act may be cited as the "Freedom
 25 from Unwarranted Surveillance Act."

26 (2) DEFINITIONS.—As used in this act, the term:

27 (a) "Drone" means a powered, aerial vehicle that:
 28 1. Does not carry a human operator;
 29 2. Uses aerodynamic forces to provide vehicle lift;
 30 3. Can fly autonomously or be piloted remotely;
 31 4. Can be expendable or recoverable; and
 32 5. Can carry a lethal or nonlethal payload.

33 (b) "Image" means a record of thermal, infrared,
 34 ultraviolet, visible light, or other electromagnetic waves;
 35 sound waves; odors; or other physical phenomena which captures
 36 conditions existing on or about real property or an individual
 37 located on that property.

38 (c) "Imaging device" means a mechanical, digital, or
 39 electronic viewing device; still camera; camcorder; motion
 40 picture camera; or any other instrument, equipment, or format
 41 capable of recording, storing, or transmitting an image.

42 ~~(d) (b)~~ "Law enforcement agency" means a lawfully
 43 established state or local public agency that is responsible for
 44 the prevention and detection of crime, local government code
 45 enforcement, and the enforcement of penal, traffic, regulatory,
 46 game, or controlled substance laws.

47 (3) PROHIBITED USE OF DRONES.—

48 (a) A law enforcement agency may not use a drone to gather
 49 evidence or other information.

50 (b) A person, a state agency, or a political subdivision
 51 as defined in s. 11.45 may not use a drone equipped with an
 52 imaging device to record an image of privately owned or occupied

53 real property or of the owner, tenant, or occupant of such
 54 property with the intent to conduct surveillance on the
 55 individual or property captured in the image in violation of
 56 such person's reasonable expectation of privacy without his or
 57 her written consent. For purposes of this section, a person is
 58 presumed to have a reasonable expectation of privacy on his or
 59 her privately owned or occupied real property if he or she is
 60 not observable by persons located at ground level in a place
 61 where they have a legal right to be, regardless of whether he or
 62 she is observable from the air with the use of a drone.

63 (4) EXCEPTIONS.—This act does not prohibit the use of a
 64 drone:

65 (a) To counter a high risk of a terrorist attack by a
 66 specific individual or organization if the United States
 67 Secretary of Homeland Security determines that credible
 68 intelligence indicates that there is such a risk.

69 (b) If the law enforcement agency first obtains a search
 70 warrant signed by a judge authorizing the use of a drone.

71 (c) If the law enforcement agency possesses reasonable
 72 suspicion that, under particular circumstances, swift action is
 73 needed to prevent imminent danger to life or serious damage to
 74 property, to forestall the imminent escape of a suspect or the
 75 destruction of evidence, or to achieve purposes including, but
 76 not limited to, facilitating the search for a missing person.

77 (5) REMEDIES FOR VIOLATION.—

78 (a) An aggrieved party may initiate a civil action against

79 a law enforcement agency to obtain all appropriate relief in
 80 order to prevent or remedy a violation of this act.

81 (b) The owner, tenant, or occupant of privately owned or
 82 occupied real property may initiate a civil action for
 83 compensatory damages for violations of this section and may seek
 84 injunctive relief to prevent future violations of this section
 85 against a person, state agency, or political subdivision that
 86 violates paragraph (3)(b). In such action, the prevailing party
 87 is entitled to recover reasonable attorney fees from the
 88 nonprevailing party based on the actual and reasonable time
 89 expended by his or her attorney billed at an appropriate hourly
 90 rate and, in cases in which the payment of such a fee is
 91 contingent on the outcome, without a multiplier, unless the
 92 action is tried to verdict, in which case a multiplier of up to
 93 twice the actual value of the time expended may be awarded in
 94 the discretion of the trial court.

95 (c) Punitive damages under this section may be sought
 96 against a person subject to other requirements and limitations
 97 of law, including, but not limited to, part II of chapter 768
 98 and case law.

99 (d) The remedies provided by this section are cumulative
 100 to other existing remedies.

101 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or
 102 collected in violation of this act is not admissible as evidence
 103 in a criminal prosecution in any court of law in this state.

104 Section 2. This act shall take effect July 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Metz offered the following:

4
5 **Amendment**

6 Remove lines 57-99 and insert:

7 her written consent. For purposes of this paragraph, a person is
 8 presumed to have a reasonable expectation of privacy on his or
 9 her privately owned or occupied real property if he or she is
 10 not observable by persons located at ground level in a place
 11 where they have a legal right to be, regardless of whether he or
 12 she is observable from the air with the use of a drone.

13 (4) EXCEPTIONS.—Paragraph(3)(a) ~~This act~~ does not prohibit
 14 the use of a drone:

15 (a) To counter a high risk of a terrorist attack by a
 16 specific individual or organization if the United States
 17 Secretary of Homeland Security determines that credible



Amendment No. 1

18 intelligence indicates that there is such a risk.

19 (b) If the law enforcement agency first obtains a search
20 warrant signed by a judge authorizing the use of a drone.

21 (c) If the law enforcement agency possesses reasonable
22 suspicion that, under particular circumstances, swift action is
23 needed to prevent imminent danger to life or serious damage to
24 property, to forestall the imminent escape of a suspect or the
25 destruction of evidence, or to achieve purposes including, but
26 not limited to, facilitating the search for a missing person.

27 (5) REMEDIES FOR VIOLATION.—

28 (a) An aggrieved party may initiate a civil action against
29 a law enforcement agency to obtain all appropriate relief in
30 order to prevent or remedy a violation of paragraph (3)(a) this
31 act.

32 (b)1. The owner, tenant, or occupant of privately owned or
33 occupied real property may initiate a civil action for
34 compensatory damages for violations of paragraph (3)(b) and may
35 seek injunctive relief to prevent future violations of paragraph
36 (3)(b) against a person, state agency, or political subdivision
37 that violates paragraph (3)(b). In such action, the prevailing
38 party is entitled to recover reasonable attorney fees from the
39 nonprevailing party based on the actual and reasonable time
40 expended by his or her attorney billed at an appropriate hourly
41 rate and, in cases in which the payment of such a fee is
42 contingent on the outcome, without a multiplier, unless the
43 action is tried to verdict, in which case a multiplier of up to



Amendment No. 1

44 twice the actual value of the time expended may be awarded in
45 the discretion of the trial court.

46 2. Punitive damages under this paragraph may be sought
47 against a person subject to other requirements and limitations
48 of law, including, but not limited to, part II of chapter 768
49 and case law.

50 3. The remedies provided by this paragraph are cumulative

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 755 Convenience Business Security
SPONSOR(S): Stone
TIED BILLS: None **IDEN./SIM. BILLS:** SB 684

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

SUMMARY ANALYSIS

The Convenience Business Security Act (Act) requires a convenience business to be equipped with a variety of security devices and standards (e.g., a security camera system, a drop safe for restricted access to cash receipts, a notice at the entrance stating that the cash register contains \$50 or less, height markers at the entrance; a cash management policy that limits cash on hand after 11 p.m., a silent alarm, etc.).

The Act also requires any convenience business at which a specified crime has occurred, to implement enhanced security measures. These measures must be in place between 11 p.m. and 5 a.m., and include:

- Providing at least two employees on the premises, installing a transparent secured safety enclosure for use by the employees; providing a security guard on the premises; locking the premises and transacting business through an indirect pass-through window; or closing the business.

The Act also requires all employees to receive robbery deterrence and safety training within 60 days of employment. Convenience businesses must submit a proposed training curriculum to the Department of Legal Affairs (Department), along with an administrative fee not to exceed \$100, for review and approval. The training curriculum must be submitted to the Department biennially, along with the appropriate administrative fee, for reapproval.

Currently, the term "convenience business" is defined to exclude *any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.*

The bill amends the definition of "convenience business" so that it does not exclude businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. As a result, all of the above-described security and training requirements (except the ones noted below) will apply to convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

The bill continues to exempt convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. from the enhanced security standards required after a crime has occurred on the property (described above).

The bill also removes the requirement that convenience businesses submit a safety training curriculum to the Department.

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

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Convenience Business Security Act

In 1990, the Legislature passed the Convenience Business Security Act (Act)¹ to prevent violent crime and provide uniform statewide security standards for late night convenience businesses.² The provisions of the Act are enforced by the Department of Legal Affairs (Department).³

Minimum Security Standards

The Act requires convenience businesses to have the following security devices and standards:

- A security camera system that is capable of recording and retrieving an image to assist in offender identification and apprehension;
- A drop safe or cash management device for restricted access to cash receipts;
- A lighted parking lot illuminated at a specified intensity;
- A conspicuous notice at the entrance stating that the cash register contains \$50 or less;
- Window signage that allows a clear and unobstructed view from outside the building and in a normal line of sight of the cash register and sales transaction area;
- Height markers at the entrance of the convenience business that display height measures;
- A cash management policy that limits cash on hand after 11 p.m.;
- Windows that are not tinted in a way that reduces exterior or interior view; and
- A silent alarm to law enforcement or a private security agency.⁴

Enhanced Security Standards

The Act requires any convenience business at which a murder, robbery, sexual battery, aggravated assault, aggravated battery, kidnapping, or false imprisonment has occurred, to implement additional security measures. These additional security measures must be in place at all times between 11 p.m. and 5 a.m., and include:

- Providing at least two employees on the premises;
- Installing a transparent secured safety enclosure for use by the employees;
- Providing a security guard on the premises;
- Locking the premises and transacting business through an indirect pass-through window; or
- Closing the business.⁵

After complying with these provisions for 24 months with no additional occurrences of the above-described crimes, a convenience business may file a notice of exemption from the enhanced security measures with the Department.⁶

Training Requirements

The Act requires all employees to receive robbery deterrence and safety training within 60 days of employment.⁷ Convenience businesses must submit a proposed training curriculum to the Department, along with an administrative fee not to exceed \$100, for review and approval.⁸ The training curriculum must be submitted to the Department biennially, along with the appropriate administrative fee, for reapproval.⁹

¹ Ch. 90-346, Laws of Florida.

² s. 812.172, F.S.

³ s. 812.175, F.S. The Department may also enter into agreements with local governments to assist in enforcement. s. 812.175(4), F.S.

⁴ s. 812.173(1), (2), and (3), F.S.

⁵ s. 812.173(4), F.S.

⁶ s. 812.173(5), F.S.

⁷ s. 812.174, F.S.

⁸ *Id.*

⁹ *Id.*

Enforcement

The Department enforces the provisions of the Act. Upon learning of a violation, the Department must provide the convenience business a notice of violation which the business has 30 days to correct.¹⁰ If the convenience business fails to correct the violation within 30 days, the Department may impose a civil fine of up to \$5,000.¹¹ If the violation is determined to be a threat to health, safety, and public welfare, the Department is authorized to pursue an injunction against the convenience business.¹²

Currently, the term "convenience business" is defined as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m.¹³ The term does not include:

- A business that is solely or primarily a restaurant;
- A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.; or
- A business that has at least 10,000 square feet of retail floor space.¹⁴

The term also does not include any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.¹⁵

Effect of the Bill

The bill amends the definition of "convenience business" so that it does not exclude any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. As a result, all of the above-described security and training requirements (except the ones noted below) will apply to convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.

The bill continues to exempt convenience businesses in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. from the enhanced security standards required after a crime has occurred on the property (described above).

The bill also removes the requirement that convenience businesses submit a safety training curriculum to the Department.

B. SECTION DIRECTORY:

Section 1. Amends s. 812.171, F.S., relating to definition.

Section 2. Amends s. 812.173, F.S., relating to convenience business security.

Section 3. Amends s. 812.174, F.S., relating to training of employees.

Section 4. Provides an effective date of July 1, 2015.

¹⁰ s. 812.175(1), F.S.

¹¹ *Id.*

¹² s. 812.175(3), F.S.

¹³ s. 812.171, F.S.

¹⁴ *Id.*

¹⁵ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill removes the requirement that a convenience business submit a safety training curriculum to and associated administrative fee to the Department. The Department reports that they are not currently collecting the fee, and that the bill will not have a fiscal impact.¹⁶

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on convenience businesses, as they will no longer be required to submit a safety training curriculum and associated fee to the Department.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁶ E-mail from Andrew Fay, Florida Department of Legal Affairs, March 11, 2015 (on file with the Criminal Justice Subcommittee).
STORAGE NAME: h0755.CRJS.DOCX
DATE: 3/12/2015

27 "convenience business" does not include:

28 (1) A business that is solely or primarily a restaurant.

29 (2) A business that always has at least five employees on
30 the premises after 11 p.m. and before 5 a.m.

31 (3) A business that has at least 10,000 square feet of
32 retail floor space.

33

34 ~~The term "convenience business" does not include any business in~~
35 ~~which the owner or members of his or her family work between the~~
36 ~~hours of 11 p.m. and 5 a.m.~~

37 Section 2. Subsection (4) of section 812.173, Florida
38 Statutes, is amended to read:

39 812.173 Convenience business security.—

40 (4) If a murder, robbery, sexual battery, aggravated
41 assault, aggravated battery, or kidnapping or false
42 imprisonment, as those crimes are identified and defined by
43 Florida Statutes, occurs or has occurred at a convenience
44 business since July 1, 1989, and arises out of the operation of
45 the convenience business, that convenience business, unless it
46 is a convenience business in which the owner or members of his
47 or her family work between the hours of 11 p.m. and 5 a.m.,
48 shall implement at least one of the following security measures:

49 (a) Provide at least two employees on the premises at all
50 times after 11 p.m. and before 5 a.m.;

51 (b) Install for use by employees at all times after 11
52 p.m. and before 5 a.m. a secured safety enclosure of transparent

53 polycarbonate or other material that meets at least one of the
 54 following minimum standards:

55 1. American Society for Testing and Materials Standard
 56 D3935 (classification PC110 B 3 0800700) and that has a
 57 thickness of at least 0.375 inches and has an impact strength of
 58 at least 200 foot pounds; or

59 2. Underwriters Laboratory Standard UL 752 for medium
 60 power small arms (level one), Bullet Resisting Equipment;

61 (c) Provide a security guard on the premises at all times
 62 after 11 p.m. and before 5 a.m.;

63 (d) Lock the business premises throughout the hours of 11
 64 p.m. to 5 a.m., and only transact business through an indirect
 65 pass-through trough, trapdoor, or window; or

66 (e) Close the business at all times after 11 p.m. and
 67 before 5 a.m.

68 Section 3. Section 812.174, Florida Statutes, is amended
 69 to read:

70 812.174 Training of employees.—

71 (1) The owner or principal operator of a convenience
 72 business or convenience businesses shall provide proper robbery
 73 deterrence and safety training by an approved curriculum to its
 74 retail employees within 60 days after ~~of~~ employment. ~~Existing~~
 75 ~~retail employees shall receive training within 6 months of April~~
 76 ~~8, 1992.~~

77 (2) A proposed curriculum shall be submitted in writing to
 78 the Attorney General ~~with an administrative fee not to exceed~~



79 ~~§100.~~ The Attorney General shall review and approve or
 80 disapprove the curriculum in writing within 60 days after
 81 receipt. The state shall have no liability for approving or
 82 disapproving a training curriculum under this section. Approval
 83 shall be given to a curriculum that ~~which~~ trains and
 84 familiarizes retail employees with the security principles,
 85 devices, and measures required by s. 812.173. Disapproval of a
 86 curriculum shall be subject to ~~the provisions of~~ chapter 120.

87 (3) ~~A~~ No person shall not be liable for ordinary
 88 negligence due to implementing an approved curriculum if the
 89 training was actually provided. ~~A curriculum shall be submitted~~
 90 ~~for reapproval biennially with an administrative fee not to~~
 91 ~~exceed \$100. Any curriculum approved by the Attorney General~~
 92 ~~since September 1990 shall be subject to reapproval 2 years from~~
 93 ~~the anniversary of initial approval and biennially thereafter.~~

94 Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 783 Charging Youths as Adults in Criminal Proceedings
SPONSOR(S): Edwards and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1082

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

SUMMARY ANALYSIS

In Florida, there are several methods for transferring a juvenile to adult court for prosecution – judicial waiver, indictment, and direct file. The bill substantially amends Florida's indictment and direct file transfer processes.

The bill amends the indictment transfer process by:

- Limiting the State's authority to convene a grand jury to cases in which the juvenile is 14 or older and is charged with murder, manslaughter, or aggravated sexual battery (the State currently has this authority for juveniles of any age who are charged with an offense punishable by death or life imprisonment).

The bill amends the direct file transfer process by eliminating the mandatory direct file system and modifying the discretionary direct file system to a three-tiered system based on the juvenile's age at the time of offense.

- In the first tier, the State may direct file a juvenile who was 17 at the time of the alleged offense and committed an enumerated offense.
- In the second tier, the State may direct file a juvenile who was 16 at the time of the offense and committed murder, manslaughter, aggravated sexual battery, or DUI resulting in fatality.
- In the third tier, the State may direct file a juvenile who was 15 at the time of the offense and committed murder, manslaughter, or aggravated sexual battery.

The bill prohibits a juvenile from being direct filed pursuant to any of the three tiers if the juvenile:

- Suffers from a mental illness, a developmental or intellectual disability, substance abuse, or any other condition amenable to treatment, habilitation, or rehabilitation in the juvenile justice system; or
- Has a pending competency hearing or has been previously found to be incompetent and has not been restored to competency by a court (this limitation applies to the indictment transfer process too).

Unlike current law, the bill never requires the court to impose adult sanctions. Instead, the bill provides that a juvenile transferred to adult court and who is found to have committed a violation of law may be sentenced as an adult, as a youthful offender, or as a juvenile. The bill removes, modifies, and adds criteria that the court must consider when determining whether adult, youthful offender, or juvenile sanctions are appropriate. The bill requires the court's order to include specific findings of fact and the reasons for its decisions to impose adult, youthful offender, or juvenile sanctions.

The bill also requires DJJ to collect and annually report direct file data to the Legislature.

The bill will likely have a negative prison bed impact on the Department of Corrections, and a positive residential bed impact on the Department of Juvenile Justice. See fiscal section.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Transferring Juveniles to Adult Court

In Florida, there are several methods for transferring a juvenile to adult court for prosecution. A detailed description of each method follows.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. Section 985.556, F.S., creates three types of judicial waivers:

- Voluntary Waiver - the juvenile requests to have their case transferred to adult court;¹
- Involuntary Discretionary Waiver - the State may file a motion requesting the court to transfer any case where the juvenile is 14 years of age or older;² and
- Involuntary Mandatory Waiver - the State must request the transfer of a juvenile 14 years of age or older if the child:
 - Has been previously adjudicated delinquent for a specified felony and the child is currently charged with a second or subsequent violent crime against a person; or
 - Was 14 years of age or older at the time of commission of a fourth or subsequent felony offense and the child was previously adjudicated delinquent or had adjudication withheld for three felony offenses, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person.³

If the state attorney files a motion to transfer a juvenile to adult court, the court must hold a hearing to determine whether the child should be transferred.⁴ The court must consider a variety of statutorily articulated factors when determining whether transfer is appropriate (e.g., the seriousness of the offense, the sophistication and maturity of the child, the record and previous history of the child, whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner, etc.).⁵ The court must also provide an order specifying the reasons for its decision to impose adult sanctions.⁶

If a juvenile transferred to adult court pursuant to a voluntary or involuntary discretionary waiver is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.⁷ If the transfer was pursuant to an involuntary mandatory waiver, the court must impose adult sanctions.⁸

Indictment

Section 985.56, F.S., specifies that a child of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment is returned on the charge by a grand jury. If the grand jury returns an indictment on the charge, the child must be transferred to adult court and be handled as an adult in every respect.⁹

¹ s. 985.556(1), F.S.

² s. 985.556(2), F.S.

³ s. 985.556(3), F.S.

⁴ s. 985.556(4), F.S.

⁵ s. 985.556(4)(c), F.S.

⁶ s. 985.556(4)(e), F.S.

⁷ s. 985.565(4)(a)2., F.S.

⁸ s. 985.565(4)(a)3., F.S.

⁹ s. 985.56(1), F.S. The charge punishable by death or life imprisonment must be transferred, as well as all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or life imprisonment.

If the juvenile is found to have committed the offense, the court must sentence the juvenile as an adult.¹⁰ If the juvenile is found not to have committed the indictable offense, but is found to have committed a lesser included offense or any other offense for which he or she was indicted as part of the criminal episode, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.¹¹

Direct File

While judicial waiver and indictment are both available transfer tools, they are rarely used since s. 985.557, F.S., the statute that codifies the "direct file" system, provides the State with the power to transfer cases without a judge or grand jury weighing in on the appropriateness of the transfer. Direct file accounts for 98% of the juvenile cases transferred to adult court. "Discretionary direct file" is generally considered the most controversial of the three transfer processes.

Discretionary Direct File

Section 985.557(1), F.S., establishes Florida's discretionary direct file method. This subsection *permits* the State to file an information¹² on certain juveniles' cases in adult court, without a waiver hearing, when, in the State's judgment, the offense requires that adult sanctions be imposed. Specifically, the State may file an information in adult court when a juvenile who is:

- 14 or 15 years old is charged with one of the following felony offenses:
 - Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; specified burglary of a dwelling or structure; burglary with an assault or battery; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft; possessing or discharging any weapon or firearm on school property; home invasion robbery; carjacking; grand theft of a motor vehicle; or grand theft of a motor vehicle valued at \$20,000 or more if the child has a previous adjudication for grand theft of a motor vehicle.¹³
- 16 or 17 years old is charged with any felony offense,¹⁴ and
- 16 or 17 years old is charged with any misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which is a felony.¹⁵

Florida's statutes do not currently articulate any standards that the State must use when determining whether to file a juvenile's case in adult court under discretionary direct file provisions.

If a juvenile transferred to adult court pursuant to the discretionary direct file process is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.¹⁶

Mandatory Direct File

Section 985.557(2), F.S., establishes Florida's mandatory direct file system. The subsection *requires* the State to file a juvenile's case in adult court when a juvenile who is:

- 16 or 17 years old at the time of the alleged offense:

¹⁰ s. 985.565(4)(a)1., F.S.

¹¹ *Id.*

¹² An "information" is the charging document that initiates prosecution. Any information filed pursuant to the direct file statute may include all charges that are based on the same act, criminal episode, or transaction as the primary offenses. s. 985.557(3), F.S.

¹³ s. 985.557(1)(a), F.S.

¹⁴ s. 985.557(1)(b), F.S.

¹⁵ *Id.*

¹⁶ s. 985.565(4)(a)2. and (b), F.S.

- Has been previously adjudicated delinquent for an enumerated felony¹⁷ and the juvenile is currently charged with a second or subsequent violent crime against a person;
- Is currently charged with a forcible felony¹⁸ and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other;¹⁹ or
- Is charged with committing or attempting to commit an offense listed in s. 775.087(2)(a)1.a.-q., F.S.,²⁰ and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device,²¹ or
- Any age is alleged to have committed an act that involves stealing a vehicle where the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.²²

The court may sentence the following juveniles who are transferred to adult court pursuant to the mandatory direct file process as an adult, as a youthful offender, or as a juvenile:

- Juveniles found to have committed the offense or a lesser included offense who:
 - Are 16 or 17 years old at the time of the offense, the offense was listed in s. 775.087(2)(a)1.a.-q., F.S., and during the commission of the offense the juvenile actually possessed or discharged a firearm or destructive device; and
 - Are of any age and the offense involved stealing a vehicle where the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.²³

The court must impose adult sanctions on the following juveniles who are transferred to adult court pursuant to the mandatory direct file process and who are found to have committed the offense or a lesser included offense:

- Juveniles 16 or 17 years old at the time of the offense who:
 - Have been previously adjudicated delinquent for an enumerated felony and the juvenile has been found to have committed a second or subsequent violent crime against a person; or
 - Have been found to have committed a forcible felony and have been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other.²⁴

Determining Whether to Impose Adult or Juvenile Sanctions

As noted above, judges often have discretion to impose adult or juvenile sanctions when a juvenile is transferred to adult court and is found to have committed the offense. In such instances, the judge

¹⁷ The enumerated felonies listed in this subsection include the commission of, attempt to commit, or conspiracy to commit: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; or aggravated assault.

¹⁸ Section 776.08, F.S., defines "forcible felony" to mean 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.

¹⁹ Section 985.557(2)(b), F.S., also states that this paragraph does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

²⁰ This list includes: murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.

²¹ The terms "firearm" and "destructive device" are defined in s. 790.001, F.S.

²² s. 985.557(2)(c), F.S.

²³ s. 985.565(4)(a)2., F.S.

²⁴ s. 985.565(4)(a)3., F.S.

must consider specified factors to determine whether adult or juvenile sanctions are appropriate. These include:

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;²⁵
- The sophistication and maturity of the offender;
- The record and previous history of the offender, including:
 - Previous contacts with the Department of Corrections (DOC), DJJ, the former Department of Health and Rehabilitative Services (HRS), the Department of Children and Families (DCF), law enforcement agencies, and the courts;
 - Prior periods of probation;
 - Prior adjudications that the offender committed a delinquent act or violation of law as a child;
 - Prior commitments to DJJ, former HRS, DCF, or other facilities or institutions;
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to DJJ services and facilities;
- Whether DJJ has appropriate programs, facilities, and services immediately available; and
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than juvenile sanctions.²⁶

The court is required to consider a presentence investigation (PSI) report prepared by DOC regarding the suitability of a juvenile for disposition as an adult or juvenile.²⁷ The PSI report must include a comments section prepared by DJJ, with its recommendations as to disposition.²⁸ The court must give all parties²⁹ present at the disposition hearing an opportunity to comment on the issue of sentence and any proposed rehabilitative plan, and may receive and consider any other relevant and material evidence.³⁰

If juvenile sentences are imposed, the court must adjudge the child to have committed a delinquent act.³¹ Upon adjudicating a child delinquent, the court may:

- Place the juvenile in a probation program under the supervision of DJJ for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the juvenile to DJJ for treatment in an appropriate program for an indeterminate period of time until the child is 21 or sooner if discharged by DJJ,³² or
- Order disposition under ss. 985.435, 985.437, 985.439, 985.441, 985.45, and 985.455, F.S., as an alternative to youthful offender or adult sentencing if the court determines not to impose youthful offender or adult sanctions.³³

²⁵ Greater weight is given to offenses against persons, especially if personal injury resulted.

²⁶ s. 985.565(1)(b), F.S.

²⁷ s. 985.565(3), F.S. This report requirement may be waived by the offender.

²⁸ *Id.*

²⁹ This includes the parent, guardian, or legal custodian of the offender; the offender's counsel; the State; representatives of DOC and DJJ; the victim or victim's representative; representatives of the school system; and LEOs involved in the case.

³⁰ *Id.* Other relevant evidence may include other reports, written or oral, in its effort to determine the action to be taken with regard to the child. This evidence may be relied upon by the court to the extent of its probative value even if the evidence would not be competent in an adjudicatory hearing.

³¹ s. 985.565(4)(b), F.S. Adjudication of delinquency is not deemed a conviction, nor does it operate to impose any of the civil disabilities ordinarily resulting from a conviction.

³² DJJ must notify the court of its intent to discharge the juvenile from the commitment program no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

³³ s. 985.565(4)(b), F.S.

It should be noted that if the court imposes a juvenile sanction and DJJ determines that the sanction is unsuitable for the juvenile, DJJ must return custody of the juvenile to the sentencing court for further proceedings, including the imposition of adult sanctions.³⁴

Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions.³⁵

The court may not sentence the child to a combination of adult and juvenile punishments.³⁶

Effect of Transferring a Juvenile to Adult Court

If a juvenile who has been transferred to adult court for prosecution is found to have committed the offense or a lesser included offense, the juvenile must have any subsequent violations of law handled thereafter in every respect as an adult.³⁷ The court must also immediately transfer and certify all unresolved³⁸ felony cases pertaining to the juvenile to adult court for prosecution.³⁹

If the juvenile is acquitted of all charged offenses (or lesser included offenses) contained in the original direct filed case, all felony cases transferred to adult court as a result of the direct file case must be subject to juvenile sanctions.⁴⁰

Juvenile Transfer Statistics from the Department of Juvenile Justice (DJJ)

Since FY 2008-09, there has been a significant reduction (53%) in juveniles transferred to adult court, as well as a significant reduction in the overall incidence of juvenile crime. In FY 12-13, there were a total of 1,535 juvenile transfers, most of which related to a felony offense (96%).⁴¹ The majority of the juveniles transferred to adult court are 16 or 17 years old.⁴² During FYs 08-09 through 12-13, there were only two juveniles transferred who were 11-12 years of age and none who were ages 5-10.⁴³

By looking at each circuit's total number of youth received by DJJ and total number of youth transferred to the adult system, it appears that a discrepancy exists amongst the various circuits in the rate at which they transfer juveniles to adult court.⁴⁴ The rate that juveniles are transferred to adult court for FYs 08-09 through 12-13 vary from 1.6% to up to 8.86% of the total youth received by DJJ.⁴⁵ The mean rate statewide is 3.57%.⁴⁶

In FY 12-13, the most common offenses which resulted in juveniles being transferred to adult court included:

- Burglary (481 youth);

³⁴ *Id.* DJJ also has recourse if the judge imposes a juvenile sanction and the child proves not to be suitable to the sanction. In such instances, DJJ must provide the sentencing court a written report outlining the basis for its objections to the juvenile sanction and schedule a hearing. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any adult sanction it may have originally lawfully imposed. s. 985.565(4)(c), F.S.

³⁵ s. 985.565(4)(a)4., F.S.

³⁶ *Id.*

³⁷ ss. 985.556(5), 985.56(4), and 985.557(3), F.S. This provision does not apply if the adult court imposes juvenile sanctions under s. 985.565, F.S.

³⁸ Unresolved cases include those which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not been made. See s. 985.557(3), F.S.

³⁹ ss. 985.556(5), 985.56(4), and 985.557(3), F.S.

⁴⁰ *Id.*

⁴¹ Department of Juvenile Justice (DJJ) Delinquency Profile 2012-2013 (hereinafter referenced as "Delinquency Profile").

⁴² 385 out of the 1,585 total youth transferred to criminal court in FY 12-13 were 16 years old at the time they committed the offense (25%), while 1,016 out were 17 years old or older when they committed the offense (66%). *Age at Arrest - Youth Transferred Statewide*, Delinquency Profile, also see, e-mail from Jon Menendez, DJJ, September 18, 2014 (on file with the Criminal Justice Subcommittee).

⁴³ *Id.*

⁴⁴ *Circuit Summary Data – Total Offenses – Youth Transferred*, Delinquency Profile.

⁴⁵ *Id.*

⁴⁶ *Id.*

- Armed robbery (260 youth);
- Aggravated assault or battery (185 youth);
- Weapon-related felonies (98 youth);
- Drug-related felonies (75 youth);
- Robbery (73 youth);
- Sexual battery (59 youth); and
- Grand theft auto (44 youth).⁴⁷

Florida is known for having some of the best collection and reporting practices for data relating to juveniles transferred to adult court.⁴⁸ Many states do not collect this data at all, which makes it difficult to compare Florida's transfer statistics to other states.⁴⁹ There are only 13 states that publicly report all transfers. However, even within those 13 states, huge discrepancies exist among the quality of data that is reported.⁵⁰ Of the states that do report transfers, many only report the number of juveniles that are transferred as a result of a judicial waiver hearing, but do not report those that are filed directly in adult court.⁵¹ Other factors also affect the quality of comparable data. For example discrepancies in the definition of an "adult" may lead to data that is not appropriate for comparison. As a result, it is extremely difficult to determine whether Florida transfers more juveniles to adult court than other states.

Effect of the Bill

The bill substantially amends Florida's indictment and direct file transfer processes.

Indictment

As noted above, s. 985.56, F.S., permits the State to bring a juvenile of any age who is charged with an offense that is punishable by death or life imprisonment before a grand jury for an indictment. If the juvenile is found to have committed the offense, the court must sentence the juvenile as an adult. If the juvenile is found not to have committed the indictable offense, but is found to have committed a lesser included offense or any other offense for which he or she was indicted as part of the criminal episode, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.

The bill amends s. 985.56, F.S., to:

- Limit the State's authority by specifying that the State may only convene a grand jury for a juvenile who is 14 years of age or older where the juvenile is charged with murder, manslaughter, or aggravated sexual battery;
- Allow the court to sentence the juvenile as an adult, a youthful offender, or as a juvenile, even when the juvenile is found to have committed the indictable offense; and
- Prohibit a juvenile who is eligible for indictment but who is pending a competency hearing in juvenile court or has been previously found to be incompetent and has not been restored to competency from being transferred to adult court for criminal prosecution.

Currently, the court is required to immediately transfer any unresolved felony cases pertaining to the juvenile to adult court upon the grand jury returning an indictment. The bill permits, rather than requires, the court to transfer such unresolved felony cases.

The bill amends s. 985.557, F.S., to reiterate that for a juvenile who is 14 years of age, the State may seek an indictment before a grand jury when:

- In the State's best judgment and discretion, the public interest requires that adult sanctions be considered; and
- The juvenile is charged with commission of or attempt to commit murder, manslaughter, or aggravated sexual battery.

⁴⁷ *Felonies – Youth Transferred Statewide*, Delinquency Profile and s. 812.14(1)(c)6., F.S.

⁴⁸ *Trying Juveniles as Adults*, at 16.

⁴⁹ *Trying Juveniles as Adults*, at 14.

⁵⁰ *Id.*

⁵¹ *Id.*

Direct File

The bill substantially rewords s. 985.557, F.S., eliminating the mandatory direct file system and modifying the discretionary direct file system to a three-tiered system based on the juvenile's age at the time of offense.

Tier One

The bill permits the State to file an information in adult court when, in their judgment and discretion, the public interest requires that adult sanctions be considered and:

- The juvenile was 17 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:
 - Murder;
 - Manslaughter;
 - Aggravated sexual battery;
 - Armed robbery;
 - Aggravated assault with a firearm;
 - Aggravated child abuse;
 - Aggravated stalking;
 - Kidnapping;
 - Unlawful throwing, placing, or discharging of a destructive device and bomb;
 - Aggravated battery resulting in great bodily harm, permanent disability, or permanent disfigurement;
 - Carrying, displaying, using, or threatening or attempting to use a weapon or firearm in furtherance of the commission of a felony;
 - Possessing or discharging a firearm on school property in violation of s. 790.115, F.S.;
 - Home invasion robbery;
 - Carjacking;
 - Aggravated animal cruelty; or
 - DUI resulting in fatality, great bodily harm, permanent disability, or permanent disfigurement to a person other than the accused or another person who voluntarily was a passenger in the vehicle.

Tier Two

The bill permits the State to file an information in adult court when, in their judgment and discretion, the public interest requires adult sanctions be considered and:

- The juvenile was 16 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:
 - Murder;
 - Manslaughter;
 - Aggravated sexual battery; or
 - DUI resulting in fatality, great bodily harm, permanent disability, or permanent disfigurement to a person other than the accused or another person who voluntarily was a passenger in the vehicle.

Tier Three

The bill permits the State to file an information in adult court when, in their judgment and discretion, the public interest requires adult sanctions be considered and:

- The juvenile was 15 years of age at the time of the alleged offense; and
- The juvenile committed, or attempted to commit, one of the following enumerated offenses:
 - Murder;
 - Manslaughter; or
 - Aggravated sexual battery.

The bill prohibits a juvenile from being direct filed pursuant to any of the three tiers if the juvenile suffers from a mental illness, a developmental or intellectual disability, substance abuse, or any other condition amenable to treatment, habilitation, or rehabilitation in the juvenile justice system.

Additionally, a juvenile eligible for direct file cannot be transferred if he or she has a pending competency hearing in juvenile court or has been previously found to be incompetent and has not been restored to competency by a court.

As noted above, current law requires the court to transfer any unresolved felony cases pertaining to the juvenile to adult court when a juvenile is direct filed. The bill amends this provision to permit, the court to transfer such unresolved felony cases. As in current law, the bill requires a juvenile to receive juvenile sanctions if the juvenile is acquitted in adult court on the case that resulted in the direct file.

The bill also requires DJJ to collect and annually report data to the President of the Senate and Speaker of the House of Representatives regarding juveniles who qualify for direct file. This data includes, but is not limited to:

- Age;
- Race and ethnicity;
- Gender;
- Circuit and county of residence;
- Circuit and county of offense;
- Prior adjudicated offenses;
- Prior periods of probation;
- Previous contacts with law enforcement agencies or the courts;
- Initial charges;
- Charges at disposition;
- Whether adult codefendants were involved;
- Whether child codefendants were involved who were transferred to adult court;
- Whether the child was represented by counsel;
- Whether the child had waived counsel;
- Risk assessment instrument score;
- The child's medical, mental health, substance abuse, or trauma history;
- The child's history of physical or mental impairment or disability-related accommodations;
- The child's history of abuse or neglect;
- The child's history of foster care placements, including the number of prior placements;
- Whether the child has experienced a failed adoption;
- Whether the child has fetal alcohol syndrome or was exposed to controlled substances at birth;
- Whether the child has below-average intellectual functioning or is eligible for exceptional student education services;
- Whether the child has received mental health services or treatment;
- Whether the child has been the subject of a CINS/FINS or dependency petition;
- Plea offers made by the state and the outcome of any plea offers;
- Whether the child was transferred for criminal prosecution as an adult;
- The case resolution in juvenile court;
- The case resolution in adult court; and
- Disposition data, including, but not limited to, whether the child received adult sanctions, juvenile sanctions, or diversion, and, if sentenced to prison, length of prison sentence or enhanced sentence.

No Requirement to Impose Adult Sanctions

Unlike current law, the bill never requires the court to impose adult sanctions. Instead, the bill provides that a juvenile transferred pursuant to information or waiver of juvenile court jurisdiction and who is found to have committed a violation of law or a lesser included offense may be sentenced as:

- An adult;
- A youthful offender under ch. 958, F.S.; or
- A juvenile.

Determining Whether to Impose Adult or Juvenile Sanctions

The bill amends portions of s. 985.565, F.S., modifying existing criteria and adding additional criteria the court must consider when determining whether juvenile sanctions or adult sanctions are appropriate. The bill includes the following additional criteria for courts to consider:

- The extent of the child's participation or role in the offense;
- The effect, if any, of familial or peer pressure on the child's actions; and
- Whether DOC has appropriate programs, facilities, and services immediately available for the juvenile.

The bill modifies the following existing criteria for courts to consider:

- The sophistication and maturity of the child, including:
 - The child's age, intellectual capacity, and mental and emotional health at the time of the offense;
 - The child's background, including his or her family, home, and community environment;
 - The effect, if any, of immaturity, impetuosity, or failure to appreciate the risks and consequences on the child's participation in the offense; and
 - The effect, if any, of characteristics attributable to the child's age on the child's judgment
- The record and previous history of the juvenile, including:
 - Previous contacts with DOC, DJJ, HRS, and DCF and the adequacy and appropriateness of the any services provided to address the juvenile's needs;
 - Previous contacts with law enforcement agencies and the courts;
 - History of abuse, abandonment, or neglect; and
 - Identification of the child as having a mental, physical, or intellectual or developmental disability or having previously received mental health services or treatment.

The bill removes the provision allowing the court to consider whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

As noted above, the court is not currently required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions. The bill requires the court to render an order including specific findings of fact and the reasons for its decisions to impose adult, youthful offender, or juvenile sanctions. The order is reviewable on appeal under s. 985.534, F.S., and the Florida Rules of Appellate Procedure.

As noted above, the court may currently consider any other relevant evidence when determining whether juvenile or adult sanctions are most appropriate, but the statute is silent as to specified types of additional evidence that can be considered. The bill amends this provision to require the court to consider any reports that may assist the court in its decision. These include, but are not limited to:

- Prior predisposition reports, psychosocial assessments, individual education plans, developmental assessments, school records, abuse or neglect reports, home studies, protective investigations, and psychological or psychiatric evaluations.

The juvenile, the State, and defense counsel have the right to examine these reports, and to question the parties responsible for them at the hearing.

The bill also requires the court to adjudge the juvenile to have committed a delinquent act any time juvenile sanctions are imposed (currently, the court only has to do so in limited instances).

Lastly, the bill removes the:

- Prohibition on imposing both adult and juvenile sanctions; and
- Requirement that DJJ return the juvenile to sentencing court for further proceedings if DJJ determines the sanction is inappropriate.

The bill also amends ss. 985.04 and 985.556, F.S., conforming statutory cross-references to changes made in the act.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.557, F.S., relating to direct filing of an information; discretionary and mandatory criteria.

Section 2. Amends s. 985.56, F.S., relating to indictment of a juvenile.

Section 3. Amends s. 985.565, F.S., relating to sentencing powers; procedures; alternatives for juveniles prosecuted as adults.

Section 4. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 5. Amends s. 985.556, F.S., relating to waiver of juvenile court jurisdiction; hearing.

Section 6. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

On March 11, 2015, the Criminal Justice Impact Conference determined that this bill will have a negative indeterminate prison bed impact on the Department of Corrections (i.e., an unquantifiable negative bed impact). Additionally, to the extent that this bill results in more juveniles being prosecuted in the juvenile justice system (rather than the adult system) and ultimately sentenced to a residential commitment program within DJJ, there will be a positive residential bed impact on DJJ (i.e., a need for more residential beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 985.64, F.S., requires DJJ to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of ch. 985, F.S. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- 1) Lines 319-329: As noted above, the bill deletes any language that mandates how a court must sentence a juvenile that has been transferred to adult court through indictment. The word "indictment" may need to be added to line 330 to ensure that the court has authority to sentence a juvenile that was transferred to adult court via indictment.
- 2) Lines 367-371: The bill removes language permitting DJJ to transfer the juvenile back for resentencing if DJJ determines that there is no appropriate placement for that juvenile. The bill does not provide another method for such situation and this issue may need to be addressed in the bill to provide DJJ guidance.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to charging youths as adults in
 3 criminal proceedings; amending s. 985.557, F.S.;
 4 specifying offenses that allow a state attorney to
 5 file an information for specified juvenile offenders;
 6 providing that certain open felony cases may also be
 7 transferred to the adult court; prohibiting the filing
 8 of informations for juveniles with certain conditions;
 9 specifying the effects of a direct file; prohibiting
 10 certain juvenile offenders from being transferred to
 11 adult court; requiring the Department of Juvenile
 12 Justice to collect specified data related to specified
 13 juvenile offenders transferred to adult court;
 14 requiring a report; amending s. 985.56, F.S.;
 15 specifying a minimum age for indictment of a juvenile
 16 for certain offenses; prohibiting certain juvenile
 17 offenders from being transferred to adult court;
 18 deleting provisions relating to sentencing of
 19 juveniles as adults for certain offenses; revising
 20 provisions relating to transfer of other pending
 21 felony charges when a child has been indicted;
 22 amending s. 985.565, F.S.; revising factors to be
 23 considered in determining whether to impose juvenile
 24 or adult sanctions for violations of law by a
 25 juvenile; requiring the court to consider specified
 26 reports in a hearing on such sentencing; providing for

27 | rights to examine the reports and question the parties
 28 | responsible for them; revising provisions relating to
 29 | sentencing alternatives; amending s. 985.04 and
 30 | 985.556, F.S.; conforming provisions to changes made
 31 | by the act; providing an effective date.
 32 |

33 | Be It Enacted by the Legislature of the State of Florida:
 34 |

35 | Section 1. Section 985.557, Florida Statutes, is amended
 36 | to read:

37 | (Substantial rewording of section. See
 38 | s. 985.557, F.S., for present text.)
 39 | 985.557 Direct filing of an information.-

40 | (1) DIRECT FILE.-

41 | (a) With respect to a child who was 17 years of age at the
 42 | time the alleged offense was committed, the state attorney may
 43 | file an information when, in the state attorney's judgment and
 44 | discretion, the public interest requires that adult sanctions be
 45 | considered and when the offense charged is for the commission of
 46 | or attempt to commit:

47 | 1. Murder;

48 | 2. Manslaughter;

49 | 3. Aggravated sexual battery;

50 | 4. Armed robbery;

51 | 5. Aggravated assault with a firearm;

52 | 6. Aggravated child abuse;

- 53 7. Aggravated stalking;
 54 8. Kidnapping;
 55 9. Unlawful throwing, placing, or discharging of a
 56 destructive device or bomb;
 57 10. Aggravated battery resulting in great bodily harm,
 58 permanent disability, or permanent disfigurement;
 59 11. Carrying, displaying, using, or threatening or
 60 attempting to use a weapon or firearm in furtherance of the
 61 commission of a felony;
 62 12. Possessing or discharging a firearm on school property
 63 in violation of s. 790.115;
 64 13. Home invasion robbery;
 65 14. Carjacking; or
 66 15. Aggravated animal cruelty.
 67 (b) With respect to a child who was 16 or 17 years of age
 68 at the time the alleged offense was committed, the state
 69 attorney may file an information when, in the state attorney's
 70 judgment and discretion, the public interest requires that adult
 71 sanctions be considered and when the offense charged is for the
 72 commission of DUI resulting in fatality, great bodily harm,
 73 permanent disability, or permanent disfigurement to a person
 74 other than the accused or another person who voluntarily was a
 75 passenger in the vehicle operated by the accused.
 76 (c) With respect to a child who was 15 or 16 years of age
 77 at the time the alleged offense was committed, the state
 78 attorney may file an information when, in the state attorney's

79 judgment and discretion, the public interest requires that adult
 80 sanctions be considered and when the offense charged is for the
 81 commission of or attempt to commit:

- 82 1. Murder;
- 83 2. Manslaughter; or
- 84 3. Aggravated sexual battery.

85 (d) With respect to a child who was 14 years of age at the
 86 time the alleged offense was committed, the state attorney may
 87 seek an indictment before a grand jury when, in the state
 88 attorney's judgment and discretion, the public interest requires
 89 that adult sanctions be considered and when the offense charged
 90 is for the commission of or attempt to commit:

- 91 1. Murder;
- 92 2. Manslaughter; or
- 93 3. Aggravated sexual battery.

94 (2) CHILDREN NOT SUBJECT TO DIRECT FILE.—Subsection (1)
 95 does not apply to a child who suffers from mental illness, a
 96 developmental or intellectual disability, substance abuse, or
 97 any other condition amenable to treatment, habilitation, or
 98 rehabilitation in the juvenile justice system.

99 (3) EFFECT OF DIRECT FILE.—When a child is transferred for
 100 criminal prosecution as an adult, the court may transfer and
 101 certify to the adult circuit court for prosecution of the child
 102 as an adult all related felony cases pertaining to the child
 103 which have not yet resulted in a plea of guilty or nolo
 104 contendere or in which a finding of guilt has not been made. If

105 the child is acquitted of all charged offenses or lesser
 106 included offenses contained in the original case transferred to
 107 adult court, any felony cases that were transferred to adult
 108 court under this subsection shall be subject to the same
 109 penalties such cases were subject to before being transferred to
 110 adult court.

111 (4) TRANSFER PROHIBITION.—Notwithstanding any other
 112 provision of law, a child who is eligible for direct file and
 113 who is pending a competency hearing in juvenile court or has
 114 been previously found to be incompetent and has not been
 115 restored to competency by a court may not be transferred to
 116 adult court for criminal prosecution.

117 (5) DATA COLLECTION RELATING TO DIRECT FILE.—

118 (a) The department shall collect data regarding children
 119 who qualify for direct file under subsection (1), including, but
 120 not limited to:

- 121 1. Age.
- 122 2. Race and ethnicity.
- 123 3. Gender.
- 124 4. Circuit and county of residence.
- 125 5. Circuit and county of offense.
- 126 6. Prior adjudicated offenses.
- 127 7. Prior periods of probation.
- 128 8. Previous contacts with law enforcement agencies or the
 129 courts.
- 130 9. Initial charges.

- 131 | 10. Charges at disposition.
- 132 | 11. Whether adult codefendants were involved.
- 133 | 12. Whether child codefendants were involved who were
 134 | transferred to adult court.
- 135 | 13. Whether the child was represented by counsel.
- 136 | 14. Whether the child had waived counsel.
- 137 | 15. Risk assessment instrument score.
- 138 | 16. The child's medical, mental health, substance abuse,
 139 | or trauma history.
- 140 | 17. The child's history of physical or mental impairment
 141 | or disability-related accommodations.
- 142 | 18. The child's history of abuse or neglect.
- 143 | 19. The child's history of foster care placements,
 144 | including the number of prior placements.
- 145 | 20. Whether the child has experienced a failed adoption.
- 146 | 21. Whether the child has fetal alcohol syndrome or was
 147 | exposed to controlled substances at birth.
- 148 | 22. Whether the child has below-average intellectual
 149 | functioning or is eligible for exceptional student education
 150 | services.
- 151 | 23. Whether the child has received mental health services
 152 | or treatment.
- 153 | 24. Whether the child has been the subject of a CINS/FINS
 154 | or dependency petition.
- 155 | 25. Plea offers made by the state and the outcome of any
 156 | plea offers.

157 26. Whether the child was transferred for criminal
 158 prosecution as an adult.

159 27. The case resolution in juvenile court.

160 28. The case resolution in adult court.

161 (b) When a child is transferred for criminal prosecution
 162 as an adult, the department shall also collect disposition data,
 163 including, but not limited to, whether the child received adult
 164 sanctions, juvenile sanctions, or diversion, and, if sentenced
 165 to prison, length of prison sentence or enhanced sentence.

166 (c) The department shall annually provide a report
 167 analyzing this aggregated data to the President of the Senate
 168 and the Speaker of the House of Representatives.

169 Section 2. Section 985.56, Florida Statutes, is amended to
 170 read:

171 985.56 Indictment of a juvenile.—

172 (1) A child who is 14 years of age or older at the time of
 173 the charged offense and ~~of any age~~ who is charged with murder,
 174 manslaughter, or aggravated sexual battery ~~a violation of state~~
 175 law punishable by death or by life imprisonment is subject to
 176 the jurisdiction of the court as set forth in s. 985.0301(2)
 177 unless and until an indictment on the charge is returned by the
 178 grand jury. When such indictment is returned, the petition for
 179 delinquency, if any, must be dismissed and the child must be
 180 tried ~~and handled in every respect~~ as an adult:

181 (a) On the indicting offense ~~punishable by death or by~~
 182 ~~life imprisonment~~; and

183 (b) On all other felonies or misdemeanors charged in the
 184 indictment which are based on the same act or transaction as the
 185 indicting offense ~~punishable by death or by life imprisonment or~~
 186 ~~on one or more acts or transactions connected with the offense~~
 187 ~~punishable by death or by life imprisonment.~~

188 (2) An adjudicatory hearing may not be held until 21 days
 189 after the child is taken into custody and charged with having
 190 committed an indictable offense ~~punishable by death or by life~~
 191 ~~imprisonment~~, unless the state attorney advises the court in
 192 writing that he or she does not intend to present the case to
 193 the grand jury, or has presented the case to the grand jury and
 194 the grand jury has not returned an indictment. If the court
 195 receives such a notice from the state attorney, or if the grand
 196 jury fails to act within the 21-day period, the court may
 197 proceed as otherwise authorized under this part.

198 (3) Notwithstanding any other provision of law, a child
 199 who is eligible for indictment and who is pending a competency
 200 hearing in juvenile court or has been previously found to be
 201 incompetent and has not been restored to competency by a court
 202 may not be transferred to adult court for criminal prosecution.

203 ~~(3) If the child is found to have committed the offense~~
 204 ~~punishable by death or by life imprisonment, the child shall be~~
 205 ~~sentenced as an adult. If the juvenile is not found to have~~
 206 ~~committed the indictable offense but is found to have committed~~
 207 ~~a lesser included offense or any other offense for which he or~~
 208 ~~she was indicted as a part of the criminal episode, the court~~

209 ~~may sentence under s. 985.565.~~

210 (4) (a) Once a child has been indicted pursuant to this
 211 section and has been found to have committed any offense for
 212 which he or she was indicted as a part of the criminal episode,
 213 the child shall be handled thereafter ~~in every respect~~ as ~~if~~ an
 214 adult for any subsequent violation of state law, unless the
 215 court imposes juvenile sanctions under s. 985.565.

216 (b) When a child has been indicted pursuant to this
 217 section, the court may ~~shall immediately~~ transfer and certify to
 218 the adult circuit court all related felony cases pertaining to
 219 the child, for prosecution of the child as an adult, which have
 220 not yet resulted in a plea of guilty or nolo contendere or in
 221 which a finding of guilt has not been made. If the child is
 222 acquitted of all charged offenses or lesser included offenses
 223 contained in the indictment case, any ~~all~~ felony cases that were
 224 transferred to adult court pursuant to this paragraph shall be
 225 subject to the same penalties such cases were subject to before
 226 being transferred to adult court.

227 Section 3. Subsection (1), paragraph (c) of subsection
 228 (3), and subsection (4) of section 985.565, Florida Statutes,
 229 are amended to read:

230 985.565 Sentencing powers; procedures; alternatives for
 231 juveniles prosecuted as adults.—

232 (1) POWERS OF DISPOSITION.—

233 (a) A child who is found to have committed a violation of
 234 law may, as an alternative to adult dispositions, be committed

235 to the department for treatment in an appropriate program for
 236 children outside the adult correctional system or be placed on
 237 juvenile probation.

238 (b) In determining whether to impose juvenile sanctions or
 239 ~~instead of~~ adult sanctions, the court shall consider the
 240 following criteria:

241 1. The seriousness of the offense to the community and
 242 whether the protection of the community would be best served ~~be~~
 243 ~~protected~~ by juvenile or adult sanctions.

244 2. The extent of the child's participation or role in the
 245 offense.

246 3. The effect, if any, of familial or peer pressure on the
 247 child's actions.

248 4.2. Whether the offense was committed in an aggressive,
 249 violent, premeditated, or willful manner.

250 5.3. Whether the offense was against persons or against
 251 property, with greater weight being given to offenses against
 252 persons, especially if personal injury resulted.

253 6.4. The sophistication and maturity of the child,
 254 including:

255 a. The child's age, intellectual capacity, and mental and
 256 emotional health at the time of the offense.

257 b. The child's background, including his or her family,
 258 home, and community environment.

259 c. The effect, if any, of immaturity, impetuosity, or
 260 failure to appreciate the risks and consequences on the child's

261 participation in the offense.

262 d. The effect, if any, of characteristics attributable to

263 the child's age on the child's judgment ~~offender.~~

264 7.5. The record and previous history of the offender,

265 including:

266 a. Previous contacts with the Department of Corrections,

267 the Department of Juvenile Justice, the former Department of

268 Health and Rehabilitative Services, and the Department of

269 Children and Families and the adequacy and appropriateness of

270 the services provided to address the child's needs, ~~law~~

271 ~~enforcement agencies, and the courts.~~

272 b. Prior periods of probation.

273 c. Prior adjudications that the offender committed a

274 delinquent act or violation of law as a child.

275 d. Prior commitments to the Department of Juvenile

276 Justice, the former Department of Health and Rehabilitative

277 Services, the Department of Children and Families, or other

278 facilities or institutions and the adequacy and appropriateness

279 of the services provided to address the child's needs.

280 e. Previous contacts with law enforcement agencies and the

281 courts.

282 f. History of abuse, abandonment, or neglect.

283 g. Identification of the child as having a mental,

284 physical, or intellectual or developmental disability or having

285 previously received mental health services or treatment.

286 8.6. The prospects for adequate protection of the public

287 and the likelihood of deterrence and reasonable rehabilitation
 288 of the offender if assigned to services and facilities of the
 289 Department of Juvenile Justice.

290 ~~9.7.~~ Whether the Department of Juvenile Justice has
 291 appropriate programs, facilities, and services immediately
 292 available.

293 10. Whether the Department of Corrections has appropriate
 294 programs, facilities, and services immediately available.

295 (c) The adult court shall render an order including
 296 specific findings of fact and the reasons for its decision. The
 297 order shall be reviewable on appeal under s. 985.534 and the
 298 Florida Rules of Appellate Procedure.

299 ~~8. Whether adult sanctions would provide more appropriate~~
 300 ~~punishment and deterrence to further violations of law than the~~
 301 ~~imposition of juvenile sanctions.~~

302 (3) SENTENCING HEARING.—

303 (c) The court may receive and consider any other relevant
 304 and material evidence, including other reports, written or oral,
 305 in its effort to determine the action to be taken with regard to
 306 the child, and may rely upon such evidence to the extent of its
 307 probative value even if the evidence would not be competent in
 308 an adjudicatory hearing. The court shall consider any reports
 309 that may assist it, including, but not limited to, prior
 310 predisposition reports, psychosocial assessments, individual
 311 education plans, developmental assessments, school records,
 312 abuse or neglect reports, home studies, protective

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313 investigations, and psychological or psychiatric evaluations.
 314 The child, the child's defense counsel, and the state attorney
 315 have the right to examine these reports and to question the
 316 parties responsible for them at the hearing.

317 (4) SENTENCING ALTERNATIVES.-

318 (a) ~~Adult Sanctions.-~~

319 ~~1. Cases prosecuted on indictment. If the child is found~~
 320 ~~to have committed the offense punishable by death or life~~
 321 ~~imprisonment, the child shall be sentenced as an adult. If the~~
 322 ~~juvenile is not found to have committed the indictable offense~~
 323 ~~but is found to have committed a lesser included offense or any~~
 324 ~~other offense for which he or she was indicted as a part of the~~
 325 ~~criminal episode, the court may sentence as follows:~~

326 ~~a. As an adult;~~

327 ~~b. Under chapter 958; or~~

328 ~~c. As a juvenile under this section.~~

329 ~~2. Other cases.-~~ If a child who has been transferred for
 330 criminal prosecution pursuant to information or waiver of
 331 juvenile court jurisdiction is found to have committed a
 332 violation of state law or a lesser included offense for which he
 333 or she was charged as a part of the criminal episode, the court
 334 may sentence as follows:

335 ~~1.a.~~ As an adult;

336 ~~2.b.~~ As a youthful offender under chapter 958; or

337 ~~3.e.~~ As a juvenile under this section.

338 ~~3. Notwithstanding any other provision to the contrary, if~~

339 ~~the state attorney is required to file a motion to transfer and~~
 340 ~~certify the juvenile for prosecution as an adult under s.~~
 341 ~~985.556(3) and that motion is granted, or if the state attorney~~
 342 ~~is required to file an information under s. 985.557(2)(a) or~~
 343 ~~(b), the court must impose adult sanctions.~~

344 (b)4. Findings.—~~The court must~~ Any sentence imposing adult
 345 ~~sanctions is presumed appropriate, and the court is not required~~
 346 ~~to~~ set forth specific findings or enumerate the criteria in this
 347 subsection as any basis for its decision to impose adult,
 348 youthful offender, or juvenile sanctions.

349 (c)5. Restitution.—~~When a child has been transferred for~~
 350 ~~criminal prosecution as an adult and has been found to have~~
 351 ~~committed a violation of state law, the disposition of the case~~
 352 ~~may include the enforcement of any restitution ordered in any~~
 353 ~~juvenile proceeding.~~

354 (d)(b) Juvenile sanctions.—If a juvenile sentence is ~~For~~
 355 ~~juveniles transferred to adult court but who do not qualify for~~
 356 ~~such transfer under s. 985.556(3) or s. 985.557(2)(a) or (b),~~
 357 ~~the court may impose juvenile sanctions under this paragraph. If~~
 358 ~~juvenile sentences are imposed, the court shall, under this~~
 359 ~~paragraph, adjudge the child to have committed a delinquent act.~~
 360 ~~Adjudication of delinquency shall not be deemed a conviction,~~
 361 ~~nor shall it operate to impose any of the civil disabilities~~
 362 ~~ordinarily resulting from a conviction. The court shall impose~~
 363 ~~an adult sanction or a juvenile sanction and may not sentence~~
 364 ~~the child to a combination of adult and juvenile punishments. An~~

365 adult sanction or a juvenile sanction may include enforcement of
 366 an order of restitution or probation previously ordered in any
 367 juvenile proceeding. ~~However, if the court imposes a juvenile~~
 368 ~~sanction and the department determines that the sanction is~~
 369 ~~unsuitable for the child, the department shall return custody of~~
 370 ~~the child to the sentencing court for further proceedings,~~
 371 ~~including the imposition of adult sanctions.~~ Upon adjudicating a
 372 child delinquent under subsection (1), the court may:

373 1. Place the child in a probation program under the
 374 supervision of the department for an indeterminate period of
 375 time until the child reaches the age of 19 years or sooner if
 376 discharged by order of the court.

377 2. Commit the child to the department for treatment in an
 378 appropriate program for children for an indeterminate period of
 379 time until the child is 21 or sooner if discharged by the
 380 department. The department shall notify the court of its intent
 381 to discharge no later than 14 days prior to discharge. Failure
 382 of the court to timely respond to the department's notice shall
 383 be considered approval for discharge.

384 3. Order disposition under ss. 985.435, 985.437, 985.439,
 385 985.441, 985.45, and 985.455 as an alternative to youthful
 386 offender or adult sentencing if the court determines not to
 387 impose youthful offender or adult sanctions.

388 (e) ~~(e)~~ Adult sanctions upon failure of juvenile
 389 sanctions.—If a child proves not to be suitable to a commitment
 390 program, juvenile probation program, or treatment program under

391 paragraph (d) ~~(b)~~, the department shall provide the sentencing
 392 court with a written report outlining the basis for its
 393 objections to the juvenile sanction and shall simultaneously
 394 provide a copy of the report to the state attorney and the
 395 defense counsel. The department shall schedule a hearing within
 396 30 days. Upon hearing, the court may revoke the previous
 397 adjudication, impose an adjudication of guilt, and impose any
 398 sentence which it may lawfully impose, giving credit for all
 399 time spent by the child in the department. The court may also
 400 classify the child as a youthful offender under s. 958.04, if
 401 appropriate. For purposes of this paragraph, a child may be
 402 found not suitable to a commitment program, community control
 403 program, or treatment program under paragraph (d) ~~(b)~~ if the
 404 child commits a new violation of law while under juvenile
 405 sanctions, if the child commits any other violation of the
 406 conditions of juvenile sanctions, or if the child's actions are
 407 otherwise determined by the court to demonstrate a failure of
 408 juvenile sanctions.

409 (f) ~~(d)~~ Further proceedings heard in adult court.—When a
 410 child is sentenced to juvenile sanctions, further proceedings
 411 involving those sanctions shall continue to be heard in the
 412 adult court.

413 (g) ~~(e)~~ School attendance.—If the child is attending or is
 414 eligible to attend public school and the court finds that the
 415 victim or a sibling of the victim in the case is attending or
 416 may attend the same school as the child, the court placement

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2015

417 order shall include a finding pursuant to the proceeding
418 described in s. 985.455(2), regardless of whether adjudication
419 is withheld.

420

421 It is the intent of the Legislature that the criteria and
422 guidelines in this subsection are mandatory and that a
423 determination of disposition under this subsection is subject to
424 the right of the child to appellate review under s. 985.534.

425 Section 4. Paragraph (d) of subsection (2) of section
426 985.04, Florida Statutes, is amended to read:

427 985.04 Oaths; records; confidential information.—

428 (2) Notwithstanding any other provisions of this chapter,
429 the name, photograph, address, and crime or arrest report of a
430 child:

431 (d) Taken into custody by a law enforcement officer for a
432 violation of law subject to s. 985.557(1)(a), (b), or (c)

433 ~~985.557(2)(b) or (d)~~; or

434

435 shall not be considered confidential and exempt from s.
436 119.07(1) solely because of the child's age.

437 Section 5. Subsection (1) of section 985.556, Florida
438 Statutes, is amended to read:

439 985.556 Waiver of juvenile court jurisdiction; hearing.—

440 (1) VOLUNTARY WAIVER.—The court shall transfer and certify
441 a child's criminal case for trial as an adult if the child is
442 alleged to have committed a violation of law and, prior to the

443 commencement of an adjudicatory hearing, the child, joined by a
 444 parent or, in the absence of a parent, by the guardian or
 445 guardian ad litem, demands in writing to be tried as an adult.
 446 Once a child has been transferred for criminal prosecution
 447 pursuant to a voluntary waiver hearing and has been found to
 448 have committed the presenting offense or a lesser included
 449 offense, the child shall be handled thereafter in every respect
 450 as an adult for any subsequent violation of state law, unless
 451 the court imposes juvenile sanctions under s. 985.565(4)(d)
 452 ~~985.565(4)(b)~~.

453 Section 6. This act shall take effect July 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice

2 Subcommittee

3 Representative Edwards offered the following:

4
5 **Amendment**

6 Remove lines 41-202 and insert:

7 (a) With respect to a child who was 16 years of age or
8 older and less than 18 years of age at the time the alleged
9 offense was committed, the state attorney may file an
10 information when, in the state attorney's judgment and
11 discretion, the public interest requires that adult sanctions be
12 considered and when the offense charged is for the commission of
13 or attempt to commit:

- 14 1. Murder;
- 15 2. Manslaughter;
- 16 3. Sexual battery;
- 17 4. Armed robbery;



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- 18 5. Aggravated assault with a firearm;
19 6. Aggravated child abuse;
20 7. Aggravated stalking;
21 8. Kidnapping;
22 9. Unlawful throwing, placing, or discharging of a
23 destructive device or bomb;
24 10. Aggravated battery resulting in great bodily harm,
25 permanent disability, or permanent disfigurement;
26 11. Carrying, displaying, using, or threatening or
27 attempting to use a weapon or firearm in furtherance of the
28 commission of a felony, provided the use or threatened use does
29 not include the mere acquisition of a deadly weapon or firearm
30 during the felony;
31 12. Possessing or discharging a firearm on school property
32 in violation of s. 790.115;
33 13. Home invasion robbery;
34 14. Carjacking;
35 15. Aggravated animal cruelty;
36 16. DUI resulting in fatality, great bodily harm,
37 permanent disability, or permanent disfigurement to a person
38 other than the accused;
39 17. Criminal use of personal identification information in
40 violation of s. 817.568(2)(b) or (c); or
41 18. Arson in violation of s. 806.031(2).
42 (b) With respect to a child who was 14 years of age or
43 older and less than 16 years of age at the time the alleged



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44 offense was committed, the state attorney may file an
45 information when, in the state attorney's judgment and
46 discretion, the public interest requires that adult sanctions be
47 considered and when the offense charged is for the commission of
48 or attempt to commit:

- 49 1. Murder;
50 2. Manslaughter; or
51 3. Sexual battery.

52 (2) EFFECT OF DIRECT FILE.—When a child is transferred for
53 criminal prosecution as an adult, the court may transfer and
54 certify to the adult circuit court for prosecution of the child
55 as an adult all related felony cases pertaining to the child
56 which have not yet resulted in a plea of guilty or nolo
57 contendere or in which a finding of guilt has not been made. If
58 the child is acquitted of all charged offenses or lesser
59 included offenses contained in the original case transferred to
60 adult court, any felony cases that were transferred to adult
61 court under this subsection shall be subject to the same
62 penalties such cases were subject to before being transferred to
63 adult court.

64 (3) TRANSFER PROHIBITION.—Notwithstanding any other
65 provision of law, a child who is eligible for direct file may
66 not be transferred to adult court for criminal prosecution if he
67 or she:

- 68 (a) Is pending a competency hearing in juvenile court; or



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69 (b) Has been previously found to be incompetent to proceed
70 and has not subsequently been found by a court to have attained
71 competency.

72 (4) Nothing in this section shall preclude the state
73 attorney from seeking to transfer a child for criminal
74 prosecution pursuant to s. 985.556.

75 (5) DATA COLLECTION RELATING TO DIRECT FILE.-

76 (a) The department shall collect data regarding children
77 who qualify for direct file under subsection (1), including, but
78 not limited to:

79 1. Age.

80 2. Race and ethnicity.

81 3. Gender.

82 4. Circuit and county of residence.

83 5. Circuit and county of offense.

84 6. Prior adjudicated offenses.

85 7. Prior periods of probation.

86 8. Previous contacts with law enforcement agencies or the
87 courts.

88 9. Initial charges.

89 10. Charges at disposition.

90 11. Whether adult codefendants were involved.

91 12. Whether child codefendants were involved who were
92 transferred to adult court.

93 13. Whether the child was represented by counsel.

94 14. Whether the child had waived counsel.



Amendment No. 1

- 95 15. Risk assessment instrument score.
- 96 16. The child's medical, mental health, substance abuse,
97 or trauma history.
- 98 17. The child's history of physical or mental impairment
99 or disability-related accommodations.
- 100 18. The child's history of abuse or neglect.
- 101 19. The child's history of foster care placements,
102 including the number of prior placements.
- 103 20. Whether the child has experienced a failed adoption.
- 104 21. Whether the child has fetal alcohol syndrome or was
105 exposed to controlled substances at birth.
- 106 22. Whether the child has below-average intellectual
107 functioning or is eligible for exceptional student education
108 services.
- 109 23. Whether the child has received mental health services
110 or treatment.
- 111 24. Whether the child has been the subject of a CINS/FINS
112 or dependency petition.
- 113 25. Plea offers made by the state and the outcome of any
114 plea offers.
- 115 26. Whether the child was transferred for criminal
116 prosecution as an adult.
- 117 27. The case resolution in juvenile court.
- 118 28. The case resolution in adult court.
- 119 (b) When a child is transferred for criminal prosecution
120 as an adult, the department shall also collect disposition data,



Amendment No. 1

121 including, but not limited to, whether the child received adult
122 sanctions, youthful offender sanctions, juvenile sanctions, or
123 diversion, and, if sentenced to prison, the length of prison
124 sentence or enhanced sentence.

125 (c) The department shall annually provide a report
126 analyzing this aggregated data to the President of the Senate
127 and the Speaker of the House of Representatives.

128 Section 2. Section 985.56, Florida Statutes, is amended to
129 read:

130 985.56 Indictment of a juvenile.-

131 (1) With respect to a child who is 13 years of age or
132 older and less than 18 years of age at the time the alleged
133 offense was committed, the state attorney may seek an indictment
134 before a grand jury when, in the state attorney's judgment and
135 discretion, the public interest requires that adult sanctions be
136 considered and when the offense charged is for the commission of
137 or attempt to commit murder, manslaughter, or sexual battery. ~~of~~
138 any age who is charged with a violation of state law punishable
139 by death or by life imprisonment The child is subject to the
140 jurisdiction of the court as set forth in s. 985.0301(2) unless
141 and until an indictment on the charge is returned by the grand
142 jury. When such indictment is returned, the petition for
143 delinquency, if any, must be dismissed and the child must be
144 tried ~~and handled in every respect~~ as an adult:

145 (a) On the indicting offense punishable by death or by
146 life imprisonment; and



Amendment No. 1

147 (b) On all other felonies or misdemeanors charged in the
148 indictment which are based on the same act or transaction as the
149 indicting offense ~~punishable by death or by life imprisonment or~~
150 ~~on one or more acts or transactions connected with the offense~~
151 ~~punishable by death or by life imprisonment.~~

152 (2) An adjudicatory hearing may not be held until 21 days
153 after the child is taken into custody and charged with having
154 committed an indictable offense ~~punishable by death or by life~~
155 ~~imprisonment~~, unless the state attorney advises the court in
156 writing that he or she does not intend to present the case to
157 the grand jury, or has presented the case to the grand jury and
158 the grand jury has not returned an indictment. If the court
159 receives such a notice from the state attorney, or if the grand
160 jury fails to act within the 21-day period, the court may
161 proceed as otherwise authorized under this part.

162 (3) Notwithstanding any other provision of law, a child
163 who is eligible for indictment may not be transferred to adult
164 court for criminal prosecution if he or she:

165 (a) Is pending a competency hearing in juvenile court; or

166 (b) Has been previously found to be incompetent to proceed
167 and has not subsequently been found by a court to have attained
168 competency.

169

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 783 (2015)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Edwards offered the following:

4
5 **Amendment**

6 Remove line 330 and insert:
7 criminal prosecution pursuant to information, indictment, or
8 waiver of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 845 Sexting
SPONSOR(S): DuBose
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1112

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

SUMMARY ANALYSIS

Section 847.0141, F.S., specifies that a minor commits sexting if he or she knowingly:

- Uses a computer, or any other electronic device, to transmit or distribute to another minor any photograph or video of any person which depicts nudity and is harmful to minors; or
- Possess a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors.

Currently, a first sexting offense is a noncriminal violation punishable by community service or, if ordered by the court in lieu of community service, a \$60 fine. Subsequent violations of the statute are criminal offenses.

In January 2015, Florida's Fourth District Court of Appeal (DCA) held that because a first offense of sexting (a noncriminal violation) does not fit within the definition of "delinquent act" or "violation of law," the state could not use a petition for delinquency to prosecute such offense. As a result, it is unclear how a minor can be prosecuted for a first-time sexting violation.

The bill changes the penalties associated with first-time violations of the sexting statute to address the Fourth DCA's holding. The bill specifies that first-time sexting violations remain a noncriminal violation. However, a minor who commits a first-time sexting violation must sign and accept a citation indicating a promise to appear before the juvenile court. In lieu of appearing in court, the minor may complete 8 hours of community service work, pay a \$60 civil penalty, or participate in a cyber-safety program, if such program is locally available. The minor must satisfy any penalty within 30 days after receipt of the citation. A minor who fails to comply with the citation waives his or her right to contest it, and authorizes the court to:

- Order the minor to perform 8 hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof); or
- Issue an order to show cause.

If the minor opts to appear in court (rather than complete community service, etc.) and the court finds that the minor committed the noncriminal violation, the court may order the minor to perform eight hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof).

Upon a finding of contempt, the court may impose additional penalties, which may include issuance of an order to the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend the driver license or driving privilege of, the minor for 30 consecutive days. The court may not impose incarceration.

The bill may have a positive fiscal impact on state and local government because it allocates specified percentages of all civil penalties received by a juvenile court pursuant to the citation process to the clerk of court and to the county commission. See fiscal section.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sexting

The act of electronically sending sexually explicit messages or photos of oneself to another is generally referred to as sexting. Sexting among youth is more prevalent than previously thought, according to a new study from Drexel University that was based on a survey of undergraduate students at a large northeastern university.¹ More than 50 percent of those surveyed reported that they had exchanged sexually explicit text messages, with or without photographic images, as minors.

2011 Legislation

In 2011, the Legislature passed HB 75,² which created s. 847.0141, F.S., relating to sexting. This statute specifies that a minor commits sexting if he or she knowingly:

- Uses a computer, or any other device capable of electronic data transmission or distribution, to transmit or distribute to another minor any photograph or video of any person which depicts nudity³ and is harmful to minors⁴; or
- Possess a photograph or video of any person that was transmitted or distributed by another minor which depicts nudity and is harmful to minors.

A minor who possesses a prohibited photograph or video does not commit sexting if:

- The minor did not solicit the photograph or video;
- The minor took reasonable steps to report the photograph or video to the minor's legal guardian or to a school or law enforcement official; and
- The minor did not transmit or distribute the photograph or video to a third party.⁵

The statute specifies that the transmission or distribution of multiple photographs or videos is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period. Additionally, the possession of multiple photographs or videos that were transmitted or distributed by a minor is a single offense if the photographs or videos were transmitted or distributed within the same 24-hour period.⁶

The following penalties apply to sexting:

- A minor's first violation is a noncriminal violation punishable by 8 hours of community service or, if ordered by the court in lieu of community service, a \$60 fine. Additionally, the court may order the minor to participate in suitable training or instruction in lieu of, or in addition to, community service or a fine.

¹ *Sexting among youth more prevalent than thought? Minors unaware of harsh legal consequences, survey shows*, Science Daily, June 18, 2014, <http://www.sciencedaily.com/releases/2014/06/140618122259.htm> (last visited March 13, 2015).

² Ch. 2011-180, Laws of Florida.

³ Section 847.001(9), F.S., defines the term "nudity" as "the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state. A mother's breastfeeding of her baby does not under any circumstance constitute 'nudity,' irrespective of whether or not the nipple is covered during or incidental to feeding."

⁴ The term "harmful to minors" is defined by s. 847.001, F.S., as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it predominantly appeals to a prurient, shameful, or morbid interest; is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

⁵ s. 847.0141(1)(b), F.S.

⁶ s. 847.0141(2), F.S.

- A minor commits a first degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine, for a violation that occurs after being found to have committed⁷ a noncriminal sexting offense.
- A minor commits a third degree felony, punishable by up to five years imprisonment and a \$5,000 fine, for a violation that occurs after being found to have committed a first degree misdemeanor sexting offense.⁸

State v. C.M.

In January 2015, Florida's Fourth District Court of Appeal (DCA) decided *State v. C.M.*⁹ The case involved a minor who was charged via a delinquency petition with committing a first-time violation of the sexting statute – a noncriminal violation. At trial, the defense filed a motion to dismiss arguing that because the minor did not commit a delinquent act, she could not be subject to prosecution through a petition for delinquency. The trial court agreed and granted the motion.¹⁰

On appeal, the Fourth DCA recognized that under the delinquency statutes, the state attorney files a petition for delinquency to obtain a finding that a child has committed a delinquent act or violation of law.¹¹ The court held that because a first offense of sexting (a noncriminal violation) does not fit within the definition of “delinquent act” or “violation of law,” a petition for delinquency was not the proper method to prosecute such offense.¹²

The state argued that the trial court’s dismissal left them without a remedy, and asserted that the court should authorize the use of a petition for delinquency because it was the only method to determine if a noncriminal first offense of sexting occurred.¹³ The Fourth DCA disagreed reasoning that courts “are not at liberty to add words to statutes that were not placed there by the Legislature.”¹⁴ The court went on to state:

[O]nly the legislature can add to the sexting statute to set out the procedure for the prosecution and determination if there has been a violation of the first offense. Until that is effectuated by the legislature, we are bound to the letter of the law and “must apply a statute as [we] find it, leaving to the legislature the correction of assorted inconsistencies and inequalities in its operation.”¹⁵

Effect of the Bill

The bill addresses the holding in *State v. C.M.* by amending s. 985.0301, F.S., to specify that a circuit court has exclusive original jurisdiction of proceedings in which a child is alleged to have committed a noncriminal violation that has been assigned to juvenile court by law.

The bill also addresses the holding in *State v. C.M.* by making a multitude of changes to the penalties associated with a first-time violation of the sexting statute.¹⁶ For example, the bill specifies that first-time sexting violations remain a noncriminal violation. However, the bill requires a minor who commits a first-time sexting violation to sign and accept a citation indicating a promise to appear before the juvenile court. If the citation is contested and the court determines that the minor committed a noncriminal violation, the court may order the minor to perform eight hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof).

⁷ Section 847.0141(5), F.S., defines the term “found to have committed” as a determination of guilt that is the result of a plea or trial, or a finding of delinquency that is the result of a plea or an adjudicatory hearing, regardless of whether adjudication is withheld.

⁸ s. 847.0141(3), F.S.

⁹ 154 So. 3d 1177 (Fla. 4th DCA 2015).

¹⁰ *Id.*

¹¹ *Id.* at 1179.

¹² *Id.* at 1179-1180.

¹³ *Id.* at 1180.

¹⁴ *Id.*, (citing *Bay Holdings, Inc. v. 2000 Island Blvd. Condo. Ass'n*, 895 So. 2d 1197, 1197 (Fla. 3d DCA 2005)).

¹⁵ *Id.* (citing *Guilder v. State*, 899 So. 2d 412, 419 (Fla. 4th DCA 2005) (quoting *State v. Aiuppa*, 298 So. 2d 391, 404 (Fla. 1974)).

¹⁶ The penalties associated with second and subsequent sexting offenses remain unchanged.

In lieu of appearing in court, the minor may:

- Complete 8 hours of community service work;
- Pay a \$60 civil penalty; or
- Participate in a cyber-safety program, if such a program is locally available.

The minor must satisfy any penalty within 30 days after receipt of the citation. A minor who fails to comply with the citation waives his or her right to contest it, and authorizes the court to:

- Order the minor to perform 8 hours of community service, pay a \$60 civil penalty, or participate in a cyber-safety program (or any combination thereof); or
- Issue an order to show cause.

Upon a finding of contempt, the court may impose additional age-appropriate penalties, which may include issuance of an order to the Department of Highway Safety and Motor Vehicles to withhold issuance of, or suspend the driver license or driving privilege of, the minor for 30 consecutive days. The bill prohibits the court from imposing incarceration.

The bill requires the citation issued to a minor to be in a form prescribed by the issuing law enforcement agency, be signed by the minor, and to contain:

- The date and time of issuance;
- The name and address of the minor to whom the citation is issued;
- A thumbprint of the minor to whom the citation is issued;
- Identification of the noncriminal violation and the time it was committed;
- The facts constituting reasonable cause;
- The specific section of law violated;
- The name and authority of the citing officer; and
- The procedures that the minor must follow to contest the citation, perform the required community service, pay the civil penalty, and participate in a cyber-safety program.

The bill requires all court records and information obtained or produced in relation to a noncriminal sexting violation to be afforded the same level of confidentiality provided under ss. 985.04 and 985.045, F.S. All noncriminal sexting violations that occurred on or after October 1, 2011 are considered confidential.

The bill also requires 80% of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors. The remaining 20% must remain with the clerk of the court to defray administrative costs.

B. SECTION DIRECTORY:

Section 1. Amends s. 847.0141, F.S., relating to sexting; prohibited acts; penalties.

Section 2. Amends s. 985.0301, F.S., relating to jurisdiction.

Section 3. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires 20% of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be retained by the clerk of the court to defray administrative costs.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill requires 80% of all civil penalties received by a juvenile court pursuant to the citation process outlined above to be remitted by the clerk of the court to the county commission to provide training on cyber safety for minors.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Article I, section 24(c), of the Florida Constitution requires bills that enact public record exemptions to relate to one subject, and to only contain public record exemptions and provisions governing the enforcement of public records laws.

The bill requires all court records and information obtained or produced in relation to a noncriminal sexting violation to be afforded the same level of confidentiality provided under ss. 985.04 and 985.045, F.S. The bill also specifies that all noncriminal violations for sexting that occurred on or after October 1, 2011, are considered confidential. This may violate Article I, section 24(c), of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Currently the bill is effective October 1, 2015. Because there is case law that essentially makes the current sexting statute unusable, the effective date should be changed to "upon becoming a law."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to sexting; amending s. 847.0141,
 3 F.S.; removing the court's discretion to impose a
 4 specified penalty for a first violation of sexting;
 5 requiring a minor cited for a first violation to sign
 6 and accept a citation to appear before juvenile court
 7 or, in lieu of appearing in court, to complete
 8 community service work, pay a civil penalty, or
 9 participate in a cyber-safety program within a certain
 10 period of time, if such program is locally available;
 11 requiring the citation to be in a form prescribed by
 12 the issuing law enforcement agency; requiring such
 13 citation to include certain information; authorizing a
 14 court to order certain penalties under certain
 15 circumstances; authorizing a court to order specified
 16 additional penalties in certain circumstances;
 17 prohibiting the court from imposing incarceration;
 18 specifying that all court records and any information
 19 obtained or produced is confidential; providing
 20 retroactive application of confidentiality provisions
 21 for certain violations; conforming provisions to
 22 changes made by the act; requiring that a specified
 23 percentage of civil penalties received by a juvenile
 24 court be remitted by the clerk of court to the county
 25 commission to provide cyber-safety training for
 26 minors; requiring that the remaining percentage remain

27 with the clerk of the court to cover administrative
 28 costs; amending s. 985.0301, F.S.; creating exclusive
 29 original jurisdiction in the circuit court when a
 30 child is alleged to have committed a noncriminal
 31 violation that is assigned to juvenile court;
 32 providing an effective date.

33

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

35

36 Section 1. Subsections (3) and (5) of section 847.0141,
 37 Florida Statutes, are amended, and subsection (6) is added to
 38 that section, to read:

39 847.0141 Sexting; prohibited acts; penalties.—

40 (3) A minor who violates subsection (1):

41 (a) Commits a noncriminal violation for a first violation,
 42 ~~punishable by 8 hours of community service or, if ordered by the~~
 43 ~~court in lieu of community service, a \$60 fine. The court may~~
 44 ~~also order the minor to participate in suitable training or~~
 45 ~~instruction in lieu of, or in addition to, community service or~~
 46 ~~a fine. The minor must sign and accept a citation indicating a~~
 47 ~~promise to appear before the juvenile court. In lieu of~~
 48 ~~appearing in court, the minor may complete 8 hours of community~~
 49 ~~service work, pay a \$60 civil penalty, or participate in a~~
 50 ~~cyber-safety program, if such a program is locally available.~~
 51 ~~The minor must satisfy any penalty within 30 days after receipt~~
 52 ~~of the citation.~~

53 1. A citation issued to a minor under this subsection must
 54 be in a form prescribed by the issuing law enforcement agency,
 55 must be signed by the minor, and must contain all of the
 56 following:

- 57 a. The date and time of issuance.
- 58 b. The name and address of the minor to whom the citation
 59 is issued.
- 60 c. A thumbprint of the minor to whom the citation is
 61 issued.
- 62 d. Identification of the noncriminal violation and the
 63 time it was committed.
- 64 e. The facts constituting reasonable cause.
- 65 f. The specific section of law violated.
- 66 g. The name and authority of the citing officer.
- 67 h. The procedures that the minor must follow to contest
 68 the citation, perform the required community service, pay the
 69 civil penalty, and participate in a cyber-safety program.

70 2. If the citation is contested and the court determines
 71 that the minor committed a noncriminal violation under this
 72 section, the court may order the minor to perform 8 hours of
 73 community service, pay a \$60 civil penalty, or participate in a
 74 cyber-safety program, or any combination thereof.

75 3. A minor who fails to comply with the citation waives
 76 his or her right to contest it, and the court may impose any of
 77 the penalties identified in subparagraph 2. or issue an order to
 78 show cause. Upon a finding of contempt, the court may impose

79 additional age-appropriate penalties, which may include issuance
 80 of an order to the Department of Highway Safety and Motor
 81 Vehicles to withhold issuance of, or suspend the driver license
 82 or driving privilege of, the minor for 30 consecutive days.
 83 However, the court may not impose incarceration.

84 4. All court records and information obtained or produced
 85 under this paragraph shall be afforded the same level of
 86 confidentiality provided under ss. 985.04 and 985.045. All
 87 noncriminal violations for sexting that occurred on or after
 88 October 1, 2011 are considered confidential.

89 (b) Commits a misdemeanor of the first degree for a
 90 violation that occurs after the minor has been ~~being~~ found to
 91 have committed a noncriminal violation for sexting or has
 92 satisfied the penalty imposed in lieu of a court appearance as
 93 provided in paragraph (a), punishable as provided in s. 775.082
 94 or s. 775.083.

95 (c) Commits a felony of the third degree for a violation
 96 that occurs after the minor has been ~~being~~ found to have
 97 committed a misdemeanor of the first degree for sexting,
 98 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

99 (5) As used in this section, the term "found to have
 100 committed" means a determination of guilt that is the result of
 101 a plea or trial, or a finding of delinquency that is the result
 102 of a plea or an adjudicatory hearing, regardless of whether
 103 adjudication is withheld.

104 (6) Eighty percent of all civil penalties received by a

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105 juvenile court pursuant to this section shall be remitted by the
 106 clerk of the court to the county commission to provide training
 107 on cyber safety for minors. The remaining 20 percent shall
 108 remain with the clerk of the court to defray administrative
 109 costs.

110 Section 2. Subsection (1) of section 985.0301, Florida
 111 Statutes, is amended to read:

112 985.0301 Jurisdiction.—

113 (1) The circuit court has exclusive original jurisdiction
 114 of proceedings in which a child is alleged to have committed:

115 (a) ~~to have committed~~ A delinquent act or violation of
 116 law.

117 (b) A noncriminal violation that has been assigned to
 118 juvenile court by law.

119 Section 3. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 963 Controlled Substances
SPONSOR(S): Burgess, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1188

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

SUMMARY ANALYSIS

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein.

In recent years, synthetic drugs have become a problem in Florida. Synthetic drugs, such as cannabinoids, are industrial grade chemicals mixed to produce a "high" similar to what would be experienced when using illegal drugs such as marijuana. Each year since 2011, the Florida Legislature has added numerous synthetic cannabinoids to Schedule I of Florida's controlled substances schedules.

Section 893.135, F.S., creates a variety of first degree felony drug trafficking offenses that are subject to mandatory minimum terms of imprisonment. The mandatory minimum sentence required to be imposed depends on the type and quantity of drug trafficked. Currently, Florida law does not specifically prohibit trafficking in synthetic drugs.

The bill amends s. 893.135, F.S., to create a new offense entitled "trafficking in synthetic drugs." The substances enumerated in this new offense include 51 variations of synthetic cannabinoid compounds. A person who commits "trafficking in synthetic drugs" and the quantity of the synthetic cannabinoids involved is:

- More than 250 grams, but less than 500 grams - 3 year mandatory minimum and a fine of \$25,000.
- 500 grams or more, but less than 1,000 grams - 7 year mandatory minimum and a fine of \$50,000.
- 1,000 grams or more, but less than 30 kilograms - 15 year mandatory minimum and a fine of \$200,000.
- 30 kilograms or more - 25 year mandatory minimum and pay a fine of \$750,000.

Section 893.13(1)(a), F.S., makes it a crime for a person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a variety of controlled substances. The offense is either a third or a second degree felony, depending on the controlled substance involved, and minimum mandatory sentences are not required to be imposed.

The bill amends s. 893.13(1)(a), F.S., to require the court to impose a mandatory minimum term of imprisonment of 3 years if the sale, manufacture, etc. occurs in a dwelling.

On March 11, 2015, the Criminal Justice Impact Conference determined that the bill will have a positive indeterminate impact on state prison beds (i.e. an unquantifiable increase of prison beds).

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Synthetic Drug Abuse

Background

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act and classifies controlled substances into five categories, known as schedules. These schedules are used to regulate the manufacture, distribution, preparation and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the "potential for abuse"¹ of the substance listed therein and whether there is a currently accepted medical use for the substance.² Schedule I substances have a high potential for abuse and have no currently accepted medical use in the United States.³ Cannabis and heroin are examples of Schedule I drugs.⁴

Chapter 893, F.S., contains a variety of provisions criminalizing behavior related to controlled substances. Most of these provisions are found in s. 893.13, F.S., which criminalizes the possession, sale, purchase, manufacture, and delivery of controlled substances. The penalty for violating these provisions depends largely on the schedule in which the substance is listed.⁵ Other factors, such as the quantity of controlled substance involved in a crime, can also affect the penalties for violating the criminal provisions of ch. 893, F.S.

In recent years, synthetic drugs have emerged in Florida. Synthetic drugs, such as cannabinoids and cathinones, are industrial grade chemicals mixed to produce a "high" similar to what would be experienced when using illegal drugs such as marijuana or methamphetamine.⁶ According to the United States Drug Enforcement Administration, these substances have not been approved for human consumption by the United States Food and Drug Administration (FDA).⁷

Synthetic Cannabinoids

Synthetic cannabinoids (also known as "K2" or "Spice") are chemically engineered substances that, when smoked or ingested, can produce a high similar to marijuana, without the delta-tetrahydrocannabinol (THC).⁸ The chemicals are a white powder that is often applied to a plant material to mimic marijuana.⁹ Synthetic cannabinoids have been developed over the last 30 years for research purposes to investigate the cannabinoid system.¹⁰ No legitimate non-research uses have

¹ Section 893.035(3)(a), F.S., defines "potential for abuse" as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user's health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user's own initiative rather than on the basis of professional medical advice.

² See, s. 893.03, F.S.

³ *Id.*

⁴ *Id.*

⁵ See, e.g., s. 893.13(1)(a) and (c), F.S.

⁶ OFFICE OF NATIONAL DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, <https://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited March 12, 2015).

⁷ UNITED STATES DRUG ENFORCEMENT ADMINISTRATION, *Chemicals Used in "Spice" and K2" Type Products Now under Federal Control and Regulation*, <http://www.dea.gov/pubs/pressrel/pr030111.html> (last visited March 12, 2015).

⁸ OFFICE OF NATIONAL DRUG CONTROL POLICY, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited March 12, 2015).

⁹ *Id.*

¹⁰ *Schedules of Controlled Substances: Temporary Placement of Four Synthetic Cannabinoids Into Schedule I*, Federal Register, The Daily Journal of the United States Government, February 10, 2014, <https://www.federalregister.gov/articles/2014/02/10/2014-02848/schedules-of-controlled-substances-temporary-placement-of-four-synthetic-cannabinoids-into-schedule> (last visited on March 12, 2015).

been identified for synthetic cannabinoids and they have not been approved by the FDA for human consumption.¹¹

Synthetic Drug Abuse

Despite being labeled "not for human consumption," synthetic cannabinoids and other synthetic drugs are used as recreational drugs and have been marketed as legal and safer alternatives to illegal methods of getting "high."¹² They can be found on the Internet, specialty smoke shops, and convenience stores.¹³ These substances are predominately being used by individuals between the ages of 16 and 30. The effects of ingesting synthetic cannabinoids can be very serious, and may include seizures, hallucinations, paranoia, anxiety, and tachycardia (racing heartbeat), among others.¹⁴

Recent Legislation

Every year since 2011, the Florida Legislature has added numerous synthetic cannabinoids to Schedule I of Florida's controlled substances schedules.¹⁵ As a result, the criminal penalties relating to the possession, sale, manufacture, and delivery of controlled substances now apply to these synthetic substances.

Drug Trafficking – Generally

Section 893.135, F.S., creates a variety of drug trafficking offenses. Drug trafficking occurs when a person knowingly sells, purchases, manufactures, delivers, or brings into this state; or is knowingly in actual or constructive possession of, a specified quantity of a controlled substance.¹⁶ Section 893.135, F.S., categorizes drug trafficking offenses by drug type as follows:

- Paragraph (1)(a) establishes the offense of "trafficking in cannabis;"
- Paragraph (1)(b) establishes the offense of "trafficking in cocaine;"
- Paragraph (1)(c)1. establishes the offense of "trafficking in illegal drugs;"
- Paragraph (1)(c)2. establishes the offense of "trafficking in hydrocodone;"
- Paragraph (1)(c)3. establishes the offense of "trafficking in oxycodone;"
- Paragraph (1)(d) establishes the offense of "trafficking in phencyclidine;"
- Paragraph (1)(e) establishes the offense of "trafficking in methaqualone;"
- Paragraph (1)(f) establishes the offense of "trafficking in amphetamine;"
- Paragraph (1)(g) establishes the offense of "trafficking in flunitrazepam;"
- Paragraph (1)(h) establishes the offense of "trafficking in GHB;"
- Paragraph (1)(i) establishes the offense of "trafficking in GBL;"
- Paragraph (1)(j) establishes the offense of "trafficking in 1,4-butanediol;"
- Paragraph (1)(k) establishes the offense of "trafficking in phenethylamines;" and
- Paragraph (1)(l) establishes the offense of "trafficking in LSD."

Generally, drug trafficking offenses are first degree felonies¹⁷ that are subject to mandatory minimum terms of imprisonment.¹⁸ The mandatory minimum sentence applicable to a drug trafficking offense depends on the type and quantity of drug trafficked. A sentencing judge has no discretion to sentence

¹¹ *Id.*

¹² "Bath Salts" Receive Emergency Drug Scheduling, Brief # 10-194, Public Florida Fusion Center, Unit Reporting: Office of Statewide Intelligence, January 26, 2011, http://www.fdle.state.fl.us/Content/BathSalts/FDLEBrief10_194BathSaltsPublic.pdf (last visited on March 21, 2014); FDLE HB 697 Analysis (on file with the Criminal Justice Subcommittee).

¹³ *Id.*

¹⁴ Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I, 76 Fed. Reg. 11,075-78 (March 1, 2011) (supplementary information) also available at http://www.deadiversion.usdoj.gov/fed_regs/rules/2011/tr0301.htm.

¹⁵ Chs. 14-159, 13-29, 12-23, 11-73, 11-90, Laws of Fla.

¹⁶ See s. 893.135(1)(a)-(l), F.S.

¹⁷ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁸ Section 893.135, F.S., provides for more severe penalties in certain situations. For example, drug trafficking is a capital felony if, during the commission of the offense, the defendant intentionally killed a person; counseled, commanded, induced, procured, or caused the intentional killing of an individual; or the trafficking led to a natural, though not inevitable, lethal result to another person.

a person below the mandatory minimum sentences outlined in statute, regardless of any mitigating testimony provided to the court.¹⁹ Only the state attorney has the discretion to waive the mandatory minimum sentence for trafficking offenses.²⁰

Currently, Florida law does not establish a specific offense within the trafficking statute prohibiting trafficking in synthetic drugs.

Effect of the Bill

The bill amends s. 893.135(1), F.S., to create a new offense entitled "trafficking in synthetic drugs." The new offense provides:

Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 250 grams of a controlled substance described in s. 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-173., or any mixture containing those substances, commits a felony of the first degree, which felony shall be known as "trafficking in synthetic drugs."

The substances enumerated in the new offense of "trafficking in synthetic drugs" include 51 variations of synthetic cannabinoid compounds (e.g., JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-yl)methanone) and JWH-020 (1-heptyl-3-(1-naphthoyl)indole)).²¹

The bill provides that a person who commits "trafficking in synthetic drugs" and the quantity involved:

- Is more than 250 grams, but less than 500 grams, must be sentenced to a mandatory minimum term of imprisonment of 3 years and ordered to pay a fine of \$25,000.
- Is 500 grams or more, but less than 1,000 grams, must be sentenced to a mandatory minimum term of imprisonment of 7 years and ordered to pay a fine of \$50,000.
- Is 1,000 grams or more, but less than 30 kilograms, must be sentenced to a mandatory minimum term of imprisonment of 15 years, and ordered to pay a fine of \$200,000.
- Is 30 kilograms or more, must be sentenced to a mandatory minimum term of imprisonment of 25 years, and ordered to pay a fine of \$750,000.

The bill makes conforming changes to the offense severity ranking chart to reflect the renumbering of the existing trafficking provisions.

Sale, Manufacture, or Delivery, or Possession with Intent of a Controlled Substance

Section 893.13(1)(a)1., F.S., makes it a second degree felony²² for a person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, the following controlled substances:

- Schedule I substances listed in s. 893.03(1)(a), F.S.;
- Schedule I substances listed in s. 893.03(1)(b), F.S.;
- Schedule I substances listed in s. 893.03(1)(d), F.S.;
- Schedule II²³ substances listed in s. 893.03(2)(a), F.S.;
- Schedule II substances listed in s. 893.03(2)(b), F.S.; or
- Schedule II substances listed in s. 893.03(2)(c)4., F.S.

Section 893.13(1)(a)2., F.S., makes it a third degree felony²⁴ for a person to sell, manufacture, etc., the following controlled substances:

¹⁹ 16 Fla. Prac., Sentencing s. 6:69 (2012-2013 ed.).

²⁰ *Id.*

²¹ The bill prohibits the trafficking of any material, compound, mixture, or preparation that contains any quantity of the enumerated chemical substances.

²² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

²³ A substance in Schedule II has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States, and abuse of the substance may lead to severe psychological or physical dependence. s. 893.03(2), F.S.

- Schedule I substances listed in s. 893.03(1)(c), F.S.;
- Schedule II substances listed in s. 893.03(2)(c)1., F.S.;
- Schedule II substances listed in s. 893.03(2)(c)2., F.S.;
- Schedule II substances listed in s. 893.03(2)(c)3., F.S.;
- Schedule II substances listed in s. 893.03(2)(c)5., F.S.;
- Schedule II substances listed in s. 893.03(2)(c)6., F.S.;
- Schedule II substances listed in s. 893.03(2)(c)7., F.S.;
- Schedule II substances listed in s. 893.03(2)(c)8., F.S.;
- Schedule II substances listed in s. 893.03(2)(c)9., F.S.;
- Schedule III²⁵ substances listed in s. 893.03(3), F.S.; or
- Schedule IV²⁶ substances listed in s. 893.03(4), F.S.

Currently, minimum mandatory sentences are not required to be imposed for violations of the above-described offenses.

Effect of the Bill

The bill amends s. 893.13(1)(a), F.S., to require the court to impose a mandatory minimum term of imprisonment of 3 years if the sale, manufacture, etc. of any of the above-listed substances occurs in a dwelling as defined in s. 810.011, F.S.²⁷

B. SECTION DIRECTORY:

Section 1. Amends s. 893.13, F.S., relating to prohibited acts; penalties.

Section 2. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

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

Section 4. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

On March 11, 2015, the Criminal Justice Impact Conference determined that the bill will have a positive indeterminate impact on state prison beds (i.e. an unquantifiable increase of prison beds).

²⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

²⁵ A substance in Schedule III has a potential for abuse less than the substances contained in Schedules I and II and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. s. 893.03(3), F.S.

²⁶ A substance in Schedule IV has a low potential for abuse relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States, and abuse of the substance may lead to limited physical or psychological dependence relative to the substances in Schedule III. s. 893.03(4), F.S.

²⁷ Section 810.011, F.S., defines a "dwelling" to mean "a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 27: If the intent is to only apply the minimum mandatory sentence to the second degree felony offense of selling , manufacturing, etc., the word "paragraph" should be replaced with "subparagraph."

Lines 48 and 55: The bill language states "any person in possession...of synthetic drugs...in excess of 250 grams..." and "If the quantity involved...is in excess of 250 grams." Other subsections in s. 893.135, F.S., state "x grams or more..." or "more than x grams..." It may provide more clarity and consistency to amend the bill to state that "possession...of more than 250 grams..."

Line 65: The bill's penalty provision includes the phrase "calendar years" when discussing the mandatory minimum term of imprisonment. All the other penalty provisions use the term "years."

Line 69: The bill does not include language establishing the offenses of first degree trafficking in synthetic drugs, punishable by life, and the capital importation of synthetic drugs.

Line 178: The bill does not add the new offense of "trafficking in synthetic drugs" to the offense severity ranking chart. Ten out of the twelve existing trafficking provisions prohibited by s. 893.135, F.S., are currently ranked in the offense severity ranking chart.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to controlled substances; amending s.
 3 893.13, F.S.; providing a minimum mandatory term of
 4 imprisonment for specified violations committed in a
 5 dwelling; amending s. 893.135, F.S.; creating the
 6 offense of trafficking in synthetic drugs; providing
 7 specified offenses involving in excess of 250 grams of
 8 specified controlled substances; providing specified
 9 minimum terms of imprisonment and fines based on the
 10 quantity involved in the offense; amending s.
 11 921.0022, F.S.; conforming provisions to changes made
 12 by the act; providing an effective date.

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

15
 16 Section 1. Paragraph (a) of subsection (1) of section
 17 893.13, Florida Statutes, is amended to read:

18 893.13 Prohibited acts; penalties.—

19 (1)(a) Except as authorized by this chapter and chapter
 20 499, a person may not sell, manufacture, or deliver, or possess
 21 with intent to sell, manufacture, or deliver, a controlled
 22 substance. A person who violates this provision with respect to:

23 1. A controlled substance named or described in s.
 24 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
 25 commits a felony of the second degree, punishable as provided in
 26 s. 775.082, s. 775.083, or s. 775.084. A person who violates

27 this paragraph in a dwelling as defined in s. 810.011 shall be
 28 sentenced to a mandatory minimum term of imprisonment of 3
 29 years.

30 2. A controlled substance named or described in s.
 31 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 32 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 33 the third degree, punishable as provided in s. 775.082, s.
 34 775.083, or s. 775.084.

35 3. A controlled substance named or described in s.
 36 893.03(5) commits a misdemeanor of the first degree, punishable
 37 as provided in s. 775.082 or s. 775.083.

38 Section 2. Paragraphs (b) through (l) of subsection (1) of
 39 section 893.135, Florida Statutes, are redesignated as
 40 paragraphs (c) through (m), respectively, and paragraph (b) is
 41 added to that subsection, to read:

42 893.135 Trafficking; mandatory sentences; suspension or
 43 reduction of sentences; conspiracy to engage in trafficking.-

44 (1) Except as authorized in this chapter or in chapter 499
 45 and notwithstanding the provisions of s. 893.13:

46 (b) Any person who knowingly sells, purchases,
 47 manufactures, delivers, or brings into this state, or who is
 48 knowingly in actual or constructive possession of, in excess of
 49 250 grams of a controlled substance described in s.
 50 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-173., or any
 51 mixture containing those substances, commits a felony of the
 52 first degree, which felony shall be known as "trafficking in

53 synthetic drugs," punishable as provided in s. 775.082, s.
54 775.083, or s. 775.084. If the quantity involved:

55 1. Is in excess of 250 grams, but less than 500 grams,
56 such person shall be sentenced to a mandatory minimum term of
57 imprisonment of 3 years, and the defendant shall be ordered to
58 pay a fine of \$25,000.

59 2. Is 500 grams or more, but less than 1,000 grams, such
60 person shall be sentenced to a mandatory minimum term of
61 imprisonment of 7 years, and the defendant shall be ordered to
62 pay a fine of \$50,000.

63 3. Is 1,000 grams or more, but less than 30 kilograms,
64 such person shall be sentenced to a mandatory minimum term of
65 imprisonment of 15 calendar years, and the defendant shall be
66 ordered to pay a fine of \$200,000.

67 4. Is 30 kilograms or more, such person shall be sentenced
68 to a mandatory minimum term of imprisonment of 25 years, and the
69 defendant shall be ordered to pay a fine of \$750,000.

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

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

74 (3) OFFENSE SEVERITY RANKING CHART

75 (g) LEVEL 7

76

| | | |
|---------|--------|-------------|
| Florida | Felony | |
| Statute | Degree | Description |

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

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77

316.027(2)(c) 1st Accident involving death,
failure to stop; leaving scene.

78

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

79

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

80

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

81

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

82

409.920 3rd Medicaid provider fraud;

| | | | |
|----|--------------|-----|---------------------------------|
| 83 | (2) (b) 1.a. | | \$10,000 or less. |
| | 409.920 | 2nd | Medicaid provider fraud; more |
| | (2) (b) 1.b. | | than \$10,000, but less than |
| 84 | | | \$50,000. |
| | 456.065 (2) | 3rd | Practicing a health care |
| | | | profession without a license. |
| 85 | | | |
| | 456.065 (2) | 2nd | Practicing a health care |
| | | | profession without a license |
| | | | which results in serious bodily |
| | | | injury. |
| 86 | | | |
| | 458.327 (1) | 3rd | Practicing medicine without a |
| | | | license. |
| 87 | | | |
| | 459.013 (1) | 3rd | Practicing osteopathic medicine |
| | | | without a license. |
| 88 | | | |
| | 460.411 (1) | 3rd | Practicing chiropractic |
| | | | medicine without a license. |
| 89 | | | |
| | 461.012 (1) | 3rd | Practicing podiatric medicine |
| | | | without a license. |
| 90 | | | |

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| 91 | 462.17 | 3rd | Practicing naturopathy without a license. |
| 92 | 463.015(1) | 3rd | Practicing optometry without a license. |
| 93 | 464.016(1) | 3rd | Practicing nursing without a license. |
| 94 | 465.015(2) | 3rd | Practicing pharmacy without a license. |
| 95 | 466.026(1) | 3rd | Practicing dentistry or dental hygiene without a license. |
| 96 | 467.201 | 3rd | Practicing midwifery without a license. |
| 97 | 468.366 | 3rd | Delivering respiratory care services without a license. |
| 98 | 483.828(1) | 3rd | Practicing as clinical laboratory personnel without a license. |
| | 483.901(9) | 3rd | Practicing medical physics |

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| | | | without a license. |
| 99 | | | |
| | 484.013(1)(c) | 3rd | Preparing or dispensing optical devices without a prescription. |
| 100 | | | |
| | 484.053 | 3rd | Dispensing hearing aids without a license. |
| 101 | | | |
| | 494.0018(2) | 1st | Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims. |
| 102 | | | |
| | 560.123(8)(b)1. | 3rd | Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business. |
| 103 | | | |
| | 560.125(5)(a) | 3rd | Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000. |
| 104 | | | |

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| 105 | 655.50(10)(b)1. | 3rd | Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution. |
| 106 | 775.21(10)(a) | 3rd | Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations. |
| 107 | 775.21(10)(b) | 3rd | Sexual predator working where children regularly congregate. |
| 108 | 775.21(10)(g) | 3rd | Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator. |
| 109 | 782.051(3) | 2nd | Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony. |
| | 782.07(1) | 2nd | Killing of a human being by the |

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| | | | act, procurement, or culpable negligence of another (manslaughter). |
| 110 | 782.071 | 2nd | Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide). |
| 111 | 782.072 | 2nd | Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide). |
| 112 | 784.045 (1) (a) 1. | 2nd | Aggravated battery; intentionally causing great bodily harm or disfigurement. |
| 113 | 784.045 (1) (a) 2. | 2nd | Aggravated battery; using deadly weapon. |
| 114 | 784.045 (1) (b) | 2nd | Aggravated battery; perpetrator aware victim pregnant. |
| 115 | 784.048 (4) | 3rd | Aggravated stalking; violation |

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| | | | of injunction or court order. |
| 116 | 784.048(7) | 3rd | Aggravated stalking; violation of court order. |
| 117 | 784.07(2)(d) | 1st | Aggravated battery on law enforcement officer. |
| 118 | 784.074(1)(a) | 1st | Aggravated battery on sexually violent predators facility staff. |
| 119 | 784.08(2)(a) | 1st | Aggravated battery on a person 65 years of age or older. |
| 120 | 784.081(1) | 1st | Aggravated battery on specified official or employee. |
| 121 | 784.082(1) | 1st | Aggravated battery by detained person on visitor or other detainee. |
| 122 | 784.083(1) | 1st | Aggravated battery on code inspector. |
| 123 | 787.06(3)(a)2. | 1st | Human trafficking using |

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| | | | coercion for labor and services of an adult. |
| 124 | 787.06(3)(e)2. | 1st | Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state. |
| 125 | 790.07(4) | 1st | Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2). |
| 126 | 790.16(1) | 1st | Discharge of a machine gun under specified circumstances. |
| 127 | 790.165(2) | 2nd | Manufacture, sell, possess, or deliver hoax bomb. |
| 128 | 790.165(3) | 2nd | Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony. |
| 129 | 790.166(3) | 2nd | Possessing, selling, using, or |

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| 130 | 790.166(4) | 2nd | attempting to use a hoax weapon of mass destruction. |
| 131 | 790.23 | 1st, PBL | Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony. |
| 132 | 794.08(4) | 3rd | Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04. |
| 133 | 796.05(1) | 1st | Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age. |
| 134 | 796.05(1) | 1st | Live on earnings of a prostitute; 2nd offense. |
| | | | Live on earnings of a prostitute; 3rd and subsequent offense. |

135

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

136

800.04 (5) (c) 2. 2nd Lewd or lascivious molestation;
victim 12 years of age or older
but younger than 16 years of
age; offender 18 years of age
or older.

137

800.04 (5) (e) 1st Lewd or lascivious molestation;
victim 12 years of age or older
but younger than 16 years;
offender 18 years or older;
prior conviction for specified
sex offense.

138

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

139

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

140

810.02 (3) (b) 2nd Burglary of unoccupied

| | | | |
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| | | | dwelling; unarmed; no assault or battery. |
| 141 | 810.02(3)(d) | 2nd | Burglary of occupied conveyance; unarmed; no assault or battery. |
| 142 | 810.02(3)(e) | 2nd | Burglary of authorized emergency vehicle. |
| 143 | 812.014(2)(a)1. | 1st | Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft. |
| 144 | 812.014(2)(b)2. | 2nd | Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree. |
| 145 | 812.014(2)(b)3. | 2nd | Property stolen, emergency medical equipment; 2nd degree grand theft. |
| 146 | | | |

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| 147 | 812.014(2)(b)4. | 2nd | Property stolen, law enforcement equipment from authorized emergency vehicle. |
| 148 | 812.0145(2)(a) | 1st | Theft from person 65 years of age or older; \$50,000 or more. |
| 149 | 812.019(2) | 1st | Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property. |
| 150 | 812.131(2)(a) | 2nd | Robbery by sudden snatching. |
| 151 | 812.133(2)(b) | 1st | Carjacking; no firearm, deadly weapon, or other weapon. |
| 152 | 817.034(4)(a)1. | 1st | Communications fraud, value greater than \$50,000. |
| 153 | 817.234(8)(a) | 2nd | Solicitation of motor vehicle accident victims with intent to defraud. |
| | 817.234(9) | 2nd | Organizing, planning, or participating in an intentional |

| | | | |
|-----|-----------------------------|-----|--|
| 154 | | | motor vehicle collision. |
| | 817.234(11)(c) | 1st | Insurance fraud; property value \$100,000 or more. |
| 155 | | | |
| | 817.2341 (2)(b) & (3)(b) | 1st | Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity. |
| 156 | | | |
| | 817.535(2)(a) | 3rd | Filing false lien or other unauthorized document. |
| 157 | | | |
| | 825.102(3)(b) | 2nd | Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement. |
| 158 | | | |
| | 825.103(3)(b) | 2nd | Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000. |
| 159 | | | |

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| 160 | 827.03(2)(b) | 2nd | Neglect of a child causing great bodily harm, disability, or disfigurement. |
| 161 | 827.04(3) | 3rd | Impregnation of a child under 16 years of age by person 21 years of age or older. |
| 162 | 837.05(2) | 3rd | Giving false information about alleged capital felony to a law enforcement officer. |
| 163 | 838.015 | 2nd | Bribery. |
| 164 | 838.016 | 2nd | Unlawful compensation or reward for official behavior. |
| 165 | 838.021(3)(a) | 2nd | Unlawful harm to a public servant. |
| 166 | 838.22 | 2nd | Bid tampering. |
| 167 | 843.0855(2) | 3rd | Impersonation of a public officer or employee. |
| | 843.0855(3) | 3rd | Unlawful simulation of legal |

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| | | | process. |
| 168 | 843.0855(4) | 3rd | Intimidation of a public officer or employee. |
| 169 | 847.0135(3) | 3rd | Solicitation of a child, via a computer service, to commit an unlawful sex act. |
| 170 | 847.0135(4) | 2nd | Traveling to meet a minor to commit an unlawful sex act. |
| 171 | 872.06 | 2nd | Abuse of a dead human body. |
| 172 | 874.05(2)(b) | 1st | Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense. |
| 173 | 874.10 | 1st, PBL | Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity. |
| 174 | 893.13(1)(c)1. | 1st | Sell, manufacture, or deliver cocaine (or other drug |

prohibited under s.
 893.03(1)(a), (1)(b), (1)(d),
 (2)(a), (2)(b), or (2)(c)4.)
 within 1,000 feet of a child
 care facility, school, or
 state, county, or municipal
 park or publicly owned
 recreational facility or
 community center.

175

893.13(1)(e)1. 1st Sell, manufacture, or deliver
 cocaine or other drug
 prohibited under s.
 893.03(1)(a), (1)(b), (1)(d),
 (2)(a), (2)(b), or (2)(c)4.,
 within 1,000 feet of property
 used for religious services or
 a specified business site.

176

893.13(4)(a) 1st Deliver to minor cocaine (or
 other s. 893.03(1)(a), (1)(b),
 (1)(d), (2)(a), (2)(b), or
 (2)(c)4. drugs).

177

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

lbs.

178

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

179

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

180

893.135 1st Trafficking in hydrocodone, 14
(1) (d) 2.a. grams or more, less than 28
~~893.135~~ grams.
~~(1) (e) 2.a.~~

181

893.135 1st Trafficking in hydrocodone, 28
(1) (d) 2.b. grams or more, less than 50
~~893.135~~ grams.
~~(1) (e) 2.b.~~

182

893.135 1st Trafficking in oxycodone, 7
(1) (d) 3.a. grams or more, less than 14
~~893.135~~ grams.
~~(1) (e) 3.a.~~

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|-----|---|-----|--|
| 183 | <u>893.135</u> (1) (d) 3.b. 893.135 (1) (e) 3.b. | 1st | Trafficking in oxycodone, 14 grams or more, less than 25 grams. |
| 184 | <u>893.135(1)(e)1.</u> 893.135(1)(d)1. | 1st | Trafficking in phencyclidine, more than 28 grams, less than 200 grams. |
| 185 | <u>893.135(1)(f)1.</u> 893.135(1)(e)1. | 1st | Trafficking in methaqualone, more than 200 grams, less than 5 kilograms. |
| 186 | <u>893.135(1)(g)1.</u> 893.135(1)(f)1. | 1st | Trafficking in amphetamine, more than 14 grams, less than 28 grams. |
| 187 | <u>893.135</u> (1) (h) 1.a. 893.135 (1) (g) 1.a. | 1st | Trafficking in flunitrazepam, 4 grams or more, less than 14 grams. |
| 188 | <u>893.135</u> (1) (i) 1.a. 893.135 | 1st | Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 |

| | | | |
|-----|-----------------------|-----|----------------------------------|
| 189 | (1)(h)1.a. | | kilograms. |
| | <u>893.135</u> | 1st | Trafficking in 1,4-Butanediol, |
| | <u>(1)(k)1.a.</u> | | 1 kilogram or more, less than 5 |
| | 893.135 | | kilograms. |
| | (1)(j)1.a. | | |
| 190 | | | |
| | <u>893.135</u> | 1st | Trafficking in Phenethylamines, |
| | <u>(1)(l)2.a.</u> | | 10 grams or more, less than 200 |
| | 893.135 | | grams. |
| | (1)(k)2.a. | | |
| 191 | | | |
| | 893.1351(2) | 2nd | Possession of place for |
| | | | trafficking in or manufacturing |
| | | | of controlled substance. |
| 192 | | | |
| | 896.101(5)(a) | 3rd | Money laundering, financial |
| | | | transactions exceeding \$300 but |
| | | | less than \$20,000. |
| 193 | | | |
| | 896.104(4)(a)1. | 3rd | Structuring transactions to |
| | | | evade reporting or registration |
| | | | requirements, financial |
| | | | transactions exceeding \$300 but |
| | | | less than \$20,000. |
| 194 | | | |

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| | | | |
|-----|----------------|-----|--|
| 195 | 943.0435(4)(c) | 2nd | Sexual offender vacating permanent residence; failure to comply with reporting requirements. |
| 196 | 943.0435(8) | 2nd | Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements. |
| 197 | 943.0435(9)(a) | 3rd | Sexual offender; failure to comply with reporting requirements. |
| 198 | 943.0435(13) | 3rd | Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender. |
| 199 | 943.0435(14) | 3rd | Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information. |
| | 944.607(9) | 3rd | Sexual offender; failure to |

| | | | |
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| | | | comply with reporting requirements. |
| 200 | 944.607(10)(a) | 3rd | Sexual offender; failure to submit to the taking of a digitized photograph. |
| 201 | 944.607(12) | 3rd | Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender. |
| 202 | 944.607(13) | 3rd | Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information. |
| 203 | 985.4815(10) | 3rd | Sexual offender; failure to submit to the taking of a digitized photograph. |
| 204 | 985.4815(12) | 3rd | Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender. |

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205

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

206

207

(h) LEVEL 8

208

| | | |
|---------|--------|-------------|
| Florida | Felony | |
| Statute | Degree | Description |

209

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

210

| | | |
|-----------------|-----|--|
| 316.1935(4) (b) | 1st | Aggravated fleeing or attempted eluding with serious bodily injury or death. |
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211

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

212

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

213

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

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| 214 | 560.123(8)(b)2. | 2nd | <p>labels.</p> <p>Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.</p> |
| 215 | 560.125(5)(b) | 2nd | <p>Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.</p> |
| 216 | 655.50(10)(b)2. | 2nd | <p>Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.</p> |
| 217 | 777.03(2)(a) | 1st | <p>Accessory after the fact, capital felony.</p> |
| 218 | 782.04(4) | 2nd | <p>Killing of human without design when engaged in act or attempt of any felony other than arson,</p> |

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|-----|----------------|-----|---|
| | | | sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb. |
| 219 | 782.051(2) | 1st | Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3). |
| 220 | 782.071(1)(b) | 1st | Committing vehicular homicide and failing to render aid or give information. |
| 221 | 782.072(2) | 1st | Committing vessel homicide and failing to render aid or give information. |
| 222 | 787.06(3)(a)1. | 1st | Human trafficking for labor and services of a child. |
| 223 | 787.06(3)(b) | 1st | Human trafficking using coercion for commercial sexual activity of an adult. |

| | | | |
|-----|----------------|-----|---|
| 224 | 787.06(3)(c)2. | 1st | Human trafficking using coercion for labor and services of an unauthorized alien adult. |
| 225 | 787.06(3)(e)1. | 1st | Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state. |
| 226 | 787.06(3)(f)2. | 1st | Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state. |
| 227 | 790.161(3) | 1st | Discharging a destructive device which results in bodily harm or property damage. |
| 228 | 794.011(5)(a) | 1st | Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does |

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| 229 | 794.011 (5) (b) | 2nd | not use physical force likely to cause serious injury. Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury. |
| 230 | 794.011 (5) (c) | 2nd | Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury. |
| 231 | 794.011 (5) (d) | 1st | Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense. |
| 232 | 794.08 (3) | 2nd | Female genital mutilation, removal of a victim younger than 18 years of age from this state. |

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| 233 | 800.04(4)(b) | 2nd | Lewd or lascivious battery. |
| 234 | 800.04(4)(c) | 1st | Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense. |
| 235 | 806.01(1) | 1st | Maliciously damage dwelling or structure by fire or explosive, believing person in structure. |
| 236 | 810.02(2)(a) | 1st, PBL | Burglary with assault or battery. |
| 237 | 810.02(2)(b) | 1st, PBL | Burglary; armed with explosives or dangerous weapon. |
| 238 | 810.02(2)(c) | 1st | Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage. |
| 239 | 812.014(2)(a)2. | 1st | Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree. |

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240

812.13(2)(b) 1st Robbery with a weapon.

241

812.135(2)(c) 1st Home-invasion robbery, no
firearm, deadly weapon, or
other weapon.

242

817.535(2)(b) 2nd Filing false lien or other
unauthorized document; second
or subsequent offense.

243

817.535(3)(a) 2nd Filing false lien or other
unauthorized document; property
owner is a public officer or
employee.

244

817.535(4)(a)1. 2nd Filing false lien or other
unauthorized document;
defendant is incarcerated or
under supervision.

245

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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| | | | |
|-----|---------------|-----|--|
| 246 | 817.568(6) | 2nd | Fraudulent use of personal identification information of an individual under the age of 18. |
| 247 | 825.102(2) | 1st | Aggravated abuse of an elderly person or disabled adult. |
| 248 | 825.1025(2) | 2nd | Lewd or lascivious battery upon an elderly person or disabled adult. |
| 249 | 825.103(3)(a) | 1st | Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more. |
| 250 | 837.02(2) | 2nd | Perjury in official proceedings relating to prosecution of a capital felony. |
| 251 | 837.021(2) | 2nd | Making contradictory statements in official proceedings relating to prosecution of a capital felony. |
| 252 | | | |

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| | | | |
|-----|-------------------------------------|-----|--|
| 253 | 860.121(2)(c) | 1st | Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm. |
| 254 | 860.16 | 1st | Aircraft piracy. |
| 255 | 893.13(1)(b) | 1st | Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b). |
| 256 | 893.13(2)(b) | 1st | Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b). |
| 257 | 893.13(6)(c) | 1st | Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b). |
| 258 | 893.135(1)(a)2. | 1st | Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs. |
| | <u>893.135</u> <u>(1)(c)1.b.</u> | 1st | Trafficking in cocaine, more than 200 grams, less than 400 |

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| | 893.135 | | grams. |
| | (1)(b)1.b. | | |
| 259 | <u>893.135</u> | 1st | Trafficking in illegal drugs, |
| | <u>(1)(d)1.b.</u> | | more than 14 grams, less than |
| | 893.135 | | 28 grams. |
| | (1)(e)1.b. | | |
| 260 | <u>893.135</u> | 1st | Trafficking in hydrocodone, 50 |
| | <u>(1)(d)2.c.</u> | | grams or more, less than 200 |
| | 893.135 | | grams. |
| | (1)(e)2.c. | | |
| 261 | <u>893.135</u> | 1st | Trafficking in oxycodone, 25 |
| | <u>(1)(d)3.c.</u> | | grams or more, less than 100 |
| | 893.135 | | grams. |
| | (1)(e)3.c. | | |
| 262 | <u>893.135</u> | 1st | Trafficking in phencyclidine, |
| | <u>(1)(e)1.b.</u> | | more than 200 grams, less than |
| | 893.135 | | 400 grams. |
| | (1)(d)1.b. | | |
| 263 | <u>893.135</u> | 1st | Trafficking in methaqualone, |
| | <u>(1)(f)1.b.</u> | | more than 5 kilograms, less |
| | 893.135 | | than 25 kilograms. |

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| 264 | (1)(e)1.b. <u>893.135</u> <u>(1)(g)1.b.</u> 893.135 (1)(f)1.b. | 1st | Trafficking in amphetamine, more than 28 grams, less than 200 grams. |
| 265 | <u>893.135</u> <u>(1)(h)1.b.</u> 893.135 (1)(g)1.b. | 1st | Trafficking in flunitrazepam, 14 grams or more, less than 28 grams. |
| 266 | <u>893.135</u> <u>(1)(i)1.b.</u> 893.135 (1)(h)1.b. | 1st | Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms. |
| 267 | <u>893.135</u> <u>(1)(k)1.b.</u> 893.135 (1)(j)1.b. | 1st | Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms. |
| 268 | <u>893.135</u> <u>(1)(l)2.b.</u> 893.135 (1)(k)2.b. | 1st | Trafficking in Phenethylamines, 200 grams or more, less than 400 grams. |

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| 269 | 893.1351(3) | 1st | Possession of a place used to manufacture controlled substance when minor is present or resides there. |
| 270 | 895.03(1) | 1st | Use or invest proceeds derived from pattern of racketeering activity. |
| 271 | 895.03(2) | 1st | Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property. |
| 272 | 895.03(3) | 1st | Conduct or participate in any enterprise through pattern of racketeering activity. |
| 273 | 896.101(5)(b) | 2nd | Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000. |
| 274 | 896.104(4)(a)2. | 2nd | Structuring transactions to evade reporting or registration |

requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.

275

276 (i) LEVEL 9

277

| Florida Statute | Felony Degree | Description |
|-----------------------|---------------|--|
| 316.193 (3)(c)3.b. | 1st | DUI manslaughter; failing to render aid or give information. |
| 327.35 (3)(c)3.b. | 1st | BUI manslaughter; failing to render aid or give information. |
| 409.920 (2)(b)1.c. | 1st | Medicaid provider fraud; \$50,000 or more. |
| 499.0051(9) | 1st | Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm. |
| 560.123(8)(b)3. | 1st | Failure to report currency or payment instruments totaling or exceeding \$100,000 by money |

278

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| | | | transmitter. |
| 283 | 560.125(5)(c) | 1st | Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000. |
| 284 | 655.50(10)(b)3. | 1st | Failure to report financial transactions totaling or exceeding \$100,000 by financial institution. |
| 285 | 775.0844 | 1st | Aggravated white collar crime. |
| 286 | 782.04(1) | 1st | Attempt, conspire, or solicit to commit premeditated murder. |
| 287 | 782.04(3) | 1st, PBL | Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies. |
| 288 | 782.051(1) | 1st | Attempted felony murder while |

| | | | |
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| | | | perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3). |
| 289 | 782.07(2) | 1st | Aggravated manslaughter of an elderly person or disabled adult. |
| 290 | 787.01(1)(a)1. | 1st, PBL | Kidnapping; hold for ransom or reward or as a shield or hostage. |
| 291 | 787.01(1)(a)2. | 1st, PBL | Kidnapping with intent to commit or facilitate commission of any felony. |
| 292 | 787.01(1)(a)4. | 1st, PBL | Kidnapping with intent to interfere with performance of any governmental or political function. |
| 293 | 787.02(3)(a) | 1st, PBL | False imprisonment; child under age 13; perpetrator also commits aggravated child abuse, sexual battery, or lewd or lascivious battery, |

| | | | |
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| | | | molestation, conduct, or exhibition. |
| 294 | 787.06(3)(c)1. | 1st | Human trafficking for labor and services of an unauthorized alien child. |
| 295 | 787.06(3)(d) | 1st | Human trafficking using coercion for commercial sexual activity of an unauthorized adult alien. |
| 296 | 787.06(3)(f)1. | 1st, PBL | Human trafficking for commercial sexual activity by the transfer or transport of any child from outside Florida to within the state. |
| 297 | 790.161 | 1st | Attempted capital destructive device offense. |
| 298 | 790.166(2) | 1st, PBL | Possessing, selling, using, or attempting to use a weapon of mass destruction. |
| 299 | 794.011(2) | 1st | Attempted sexual battery; |

| | | | |
|-----|---------------|----------|---|
| | | | victim less than 12 years of age. |
| 300 | 794.011(2) | Life | Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years. |
| 301 | 794.011(4)(a) | 1st, PBL | Sexual battery, certain circumstances; victim 12 years of age or older but younger than 18 years; offender 18 years or older. |
| 302 | 794.011(4)(b) | 1st | Sexual battery, certain circumstances; victim and offender 18 years of age or older. |
| 303 | 794.011(4)(c) | 1st | Sexual battery, certain circumstances; victim 12 years of age or older; offender younger than 18 years. |
| 304 | 794.011(4)(d) | 1st, PBL | Sexual battery, certain circumstances; victim 12 years |

| | | | |
|-----|---------------|----------|--|
| | | | of age or older; prior conviction for specified sex offenses. |
| 305 | 794.011(8)(b) | 1st, PBL | Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority. |
| 306 | 794.08(2) | 1st | Female genital mutilation; victim younger than 18 years of age. |
| 307 | 800.04(5)(b) | Life | Lewd or lascivious molestation; victim less than 12 years; offender 18 years or older. |
| 308 | 812.13(2)(a) | 1st, PBL | Robbery with firearm or other deadly weapon. |
| 309 | 812.133(2)(a) | 1st, PBL | Carjacking; firearm or other deadly weapon. |
| 310 | 812.135(2)(b) | 1st | Home-invasion robbery with weapon. |
| 311 | | | |

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| 312 | 817.535(3)(b) | 1st | Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee. |
| 313 | 817.535(4)(a)2. | 1st | Filing false claim or other unauthorized document; defendant is incarcerated or under supervision. |
| 314 | 817.535(5)(b) | 1st | Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument. |
| 315 | 817.568(7) | 2nd, PBL | Fraudulent use of personal identification information of an individual under the age of 18 by his or her parent, legal guardian, or person exercising custodial authority. |
| | 827.03(2)(a) | 1st | Aggravated child abuse. |

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| 316 | 847.0145(1) | 1st | Selling, or otherwise transferring custody or control, of a minor. |
| 317 | 847.0145(2) | 1st | Purchasing, or otherwise obtaining custody or control, of a minor. |
| 318 | 859.01 | 1st | Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person. |
| 319 | 893.135 | 1st | Attempted capital trafficking offense. |
| 320 | 893.135(1)(a)3. | 1st | Trafficking in cannabis, more than 10,000 lbs. |
| 321 | <u>893.135</u> <u>(1)(c)1.c.</u> 893.135 | 1st | Trafficking in cocaine, more than 400 grams, less than 150 kilograms. |

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| 322 | (1) (b) 1. c. <u>893.135</u> (1) (d) 1. c. 893.135 (1) (e) 1. c. | 1st | Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms. |
| 323 | <u>893.135</u> (1) (d) 2. d. 893.135 (1) (e) 2. d. | 1st | Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms. |
| 324 | <u>893.135</u> (1) (d) 3. d. 893.135 (1) (e) 3. d. | 1st | Trafficking in oxycodone, 100 grams or more, less than 30 kilograms. |
| 325 | <u>893.135</u> (1) (e) 1. c. 893.135 (1) (d) 1. e. | 1st | Trafficking in phencyclidine, more than 400 grams. |
| 326 | <u>893.135</u> (1) (f) 1. c. 893.135 (1) (e) 1. c. | 1st | Trafficking in methaqualone, more than 25 kilograms. |

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327

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

~~893.135~~
~~(1)(f)1.c.~~

328

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

~~(1)(h)1.c.~~

329

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

~~893.135~~
~~(1)(j)1.c.~~

330

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

~~893.135~~
~~(1)(k)2.c.~~

331

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

332

896.104(4)(a)3. 1st Structuring transactions to

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evade reporting or registration
requirements, financial
transactions totaling or
exceeding \$100,000.

333

334

Section 4. This act shall take effect October 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Burgess offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (1) of section
8 893.13, Florida Statutes, is amended to read:

9 893.13 Prohibited acts; penalties.—

10 (1)(a) Except as authorized by this chapter and chapter
11 499, a person may not sell, manufacture, or deliver, or possess
12 with intent to sell, manufacture, or deliver, a controlled
13 substance. A person who violates this provision with respect to:

14 1. A controlled substance named or described in s.
15 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
16 commits a felony of the second degree, punishable as provided in
17 s. 775.082, s. 775.083, or s. 775.084. A person who violates



Amendment No. 1

18 this subparagraph in a dwelling as defined in s. 810.011 shall
19 be sentenced to a mandatory minimum term of imprisonment of 3
20 years.

21 2. A controlled substance named or described in s.
22 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
23 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
24 the third degree, punishable as provided in s. 775.082, s.
25 775.083, or s. 775.084.

26 3. A controlled substance named or described in s.
27 893.03(5) commits a misdemeanor of the first degree, punishable
28 as provided in s. 775.082 or s. 775.083.

29 Section 2. Paragraph (m) is added to subsection (1) of
30 section 893.135, Florida Statutes, to read:

31 893.135 Trafficking; mandatory sentences; suspension or
32 reduction of sentences; conspiracy to engage in trafficking.-

33 (1) Except as authorized in this chapter or in chapter 499
34 and notwithstanding the provisions of s. 893.13:

35 (m)1. Any person who knowingly sells, purchases,
36 manufactures, delivers, or brings into this state, or who is
37 knowingly in actual or constructive possession of, 250 grams or
38 more of a controlled substance described in s. 893.03(1)(c)46.-
39 50., 114.-142., 151.-159., or 166.-173., or any mixture
40 containing those substances, commits a felony of the first
41 degree, which felony shall be known as "trafficking in synthetic
42 drugs," punishable as provided in s. 775.082, s. 775.083, or s.
43 775.084. If the quantity involved:



Amendment No. 1

44 a. Is 250 grams or more, but less than 500 grams, such
45 person shall be sentenced to a mandatory minimum term of
46 imprisonment of 3 years, and the defendant shall be ordered to
47 pay a fine of \$25,000.

48 b. Is 500 grams or more, but less than 1,000 grams, such
49 person shall be sentenced to a mandatory minimum term of
50 imprisonment of 7 years, and the defendant shall be ordered to
51 pay a fine of \$50,000.

52 c. Is 1,000 grams or more, but less than 30 kilograms,
53 such person shall be sentenced to a mandatory minimum term of
54 imprisonment of 15 years, and the defendant shall be ordered to
55 pay a fine of \$200,000.

56 d. Is 30 kilograms or more, such person shall be sentenced
57 to a mandatory minimum term of imprisonment of 25 years, and the
58 defendant shall be ordered to pay a fine of \$750,000.

59 2. A person who knowingly sells, purchases, manufactures,
60 delivers, or brings into this state, or who is knowingly in
61 actual or constructive possession of, 30 kilograms or more of a
62 controlled substance described in s. 893.03(1)(c)46.-50., 114.-
63 142., 151.-159., or 166.-173., or any mixture containing those
64 substances, commits the first degree felony of trafficking in
65 synthetic drugs. A person who has been convicted of the first
66 degree felony of trafficking in synthetic drugs under this
67 subparagraph shall be punished by life imprisonment and is
68 ineligible for any form of discretionary early release except
69 pardon or executive clemency or conditional medical release

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70 under s. 947.149. However, if the court determines that, in
71 addition to committing any act specified in this paragraph:

72 a. The person intentionally killed an individual or
73 counseled, commanded, induced, procured, or caused the
74 intentional killing of an individual and such killing was the
75 result; or

76 b. The person's conduct in committing that act led to a
77 natural, though not inevitable, lethal result,

78
79 such person commits the capital felony of trafficking in
80 synthetic drugs, punishable as provided in ss. 775.082 and
81 921.142. A person sentenced for a capital felony under this
82 paragraph shall also be sentenced to pay the maximum fine
83 provided under subparagraph 1.

84 3. A person who knowingly brings into this state 60
85 kilograms or more of a controlled substance described in s.
86 893.03(1)(c)46.-50., 114.-142., 151.-159., or 166.-173., or any
87 mixture containing those substances, and who knows that the
88 probable result of such importation would be the death of a
89 person, commits capital importation of synthetic drugs, a
90 capital felony punishable as provided in ss. 775.082 and
91 921.142. A person sentenced for a capital felony under this
92 paragraph shall also be sentenced to pay the maximum fine
93 provided under subparagraph 1.

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

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Amendment No. 1

96 921.0022 Criminal Punishment Code; offense severity
97 ranking chart.—

98 (3) OFFENSE SEVERITY RANKING CHART

99 (g) LEVEL 7

100

| Florida Statute | Felony Degree | Description |
|--------------------|------------------|-------------|
|--------------------|------------------|-------------|

101

| | | |
|---------------|-----|--|
| 316.027(2)(c) | 1st | Accident involving death, failure to stop; leaving scene. |
|---------------|-----|--|

102

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

103

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

104

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

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Amendment No. 1

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| 106 | 402.319(2) | 2nd | Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death. |
| 107 | 409.920 (2)(b)1.a. | 3rd | Medicaid provider fraud; \$10,000 or less. |
| 108 | 409.920 (2)(b)1.b. | 2nd | Medicaid provider fraud; more than \$10,000, but less than \$50,000. |
| 109 | 456.065(2) | 3rd | Practicing a health care profession without a license. |
| 110 | 456.065(2) | 2nd | Practicing a health care profession without a license which results in serious bodily injury. |
| 111 | 458.327(1) | 3rd | Practicing medicine without a license. |
| | 459.013(1) | 3rd | Practicing osteopathic medicine without a license. |



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 963 (2015)

Amendment No. 1

112

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

113

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

114

462.17 3rd Practicing naturopathy without
a license.

115

463.015(1) 3rd Practicing optometry without a
license.

116

464.016(1) 3rd Practicing nursing without a
license.

117

465.015(2) 3rd Practicing pharmacy without a
license.

118

466.026(1) 3rd Practicing dentistry or dental
hygiene without a license.

119

467.201 3rd Practicing midwifery without a
license.

120

468.366 3rd Delivering respiratory care

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Amendment No. 1

services without a license.

121

483.828(1) 3rd Practicing as clinical
laboratory personnel without a
license.

122

483.901(9) 3rd Practicing medical physics
without a license.

123

484.013(1)(c) 3rd Preparing or dispensing optical
devices without a prescription.

124

484.053 3rd Dispensing hearing aids without
a license.

125

494.0018(2) 1st Conviction of any violation of
ss. 494.001-494.0077 in which
the total money and property
unlawfully obtained exceeded
\$50,000 and there were five or
more victims.

126

560.123(8)(b)1. 3rd Failure to report currency or
payment instruments exceeding
\$300 but less than \$20,000 by a
money services business.



Amendment No. 1

127

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

128

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

129

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

130

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

131

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

132

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Amendment No. 1

- 133 782.051(3) 2nd Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
- 134 782.07(1) 2nd Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
- 135 782.071 2nd Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
- 136 782.072 2nd Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
- 137 784.045(1)(a)1. 2nd Aggravated battery; intentionally causing great bodily harm or disfigurement.



Amendment No. 1

| | | | |
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| 138 | 784.045(1)(a)2. | 2nd | Aggravated battery; using deadly weapon. |
| 139 | 784.045(1)(b) | 2nd | Aggravated battery; perpetrator aware victim pregnant. |
| 140 | 784.048(4) | 3rd | Aggravated stalking; violation of injunction or court order. |
| 141 | 784.048(7) | 3rd | Aggravated stalking; violation of court order. |
| 142 | 784.07(2)(d) | 1st | Aggravated battery on law enforcement officer. |
| 143 | 784.074(1)(a) | 1st | Aggravated battery on sexually violent predators facility staff. |
| 144 | 784.08(2)(a) | 1st | Aggravated battery on a person 65 years of age or older. |
| 145 | 784.081(1) | 1st | Aggravated battery on specified official or employee. |
| | 784.082(1) | 1st | Aggravated battery by detained |

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Amendment No. 1

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| | | | person on visitor or other detainee. |
| 146 | 784.083(1) | 1st | Aggravated battery on code inspector. |
| 147 | 787.06(3)(a)2. | 1st | Human trafficking using coercion for labor and services of an adult. |
| 148 | 787.06(3)(e)2. | 1st | Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state. |
| 149 | 790.07(4) | 1st | Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2). |
| 150 | 790.16(1) | 1st | Discharge of a machine gun under specified circumstances. |
| 151 | 790.165(2) | 2nd | Manufacture, sell, possess, or deliver hoax bomb. |



Amendment No. 1

152

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

153

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

154

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

155

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

156

794.08(4) 3rd Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.



Amendment No. 1

157
796.05(1) 1st Live on earnings of a
prostitute; 2nd offense.

158
796.05(1) 1st Live on earnings of a
prostitute; 3rd and subsequent
offense.

159
800.04(5)(c)1. 2nd Lewd or lascivious molestation;
victim younger than 12 years of
age; offender younger than 18
years of age.

160
800.04(5)(c)2. 2nd Lewd or lascivious molestation;
victim 12 years of age or older
but younger than 16 years of
age; offender 18 years of age
or older.

161
800.04(5)(e) 1st Lewd or lascivious molestation;
victim 12 years of age or older
but younger than 16 years;
offender 18 years or older;
prior conviction for specified
sex offense.

162



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 963 (2015)

Amendment No. 1

| | | | |
|-----|-----------------|-----|---|
| 163 | 806.01(2) | 2nd | Maliciously damage structure by fire or explosive. |
| 164 | 810.02(3)(a) | 2nd | Burglary of occupied dwelling; unarmed; no assault or battery. |
| 165 | 810.02(3)(b) | 2nd | Burglary of unoccupied dwelling; unarmed; no assault or battery. |
| 166 | 810.02(3)(d) | 2nd | Burglary of occupied conveyance; unarmed; no assault or battery. |
| 167 | 810.02(3)(e) | 2nd | Burglary of authorized emergency vehicle. |
| 168 | 812.014(2)(a)1. | 1st | Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft. |
| | 812.014(2)(b)2. | 2nd | Property stolen, cargo valued |

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169 at less than \$50,000, grand
theft in 2nd degree.

812.014(2)(b)3. 2nd Property stolen, emergency
medical equipment; 2nd degree
grand theft.

170 812.014(2)(b)4. 2nd Property stolen, law
enforcement equipment from
authorized emergency vehicle.

171 812.0145(2)(a) 1st Theft from person 65 years of
age or older; \$50,000 or more.

172 812.019(2) 1st Stolen property; initiates,
organizes, plans, etc., the
theft of property and traffics
in stolen property.

173 812.131(2)(a) 2nd Robbery by sudden snatching.

174 812.133(2)(b) 1st Carjacking; no firearm, deadly
weapon, or other weapon.

175 817.034(4)(a)1. 1st Communications fraud, value
greater than \$50,000.



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176

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

177

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

178

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

179

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

180

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

181

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



Amendment No. 1

| | | | |
|-----|---------------|-----|--|
| | | | disfigurement. |
| 182 | 825.103(3)(b) | 2nd | Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000. |
| 183 | 827.03(2)(b) | 2nd | Neglect of a child causing great bodily harm, disability, or disfigurement. |
| 184 | 827.04(3) | 3rd | Impregnation of a child under 16 years of age by person 21 years of age or older. |
| 185 | 837.05(2) | 3rd | Giving false information about alleged capital felony to a law enforcement officer. |
| 186 | 838.015 | 2nd | Bribery. |
| 187 | 838.016 | 2nd | Unlawful compensation or reward for official behavior. |
| 188 | 838.021(3)(a) | 2nd | Unlawful harm to a public servant. |



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 963 (2015)

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| | | | |
|-----|--------------|-----|--|
| 189 | 838.22 | 2nd | Bid tampering. |
| 190 | 843.0855(2) | 3rd | Impersonation of a public officer or employee. |
| 191 | 843.0855(3) | 3rd | Unlawful simulation of legal process. |
| 192 | 843.0855(4) | 3rd | Intimidation of a public officer or employee. |
| 193 | 847.0135(3) | 3rd | Solicitation of a child, via a computer service, to commit an unlawful sex act. |
| 194 | 847.0135(4) | 2nd | Traveling to meet a minor to commit an unlawful sex act. |
| 195 | 872.06 | 2nd | Abuse of a dead human body. |
| 196 | 874.05(2)(b) | 1st | Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense. |
| 197 | | | |

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- 198
- 874.10 1st,PBL Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
- 893.13(1)(c)1. 1st Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
- 199
- 893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.
- 200



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| | | | |
|-----|-----------------------|-----|---|
| 201 | 893.13(4)(a) | 1st | Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs). |
| 202 | 893.135(1)(a)1. | 1st | Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs. |
| 203 | 893.135 (1)(b)1.a. | 1st | Trafficking in cocaine, more than 28 grams, less than 200 grams. |
| 204 | 893.135 (1)(c)1.a. | 1st | Trafficking in illegal drugs, more than 4 grams, less than 14 grams. |
| 205 | 893.135 (1)(c)2.a. | 1st | Trafficking in hydrocodone, 14 grams or more, less than 28 grams. |
| 206 | 893.135 (1)(c)2.b. | 1st | Trafficking in hydrocodone, 28 grams or more, less than 50 grams. |
| | 893.135 | 1st | Trafficking in oxycodone, 7 |



Amendment No. 1

| | | | |
|-----|--------------------|-----|--|
| 207 | (1) (c) 3.a. | | grams or more, less than 14 grams. |
| | 893.135 | 1st | Trafficking in oxycodone, 14 grams or more, less than 25 grams. |
| 208 | (1) (c) 3.b. | | |
| | 893.135 (1) (d) 1. | 1st | Trafficking in phencyclidine, more than 28 grams, less than 200 grams. |
| 209 | | | |
| | 893.135 (1) (e) 1. | 1st | Trafficking in methaqualone, more than 200 grams, less than 5 kilograms. |
| 210 | | | |
| | 893.135 (1) (f) 1. | 1st | Trafficking in amphetamine, more than 14 grams, less than 28 grams. |
| 211 | | | |
| | 893.135 | 1st | Trafficking in flunitrazepam, 4 grams or more, less than 14 grams. |
| | (1) (g) 1.a. | | |
| 212 | | | |
| | 893.135 | 1st | Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 |
| | (1) (h) 1.a. | | |



Amendment No. 1

kilograms.

213

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

214

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

215

893.135 1st Trafficking in LSD, 1 gram or
(1)(l)1.a. more, less than 5 grams.

216

893.135 1st Trafficking in synthetic drugs,
(1)(m)1.a. 250 grams or more, less than
 500 grams.

217

893.135 1st Trafficking in synthetic drugs,
(1)(m)1.b. 500 grams or more, less than
 1,000 grams.

218

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

219

896.101(5)(a) 3rd Money laundering, financial



Amendment No. 1

| | | | |
|-----|-----------------|-----|--|
| 220 | | | transactions exceeding \$300 but less than \$20,000. |
| 221 | 896.104(4)(a)1. | 3rd | Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000. |
| 222 | 943.0435(4)(c) | 2nd | Sexual offender vacating permanent residence; failure to comply with reporting requirements. |
| 223 | 943.0435(8) | 2nd | Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements. |
| 224 | 943.0435(9)(a) | 3rd | Sexual offender; failure to comply with reporting requirements. |
| | 943.0435(13) | 3rd | Failure to report or providing false information about a sexual offender; harbor or |



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| | | | |
|-----|----------------|-----|--|
| 225 | | | conceal a sexual offender. |
| | 943.0435(14) | 3rd | Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information. |
| 226 | | | |
| | 944.607(9) | 3rd | Sexual offender; failure to comply with reporting requirements. |
| 227 | | | |
| | 944.607(10)(a) | 3rd | Sexual offender; failure to submit to the taking of a digitized photograph. |
| 228 | | | |
| | 944.607(12) | 3rd | Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender. |
| 229 | | | |
| | 944.607(13) | 3rd | Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information. |



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230

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

231

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

232

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

233

234

(h) LEVEL 8

235

| | | |
|---------|--------|-------------|
| Florida | Felony | |
| Statute | Degree | Description |

236

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

237

316.1935(4)(b) 1st Aggravated fleeing or attempted eluding with serious bodily



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injury or death.

238

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

239

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

240

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

241

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

242

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

243

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



Amendment No. 1

| | | | |
|-----|---------------|-----|---|
| 244 | | | than \$100,000 by financial institutions. |
| 245 | 777.03(2)(a) | 1st | Accessory after the fact, capital felony. |
| 246 | 782.04(4) | 2nd | Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb. |
| 247 | 782.051(2) | 1st | Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3). |
| 248 | 782.071(1)(b) | 1st | Committing vehicular homicide and failing to render aid or give information. |
| | 782.072(2) | 1st | Committing vessel homicide and |



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failing to render aid or give
information.

249

787.06(3)(a)1. 1st Human trafficking for labor and
services of a child.

250

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

251

787.06(3)(c)2. 1st Human trafficking using
coercion for labor and services
of an unauthorized alien adult.

252

787.06(3)(e)1. 1st Human trafficking for labor and
services by the transfer or
transport of a child from
outside Florida to within the
state.

253

787.06(3)(f)2. 1st Human trafficking using
coercion for commercial sexual
activity by the transfer or
transport of any adult from
outside Florida to within the
state.



Amendment No. 1

| | | | |
|-----|---------------|-----|---|
| 254 | 790.161(3) | 1st | Discharging a destructive device which results in bodily harm or property damage. |
| 255 | 794.011(5)(a) | 1st | Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury. |
| 256 | 794.011(5)(b) | 2nd | Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury. |
| 257 | 794.011(5)(c) | 2nd | Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury. |
| 258 | 794.011(5)(d) | 1st | Sexual battery; victim 12 years of age or older; offender does |



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not use physical force likely to cause serious injury; prior conviction for specified sex offense.

259

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

260

800.04(4)(b) 2nd Lewd or lascivious battery.

261

800.04(4)(c) 1st Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.

262

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

263

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

264

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



Amendment No. 1

| | | | |
|-----|-----------------|-----|---|
| 265 | 810.02(2)(c) | 1st | Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage. |
| 266 | 812.014(2)(a)2. | 1st | Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree. |
| 267 | 812.13(2)(b) | 1st | Robbery with a weapon. |
| 268 | 812.135(2)(c) | 1st | Home-invasion robbery, no firearm, deadly weapon, or other weapon. |
| 269 | 817.535(2)(b) | 2nd | Filing false lien or other unauthorized document; second or subsequent offense. |
| 270 | 817.535(3)(a) | 2nd | Filing false lien or other unauthorized document; property owner is a public officer or employee. |
| 271 | 817.535(4)(a)1. | 2nd | Filing false lien or other |



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unauthorized document;
defendant is incarcerated or
under supervision.

272

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

273

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

274

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

275

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

276

825.103(3)(a) 1st Exploiting an elderly person or
disabled adult and property is
valued at \$50,000 or more.

277



Amendment No. 1

| | | | |
|-----|---------------|-----|--|
| 278 | 837.02(2) | 2nd | Perjury in official proceedings relating to prosecution of a capital felony. |
| 279 | 837.021(2) | 2nd | Making contradictory statements in official proceedings relating to prosecution of a capital felony. |
| 280 | 860.121(2)(c) | 1st | Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm. |
| 281 | 860.16 | 1st | Aircraft piracy. |
| 282 | 893.13(1)(b) | 1st | Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b). |
| 283 | 893.13(2)(b) | 1st | Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b). |
| | 893.13(6)(c) | 1st | Possess in excess of 10 grams |



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of any substance specified in
s. 893.03(1)(a) or (b).

284

893.135(1)(a)2. 1st Trafficking in cannabis, more
than 2,000 lbs., less than
10,000 lbs.

285

893.135 1st Trafficking in cocaine, more
(1)(b)1.b. than 200 grams, less than 400
grams.

286

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

287

893.135 1st Trafficking in hydrocodone, 50
(1)(c)2.c. grams or more, less than 200
grams.

288

893.135 1st Trafficking in oxycodone, 25
(1)(c)3.c. grams or more, less than 100
grams.

289

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



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| | | | |
|-----|-----------------------|-----|--|
| 290 | 893.135 (1)(e)1.b. | 1st | Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms. |
| 291 | 893.135 (1)(f)1.b. | 1st | Trafficking in amphetamine, more than 28 grams, less than 200 grams. |
| 292 | 893.135 (1)(g)1.b. | 1st | Trafficking in flunitrazepam, 14 grams or more, less than 28 grams. |
| 293 | 893.135 (1)(h)1.b. | 1st | Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms. |
| 294 | 893.135 (1)(j)1.b. | 1st | Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms. |
| 295 | 893.135 (1)(k)2.b. | 1st | Trafficking in Phenethylamines, 200 grams or more, less than 400 grams. |
| 296 | | | |

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| | | | |
|-----|-------------------------------------|------------|--|
| 297 | <u>893.135</u> <u>(1)(1)1.b.</u> | <u>1st</u> | <u>Trafficking in LSD, 5 grams or more, less than 7 grams.</u> |
| 298 | <u>893.135</u> <u>(1)(m)1.c.</u> | <u>1st</u> | <u>Trafficking in synthetic drugs, 1,000 grams or more, less than 30 kilograms.</u> |
| 299 | 893.1351(3) | 1st | Possession of a place used to manufacture controlled substance when minor is present or resides there. |
| 300 | 895.03(1) | 1st | Use or invest proceeds derived from pattern of racketeering activity. |
| 301 | 895.03(2) | 1st | Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property. |
| 302 | 895.03(3) | 1st | Conduct or participate in any enterprise through pattern of racketeering activity. |
| | 896.101(5)(b) | 2nd | Money laundering, financial |

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transactions totaling or exceeding \$20,000, but less than \$100,000.

303

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

304

305

(i) LEVEL 9

306

| | | |
|--------------------|------------------|-------------|
| Florida Statute | Felony Degree | Description |
|--------------------|------------------|-------------|

307

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

308

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

309

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

310

| | | |
|--------------|-----|-----------------------------|
| 499.0051 (9) | 1st | Knowing sale or purchase of |
|--------------|-----|-----------------------------|



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| | | | |
|-----|-----------------|---------|---|
| | | | contraband prescription drugs resulting in great bodily harm. |
| 311 | | | |
| | 560.123(8)(b)3. | 1st | Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter. |
| 312 | | | |
| | 560.125(5)(c) | 1st | Money transmitter business by unauthorized person, currency, or payment instruments totaling or exceeding \$100,000. |
| 313 | | | |
| | 655.50(10)(b)3. | 1st | Failure to report financial transactions totaling or exceeding \$100,000 by financial institution. |
| 314 | | | |
| | 775.0844 | 1st | Aggravated white collar crime. |
| 315 | | | |
| | 782.04(1) | 1st | Attempt, conspire, or solicit to commit premeditated murder. |
| 316 | | | |
| | 782.04(3) | 1st,PBL | Accomplice to murder in connection with arson, sexual battery, robbery, burglary, |

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317 aggravated fleeing or eluding
with serious bodily injury or
death, and other specified
felonies.

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

318 782.07(2) 1st Aggravated manslaughter of an
elderly person or disabled
adult.

319 787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or
reward or as a shield or
hostage.

320 787.01(1)(a)2. 1st,PBL Kidnapping with intent to
commit or facilitate commission
of any felony.

321 787.01(1)(a)4. 1st,PBL Kidnapping with intent to
interfere with performance of
any governmental or political
function.



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322

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

323

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

324

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

325

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

326

790.161 1st Attempted capital destructive device offense.



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327
790.166(2) 1st,PBL Possessing, selling, using, or
attempting to use a weapon of
mass destruction.

328
794.011(2) 1st Attempted sexual battery;
victim less than 12 years of
age.

329
794.011(2) Life Sexual battery; offender
younger than 18 years and
commits sexual battery on a
person less than 12 years.

330
794.011(4)(a) 1st,PBL Sexual battery, certain
circumstances; victim 12 years
of age or older but younger
than 18 years; offender 18
years or older.

331
794.011(4)(b) 1st Sexual battery, certain
circumstances; victim and
offender 18 years of age or
older.

332
794.011(4)(c) 1st Sexual battery, certain



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333 circumstances; victim 12 years
of age or older; offender
younger than 18 years.

794.011(4)(d) 1st,PBL Sexual battery, certain
circumstances; victim 12 years
of age or older; prior
conviction for specified sex
offenses.

334 794.011(8)(b) 1st,PBL Sexual battery; engage in
sexual conduct with minor 12 to
18 years by person in familial
or custodial authority.

335 794.08(2) 1st Female genital mutilation;
victim younger than 18 years of
age.

336 800.04(5)(b) Life Lewd or lascivious molestation;
victim less than 12 years;
offender 18 years or older.

337 812.13(2)(a) 1st,PBL Robbery with firearm or other
deadly weapon.

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| | | | |
|-----|-------------------|----------|--|
| 339 | 812.133(2) (a) | 1st, PBL | Carjacking; firearm or other deadly weapon. |
| 340 | 812.135(2) (b) | 1st | Home-invasion robbery with weapon. |
| 341 | 817.535(3) (b) | 1st | Filing false lien or other unauthorized document; second or subsequent offense; property owner is a public officer or employee. |
| 342 | 817.535(4) (a) 2. | 1st | Filing false claim or other unauthorized document; defendant is incarcerated or under supervision. |
| 343 | 817.535(5) (b) | 1st | Filing false lien or other unauthorized document; second or subsequent offense; owner of the property incurs financial loss as a result of the false instrument. |
| | 817.568(7) | 2nd, PBL | Fraudulent use of personal identification information of |

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an individual under the age of
18 by his or her parent, legal
guardian, or person exercising
custodial authority.

344

827.03(2)(a) 1st Aggravated child abuse.

345

847.0145(1) 1st Selling, or otherwise
transferring custody or
control, of a minor.

346

847.0145(2) 1st Purchasing, or otherwise
obtaining custody or control,
of a minor.

347

859.01 1st Poisoning or introducing
bacteria, radioactive
materials, viruses, or chemical
compounds into food, drink,
medicine, or water with intent
to kill or injure another
person.

348

893.135 1st Attempted capital trafficking
offense.

349



Amendment No. 1

| | | | |
|-----|-----------------------|-----|---|
| 350 | 893.135(1)(a)3. | 1st | Trafficking in cannabis, more than 10,000 lbs. |
| | 893.135 (1)(b)1.c. | 1st | Trafficking in cocaine, more than 400 grams, less than 150 kilograms. |
| 351 | | | |
| | 893.135 (1)(c)1.c. | 1st | Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms. |
| 352 | | | |
| | 893.135 (1)(c)2.d. | 1st | Trafficking in hydrocodone, 200 grams or more, less than 30 kilograms. |
| 353 | | | |
| | 893.135 (1)(c)3.d. | 1st | Trafficking in oxycodone, 100 grams or more, less than 30 kilograms. |
| 354 | | | |
| | 893.135 (1)(d)1.c. | 1st | Trafficking in phencyclidine, more than 400 grams. |
| 355 | | | |
| | 893.135 (1)(e)1.c. | 1st | Trafficking in methaqualone, more than 25 kilograms. |
| 356 | | | |
| | 893.135 | 1st | Trafficking in amphetamine, |

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Amendment No. 1

357 (1) (f) 1.c. more than 200 grams.

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

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

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

893.135 1st Trafficking in LSD, 7 grams or
361 (1) (l) 1.c. more.

893.135 1st Trafficking in synthetic drugs,
362 (1) (m) 1.d. 30 kilograms or more.

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

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



Amendment No. 1

exceeding \$100,000.

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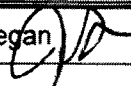

Section 4. This act shall take effect October 1, 2015.

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

Remove everything before the enacting clause and insert:
An act relating to controlled substances; amending s. 893.13,
F.S.; providing a minimum mandatory term of imprisonment for
specified violations committed in a dwelling; amending s.
893.135, F.S.; creating the offense of trafficking in synthetic
drugs; providing specified offenses involving 250 grams or more
of specified controlled substances; providing specified minimum
terms of imprisonment and fines based on the quantity involved
in the offense; amending s. 921.0022, F.S.; adding specified
trafficking provisions established in s. 893.135, F.S., to the
offense severity ranking chart; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 967 Trespass on Airport Property
SPONSOR(S): Cortes
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1174

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

SUMMARY ANALYSIS

Florida law currently prohibits a variety of acts relating to trespassing in or on the property of others. Generally, trespass offenses are misdemeanors. However, the penalties for trespass offenses are often increased when the offense involves specified types of property. For example, it is a third degree felony to trespass on designated construction sites, commercial horticulture properties, and agricultural chemicals manufacturing facilities.

Federal law currently prohibits any person from knowingly and willfully entering any aircraft or airport area in violation of specified security requirements. Currently, Florida law does not specifically prohibit trespassing in any portion of an airport. Therefore, trespassing on airport property is a first degree misdemeanor.

The bill amends s. 810.09, F.S., to increase the criminal penalties from a first degree misdemeanor to a third degree felony where an offender trespasses on the operational area of an airport with the intent to:

- Injure another person;
- Damage property; or
- Impede the operation or use of an aircraft, runway, taxiway, ramp or apron area.

The bill defines "operational area of an airport" as any portion of an airport to which access by the public is prohibited by fences or appropriate signs and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenances areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

The Criminal Justice Impact Conference (CJIC) met on March 11, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer beds). The bill may also have a negative jail bed impact (i.e., it may decrease the need for jail beds).

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Trespass

Florida law currently prohibits a variety of acts relating to trespassing in or on the property of others. For example:

- Section 810.08, F.S., makes it a second degree misdemeanor¹ to willfully enter or remain in any structure² or conveyance,³ without being authorized, licensed, or invited, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.⁴
- Section 810.09, F.S., makes it a first degree misdemeanor⁵ to willfully enter upon or remain in any property other than a structure or conveyance, without being authorized, licensed, or invited:
 - Where notice against entering or remaining is given either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.; or
 - If the property is the unenclosed curtilage of a dwelling⁶ and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Generally, trespass offenses are misdemeanors. However, the penalties relating to trespass offenses are often increased when the offense involves specified types of property. For example, it is a third degree felony⁷ to trespass on designated construction sites, commercial horticulture properties, and agricultural chemicals manufacturing facilities.⁸ These properties must have posted warnings that contain specific language identifying the property as a protected type.⁹

Airport Security

Air travel security first gained national attention in the 1960s because of a rash of airplane hijackings.¹⁰ In response to this new threat, Congress made aircraft piracy and carrying a "concealed deadly or dangerous weapon" on an aircraft without authorization a federal crime.¹¹ This law did little to slow the rate of hijacking attempts, and in 1970, the first federal airport screening and security program was put in place at airports nationwide to fight increasing security hazards.¹² Airport security measures have been added over the past fifteen years as new threats arise.¹³

In recent years, there have been a number of reports of individuals trespassing into security screening areas, taxiways, and other restricted areas at airports.¹⁴ Small breaches of airport security can cause

¹ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

² Section 810.011(1), F.S., defines "structure" as a building of any kind.

³ Section 810.011(3), F.S., defines "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.

⁴ This section increases the penalties to a first degree misdemeanor or a third degree felony in specified circumstances.

⁵ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁶ Section 810.011(2), F.S., defines "dwelling" as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.

⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁸ ss. 810.09(2)(d)(1), (e), and (i), F.S.

⁹ s. 810.09(2), F.S.

¹⁰ Daniel S. Harawa, *The Post-TSA Airport: A Constitution Free Zone?*, 41 PEPP. L. REV. 1, 4 (2013).

¹¹ Act of Jan. 3, 1961, Pub. L. No. 87-197, 75 Stat. 466-68.

¹² Statement Announcing a Program to Deal with Airport Hijacking, 1 PUB. PAPERS 742 (Sept. 11, 1970), <http://www.presidency.ucsb.edu/ws/index.php?pid=2659> (last visited March 10, 2015); see also Harawa, *supra* note 9, at 4.

¹³ See Exec. Order No. 13,228, 66 Fed. Reg. 51,812 (Oct. 10, 2001).

¹⁴ See Peter D'Oench, *Police: Woman Arrested for Scaling Miami Airport Fence*, CSB MIAMI (March 2, 2015),

<http://miami.cbslocal.com/2015/03/02/police-woman-arrested-for-scaling-miami-airport-fence/> (last visited March 10, 2015); Ray

major delays and security risks. One incident at Newark Liberty International Airport involved a young man who slipped under a security rope into a secured passenger area to give his girlfriend a goodbye kiss.¹⁵ This brief security breach caused a six-hour terminal shutdown, stranded thousands of passengers, and delayed flights continuing into the next day.

Federal law currently prohibits any person from knowingly and willfully entering any aircraft or airport area in violation of specified security requirements.¹⁶ An offender who acts with the intent to evade security procedures or with the intent to commit a felony in the aircraft or airport area may face up to twenty years in federal prison.¹⁷

Currently, Florida law does not specifically prohibit trespassing in any portion of an airport. Therefore, trespassing on airport property is a first degree misdemeanor.¹⁸

Effect of the Bill

The bill amends s. 810.09, F.S., to make it a third degree felony for a person to trespass on the operational area of an airport with the intent to:

- Injure another person;
- Damage property; or
- Impede the operation or use of an aircraft, runway, taxiway, ramp or apron area.

The bill defines "operational area of an airport" as any portion of an airport to which access by the public is prohibited by fences or appropriate signs and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenances areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

B. SECTION DIRECTORY:

Section 1. Amends s. 810.09, F.S., relating to trespass on property other than structure or conveyance.

Section 2. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

Sanchez, *Man Walks onto Newark Airport Runways; Authorities Reviewing Security Video*, FOX 13 (Dec. 26, 2013), <http://fox13now.com/2013/12/26/new-jersey-airports-multimillion-dollar-detection-system-fails/> (last visited March 10, 2015); Sarah Wheaton, *Man is Held in Security Breach at Newark*, THE NEW YORK TIMES (Jan. 8, 2010), http://www.nytimes.com/2010/01/09/nyregion/09newark.html?_r=0 (last visited March 10, 2015).

¹⁵ Sarah Wheaton, *Man is Held in Security Breach at Newark*, THE NEW YORK TIMES (Jan. 8, 2010), http://www.nytimes.com/2010/01/09/nyregion/09newark.html?_r=0 (last visited March 10, 2015); Al Baker & Liz Robbins, *A 'Romantic' Now in Trouble over an Airport Kiss*, THE NEW YORK TIMES (Jan. 9, 2010), <http://www.nytimes.com/2010/01/10/nyregion/10newark.html> (last visited March 9, 2015).

¹⁶ 49 U.S.C. § 46314 (2015).

¹⁷ 49 U.S.C. § 46314 (2015).

¹⁸ While Florida law does not specifically prohibit trespassing in any portion of an airport, s. 901.15, F.S., allows a law enforcement officer to arrest a person for misdemeanor trespass without a warrant when there is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas.

2. Expenditures:

The Criminal Justice Impact Conference met on March 11, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department of Corrections (i.e., an increase of 10 or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

To the extent persons who trespass on the operational area of an airport are charged with a felony rather than a misdemeanor, the bill may have a negative jail bed impact (i.e., it will decrease the need for jail beds).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill defines the "operational area of an airport" to mean any portion of an airport that is closed to the public by "fences or appropriate signs." The bill does not specify the requirements for fencing or signs which identify the operational area to the public. As noted above, other types of property protected under s. 810.09, F.S., with enhanced penalties are required to post signs containing specific language identifying the property as a protected type. A lack of proper signs may create confusion for members of the public in determining where the operational area of the airport is located.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to trespass on airport property;
3 amending s. 810.09, F.S.; providing enhanced criminal
4 penalties for a trespass upon the operational area of
5 an airport with specified intent; providing a
6 definition; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Paragraph (j) is added to subsection (2) of
11 section 810.09, Florida Statutes, to read:

12 810.09 Trespass on property other than structure or
13 conveyance.—

14 (1)(a) A person who, without being authorized, licensed,
15 or invited, willfully enters upon or remains in any property
16 other than a structure or conveyance:

17 1. As to which notice against entering or remaining is
18 given, either by actual communication to the offender or by
19 posting, fencing, or cultivation as described in s. 810.011; or

20 2. If the property is the unenclosed curtilage of a
21 dwelling and the offender enters or remains with the intent to
22 commit an offense thereon, other than the offense of trespass,

23
24 commits the offense of trespass on property other than a
25 structure or conveyance.

26 (2)

27 (j)1. The offender commits a felony of the third degree,
 28 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 29 if the offender trespasses on the operational area of an airport
 30 with the intent to injure another person, damage property, or
 31 impede the operation or use of an aircraft, runway, taxiway,
 32 ramp, or apron area.

33 2. For purposes of this paragraph, the term "operational
 34 area of an airport" means any portion of an airport to which
 35 access by the public is prohibited by fences or appropriate
 36 signs and includes runways, taxiways, ramps, apron areas,
 37 aircraft parking and storage areas, fuel storage areas,
 38 maintenance areas, and any other area of an airport used or
 39 intended to be used for landing, takeoff, or surface maneuvering
 40 of aircraft.

41 Section 2. This act shall take effect October 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Cortes, B. offered the following:

4

5 **Amendment**

6 Remove line 29 and insert:

7 if the property trespassed upon is the operational area of an
 8 airport that is legally posted and identified in substantially
 9 the following manner: "THIS AREA IS A DESIGNATED OPERATIONAL
 10 AREA OF AN AIRPORT, AND ANYONE WHO TRESPASSES ON THIS PROPERTY
 11 COMMITTS A FELONY," and the offender trespasses

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1015 Public Records/Law Enforcement Personnel, State Attorneys, & Statewide Prosecutors
SPONSOR(S): Latvala
TIED BILLS: None IDEN./SIM. BILLS: SB 1324

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

SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes guarantee every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Currently, s. 119.071(4)(d)2., F.S., provides a public records exemption for certain identification and location information of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors ("state attorneys"), and active or former sworn or civilian law enforcement personnel ("law enforcement personnel") and their spouses and children. Notably, residential addresses other than home addresses, and certain personal and financial information associated with state attorneys and law enforcement personnel are not currently exempt from public records laws.

The bill creates a public records exemption for residential addresses other than home addresses of state attorneys and law enforcement personnel, including former residences and residences in which such personnel frequently reside. The bill also creates a public records exemption for the following personal and financial information of state attorneys and law enforcement personnel:

- Email addresses;
- Driver license and license plate numbers;
- Banking and financial information; and
- Information identifying former places of employment.

The bill repeals the exemption on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Florida Constitution

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

The Legislature, however, may exempt records from the requirements of article I, section 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

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

Florida Statutes

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

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

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

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Public Record Exemption for Certain Identification and Location Information

Section 119.071(4)(d)2.a. and d., F.S., provides a public records exemption for certain identification and location information of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors ("state attorneys"), and active or former sworn or civilian law enforcement personnel ("law enforcement personnel")⁷ and their spouses and children.

¹ FLA. CONST. art. I, s. 24(a).

² FLA. CONST. art. I, s. 24(c).

³ s. 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ s. 119.15(3), F.S.

⁷ Section 119.071(4)(d)2.a., F.S., specifies that active or former sworn or civilian law enforcement personnel includes correctional and correctional probation officers; personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; personnel of the Department of Health whose duties are to support the

Currently, residential addresses other than home addresses, and certain personal and financial information associated with state attorneys and law enforcement personnel are not currently exempt from public records laws.

Effect of the Bill

The bill amends s. 119.071(4)(d)2.a. and d., F.S., to provide that the residential addresses other than home addresses of state attorneys and law enforcement personnel, including former residences and residences in which such personnel frequently reside, are exempt⁸ from public records laws. The bill also exempts the following personal and financial information of state attorneys and law enforcement personnel from public records laws:

- Email addresses;
- Driver license and license plate numbers;
- Banking and financial information; and
- Information identifying former places of employment.

The bill repeals the exemption on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁹

B. SECTION DIRECTORY:

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

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

investigation of child abuse or neglect; and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement.

⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See 85-62 Fla. Op. Att'y Gen. (August 1, 1985).

⁹ FLA. CONST. art. I, s. 24(c).

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DATE: 3/9/2015

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

Requirements for Legislative Review

Section 119.15(3), F.S., requires that any public records exemption must be repealed five years after the enactment or substantial amendment of the exemption unless reviewed and saved from repeal by the Legislature. When reviewing an exemption, s. 119.15(6)(a), F.S., requires the Legislature to consider the following matters:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for certain identifying
 5 information related to active or former sworn or
 6 civilian law enforcement personnel and other specified
 7 agency personnel; providing an exemption from public
 8 records requirements for certain information related
 9 to current and former state attorneys, assistant state
 10 attorneys, statewide prosecutors, and assistant
 11 statewide prosecutors and their parents, siblings, or
 12 cohabitants; providing for future legislative review
 13 and repeal of the exemptions; providing a statement of
 14 public necessity; providing an effective date.

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

17
 18 Section 1. Paragraph (d) of subsection (4) of section
 19 119.071, Florida Statutes, is amended to read:

20 119.071 General exemptions from inspection or copying of
 21 public records.—

22 (4) AGENCY PERSONNEL INFORMATION.—

23 (d)1. For purposes of this paragraph, the term "telephone
 24 numbers" includes home telephone numbers, personal cellular
 25 telephone numbers, personal pager telephone numbers, and
 26 telephone numbers associated with personal communications

27 devices.

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

44 (II) The names of the spouses and children of active or
45 former sworn or civilian law enforcement personnel and the other
46 specified agency personnel identified in sub-sub-subparagraph
47 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
48 State Constitution.

49 ~~(III)~~ This sub-sub-subparagraph ~~(II)~~ is subject to the
50 Open Government Sunset Review Act in accordance with s. 119.157
51 and shall stand repealed on October 2, 2018, unless reviewed and
52 saved from repeal through reenactment by the Legislature.

53 (III) The residential addresses other than home addresses,
54 including former residences, of active or former sworn or
55 civilian law enforcement personnel and the other specified
56 agency personnel identified in sub-sub-subparagraph (I),
57 including residences in which such personnel frequently reside,
58 and the e-mail addresses, driver license numbers, license plate
59 numbers, banking and financial information, and information
60 identifying former places of employment of such personnel are
61 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
62 Constitution. This sub-sub-subparagraph is subject to the Open
63 Government Sunset Review Act in accordance with s. 119.15 and
64 shall stand repealed on October 2, 2020, unless reviewed and
65 saved from repeal through reenactment by the Legislature.

66 b. The home addresses, telephone numbers, dates of birth,
67 and photographs of firefighters certified in compliance with s.
68 633.408; the home addresses, telephone numbers, photographs,
69 dates of birth, and places of employment of the spouses and
70 children of such firefighters; and the names and locations of
71 schools and day care facilities attended by the children of such
72 firefighters are exempt from s. 119.07(1).

73 c. The home addresses, dates of birth, and telephone
74 numbers of current or former justices of the Supreme Court,
75 district court of appeal judges, circuit court judges, and
76 county court judges; the home addresses, telephone numbers,
77 dates of birth, and places of employment of the spouses and
78 children of current or former justices and judges; and the names

79 and locations of schools and day care facilities attended by the
 80 children of current or former justices and judges are exempt
 81 from s. 119.07(1).

82 d.(I) The home addresses, telephone numbers, social
 83 security numbers, dates of birth, and photographs of current or
 84 former state attorneys, assistant state attorneys, statewide
 85 prosecutors, or assistant statewide prosecutors; the home
 86 addresses, telephone numbers, social security numbers,
 87 photographs, dates of birth, and places of employment of the
 88 spouses and children of current or former state attorneys,
 89 assistant state attorneys, statewide prosecutors, or assistant
 90 statewide prosecutors; and the names and locations of schools
 91 and day care facilities attended by the children of current or
 92 former state attorneys, assistant state attorneys, statewide
 93 prosecutors, or assistant statewide prosecutors are exempt from
 94 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

95 (II) The names of the spouses and children of current or
 96 former state attorneys, assistant state attorneys, statewide
 97 prosecutors, or assistant statewide prosecutors are exempt from
 98 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

99 (III) Sub-sub-subparagraph (II) is subject to the Open
 100 Government Sunset Review Act in accordance with s. 119.15, and
 101 shall stand repealed on October 2, 2018, unless reviewed and
 102 saved from repeal through reenactment by the Legislature.

103 (IV) The residential addresses other than home addresses,
 104 including former residences, of current or former state

105 attorneys, assistant state attorneys, statewide prosecutors, or
 106 assistant statewide prosecutors, including residences in which
 107 such current or former state attorneys, assistant state
 108 attorneys, statewide prosecutors, or assistant statewide
 109 prosecutors frequently reside, and the e-mail addresses, driver
 110 license numbers, license plate numbers, banking and financial
 111 information, and information identifying former places of
 112 employment of such current or former state attorneys, assistant
 113 state attorneys, statewide prosecutors, or assistant statewide
 114 prosecutors; and the home addresses, telephone numbers, social
 115 security numbers, photographs, dates of birth, and places of
 116 employment of the parents, siblings, and cohabitants of current
 117 or former state attorneys, assistant state attorneys, statewide
 118 prosecutors, or assistant statewide prosecutors, are exempt from
 119 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
 120 This sub-sub-subparagraph is subject to the Open Government
 121 Sunset Review Act in accordance with s. 119.15 and shall stand
 122 repealed on October 2, 2020, unless reviewed and saved from
 123 repeal through reenactment by the Legislature.

124 e. The home addresses, dates of birth, and telephone
 125 numbers of general magistrates, special magistrates, judges of
 126 compensation claims, administrative law judges of the Division
 127 of Administrative Hearings, and child support enforcement
 128 hearing officers; the home addresses, telephone numbers, dates
 129 of birth, and places of employment of the spouses and children
 130 of general magistrates, special magistrates, judges of

131 compensation claims, administrative law judges of the Division
 132 of Administrative Hearings, and child support enforcement
 133 hearing officers; and the names and locations of schools and day
 134 care facilities attended by the children of general magistrates,
 135 special magistrates, judges of compensation claims,
 136 administrative law judges of the Division of Administrative
 137 Hearings, and child support enforcement hearing officers are
 138 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 139 Constitution if the general magistrate, special magistrate,
 140 judge of compensation claims, administrative law judge of the
 141 Division of Administrative Hearings, or child support hearing
 142 officer provides a written statement that the general
 143 magistrate, special magistrate, judge of compensation claims,
 144 administrative law judge of the Division of Administrative
 145 Hearings, or child support hearing officer has made reasonable
 146 efforts to protect such information from being accessible
 147 through other means available to the public.

148 f. The home addresses, telephone numbers, dates of birth,
 149 and photographs of current or former human resource, labor
 150 relations, or employee relations directors, assistant directors,
 151 managers, or assistant managers of any local government agency
 152 or water management district whose duties include hiring and
 153 firing employees, labor contract negotiation, administration, or
 154 other personnel-related duties; the names, home addresses,
 155 telephone numbers, dates of birth, and places of employment of
 156 the spouses and children of such personnel; and the names and

157 | locations of schools and day care facilities attended by the
 158 | children of such personnel are exempt from s. 119.07(1) and s.
 159 | 24(a), Art. I of the State Constitution.

160 | g. The home addresses, telephone numbers, dates of birth,
 161 | and photographs of current or former code enforcement officers;
 162 | the names, home addresses, telephone numbers, dates of birth,
 163 | and places of employment of the spouses and children of such
 164 | personnel; and the names and locations of schools and day care
 165 | facilities attended by the children of such personnel are exempt
 166 | from s. 119.07(1) and s. 24(a), Art. I of the State
 167 | Constitution.

168 | h. The home addresses, telephone numbers, places of
 169 | employment, dates of birth, and photographs of current or former
 170 | guardians ad litem, as defined in s. 39.820; the names, home
 171 | addresses, telephone numbers, dates of birth, and places of
 172 | employment of the spouses and children of such persons; and the
 173 | names and locations of schools and day care facilities attended
 174 | by the children of such persons are exempt from s. 119.07(1) and
 175 | s. 24(a), Art. I of the State Constitution, if the guardian ad
 176 | litem provides a written statement that the guardian ad litem
 177 | has made reasonable efforts to protect such information from
 178 | being accessible through other means available to the public.

179 | i. The home addresses, telephone numbers, dates of birth,
 180 | and photographs of current or former juvenile probation
 181 | officers, juvenile probation supervisors, detention
 182 | superintendents, assistant detention superintendents, juvenile

183 justice detention officers I and II, juvenile justice detention
 184 officer supervisors, juvenile justice residential officers,
 185 juvenile justice residential officer supervisors I and II,
 186 juvenile justice counselors, juvenile justice counselor
 187 supervisors, human services counselor administrators, senior
 188 human services counselor administrators, rehabilitation
 189 therapists, and social services counselors of the Department of
 190 Juvenile Justice; the names, home addresses, telephone numbers,
 191 dates of birth, and places of employment of spouses and children
 192 of such personnel; and the names and locations of schools and
 193 day care facilities attended by the children of such personnel
 194 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 195 Constitution.

196 j.(I) The home addresses, telephone numbers, dates of
 197 birth, and photographs of current or former public defenders,
 198 assistant public defenders, criminal conflict and civil regional
 199 counsel, and assistant criminal conflict and civil regional
 200 counsel; the home addresses, telephone numbers, dates of birth,
 201 and places of employment of the spouses and children of such
 202 defenders or counsel; and the names and locations of schools and
 203 day care facilities attended by the children of such defenders
 204 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 205 the State Constitution.

206 (II) The names of the spouses and children of the
 207 specified agency personnel identified in sub-sub-subparagraph
 208 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the

209 State Constitution. This sub-sub-subparagraph is subject to the
 210 Open Government Sunset Review Act in accordance with s. 119.15
 211 and shall stand repealed on October 2, 2019, unless reviewed and
 212 saved from repeal through reenactment by the Legislature.

213 k. The home addresses, telephone numbers, and photographs
 214 of current or former investigators or inspectors of the
 215 Department of Business and Professional Regulation; the names,
 216 home addresses, telephone numbers, and places of employment of
 217 the spouses and children of such current or former investigators
 218 and inspectors; and the names and locations of schools and day
 219 care facilities attended by the children of such current or
 220 former investigators and inspectors are exempt from s. 119.07(1)
 221 and s. 24(a), Art. I of the State Constitution if the
 222 investigator or inspector has made reasonable efforts to protect
 223 such information from being accessible through other means
 224 available to the public. This sub-subparagraph is subject to the
 225 Open Government Sunset Review Act in accordance with s. 119.15
 226 and shall stand repealed on October 2, 2017, unless reviewed and
 227 saved from repeal through reenactment by the Legislature.

228 l. The home addresses and telephone numbers of county tax
 229 collectors; the names, home addresses, telephone numbers, and
 230 places of employment of the spouses and children of such tax
 231 collectors; and the names and locations of schools and day care
 232 facilities attended by the children of such tax collectors are
 233 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 234 Constitution if the county tax collector has made reasonable

235 | efforts to protect such information from being accessible
 236 | through other means available to the public. This sub-
 237 | subparagraph is subject to the Open Government Sunset Review Act
 238 | in accordance with s. 119.15 and shall stand repealed on October
 239 | 2, 2017, unless reviewed and saved from repeal through
 240 | reenactment by the Legislature.

241 | m. The home addresses, telephone numbers, dates of birth,
 242 | and photographs of current or former personnel of the Department
 243 | of Health whose duties include, or result in, the determination
 244 | or adjudication of eligibility for social security disability
 245 | benefits, the investigation or prosecution of complaints filed
 246 | against health care practitioners, or the inspection of health
 247 | care practitioners or health care facilities licensed by the
 248 | Department of Health; the names, home addresses, telephone
 249 | numbers, dates of birth, and places of employment of the spouses
 250 | and children of such personnel; and the names and locations of
 251 | schools and day care facilities attended by the children of such
 252 | personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 253 | the State Constitution if the personnel have made reasonable
 254 | efforts to protect such information from being accessible
 255 | through other means available to the public. This sub-
 256 | subparagraph is subject to the Open Government Sunset Review Act
 257 | in accordance with s. 119.15 and shall stand repealed on October
 258 | 2, 2019, unless reviewed and saved from repeal through
 259 | reenactment by the Legislature.

260 | 3. An agency that is the custodian of the information

261 specified in subparagraph 2. and that is not the employer of the
 262 officer, employee, justice, judge, or other person specified in
 263 subparagraph 2. shall maintain the exempt status of that
 264 information only if the officer, employee, justice, judge, other
 265 person, or employing agency of the designated employee submits a
 266 written request for maintenance of the exemption to the
 267 custodial agency.

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

271 5. Except as otherwise expressly provided in this
 272 paragraph, this paragraph is subject to the Open Government
 273 Sunset Review Act in accordance with s. 119.15, and shall stand
 274 repealed on October 2, 2017, unless reviewed and saved from
 275 repeal through reenactment by the Legislature.

276 Section 2. (1) The Legislature finds that it is a public
 277 necessity that the residential addresses, e-mail addresses,
 278 driver license numbers, license plate numbers, banking and
 279 financial information, and information identifying former places
 280 of employment of active or former sworn or civilian law
 281 enforcement personnel and other specified agency personnel be
 282 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 283 Article I of the State Constitution. The Legislature finds that
 284 the release of such identifying and location information could
 285 place such personnel in danger of being physically and
 286 emotionally harmed or being stalked by a defendant or other

287 person. The Legislature finds that the harm that may result from
 288 the release of such identifying and location information
 289 outweighs any public benefit that may be derived from the
 290 disclosure of the information.

291 (2) The Legislature finds that it is a public necessity
 292 that the residential addresses, e-mail addresses, driver license
 293 numbers, license plate numbers, banking and financial
 294 information, and information identifying former places of
 295 employment of current or former state attorneys, assistant state
 296 attorneys, statewide prosecutors, and assistant statewide
 297 prosecutors be made exempt from s. 119.07(1), Florida Statutes,
 298 and s. 24(a), Article I of the State Constitution. The
 299 Legislature further finds that it is a public necessity that the
 300 home addresses, telephone numbers, social security numbers,
 301 photographs, dates of birth, and places of employment of the
 302 parents, siblings, and cohabitants of such persons be made
 303 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 304 Article I of the State Constitution. The Legislature finds that
 305 the release of such identifying and location information could
 306 place the person, or a parent, sibling, or cohabitant of the
 307 person, in danger of being physically and emotionally harmed or
 308 being stalked by a defendant or other person. The Legislature
 309 finds that the harm that may result from the release of such
 310 identifying and location information outweighs any public
 311 benefit that may be derived from the disclosure of the
 312 information.

HB 1015

2015

313 | Section 3. This act shall take effect July 1, 2015. |



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

6 Remove lines 59-112 and insert:
 7 numbers, and banking and financial information of such personnel
 8 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 9 Constitution. This sub-sub-subparagraph is subject to the Open
 10 Government Sunset Review Act in accordance with s. 119.15 and
 11 shall stand repealed on October 2, 2020, unless reviewed and
 12 saved from repeal through reenactment by the Legislature.

13 b. The home addresses, telephone numbers, dates of birth,
 14 and photographs of firefighters certified in compliance with s.
 15 633.408; the home addresses, telephone numbers, photographs,
 16 dates of birth, and places of employment of the spouses and
 17 children of such firefighters; and the names and locations of



Amendment No. 1

18 schools and day care facilities attended by the children of such
19 firefighters are exempt from s. 119.07(1).

20 c. The home addresses, dates of birth, and telephone
21 numbers of current or former justices of the Supreme Court,
22 district court of appeal judges, circuit court judges, and
23 county court judges; the home addresses, telephone numbers,
24 dates of birth, and places of employment of the spouses and
25 children of current or former justices and judges; and the names
26 and locations of schools and day care facilities attended by the
27 children of current or former justices and judges are exempt
28 from s. 119.07(1).

29 d.(I) The home addresses, telephone numbers, social
30 security numbers, dates of birth, and photographs of current or
31 former state attorneys, assistant state attorneys, statewide
32 prosecutors, or assistant statewide prosecutors; the home
33 addresses, telephone numbers, social security numbers,
34 photographs, dates of birth, and places of employment of the
35 spouses and children of current or former state attorneys,
36 assistant state attorneys, statewide prosecutors, or assistant
37 statewide prosecutors; and the names and locations of schools
38 and day care facilities attended by the children of current or
39 former state attorneys, assistant state attorneys, statewide
40 prosecutors, or assistant statewide prosecutors are exempt from
41 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

42 (II) The names of the spouses and children of current or
43 former state attorneys, assistant state attorneys, statewide



Amendment No. 1

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

46 (III) Sub-sub-subparagraph (II) is subject to the Open
47 Government Sunset Review Act in accordance with s. 119.15, and
48 shall stand repealed on October 2, 2018, unless reviewed and
49 saved from repeal through reenactment by the Legislature.

50 (IV) The residential addresses other than home addresses,
51 including former residences, of current or former state
52 attorneys, assistant state attorneys, statewide prosecutors, or
53 assistant statewide prosecutors, including residences in which
54 such current or former state attorneys, assistant state
55 attorneys, statewide prosecutors, or assistant statewide
56 prosecutors frequently reside, and the e-mail addresses, driver
57 license numbers, license plate numbers, and banking and
58 financial information of such current or former state attorneys,
59 assistant



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Latvala offered the following:

Amendment (with title amendment)

6 Between lines 212 and 213, insert:

7 (III) The residential addresses other than home addresses,
 8 including former residences, of current or former public
 9 defenders, assistant public defenders, criminal conflict and
 10 civil regional counsel, and assistant criminal conflict and
 11 civil regional counsel, including residences in which such
 12 current or former public defenders, assistant public defenders,
 13 criminal conflict and civil regional counsel, and assistant
 14 criminal conflict and civil regional counsel frequently reside,
 15 and the e-mail addresses, driver license numbers, license plate
 16 numbers, and banking and financial information of such current
 17 or former public defenders, assistant public defenders, criminal



Amendment No. 2

18 conflict and civil regional counsel, and assistant criminal
19 conflict and civil regional counsel; and the home addresses,
20 telephone numbers, social security numbers, photographs, dates
21 of birth, and places of employment of the parents, siblings, and
22 cohabitants of current or former public defenders, assistant
23 public defenders, criminal conflict and civil regional counsel,
24 and assistant criminal conflict and civil regional counsel, are
25 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
26 Constitution. This sub-sub-subparagraph is subject to the Open
27 Government Sunset Review Act in accordance with s. 119.15 and
28 shall stand repealed on October 2, 2020, unless reviewed and
29 saved from repeal through reenactment by the Legislature.

30

31 Between lines 312 and 313, insert:

32 (3) The Legislature finds that it is a public necessity
33 that the residential addresses, e-mail addresses, driver license
34 numbers, license plate numbers, and banking and financial
35 information of current or former public defenders, assistant
36 public defenders, criminal conflict and civil regional counsel,
37 and assistant criminal conflict and civil regional counsel be
38 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
39 Article I of the State Constitution. The Legislature further
40 finds that it is a public necessity that the home addresses,
41 telephone numbers, social security numbers, photographs, dates
42 of birth, and places of employment of the parents, siblings, and
43 cohabitants of such persons be made exempt from s. 119.07(1),



Amendment No. 2

44 Florida Statutes, and s. 24(a), Article I of the State
45 Constitution. The Legislature finds that the release of such
46 identifying and location information could place the person, or
47 a parent, sibling, or cohabitant of the person, in danger of
48 being physically and emotionally harmed or being stalked by a
49 defendant or other person. The Legislature finds that the harm
50 that may result from the release of such identifying and
51 location information outweighs any public benefit that may be
52 derived from the disclosure of the information.

53

54

55

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

56

Remove line 12 and insert:

57

cohabitants; providing an exemption from public records

58

requirements for certain information related to current or

59

former public defenders, assistant public defenders, criminal

60

conflict and civil regional counsel, and assistant criminal

61

conflict and civil regional counsel and their parents, siblings,

62


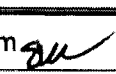
or cohabitants; providing for future legislative review

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1037 Electronic Monitoring Devices

SPONSOR(S): Torres, Jr.

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1286

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

SUMMARY ANALYSIS

Electronic monitoring devices (EMDs) are used to keep track of the location of arrestees, criminal defendants, and people who have been placed on probation, community control, or conditional release (community supervision).

A criminal defendant who tampers with or circumvents an EMD that was ordered as a condition of pretrial release may be detained while awaiting trial for the duration of his or her criminal case. Similarly, an offender who has been sentenced to use an EMD as a condition of community supervision can have his or her community supervision revoked for tampering or interfering with the EMD.

Section 948.11, F.S., makes it a third degree felony for a person to intentionally alter, tamper with, damage or destroy any electronic monitoring equipment pursuant to court or commission order, unless that person is:

- The owner of the equipment or an agent of the owner; and
- Performing ordinary maintenance and repairs.

A close read of s. 948.11, F.S., reveals that it is not a crime under current law to circumvent an EMD unless the circumvention involves altering, tampering, damaging or destroying the EMD. It is also not a crime to solicit another person to remove, destroy, or circumvent an EMD.

The bill makes it a third degree felony for a person to knowingly and without authority, remove, destroy, or circumvent the operation of an EMD that is being used for the purpose of monitoring a person who is:

- Complying with a home arrest program;
- Wearing an EMD as a condition of bond or pretrial release; or
- Wearing an electronic device as a result of a court order for a protective injunction issued for domestic violence; repeat, sexual, or dating violence; or a stalking injunction.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, or circumvent the operation of an electronic monitoring device that is being used for a purpose described above.

The Criminal Justice Impact Conference met on March 11, 2015, and determined that the bill will have a positive insignificant prison bed impact on the Department of Corrections (i.e., an increase of less than 10 prison beds).

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Electronic monitoring devices (EMDs) are used to keep track of the location of arrestees, criminal defendants, and people who have been placed on probation, community control,¹ or conditional release² (community supervision). Florida has used EMDs to keep track of released felons for years, and over 5 million offenders are monitored in some form throughout the United States.³

Judges generally have discretion to require criminal defendants and offenders on community supervision to wear an EMD.⁴ However, judges are required to impose electronic monitoring in certain instances (e.g., judges are required to impose electronic monitoring on offenders placed on community supervision for specified sexual offenses).⁵

A criminal defendant who tampers with or circumvents an EMD that was ordered as a condition of pretrial release may be detained while awaiting trial for the duration of his or her criminal case.⁶ Similarly, an offender who has been sentenced to use an EMD as a condition of community supervision can have his or her community supervision revoked for tampering or interfering with the EMD.⁷

In 2005, the Florida Legislature made it a crime to interfere with an EMD.⁸ Section 948.11, F.S., makes it a third degree felony⁹ for a person to intentionally alter, tamper with, damage or destroy any electronic monitoring equipment pursuant to court or commission¹⁰ order, unless that person is:

- The owner of the equipment or an agent of the owner; and
- Performing ordinary maintenance and repairs.¹¹

A close read of s. 948.11, F.S., reveals that it is not a crime under current law to *circumvent* an EMD unless the circumvention involves altering, tampering, damaging or destroying the EMD. It is also not a crime to *solicit another person* to remove, destroy, or circumvent an EMD.

Effect of the Bill

The bill creates s. 843.23, F.S., making it a third degree felony for a person to knowingly and without authority, remove, destroy, or circumvent the operation of an EMD that is being used for the purpose of monitoring a person who is:

- Complying with a home arrest program;
- Wearing an EMD as a condition of bond or pretrial release; or
- Wearing an electronic device as a result of a court order for a protective injunction issued for domestic violence as defined by s. 741.30, F.S.; repeat violence, sexual violence, or dating violence, as defined by s. 784.046, F.S.; or a stalking injunction as defined by s. 784.048, F.S.

¹ Community control is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. s. 948.001(1), F.S.

² Conditional release requires mandatory postrelease supervision for specified inmates. The conditions of supervision for conditional releasees are established by the Florida Commission on Offender Review. Conditional releasees are supervised by DOC probation officers. s. 947.1405, F.S.

³ United States Department of Justice, *Electronic Monitoring Reduces Recidivism*, NATIONAL INSTITUTE OF JUSTICE (Sept. 2011) <https://www.ncjrs.gov> (last visited March 11, 2015).

⁴ See, e.g., ss. 907.041, 947.1405, 948.101, 948.03, and 948.30, F.S.

⁵ s. 948.30(2)(e), F.S.

⁶ s. 907.041(4)(c)(7), F.S.

⁷ s. 948.06, F.S.; *Lawson v. State*, 969 So. 2d 222 (Fla. 2007); *State v. Meeks*, 789 So. 2d 982 (Fla. 2001).

⁸ Ch. 2005-28, Laws of Florida.

⁹ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

¹⁰ The "commission" is the Florida Commission on Offender Review.

¹¹ s. 948.11(7), F.S.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, or circumvent the operation of an electronic monitoring device that is being used for a purpose described above.

The bill defines ""electronic monitoring device" to include any device that is used to track the location of a person.

B. SECTION DIRECTORY:

Section 1. Creates s. 843.23, F.S., relating to tampering with an electronic monitoring device.

Section 2. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on March 11, 2015, and determined that the bill will have a positive insignificant prison bed impact on the Department of Corrections (i.e., an increase of less than 10 prison beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits removing, destroying, or circumventing specified EMDs. To the extent that removing or destroying an EMD is already prohibited in s. 948.11(7), F.S., this bill will overlap with an existing criminal prohibition.

The bill defines the term "electronic monitoring device," but refers to an "electronic device" at line 27. The reference to "electronic device" should be changed to match the defined term.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to electronic monitoring devices;
 3 creating s. 843.23, F.S.; providing a definition;
 4 prohibiting the removal, destruction, or circumvention
 5 of the operation of an electronic monitoring device
 6 being used by a person for specified purposes;
 7 prohibiting requesting or soliciting a person to
 8 perform such an act; providing criminal penalties;
 9 providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 843.23, Florida Statutes, is created to
 14 read:

15 843.23 Tampering with an electronic monitoring device.—

16 (1) For the purpose of this section, the term "electronic
 17 monitoring device" includes any device that is used to track the
 18 location of a person.

19 (2) It shall be unlawful for a person to knowingly and
 20 without authority:

21 (a) Remove, destroy, or circumvent the operation of an
 22 electronic monitoring device that is being used for the purpose
 23 of monitoring a person who is:

24 1. Complying with a home arrest program;

25 2. Wearing an electronic monitoring device as a condition
 26 of bond or pretrial release; or

27 3. Wearing an electronic device as a result of a court
 28 order for a protective injunction issued for domestic violence
 29 as defined by s. 741.30; repeat violence, sexual violence, or
 30 dating violence, as defined by s. 784.046; or a stalking
 31 injunction as defined by s. 784.048.

32 (b) Request or solicit any other person to remove,
 33 destroy, or circumvent the operation of an electronic monitoring
 34 device being used for a purpose described in paragraph (a).

35 (3) A person who violates this section commits a felony of
 36 the third degree, punishable as provided in s. 775.082, s.
 37 775.083, or s. 775.084.

38 Section 2. This act shall take effect October 1, 2015.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative Torres offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 19-38 and insert:

7 (2) It shall be unlawful for a person to intentionally and
8 without authority:

9 (a) Remove, destroy, alter, tamper with, damage, or
10 circumvent the operation of, an electronic monitoring device
11 that the person is required to wear or use pursuant to any court
12 order or pursuant to an order by the Commission on Offender
13 Review; or

14 (b) Request or solicit any individual to remove, destroy,
15 alter, tamper with, damage, or circumvent the operation of, an
16 electronic monitoring device required to be worn or used



Amendment No. 1

17 pursuant to any court order or pursuant to an order by the
18 Commission on Offender Review.

19 (3) A person who violates this section commits a felony of
20 the third degree, punishable as provided in s. 775.082, s.
21 775.083, or s. 775.084.

22 Section 2. Subsections (1) and (7) of section 948.11,
23 Florida Statutes, are amended to read:

24 948.11 Electronic monitoring devices.-

25 (1) The Department of Corrections may, ~~at its discretion,~~
26 electronically monitor an offender sentenced to community
27 control when the court has imposed electronic monitoring as a
28 condition of community control.

29 ~~(7) A person who intentionally alters, tampers with,~~
30 ~~damages, or destroys any electronic monitoring equipment~~
31 ~~pursuant to court or commission order, unless such person is the~~
32 ~~owner of the equipment, or an agent of the owner, performing~~
33 ~~ordinary maintenance and repairs, commits a felony of the third~~
34 ~~degree, punishable as provided in s. 775.082, s. 775.083, or s.~~
35 ~~775.084.~~

36 Section 3. This act shall take effect October 1, 2015.

37

38 -----

39

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

40

Remove lines 4-8 and insert:

41

prohibiting a person from removing, destroying, altering,

42

tampering with, damaging, or circumventing the operation of, an



COMMITTEE/SUBCOMMITTEE AMENDMENT



Bill No. HB 1037 (2015)

Amendment No. 1

43 | electronic monitoring device being worn or used pursuant to any
44 | court order or an order by the Commission on Offender Review;
45 | prohibiting requesting or soliciting a person to perform such an
46 | act; providing criminal penalties; amending s. 948.11, F.S.;
47 | clarifying that the Department of Corrections may electronically
48 | monitor an offender sentenced to community control when the
49 | court has imposed electronic monitoring as a condition of
50 | community control; deleting language imposing criminal penalties
51 | on persons who intentionally alter, tamper with, damage, or
52 | destroy electronic monitoring equipment;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1069 Defendants in Specialized Courts
SPONSOR(S): Perry
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1170

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

SUMMARY ANALYSIS

A variety of programs currently exist that offer criminal defendants an alternative to prosecution by diverting their cases into preadjudicatory diversion programs. Similarly, postadjudicatory programs exist that are designed to provide supervised community treatment services in lieu of incarceration for criminal defendants who have entered a guilty or nolo contendere plea to a crime.

Florida law also establishes *specialty* preadjudicatory and postadjudicatory programs. These programs, often referred to as problem solving courts (PSCs), focus on sobriety, counseling, and the unique needs of the specialty groups served by the program. PSCs include veterans' courts, drug courts, and mental health courts.

Currently, s. 910.035(5), F.S., allows any person who is eligible for participation in a preadjudicatory drug court program to have the case transferred to a county other than that in which the charge arose if:

- The representative of the drug court program of the county requesting to transfer the case consults with the representative of the drug court program in the county to which transfer is desired; and
- All parties approve the transfer.

If the above requirements are met, the trial court must accept a plea of nolo contendere and enter a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into its drug court.

Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred must dispose of the case. If the defendant does not complete the drug court program successfully, the jurisdiction to which the case has been transferred must dispose of the case within the guidelines of the Criminal Punishment Code.

The bill expands s. 910.035(5), F.S., so that a person participating in *any type of PSC* (not just a preadjudicatory drug court) may have their case transferred to another county. The above-described requirements applicable to the transfer remain the same.

The bill defines "problem-solving court" to include preadjudicatory and postadjudicatory drug courts pursuant to s. 948.01, s. 17 948.06, s. 948.08, s. 948.16, or s. 948.20; preadjudicatory and postadjudicatory veterans' courts pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; and mental health courts.

The bill may have a minimal fiscal impact on local government expenditures because counties will be required to take administrative and procedural steps to transfer criminal cases between counties.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Preadjudicatory Diversion Programs

A variety of programs currently exist that offer criminal defendants an alternative to prosecution by diverting their cases into pretrial diversion programs. For example, Pretrial Intervention (PTI) programs allow defendants with pending felony or misdemeanor charges the opportunity to have their charges dismissed if they successfully complete PTI program requirements.¹ The purpose of these programs is to provide defendants with services such as counseling, education programs, and psychological treatment.² Generally, PTI programs accept defendants charged with a misdemeanor or third degree felony so long as the defendant, PTI program administrator, victim, prosecutor, and presiding judge agree.³

Postadjudicatory Diversion Programs

Florida law also establishes postadjudicatory programs designed to provide supervised community treatment services in lieu of incarceration for criminal defendants who have entered a guilty or nolo contendere plea to a crime.⁴ For example, postadjudicatory drug court programs serve non-violent, drug addicted offenders who typically have prior convictions. Upon successful completion of the program, these offenders may have their adjudication withheld, probation reduced or terminated, or other sanctions reduced.⁵

Problem Solving Courts

Florida law authorizes specialty preadjudicatory and postadjudicatory programs for military service members and veterans (veterans' courts),⁶ as well as for defendants with a high risk of substance abuse (drug courts).⁷ These specialty programs, often referred to as problem-solving courts (PSCs) focus on sobriety, counseling, and the unique needs of the specialty groups served by the program.⁸ In addition, while not codified in statute, many judicial circuits have created what is often referred to as mental health courts. Mental health courts are diversionary programs for persons diagnosed with a severe mental illness or developmental disability.

Transferring Criminal Cases to Other Counties

Florida law currently authorizes criminal cases to be transferred between counties in limited circumstances. For example:

¹ See, e.g., ss. 948.08, 948.16, and 985.345, F.S.

² George E. Tragos & Peter A. Sartes, *Diversion Programs: PTI...Dismissal...Problem Solved...or Is It?*, 82 THE FLA. BAR J. 73 (Oct. 2008).

³ See, e.g., ss. 948.08, 948.16, and 985.345, F.S.

⁴ See, e.g., ss. 394.47891, 948.01, 948.06, 948.20, and 948.21, F.S. See also, Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

⁵ Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009) <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

⁶ ss. 948.08(7) and 948.16(2) and (3), F.S.

⁷ ss. 948.16(1)(a) and 985.345, F.S.

⁸ See, e.g., EIGHTEENTH JUDICIAL CIRCUIT COURTS, *Court Programs – Seminole Drug Court*, <http://www.flcourts18.org/page.php?109> (last visited March 13, 2015); Office of Program Policy Analysis & Gov't Accountability, *State's Drug Courts Could Expand to Target Prison-Bound Adult Offenders*, OPPAGA Report # 09-13 (March 2009)

<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0913rpt.pdf> (last visited March 13, 2015).

- When a defendant is arrested or held in a county other than the county where the defendant's criminal charges are pending, the criminal case may be transferred to the county where the defendant is being held.⁹
- When a defendant does not have criminal charges pending, but is arrested on a warrant issued in a county other than the county where the defendant was arrested, the criminal case may be transferred to the county where the defendant was arrested.¹⁰

In addition, s. 910.035(5), F.S., allows the transfer of a criminal case involving a PSC. This statute allows any person who is eligible for participation in a preadjudicatory drug court program¹¹ to have the case transferred to a county other than that in which the charge arose if:

- The authorized representative of the drug court program of the county requesting to transfer the case consults with the authorized representative of the drug court program in the county to which transfer is desired; and
- All parties approve the transfer.

If the above requirements are met, the trial court must accept a plea of nolo contendere and enter a transfer order¹² directing the clerk to transfer the case to the county which has accepted the defendant into its drug court.¹³ After the transfer takes place, the clerk must set the matter for a hearing before the drug court judge and the court must ensure the defendant's entry into the drug court.¹⁴

Upon successful completion of the drug court program, the jurisdiction to which the case has been transferred must dispose of the case pursuant to s. 948.08(6), F.S. If the defendant does not complete the drug court program successfully, the jurisdiction to which the case has been transferred must dispose of the case within the guidelines of the Criminal Punishment Code.¹⁵

Effect of the Bill

The bill expands s. 910.035(5), F.S., so that a person participating in any type of PSC (not just a preadjudicatory drug court) may have their case transferred to another county. Specifically, the bill provides that a person who is eligible to participate in a PSC is eligible to have the case transferred from the county in which the charge arose to another county when:

- The authorized representative of the PSC of the county requesting to transfer the case consults with the authorized representative of the PSC in the county to which transfer is desired; and
- All parties approve the transfer.

If the above requirements are met, the trial court must accept, in the case of a pretrial PSC, a plea of nolo contendere and enter a transfer order directing the clerk to transfer the case to the county which has accepted the defendant into its PSC. After the transfer takes place, the clerk must set the matter for a hearing before the PSC judge and the court must ensure the defendant's entry into the PSC.¹⁶

⁹ Section 910.035(1), F.S., permits the criminal case to be transferred if the defendant states in writing that he or she 1) wishes to plead guilty or nolo contendere, 2) to waive trial in the county in which the indictment or information is pending, and 3) to consent to disposition of the case in the county in which the defendant was arrested or is held, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending.

¹⁰ Section 910.035(2), F.S., permits the criminal case to be transferred if the defendant states in writing that he or she 1) wishes to plead guilty or nolo contendere, 2) to waive trial in the county in which the warrant was issued, and 3) to consent to disposition of the case in the county in which the defendant was arrested, subject to the approval of the prosecuting attorney of the court in which the indictment or information is pending.

¹¹ Section 948.08(6), F.S., sets forth the eligibility criteria for participation in such programs.

¹² The transfer order must include a copy of the probable cause affidavit; any charging documents in the case; all reports, witness statements, test results, evidence lists, and other documents in the case; the defendant's mailing address and phone number; and the defendant's written consent to abide by the rules and procedures of the receiving county's drug court program. s. 910.035(5)(c), F.S.

¹³ s. 910.035(5)(b), F.S.

¹⁴ s. 910.035(5)(d), F.S.

¹⁵ s. 910.035(5)(e), F.S.

¹⁶ s. 910.035(5)(d), F.S.

Upon successful completion of the PSC, the jurisdiction to which the case has been transferred must dispose of the case. If the defendant does not complete the PSC successfully, the jurisdiction to which the case has been transferred must dispose of the case within the guidelines of the Criminal Punishment Code.¹⁷

The bill defines "problem-solving court" to mean a preadjudicatory or postadjudicatory drug court pursuant to s. 948.01, s. 948.06, s. 948.08, s. 948.16, or s. 948.20; a preadjudicatory or postadjudicatory veterans' court pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or a mental health court.

B. SECTION DIRECTORY:

Section 1. Amends s. 910.035, F.S., relating to transfer from county for plea and sentence.

Section 2. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may have a minimal fiscal impact on local government expenditures because counties will be required to take administrative and procedural steps to transfer criminal cases between counties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill defines "problem-solving court" to include pre- and postadjudicatory programs. However, the transfer process established by the bill only applies to preadjudicatory cases.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to defendants in specialized courts;
 3 amending s. 910.035, F.S.; providing a definition;
 4 authorizing a trial court to transfer certain criminal
 5 cases involving participants in specified programs to
 6 another jurisdiction having such a program under
 7 certain conditions; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsection (5) of section 910.035, Florida
 12 Statutes, is amended to read:

13 910.035 Transfer from county for plea and sentence or
 14 participation in a problem-solving court.-

15 (5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING
 16 COURT.-For purposes of this subsection, the term "problem-
 17 solving court" means a drug court pursuant to s. 948.01, s.
 18 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans' court
 19 pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or
 20 a mental health court. Any person eligible for participation in
 21 a problem-solving ~~drug court treatment program pursuant to s.~~
 22 ~~948.08(6)~~ may be eligible to have the case transferred to a
 23 county other than that in which the charge arose if the problem-
 24 solving ~~drug court program~~ agrees and if the following
 25 conditions are met:

26 (a) The authorized representative of the problem-solving

27 | ~~drug court program~~ of the county requesting to transfer the case
 28 | shall consult with the authorized representative of the problem-
 29 | solving ~~drug court program~~ in the county to which transfer is
 30 | desired.

31 | (b) If approval for transfer is received from all parties,
 32 | the trial court shall accept, in the case of a pretrial problem-
 33 | solving court, a plea of nolo contendere and enter a transfer
 34 | order directing the clerk to transfer the case to the county
 35 | which has accepted the defendant into its problem-solving ~~drug~~
 36 | ~~court program~~.

37 | (c) The transfer order shall include a copy of the
 38 | probable cause affidavit, in the case of a pretrial problem-
 39 | solving court; any charging or sentencing documents in the case;
 40 | all reports, witness statements, test results, evidence lists,
 41 | and other documents in the case; the defendant's mailing address
 42 | and phone number; and the defendant's written consent to abide
 43 | by the rules and procedures of the receiving county's problem-
 44 | solving ~~drug court program~~.

45 | (d) After the transfer takes place, the clerk shall set
 46 | the matter for a hearing before the problem-solving ~~drug court~~
 47 | ~~program~~ judge, and the court shall ensure the defendant's entry
 48 | into the problem-solving ~~drug court program~~.

49 | (e) Upon successful completion of the problem-solving ~~drug~~
 50 | ~~court program~~, the jurisdiction to which the case has been
 51 | transferred shall dispose of the case ~~pursuant to s. 948.08(6)~~.
 52 | If the defendant does not complete the problem-solving ~~drug~~

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53 | court ~~program~~ successfully, the jurisdiction to which the case
54 | has been transferred shall dispose of the case within the
55 | guidelines of the Criminal Punishment Code.

56 | Section 2. This act shall take effect July 1, 2015.



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COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Perry offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
 7 Section 1. Subsection (5) of section 910.035, Florida
 8 Statutes, is amended to read:

9 910.035 Transfer from county for plea, and sentence, or
 10 participation in a problem-solving court.-

11 (5) (a) For purposes of this subsection, the term "problem-
 12 solving court" means a drug court pursuant to s. 948.01, s.
 13 948.06, s. 948.08, s. 948.16, or s. 948.20; a veterans' court
 14 pursuant to s. 394.47891, s. 948.08, s. 948.16, or s. 948.21; or
 15 a mental health court.

16 (b) Any person eligible for participation in a problem-
 17 solving ~~drug~~ court shall, upon request by the person or a court,



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18 ~~treatment program pursuant to s. 948.08(6) may be eligible to~~
19 have the case transferred to a county other than that in which
20 the charge arose if the defendant agrees to the transfer and the
21 ~~drug court program agrees and if the following conditions are~~
22 ~~met:~~

23 (a) The authorized representative of the trial drug court
24 ~~program of the county requesting to transfer the case shall~~
25 consults with the authorized representative of the problem-
26 solving drug court program in the county to which transfer is
27 desired, and both representatives agree to the transfer.

28 (c) ~~(b)~~ If all parties agree to the transfer as required by
29 paragraph (b), approval for transfer is received from all
30 ~~parties,~~ the trial court shall ~~accept a plea of nolo contendere~~
31 ~~and~~ enter a transfer order directing the clerk to transfer the
32 case to the county which has accepted the defendant into its-
33 problem solving drug court program.

34 (d) ~~1.(e)~~ When transferring a pretrial problem-solving
35 court case, The transfer order shall include a copy of the
36 probable cause affidavit; any charging documents in the case;
37 all reports, witness statements, test results, evidence lists,
38 and other documents in the case; the defendant's mailing address
39 and phone number; and the defendant's written consent to abide
40 by the rules and procedures of the receiving county's problem-
41 solving drug court program.

42 2. When transferring a postadjudicatory problem-solving
43 court case, the transfer order shall include a copy of the



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44 charging documents in the case; the final disposition; all
45 reports, test results, and other documents in the case; the
46 defendant's mailing address and phone number; and the
47 defendant's written consent to abide by the rules and procedures
48 of the receiving county's problem-solving court.

49 (e) ~~(d)~~ After the transfer takes place, the clerk shall set
50 the matter for a hearing before the problem-solving ~~drug~~ court
51 ~~program judge and the court shall to~~ ensure the defendant's
52 entry into the problem-solving ~~drug~~ court ~~program~~.

53 (f) ~~(e)~~ Upon successful completion of the problem-solving
54 ~~drug~~ court program, the jurisdiction to which the case has been
55 transferred shall dispose of the case ~~pursuant to s. 948.08(6)~~.
56 If the defendant does not complete the problem-solving ~~drug~~
57 court program successfully, the jurisdiction to which the case
58 has been transferred shall dispose of the case within the
59 guidelines of the Criminal Punishment Code.

60 Section 2. This act shall take effect July 1, 2015.

61 -----
62
63 **T I T L E A M E N D M E N T**

64 Remove everything before the enacting clause and insert:
65 An act relating to defendants in specialized courts; amending s.
66 910.035, F.S.; providing a definition; requiring a trial court
67 to transfer certain criminal cases involving participants in
68 specified programs to another jurisdiction having such a program
69 under certain conditions; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4045 Repeal of a Prohibition on Cohabitation
SPONSOR(S): Rehwinkel Vasilinda and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1078

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

SUMMARY ANALYSIS

Florida's cohabitation law (s. 798.02, F.S.) was created in 1868, and makes it a second degree misdemeanor for any man and woman:

- Not being married to each other, to lewdly and lasciviously associate and cohabit together; or
- Married or unmarried, to engage in open and gross lewdness and lascivious behavior.

In recent years, states such as Arizona, Idaho, Maine, New Mexico, North Dakota, Virginia, and West Virginia, have repealed their cohabitation laws. In 2006, North Carolina's cohabitation law was found unconstitutional as violating one's substantive due process rights.

The bill repeals the portion of s. 798.02, F.S., that makes it a second degree misdemeanor for any man and woman, not being married to each other, to lewdly and lasciviously associate and cohabit together.

The bill may have a positive jail bed impact.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida's Cohabitation Law

Florida is one of only three states with a law criminalizing cohabitation.¹ Section 798.02, F.S., created in 1868,² makes it a second degree misdemeanor³ if any man and woman:

- Not being married to each other, lewdly and lasciviously associate and cohabit together; or
- Married or unmarried, engages in open and gross lewdness and lascivious behavior.⁴

While rarely used in the criminal context, cohabitation laws have been used as a rationale to sanction people in a civil context. For example, in 1979, the Florida Department of Business and Professional Regulation suspended a company's liquor license after finding that six of the company's agents, servants or employees violated s. 798.02, F.S.⁵ In 1999, North Carolina officials refused to grant victim's compensation to an unmarried victim of domestic violence because she was cohabiting with her boyfriend, and was therefore a criminal.⁶ In 2001, authorities in Virginia cited that state's cohabitation law to revoke a professional license of the owner of a day care center.⁷

Other States' Cohabitation Laws

In recent years, states such as Arizona, Idaho, Maine, New Mexico, North Dakota, Virginia, and West Virginia, have repealed their cohabitation laws.⁸

It should also be noted that North Carolina's cohabitation law⁹ was found unconstitutional as violating one's substantive due process rights.¹⁰ In its ruling, the North Carolina court relied on *Lawrence v. Texas*,¹¹ which held that a Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Writing for the United States Supreme Court, Justice Kennedy said "Liberty protects the person from unwarranted government intrusions into a dwelling or other private places. In our tradition the State is not omnipresent in the home."¹² Justice Kennedy also stated that the following quote by Justice Stevens' in an earlier case should be controlling:

[I]ndividual decisions by married persons, concerning the intimacies of their physical relationship, even when not intended to produce offspring, are a form of 'liberty'

¹ The other states with cohabitation laws are Michigan (s. 750.335, M.C.L.A.) and Mississippi (s. 97-29-1, M.C.A.).

² Laws 1868, chapter 1637, subsection 8, section 6.

³ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

⁴ The statute was last amended in 1971 by ch. 71-136, L.O.F., which made the offense a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S., in lieu of punishment "by imprisonment in the state prison not exceeding two years, or in the county jail not exceeding one year, or by fine not exceeding three hundred dollars."

⁵ *G & B of Jacksonville, Inc. v. State, Dept. of Business Regulation, Division of Beverage*, 371 So. 2d 139 (Fla. 1st DCA 1979). Section 561.29, F.S., gives the Division authority to suspend a beverage license when the Division finds sufficient cause that a licensee or its agents, officers, servants or employees, on the licensed premises, while in the scope of employment, has violated any law of this State.

⁶ *Family denied compensation because victim lived with killer*, April 1, 1999,

http://lubbockonline.com/stories/040199/nat_040199068.shtml (last visited on March 12, 2015).

⁷ *Antiquated, unconstitutional law held up day care license for nearly a year*, March 19, 2002, <http://acluva.org/1746/social-services-reinstates-license-for-day-care-operator-accused-of-violating-virginia-cohabitation-law/> (last visited on March 12, 2015).

⁸ E-mail from Rochelle Finzel, Group Director of the National Conference of State Legislatures, dated February 14, 2014 (on file with the Criminal Justice Subcommittee).

⁹ s. 14-184, N.C.G.S.

¹⁰ *Hobbs v. Smith*, No. 05-CVS 267, 2006 WL 3103008 (N.S. Super. 2006).

¹¹ *Lawrence v. Texas*, 539 U.S. 558 (2003).

¹² *Id* at 562.

protected by the Due Process Clause of the Fourteenth Amendment. Moreover, this protection extends to intimate choices by unmarried as well as married persons.¹³

Effect of the Bill

The bill repeals the portion of s. 798.02, F.S., that makes it a second degree misdemeanor for any man and woman, not being married to each other, to lewdly and lasciviously associate and cohabit together.

B. SECTION DIRECTORY:

Section 1. Amends s. 798.02, F.S., relating to lewd and lascivious behavior.

Section 2. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill repeals an offense punishable as a second degree misdemeanor. This may have a positive jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

¹³*Id.* at 578 (citing *Bowers v. Hardwick*, 478 U.S. 186 (1986)).
STORAGE NAME: h4045.CRJS.DOCX
DATE: 3/12/2015

2. Other:

As discussed above, a North Carolina court, relying on *Lawrence v. Texas*, recently found North Carolina's cohabitation law unconstitutional as violating one's substantive due process rights. It could be argued that Florida's cohabitation statute is also unconstitutional on the same grounds.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 4045

2015

1 A bill to be entitled
2 An act relating to the repeal of a prohibition on
3 cohabitation; amending s. 798.02, F.S.; deleting
4 provisions prohibiting cohabitation by unmarried men
5 and women; providing an effective date.

6

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

8



9 Section 1. Section 798.02, Florida Statutes, is amended to
10 read:

11 798.02 Lewd and lascivious behavior. ~~If any man and woman,~~
12 ~~not being married to each other, lewdly and lasciviously~~
13 ~~associate and cohabit together, or~~ If any man or woman, married
14 or unmarried, engages in open and gross lewdness and lascivious
15 behavior, they shall be guilty of a misdemeanor of the second
16 degree, punishable as provided in s. 775.082 or s. 775.083.

17 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 151 Sexual Cyberharassment
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 538

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|--|--|
| Orig. Comm.: Criminal Justice Subcommittee | | Keegan  | Cunningham  |

SUMMARY ANALYSIS

Internet security company McAfee recently published the results of a survey conducted in 2012, which explored the connection between romantic breakups and the loss of privacy online. Among other results, the survey found that one in ten ex-partners have threatened to expose risqué photos online, and that these threats were carried out nearly 60 percent of the time.

Florida law does not currently prohibit a person from posting on the Internet nude photos of adults that were taken consensually.

The bill creates s. 784.049, F.S., to prohibit a person from willfully and maliciously sexually cyberharassing another person. "Sexually cyberharass" is defined as publishing a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without such person's consent, for no legitimate purpose, and with the intent to cause substantial emotional distress to such person.

A person who commits sexual cyberharassment commits a first degree misdemeanor. However, a second or subsequent violation by a person with a prior conviction for sexual cyberharassment is a third degree felony.

The bill amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant when there is probable cause to believe that the person has committed sexual cyberharassment. Additionally, the bill permits a search warrant to be issued for a private dwelling if evidence relevant to proving sexual cyberharassment is contained therein.

The bill also authorizes an aggrieved person to initiate a civil action against a person who commits sexual cyberharassment to obtain all appropriate relief in order to prevent or remedy a violation. This relief includes:

- Injunctive relief; monetary damages to include five thousand dollars or actual damages incurred, whichever is greater; and reasonable attorney fees and costs.

The bill specifies that sexual cyberharassment is considered to be committed in Florida if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within the state.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections and a negative jail bed impact on local governments because it creates a new third degree felony and first degree misdemeanor offense.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Internet security company McAfee recently published the results of a survey conducted in 2012, which explored the connection between romantic breakups and the loss of privacy online.¹ Among other results, the survey found that one in ten ex-partners have threatened to expose risqué photos online, and that these threats were carried out nearly 60 percent of the time.² Men reported being threatened with such exposure more often than women.³

In 2004, New Jersey⁴ passed a law prohibiting unlicensed distribution of sexually explicit photos online, and California followed suit in 2013.⁵ Since then, a number of other states have enacted similar legislation.⁶ However, because such statutes restrict speech, they raise constitutional concerns. In September, 2014, a lawsuit was filed challenging the constitutionality of one such law passed in Arizona, but no ruling has yet been issued.⁷

Florida law does not currently prohibit a person from posting on the Internet nude photos of adults that were taken consensually. However, in some circumstances, posting such pictures could be an element of stalking or cyberstalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Additionally, s. 817.568(4), F.S., makes the non-consensual use of a person's personal identification information a first degree misdemeanor⁸ if used to harass⁹ that person. "Personal identification information" is defined as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.¹⁰

¹ McAfee, Inc., *Lovers Beware: Scorned Exes May Share Intimate Data and Images Online*, MCAFEE.COM (Feb. 4, 2013), <http://www.mcafee.com/us/about/news/2013/q1/20130204-01.aspx>. (last visited March 14, 2015).

² *Id.*

³ *Id.*

⁴ N.J. Stat. § 2C:14-9 (2004).

⁵ Cal. Penal Code § 647 (2013).

⁶ See, e.g., Ariz. Rev. Stat. § 13-1425 (Arizona); CRSA § 18-7-107 (Colorado); Ga. Code Ann. § 16-11-90 (Georgia); § 711-1110.9 (Hawaii); § 18-66009 (Idaho).

⁷ *Antigone Books, L.L.C. v. Horne*, 2014 WL 4784248 (D. Ariz. filed Sept. 23, 2014).

⁸ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

⁹ Section 817.568, F.S., defines "harass" as engaging in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose.

¹⁰ s. 817.568(1)(f), F.S.

Effect of the Bill

The bill provides the following legislative findings:

- The Legislature finds that a person depicted in a sexually explicit image that was taken with such person's consent has a reasonable expectation that such image will remain private.
- The Legislature finds that it is becoming a common practice for persons to publish a sexually explicit image of another to Internet websites without the depicted person's consent, for no legitimate purpose, and with the intent to cause substantial emotional distress to the depicted person.
- The Legislature finds that when such images are published on Internet websites, they are able to be viewed indefinitely and by persons worldwide, and are able to be easily reproduced and shared.
- The Legislature finds that the publication of such images on Internet websites creates a permanent record of the depicted person's private nudity or private sexually explicit conduct.
- The Legislature finds that the existence of such images on Internet websites causes those depicted in such images significant psychological harm.
- The Legislature further finds that safeguarding the psychological well-being of persons depicted in such images is compelling.

The bill creates s. 784.049, F.S., to prohibit a person from willfully and maliciously sexually cyberharassing another person. "Sexually cyberharass" is defined as publishing a sexually explicit image¹¹ of a person that contains or conveys the personal identification information¹² of the depicted person to an Internet website without such person's consent, for no legitimate purpose, and with the intent to cause substantial emotional distress to such person.

A person who commits sexual cyberharassment commits a first degree misdemeanor. However, a second or subsequent violation by a person with a prior conviction for sexual cyberharassment is a third degree felony.¹³

The bill amends s. 901.15, F.S., to permit a law enforcement officer to arrest a person without a warrant when there is probable cause to believe that the person has committed sexual cyberharassment. Additionally, the bill permits a search warrant to be issued for a private dwelling if an instrumentality or means by which a violation of s. 784.049, F.S., has been committed, is contained therein, or if evidence relevant to proving sexual cyberharassment is contained therein.

The bill authorizes an aggrieved person to initiate a civil action against a person who commits sexual cyberharassment to obtain all appropriate relief in order to prevent or remedy a violation. This relief includes:

- Injunctive relief;
- Monetary damages to include five thousand dollars or actual damages incurred, whichever is greater; and
- Reasonable attorney fees and costs.

The bill exempts the following from the above-described criminal penalties and civil remedies:

- A provider of an interactive computer service as defined in 47 U.S.C. § 230(f), information service as defined in 47 U.S.C. § 153, or communications service as defined in s. 202.11, F.S., that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person; or

¹¹ The bill defines "sexually explicit image" to mean any image depicting nudity, as defined in s. 847.001, F.S., or depicting a person engaging in sexual conduct, as defined in s. 847.001, F.S. "Image" includes but is not limited to, any photograph, picture, motion picture, film, video, or representation.

¹² The bill defines "personal identifying information" in accordance with s. 817.568, F.S.

¹³ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

- A law enforcement officer as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that publishes a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer, or law enforcement agency.

The bill specifies that sexual cyberharassment is considered to be committed in Florida if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within the state.

B. SECTION DIRECTORY:

Section 1. Creates s. 784.049, F.S., relating to sexual cyberharassment.

Section 2. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 3. Amends s. 933.18, F.S., relating to when warrant may be issued for search of private dwelling.

Section 4. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill may have a negative prison bed impact on the Department of Corrections because it creates a new third degree felony offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may have a negative jail bed impact on local governments because it creates a new first degree misdemeanor offense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private individuals or companies who engage in the behavior prohibited by the bill may be subject to civil action for doing so.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Overbreadth

The First Amendment to the United States Constitution and article I, section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. These protections safeguard speech, the written word, and any conduct intended to communicate. When lawmakers attempt to restrict or burden First Amendment rights such as these, the laws must not only be directed toward a legitimate state interest,¹⁴ but they must be drawn as narrowly as possible.¹⁵ As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."¹⁶ Put another way, statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.¹⁷

When legislation is drafted to apply to conduct that is protected by the First Amendment, it is said to be unconstitutionally overbroad.¹⁸ The overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially "because it also threatens others not before the court – those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid."¹⁹ The doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected speech.²⁰ If statutes are not narrowly constructed they may be challenged as being overbroad.

In *Reno v. American Civil Liberties Union*, the United States Supreme Court stated:

[T]he growth of the Internet has been and continues to be phenomenal. As a matter of constitutional tradition, in the absence of evidence to the contrary, we presume that governmental regulation of the content of speech is more likely to interfere with the free exchange of ideas than encourage it. The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.²¹

The bill makes it a crime to publish a sexually explicit image of a person in specified circumstances. To the extent that the bill regulates speech protected by the First Amendment, it could be challenged as being unconstitutionally overbroad.

Content Based Regulation

A regulation that abridges speech because of the content of the speech is subject to the strict scrutiny standard of judicial review.²² In order for a statute to meet the strict scrutiny test, it must be narrowly tailored to promote a compelling state interest, where there is no other less-restrictive

¹⁴ *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973); *Bates v. City of Little Rock*, 361 U.S. 516, 523-24 (1960).

¹⁵ *NAACP v. Button*, 371 U.S. 415 (1963).

¹⁶ *Id.* at 433.

¹⁷ *Sult v. Florida*, 906 So. 2d 1013 (Fla. 1963).

¹⁸ *Id.*

¹⁹ *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 503 (1985).

²⁰ *Sult*, 906 So. 2d at 1018.

²¹ 521 U.S. 844, 885 (1997).

²² *United States v. Playboy Ent'mt Grp., Inc.*, 529 U.S. 803, 812 (2000).

option available to accomplish the state interest.²³ The strict scrutiny test applies to content-based regulation of Internet speech,²⁴ including speech that involves or communicates sexual content.²⁵ It is very uncommon for the courts to uphold regulations that forbid or limit the communication of specific ideas or viewpoints.

The bill makes it a crime to publish certain images partially because of the content of the images. To the extent that the bill regulates speech protected by the First Amendment based on its content, it could be challenged as being unconstitutional.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

²³ *Id.* at 813.

²⁴ *Reno v. ACLU*, 521 U.S. 844, 870 (1997) (stating that “our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.”)

²⁵ *Sable Commc'ns of Cal., Inc., v. F.C.C.*, 492 U.S. 115, 126 (1989).

1 A bill to be entitled
2 An act relating to sexual cyberharassment; creating s.
3 784.049, F.S.; providing legislative findings;
4 providing definitions; prohibiting a person from
5 willfully and maliciously sexually cyberharassing
6 another person; providing penalties; authorizing a law
7 enforcement officer to arrest, without a warrant, any
8 person that he or she has probable cause to believe
9 has committed sexual cyberharassment; authorizing a
10 search warrant to be issued in specified instances;
11 providing civil remedies; providing exceptions;
12 specifying the circumstances in which a violation
13 occurs in this state; amending s. 901.15, F.S.;
14 authorizing a law enforcement officer to arrest,
15 without a warrant, any person that he or she has
16 probable cause to believe has committed sexual
17 cyberharassment; amending s. 933.18, F.S.; providing
18 an additional exception to the prohibition on search
19 warrants being issued to search private dwellings;
20 providing an effective date.

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

23
24 Section 1. Section 784.049, Florida Statutes, is created
25 to read:

26 784.049 Sexual cyberharassment.--

27 (1) (a) The Legislature finds that a person depicted in a
 28 sexually explicit image that was taken with such person's
 29 consent has a reasonable expectation that such image will remain
 30 private.

31 (b) The Legislature finds that it is becoming a common
 32 practice for persons to publish a sexually explicit image of
 33 another to Internet websites without the depicted person's
 34 consent, for no legitimate purpose, and with the intent to cause
 35 substantial emotional distress to the depicted person.

36 (c) The Legislature finds that when such images are
 37 published on Internet websites, they are able to be viewed
 38 indefinitely and by persons worldwide, and are able to be easily
 39 reproduced and shared.

40 (d) The Legislature finds that the publication of such
 41 images on Internet websites creates a permanent record of the
 42 depicted person's private nudity or private sexually explicit
 43 conduct.

44 (e) The Legislature finds that the existence of such
 45 images on Internet websites causes those depicted in such images
 46 significant psychological harm.

47 (f) The Legislature further finds that safeguarding the
 48 psychological well-being of persons depicted in such images is
 49 compelling.

50 (2) As used in this section, the term:

51 (a) "Image," includes but is not limited to, any
 52 photograph, picture, motion picture, film, video, or

53 representation.

54 (b) "Personal identifying information" has the same
 55 meaning as provided in s. 817.568.

56 (c) "Sexually cyberharass" means to publish a sexually
 57 explicit image of a person that contains or conveys the personal
 58 identification information of the depicted person to an Internet
 59 website without such person's consent, for no legitimate
 60 purpose, and with the intent to cause substantial emotional
 61 distress to such person.

62 (d) "Sexually explicit image" means any image depicting
 63 nudity, as defined in s. 847.001, or depicting a person engaging
 64 in sexual conduct, as defined in s. 847.001.

65 (3) (a) Except as provided in paragraph (b), a person who
 66 willfully and maliciously sexually cyberharasses another person
 67 commits a misdemeanor of the first degree, punishable as
 68 provided in s. 775.082 or s. 775.083.

69 (b) A person who has one prior conviction for sexual
 70 cyberharassment and who commits any second or subsequent sexual
 71 cyberharassment commits a felony of the third degree, punishable
 72 as provided in s. 775.082, s. 775.083, or s. 775.084.

73 (4) (a) A law enforcement officer may arrest, without a
 74 warrant, any person that he or she has probable cause to believe
 75 has violated this section.

76 (b) Upon proper affidavits being made, a search warrant
 77 may be issued to further investigate violations of this section,
 78 including warrants issued to search a private dwelling.

79 | (5) An aggrieved person may initiate a civil action
 80 | against a person who violates this section to obtain all
 81 | appropriate relief in order to prevent or remedy a violation of
 82 | this act, to include the following:

83 | (a) Injunctive relief.

84 | (b) Monetary damages to include five thousand dollars or
 85 | actual damages incurred as a result of a violation of this
 86 | section, whichever is greater.

87 | (c) Reasonable attorney fees and costs.

88 | (6) The criminal and civil penalties in this section do
 89 | not apply to:

90 | (a) A provider of an interactive computer service as
 91 | defined in 47 U.S.C. s. 230(f), information service as defined
 92 | in 47 U.S.C. s. 153, or communications service as defined in s.
 93 | 202.11, that provides the transmission, storage, or caching of
 94 | electronic communications or messages of others; other related
 95 | telecommunications or commercial mobile radio service; or
 96 | content provided by another person; or

97 | (b) A law enforcement officer as defined in s. 943.10, or
 98 | any local, state, federal, or military law enforcement agency,
 99 | that publishes a sexually explicit image in connection with the
 100 | performance of his or her duties as a law enforcement officer,
 101 | or law enforcement agency.

102 | (7) A violation of this section is committed within this
 103 | state if any conduct that is an element of the offense, or any
 104 | harm to the depicted person resulting from the offense, occurs

105 | within this state.

106 | Section 2. Subsection (16) is added to section 901.15,
107 | Florida Statutes, to read:

108 | 901.15 When arrest by officer without warrant is lawful.—A
109 | law enforcement officer may arrest a person without a warrant
110 | when:

111 | (16) There is probable cause to believe that the person
112 | has committed a criminal act according to s. 784.049.

113 | Section 3. Subsections (9) and (10) of section 933.18,
114 | Florida Statutes, are amended and subsection (11) is added to
115 | that section, to read:

116 | 933.18 When warrant may be issued for search of private
117 | dwelling.—No search warrant shall issue under this chapter or
118 | under any other law of this state to search any private dwelling
119 | occupied as such unless:

120 | (9) It is being used for the unlawful sale, possession, or
121 | purchase of wildlife, saltwater products, or freshwater fish
122 | being unlawfully kept therein; ~~or~~

123 | (10) The laws in relation to cruelty to animals, as
124 | provided in chapter 828, have been or are being violated
125 | therein; or

126 | (11) An instrumentality or means by which a violation of s.
127 | 784.049 has been committed, or evidence relevant to proving a
128 | violation of s. 784.049 has been committed, is contained
129 | therein.

130

131 If, during a search pursuant to a warrant issued under this
 132 section, a child is discovered and appears to be in imminent
 133 danger, the law enforcement officer conducting such search may
 134 remove the child from the private dwelling and take the child
 135 into protective custody pursuant to chapter 39. The term
 136 "private dwelling" shall be construed to include the room or
 137 rooms used and occupied, not transiently but solely as a
 138 residence, in an apartment house, hotel, boardinghouse, or
 139 lodginghouse. No warrant shall be issued for the search of any
 140 private dwelling under any of the conditions hereinabove
 141 mentioned except on sworn proof by affidavit of some creditable
 142 witness that he or she has reason to believe that one of said
 143 conditions exists, which affidavit shall set forth the facts on
 144 which such reason for belief is based.

145 Section 4. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 15-04 Pub.Rec./Juvenile Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** None

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|----------------|--|
| Orig. Comm.: Criminal Justice Subcommittee | | Cox <i>JCC</i> | Cunningham <i>gn</i> |

SUMMARY ANALYSIS

Section 985.04(1), F.S., specifies that all records obtained under ch. 985, F.S., as a result of a juvenile being involved in the juvenile justice system, are confidential. However, s. 985.04(2), F.S., creates exceptions for records if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

Section 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.

A recent ruling by Florida's First District Court of Appeal highlighted the inconsistency that exists between s. 985.04(1), F.S., (making most juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's record to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- Making the records of juveniles who have been found to have committed three or more misdemeanors confidential and exempt (currently they are not);
- Ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed to be not confidential and exempt under s. 943.05, F.S.;
- Requiring FDLE to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- Specifying how FDLE must release juvenile criminal history records.

The bill repeals the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

FDLE reports that the bill may have a minimal fiscal impact, which can be absorbed. See fiscal section.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, section 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24 of the State Constitution, provided the exemption is passed by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to accomplish its purpose.²

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act³ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

The Open Government Sunset Review Act requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless reenacted by the Legislature.⁴ The Act also requires specified questions to be considered during the review process.

Confidential Information of Juveniles

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system, are confidential. However, several exceptions to the confidentiality of these records are provided. For example, s. 985.04(2), F.S., provides in part that the name, photograph, address, and crime or arrest report of certain juveniles is not confidential and exempt from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system under ss. 985.557, 985.56, F.S., or 985.556, F.S.;
- Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

Criminal Justice Information Program

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information⁵

¹ FLA. CONST. art. I, s. 24(a).

² FLA. CONST. art. I, s. 24(c).

³ See s. 119.15, F.S.

⁴ s. 119.15(3), F.S.

repository. Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in CJIP.⁶ This information can then be transmitted between criminal justice agencies.⁷

Currently, s. 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to FDLE the fingerprints, palm prints, and facial images of:

- Each adult person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile who is charged with or found to have committed an offense, which would be if committed by an adult, a felony; or
- A minor who is charged with or found to have committed an enumerated offense, unless the minor is issued a civil citation pursuant to s. 985.12, F.S.

Dissemination of Criminal History Information under Chapter 943, F.S.

Criminal history information⁸ compiled by CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.⁹ With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 dollars per name submitted.¹⁰

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.¹¹ Additionally, the statute is silent as to the release of a juvenile's information which has been made confidential pursuant to s. 985.04, F.S.

G.G. v. FDLE

In *G.G. v. FDLE*,¹² a juvenile with no prior criminal history record was arrested for petit theft – a first degree misdemeanor. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from FDLE, and discovered that it included information relating to the petit theft arrest.¹³ G.G. filed suit, claiming that the petit theft information should be confidential and exempt pursuant to s. 985.04(1), F.S.¹⁴ The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.¹⁵

⁵ Section 943.045(12), F.S., provides "criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

⁶ s. 943.052, F.S.

⁷ s. 985.051, F.S.

⁸ Section 943.045(5), F.S., defines "criminal history information" as information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

⁹ s. 943.053(3)(a), F.S.

¹⁰ s. 943.053(30)(b), F.S. The guardian ad litem program; vendors of the Department of Children and Families, DJJ, and the Department of Elderly Affairs; the Department of Agriculture and Consumer Services; and other qualified entities are charged a lesser amount.

¹¹ s. 943.053(3)(a), F.S.

¹² 97 So. 3d 268 (Fla. 1st DCA 2012).

¹³ *Id.* at 269.

¹⁴ *Id.*

¹⁵ *Id.*

On appeal, the First DCA reversed the trial court's decision and held that FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.¹⁶

FDLE – Release of Juvenile Information since G.G.

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential. However, s. 985.04(2), F.S., creates exceptions for records if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

In an effort to comply with the ruling in *G.G. v. FDLE*, FDLE is ensuring that only the above-described records are released. However, because of programming limitations¹⁷ and incomplete reporting of juvenile disposition information,¹⁸ FDLE reports that they are unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors.¹⁹ As such, FDLE is currently only releasing the following juvenile records to private entities and non-criminal justice agencies:

- Taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Treated as adults.²⁰

Effect of the Bill

The ruling in *G.G. v. FDLE* highlighted the inconsistency that exists between s. 985.04(1), F.S., (making the majority of juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- Ensuring that the specified juvenile records deemed to be not confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed to be not confidential and exempt under s. 985.04, F.S.; and
- Requiring FDLE to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status.

Section 985.04, F.S.

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential).²¹

The bill also amends s. 985.04(2), F.S., to specify that the following juvenile records are not confidential and exempt:

- Records where a juvenile has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;

¹⁶ *Id.* at 273.

¹⁷ FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. FDLE Analysis.

¹⁸ Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5%, while the adult rate is 72.2%). FDLE Analysis.

¹⁹ FDLE Analysis.

²⁰ FDLE Analysis, p. 3.

²¹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See 85-62 Fla. Op. Att'y Gen. (August 1, 1985).

- Records where a juvenile has been charged with a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records where a juvenile has been transferred to adult court pursuant to part X of ch. 985, F.S.

Notably, the bill removed language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records will now be confidential and exempt.

Section 943.05, F.S.

The bill amends s. 943.053, F.S., so that the list of juvenile records deemed to be not confidential and exempt under s. 985.04(2), F.S., will be identical to the list of juvenile records deemed to be not confidential and exempt under s. 943.05, F.S. Because the language regarding three or more misdemeanors is not included on the list, FDLE will no longer be tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies.

The bill further amends s. 943.053, F.S., establish a separate process for the dissemination of *juvenile* criminal history information. Under this process, juvenile criminal history information, including the information that is made confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4),²² for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information that is not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

The bill provides that juvenile records deemed confidential and exempt under the provisions of s. 943.053, F.S., which are released by the sheriff, DOC, or DJJ to private entities under contract with each entity retain their confidential status upon release to these private entities.

The bill repeals all new public records exemptions provided for in the bill on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.²³

B. SECTION DIRECTORY:

Section 1. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 2. Amends s. 943.053, F.S. relating to dissemination of criminal justice information; fees.

Section 3. Amends s. 943.056, F.S., relating to criminal history records; access, review, and challenge.

Section 4. Provides a public necessity statement.

²² These sections require persons who are seeking employment with specified agencies (e.g., DCF, Department of Health, DJJ, etc.) to acknowledge their criminal history record, even if such record has been sealed or expunged.

²³ FLA. CONST. art. I, s. 24(c).

Section 5. Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

FDLE reports that the Computerized Criminal History System requires an update to comply with the ruling or to implement the bill, which will require 891 hours of programming at \$85 dollars per hour for a total of \$75,877.²⁴ Additionally, the bill may require staff training related to the expansion of the public records exemption, which will likely result in an insignificant fiscal impact to FDLE. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.²⁵

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting

²⁴ FDLE Analysis, p. 6.

²⁵ *Id.*

exemption. The bill expands a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

Requirements for Legislative Review

Section 119.15(3), F.S., requires that any public records exemption must be repealed five years after the enactment or substantial amendment of the exemption unless reviewed and saved from repeal by the Legislature. When reviewing an exemption, s. 119.15(6)(a), F.S., requires the Legislature to consider the following matters:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s. 985.04,
 3 F.S.; providing information obtained under ch. 985,
 4 F.S., is confidential and exempt from public records
 5 requirements; providing for future review and repeal
 6 of the exemption under the Open Government Sunset
 7 Review Act; providing all information collected on
 8 juveniles who have only committed misdemeanors are
 9 confidential and exempt from public records
 10 requirements; amending s. 943.053, F.S.; providing for
 11 the Department of Law Enforcement's release of the
 12 criminal history information of a juvenile that has
 13 been deemed confidential and exempt under specified
 14 circumstances; providing for the Department of Law
 15 Enforcement's release of the criminal history
 16 information of a juvenile that has not been deemed to
 17 be confidential and exempt; providing a statement of
 18 public necessity; amending s. 943.056, F.S.,
 19 conforming language to changes made in the act;
 20 providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:
 23

24 Section 1. Subsections (1) and (2) of section 985.04,
 25 Florida Statutes, are amended to read:
 26 985.04 Oaths; records; confidential information.-

27 (1) (a) Except as provided in subsections (2), (3), (6),
 28 and (7) and s. 943.053, all information obtained under this
 29 chapter in the discharge of official duty by any judge, any
 30 employee of the court, any authorized agent of the department,
 31 the Florida Commission on Offender Review, the Department of
 32 Corrections, the juvenile justice circuit boards, any law
 33 enforcement agent, or any licensed professional or licensed
 34 community agency representative participating in the assessment
 35 or treatment of a juvenile is confidential and exempt from s.
 36 119.07(1) and s. 24(a), Art. 1, of the State Constitution. This
 37 public record exemption applies to information obtained before,
 38 on, or after the effective date of this act.

39 (b) Such confidential and exempt information ~~and~~ may be
 40 disclosed only to the authorized personnel of the court, the
 41 department and its designees, the Department of Corrections, the
 42 Florida Commission on Offender Review, law enforcement agents,
 43 school superintendents and their designees, any licensed
 44 professional or licensed community agency representative
 45 participating in the assessment or treatment of a juvenile, and
 46 others entitled under this chapter to receive that information,
 47 or upon order of the court.

48 (c) Within each county, the sheriff, the chiefs of police,
 49 the district school superintendent, and the department shall
 50 enter into an interagency agreement for the purpose of sharing
 51 information about juvenile offenders among all parties. The
 52 agreement must specify the conditions under which summary

53 criminal history information is to be made available to
 54 appropriate school personnel, and the conditions under which
 55 school records are to be made available to appropriate
 56 department personnel. Such agreement shall require notification
 57 to any classroom teacher of assignment to the teacher's
 58 classroom of a juvenile who has been placed in a probation or
 59 commitment program for a felony offense. The agencies entering
 60 into such agreement must comply with s. 943.0525, and must
 61 maintain the confidentiality of information that is otherwise
 62 exempt from s. 119.07(1), as provided by law.

63 (2) Notwithstanding any other provisions of this chapter,
 64 the name, photograph, address, and crime or arrest report of a
 65 child:

66 (a) Taken into custody ~~if the child has been taken into~~
 67 ~~custody~~ by a law enforcement officer for a violation of law
 68 which, if committed by an adult, would be a felony;

69 (b) Charged with a violation of law which, if committed by
 70 an adult, would be a felony;

71 (c) Found to have committed an offense which, if committed
 72 by an adult, would be a felony; or

73 (d) Transferred to adult court pursuant to part X.

74 ~~Found by a court to have committed three or more violations~~
 75 ~~of law which, if committed by an adult, would be misdemeanors;~~

76 ~~(e) Transferred to the adult system under s. 985.557,~~
 77 ~~indicted under s. 985.56, or waived under s. 985.556;~~

78 ~~(d) Taken into custody by a law enforcement officer for a~~

79 ~~violation of law subject to s. 985.557(2)(b) or (d); or~~
 80 ~~(e) Transferred to the adult system but sentenced to the~~
 81 ~~juvenile system under s. 985.565~~

82
 83 shall not be considered confidential and exempt from s.
 84 119.07(1) solely because of the child's age.

85 (d) This subsection is subject to the Open Government
 86 Sunset Review Act in accordance with s. 119.15, and shall stand
 87 repealed on October 2, 2020, unless reviewed and saved from
 88 repeal through reenactment by the Legislature.

89 Section 2. Subsections (3), (8), (9), and (10) of section
 90 943.053, Florida Statutes, are amended to read:

91 943.053 Dissemination of criminal justice information;
 92 fees.-

93 (3)(a) Criminal history information, ~~including information~~
 94 relating to an adult ~~minors~~, compiled by the Criminal Justice
 95 Information Program from intrastate sources shall be available
 96 on a priority basis to criminal justice agencies for criminal
 97 justice purposes free of charge. After providing the program
 98 with all known personal identifying information, persons in the
 99 private sector and noncriminal justice agencies may be provided
 100 criminal history information upon tender of fees as established
 101 in this subsection and in the manner prescribed by rule of the
 102 Department of Law Enforcement. ~~Any access to criminal history~~
 103 ~~information by the private sector or noncriminal justice~~
 104 ~~agencies as provided in this subsection shall be assessed~~

105 ~~without regard to the quantity or category of criminal history~~
 106 ~~record information requested.~~

107 (b) Criminal history information relating to a juvenile
 108 compiled by the Criminal Justice Information Program from
 109 intrastate sources shall be released as provided in this
 110 section. Such information is confidential and exempt from s.
 111 119.07(1) and s. 24(a), Art. 1, of the State Constitution,
 112 unless such juvenile has been:

113 1. Taken into custody by a law enforcement officer for a
 114 violation of law which, if committed by an adult, would be a
 115 felony;

116 2. Charged with a violation of law which, if committed by
 117 an adult, would be a felony;

118 3. Found to have committed an offense which, if committed
 119 by an adult, would be a felony; or

120 4. Transferred to adult court pursuant to part X of
 121 chapter 985;

122
 123 and provided the criminal history record has not been expunged
 124 or sealed under any law applicable to such record.

125 (c) Paragraph (b) of this subsection is subject to the Open
 126 Government Sunset Review Act in accordance with s. 119.15, and
 127 shall stand repealed on October 2, 2020, unless reviewed and
 128 saved from repeal through reenactment by the Legislature.

129 (d)1. Criminal history information relating to juveniles,
 130 including criminal history information consisting in whole or in

131 part of information that is confidential and exempt under
 132 paragraph (b), shall be available to:
 133 a. A criminal justice agency for criminal justice purposes
 134 on a priority basis and free of charge;
 135 b. The person to whom the record relates, or his or her
 136 attorney;
 137 c. The parent, guardian, or legal custodian of the person
 138 to whom the record relates, provided such person has not reached
 139 the age of majority, been emancipated by a court, or been
 140 legally married; or
 141 d. An agency or entity specified in ss. 943.0585(4) or
 142 943.059(4), for the purposes specified therein, and to any
 143 person within such agency or entity who has direct
 144 responsibility for employment, access authorization, or
 145 licensure decisions.
 146 2. After providing the program with all known personal
 147 identifying information, the criminal history information
 148 relating to a juvenile which is not confidential and exempt
 149 under this subsection may be released to the private sector and
 150 noncriminal justice agencies not specified in ss. 943.0585(4)
 151 and 943.059(4) in the same manner as provided in paragraph (a).
 152 As used in this section, the phrase "criminal history
 153 information relating to a juvenile which is not confidential and
 154 exempt under this subsection" shall mean the entire criminal
 155 history information relating to a juvenile who satisfies any of
 156 the criteria listed in subparagraphs 1. through 4. of paragraph

157 (b), except for any portion of such juvenile's criminal history
 158 record which has been expunged or sealed under any law
 159 applicable to such record.

160 3. All criminal history information relating to juveniles,
 161 other than that provided to criminal justice agencies for
 162 criminal justice purposes, shall be provided upon tender of fees
 163 as established in this subsection and in the manner prescribed
 164 by rule of the Department of Law Enforcement.

165 (e) The fee for access to criminal history information by
 166 the private sector or a noncriminal justice agency shall be
 167 assessed without regard to the size or category of criminal
 168 history record information requested.

169 (f) The fee per record for criminal history information
 170 provided pursuant to this subsection and s. 943.0542 is \$24 per
 171 name submitted, except that the fee for the guardian ad litem
 172 program and vendors of the Department of Children and Families,
 173 the Department of Juvenile Justice, and the Department of
 174 Elderly Affairs shall be \$8 for each name submitted; the fee for
 175 a state criminal history provided for application processing as
 176 required by law to be performed by the Department of Agriculture
 177 and Consumer Services shall be \$15 for each name submitted; and
 178 the fee for requests under s. 943.0542, which implements the
 179 National Child Protection Act, shall be \$18 for each volunteer
 180 name submitted. The state offices of the Public Defender shall
 181 not be assessed a fee for Florida criminal history information
 182 or wanted person information.

183 (8) Notwithstanding the provisions of s. 943.0525, and any
 184 user agreements adopted pursuant thereto, and notwithstanding
 185 the confidentiality of sealed records as provided for in s.
 186 943.059 and juvenile records as provided for in paragraph
 187 (3) (b), the sheriff of any county that has contracted with a
 188 private entity to operate a county detention facility pursuant
 189 to the provisions of s. 951.062 shall provide that private
 190 entity, in a timely manner, copies of the Florida criminal
 191 history records for its inmates. The sheriff may assess a charge
 192 for the Florida criminal history records pursuant to the
 193 provisions of chapter 119. Sealed records and confidential
 194 juvenile records received by the private entity under this
 195 section remain confidential and exempt from the provisions of s.
 196 119.07(1).

197 (9) Notwithstanding the provisions of s. 943.0525, and any
 198 user agreements adopted pursuant thereto, and notwithstanding
 199 the confidentiality of sealed records as provided for in s.
 200 943.059 and juvenile records as provided for in paragraph
 201 (3) (b), the Department of Corrections shall provide, in a timely
 202 manner, copies of the Florida criminal history records for
 203 inmates housed in a private state correctional facility to the
 204 private entity under contract to operate the facility pursuant
 205 to the provisions of s. 944.105. The department may assess a
 206 charge for the Florida criminal history records pursuant to the
 207 provisions of chapter 119. Sealed records and confidential
 208 juvenile records received by the private entity under this

209 section remain confidential and exempt from the provisions of s.
 210 119.07(1).

211 (10) Notwithstanding the provisions of s. 943.0525 and any
 212 user agreements adopted pursuant thereto, and notwithstanding
 213 the confidentiality of sealed records as provided for in s.
 214 943.059 or of juvenile records as provided for in paragraph
 215 (3)(b), the Department of Juvenile Justice or any other state or
 216 local criminal justice agency may provide copies of the Florida
 217 criminal history records for juvenile offenders currently or
 218 formerly detained or housed in a contracted juvenile assessment
 219 center or detention facility or serviced in a contracted
 220 treatment program and for employees or other individuals who
 221 will have access to these facilities, only to the entity under
 222 direct contract with the Department of Juvenile Justice to
 223 operate these facilities or programs pursuant to the provisions
 224 of s. 985.688. The criminal justice agency providing such data
 225 may assess a charge for the Florida criminal history records
 226 pursuant to the provisions of chapter 119. Sealed records and
 227 confidential juvenile records received by the private entity
 228 under this section remain confidential and exempt from the
 229 provisions of s. 119.07(1). Information provided under this
 230 section shall be used only for the criminal justice purpose for
 231 which it was requested and may not be further disseminated.

232 Section 3. Subsection (1) of section 943.056, Florida
 233 Statutes, is amended to read:

234 943.056 Criminal history records; access, review, and

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235 challenge.—

236 (1) For purposes of verification of the accuracy and
237 completeness of a criminal history record, the Department of Law
238 Enforcement shall provide, in the manner prescribed by rule,
239 such record for review upon verification, by fingerprints, of
240 the identity of the requesting person. If a minor, or the parent
241 or legal guardian of a minor, requests a copy of the minor's
242 criminal history record, the Department of Law Enforcement shall
243 provide such copy, including any portions of the record which
244 may be confidential under s. 943.053(3)(b), for review upon
245 verification, by fingerprints, of the identity of the minor. The
246 providing of such record shall not require the payment of any
247 fees, except those provided for by federal regulations.

248 Section 4. The Legislature finds that it is a public
249 necessity that the criminal history information of juveniles,
250 who have not been adjudicated delinquent of a felony or who have
251 been found only to have committed misdemeanor offenses be made
252 confidential and exempt from public records requirements. Many
253 juveniles who have either completed their sanctions and received
254 treatment or were never charged in the juvenile justice system
255 have found it difficult to obtain employment. The presence of an
256 arrest or a misdemeanor record in these individuals' juvenile
257 past creates an unnecessary barrier to becoming productive
258 members of society, thus frustrating the rehabilitative purpose
259 of the juvenile system. The Legislature therefore finds that it
260 is in the best interest of the public that juveniles are given

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V

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261 | the opportunity to become contributing members of society.
262 | Prohibiting the unfettered release of juvenile misdemeanor
263 | records is of greater importance than any public benefit that
264 | may be derived from the full disclosure and release of said
265 | arrest records.

266 | Section 5. This act shall take effect upon becoming law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 15-05 Expunging and Sealing Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: PCB CRJS 15-06 **IDEN./SIM. BILLS:** None

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|----------------|---|
| Orig. Comm.: Criminal Justice Subcommittee | | Cox <i>Vee</i> | Cunningham <i>mu</i> |

SUMMARY ANALYSIS

Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records. Currently, every person seeking to expunge or seal a record must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) and then petition a court to expunge or seal the record.

When a court orders a criminal history record to be expunged, criminal justice agencies other than FDLE must physically destroy the record. Only FDLE may retain expunged records. When the court orders a record to be sealed, it is not destroyed, but access is limited to specified entities. Expunged and sealed records are confidential and exempt from public records, and it is a first degree misdemeanor to divulge their existence.

Persons who have had their record expunged or sealed may lawfully deny or fail to acknowledge arrests in the record, except when applying for certain types of employment, petitioning the court for an expunge or seal, or when they are a defendant in a criminal prosecution.

Currently, a person may only expunge or seal one record, may not expunge or seal any record that resulted in a conviction, and may not expunge or seal a record if he or she has previous convictions. Additionally, only the court can order a record to be expunged or sealed.

The bill makes substantial changes to Florida's expunge and seal laws by creating nonjudicial processes for the expunction and sealing of criminal history records. The bill retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication.

The bill permits a person to obtain:

- An unlimited number of "nonjudicial expunctions" for records that resulted in a no-information, a dismissal, a dismissal based on the lawful self-defense exception, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered expunction or "nonjudicial sealing" of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; and
- One "nonjudicial sealing" of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction.

The bill also amends s. 943.0515, F.S., to require all records related to minors that are not classified as serious or habitual juvenile offenders to be automatically expunged when the minor reaches the age of 21 (this currently occurs when the minor reaches age 24).

The bill will likely have both a positive and a negative fiscal impact on FDLE. See fiscal section.

The bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sealing and Expunging Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.¹ Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order.² FDLE is required to retain expunged records.³

When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, criminal justice agencies for their respective criminal justice purposes, judges in the state courts system for the purpose of assisting them in their case-related decision-making responsibilities, and certain other specified agencies for their respective licensing and employment purposes.⁴

Records that have been sealed or expunged are confidential and exempt from the public records law.⁵ It is a first degree misdemeanor⁶ to divulge their existence.⁷

Persons who have had their criminal history records expunged or sealed may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment,⁸ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.⁹

Process for Expunging or Sealing a Record

The processes for expunging and sealing criminal history records are very similar. Every person seeking to expunge or seal a record must obtain a certificate of eligibility¹⁰ from FDLE and then subsequently petition a court to expunge or seal the record. To obtain the certificate from FDLE, a person must:

- Pay a \$75 processing fee;
- Submit a certified copy of the disposition of the record they wish to have expunged or sealed;
- Prior to the date of the application for the certificate, have never been adjudicated guilty or delinquent of:
 - A criminal offense;
 - Comparable ordinance violation; or

¹ s. 943.0585(4), F.S.

² *Id.*

³ *Id.*

⁴ s. 943.059(4), F.S.

⁵ ss. 943.059(4)(c) and 943.0585(4)(c), F.S.

⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁷ Sections 943.059 and 943.0585, F.S., require FDLE to disclose sealed and expunged criminal history records to specified entities for specified purposes.

⁸ These include candidates for employment with a criminal justice agency; applicants for admission to the Florida Bar; those seeking a sensitive position involving direct contact with children, the developmentally disabled, or the elderly with the Department of Children and Family Services, Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; persons seeking to be employed or licensed by the Department of Education, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity that licenses child care facilities; or a Florida seaport.

⁹ ss. 943.0585(4)(a) and 943.059(4)(a), F.S.

¹⁰ A certificate of eligibility for expunction or sealing is valid for 12 months after the date stamped on the certificate. If the certificate expires then a person must reapply for a new certificate of eligibility. The new certificate of eligibility must be based on the status of the applicant and the law in effect at the time of the reapplication. ss. 943.0585(2) and 943.059(2), F.S.

- A felony or misdemeanor specified in s. 943.051(3)(b), F.S.;¹¹
- Have never been adjudicated guilty or delinquent for committing any of the acts stemming from the arrest or alleged criminal activity of the record sought to be expunged or sealed;
- Have never had a prior sealing or expunction of criminal history record under ss. 943.0585 or 943.059, F.S., or former ss. 893.14, 901.33, or 943.058, F.S.;¹² and
- No longer be under any court supervision related to the disposition of the record they wish to have expunged.¹³

Additionally, a person seeking an expunction must submit a written, certified statement from the appropriate state attorney or statewide prosecutor indicating the following:

- That an indictment, information, or other charging document was:
 - Not filed or issued in the case;
 - Dismissed or nolle prosequi by the state attorney or statewide prosecutor, if filed or issued in the case; or
 - Dismissed by a court of competent jurisdiction, if filed or issued in the case;
- That none of the charges related to the arrest or alleged criminal activity that the petition to expunge pertains to resulted in a trial; and
- The record does not relate to a specified violation of law known as a "list offense."^{14,15}

After receiving a person's application for a certificate of eligibility, FDLE conducts a record check through the Florida Crime Information Center, the National Crime Information Center, local court databases, and the Florida Department of Highway Safety and Motor vehicles to determine the

¹¹ These offenses include: assault, as defined in s. 784.011, F.S.; battery, as defined in s. 784.03, F.S.; carrying a concealed weapon, as defined in s. 790.01(1), F.S.; unlawful use of destructive devices or bombs, as defined in s. 790.1615(1), F.S.; neglect of a child, as defined in s. 827.03(1)(e), F.S.; assault or battery on a law enforcement officer, a firefighter, or other specified officers, as defined in s. 784.07(2)(a) and (b), F.S.; open carrying of a weapon, as defined in s. 790.053 F.S.; exposure of sexual organs, as defined in s. 800.03, F.S.; unlawful possession of a firearm, as defined in s. 790.22(5), F.S.; petit theft, as defined in s. 812.014(3), F.S.; cruelty to animals, as defined in s. 828.12(1), F.S.; arson, as defined in s. 806.031(1), F.S.; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property as defined in s. 790.115, F.S.

¹² This provision does not prevent a person from obtaining an expunction for a record previously sealed for 10 years and the record is otherwise eligible for expunction. Section 943.0585(2)(h), F.S., provides that a record must have been sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court.

¹³ ss. 943.0585(2) and 943.059(2), F.S.

¹⁴ s. 943.0585(2)(a), F.S.

¹⁵ The "list offenses" include: sexual misconduct against a covered person, as defined in s. 393.135, F.S.; sexual misconduct against a patient, as defined in s. 394.4593, F.S.; luring or enticing a child, as defined in s. 787.025, F.S.; sexual battery offense, as defined in ch. 794; procuring person under age of 18 for prostitution, as defined in former s. 796.03, F.S.; lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age, as defined in s. 800.04, F.S.; voyeurism, as defined in s. 810.14, F.S.; lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person, as defined in s. 825.1025, F.S.; sexual performance by a child, as defined in s. 827.071, F.S.; protection of minors/prohibition of certain acts in connection with obscenity, as defined in s. 847.0133, F.S.; computer pornography, as defined in s. 847.0135, F.S.; selling or buying minors, as defined in s. 847.0145, F.S.; sexual misconduct of a mentally deficient or mentally ill defendant, as defined in s. 916.1075, F.S.; any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S., without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, F.S.; violations of the Florida Communications Act, as defined in s. 817.034, F.S.; offenses by public officers and employees, as defined in ch. 839, F.S.; drug trafficking, as defined in s. 893.135, F.S.; and enumerated offenses included in s. 907.041, F.S. Additionally, the enumerated offenses included in s. 907.041, F.S., are: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; and attempting or conspiring to commit any such crime. The list offenses preclude a person from obtaining an expunction or sealing if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or pled nolo contendere to committing, the offense as a delinquent act, regardless of whether adjudication was withheld.

person's eligibility to have the record expunged or sealed.¹⁶ FDLE reports that the process is completed within 90 days and each applicant either receives a certificate of eligibility or a denial letter.¹⁷

Once a person has received a certificate of eligibility from FDLE, they must file a petition to expunge or seal the record with the court.¹⁸ In addition to the certificate of eligibility, a petition to expunge or seal a record must also include the petitioner's sworn statement¹⁹ that he or she:

- Has not previously been adjudicated guilty of any offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or misdemeanor specified in s. 943.051(3)(b), F.S.;
- Has not been adjudicated guilty or delinquent for committing any of the acts he or she is currently trying to have expunged or sealed;
- Has not obtained a prior expunction or sealing;²⁰ and
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before any court.²¹

It is up to the court to decide whether the expunction or sealing is appropriate.²² Generally, the court will grant the expunction or sealing if the state attorney does not object at a hearing.²³ The court is only authorized to order the expunction or sealing of a record that pertains to one arrest or one incident of alleged criminal activity.²⁴ However, the court may order the expunction or sealing of a record pertaining to more than one arrest if such additional arrests directly relate to the original arrest.²⁵

Eligibility of a Record to be Expunged v. Sealed

A person may seek an expunction immediately, provided the person is no longer subject to court supervision, if none of the charges related to the arrest or alleged criminal activity resulted in a trial and:

- An indictment, information, or other charging document was not filed or issued in the case (no-information);²⁶
- An indictment, information, or other charging document was filed or issued in the case, but it was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction (dismissal);²⁷ or
- An indictment, information, or other charging document was not filed or was dismissed by the state attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense pursuant to the provisions related to justifiable use of force in ch. 776, F.S.²⁸ (dismissal based on lawful self-defense exception).²⁹

¹⁶ OPPAGA Report, at pg. 14.

¹⁷ *Id.*

¹⁸ There is an additional filing fee associated with filing a petition to expunge or seal. The fee varies by circuit, but is a minimum of \$42. OPPAGA Report at pg. 4.

¹⁹ It is a third degree felony to knowingly provide false information on this sworn statement. ss. 943.0585(1)(b) and 943.059(1)(b), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

²⁰ Unless the prior sealing was in accordance with s. 985.0585(2)(h), F.S.

²¹ ss. 943.059(1)(b) and 943.0585(1)(b), F.S. Any person knowingly providing false information on the sworn statement commits a third degree felony.

²² ss. 943.0585(1) and 943.059(1), F.S.

²³ OPPAGA Report at pg. 4.

²⁴ ss. 943.0585(1) and 943.059(1), F.S.

²⁵ *Id.* The court must articulate in writing its intention to expunge or seal a record pertaining to multiple arrests and a criminal justice agency may not expunge or seal multiple records without such written documentation. The court is also permitted to expunge or seal only a portion of a record.

²⁶ See ss. 943.0585(2), F.S.

²⁷ *Id.*

²⁸ s. 943.0585(5), F.S. The lawful self-defense exception requires a person obtain a certificate of eligibility from FDLE and file a petition for expunction with the court just as required with other petitions to expunge, but the information the person must provide to obtain an expunction based on the lawful self-defense exception is slightly different.

²⁹ See ss. 943.0585(2), F.S.

If a person proceeded to trial, received a not-guilty verdict, or received a withhold of adjudication³⁰ for any of the charges to which the petition pertains, an order to seal the record must be obtained first and then the record becomes eligible for expunction after it has been sealed for ten years.³¹

A person is not currently eligible to have a record expunged or sealed if the person was convicted for any of the charges to which the petition to expunge or seal pertains. Additionally, a person who has a previous unrelated conviction is ineligible to have a record expunged or sealed. Lastly, as stated above, a court may not expunge or seal a record that relates to any of the list offenses where the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or pled nolo contendere to committing, the offense as a delinquent act.³²

Effect of the Bill

The bill creates nonjudicial processes for the expunction and sealing of criminal history records. The bill retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication.

The bill permits a person to obtain:

- An unlimited number of “nonjudicial expunctions” for records that resulted in a no-information, a dismissal, a dismissal based on the lawful self-defense exception, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered expunction or “nonjudicial sealing” of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; and
- One “nonjudicial sealing” of a record that resulted in a conviction for a specified “nonviolent misdemeanor,” regardless of whether the person has a previous misdemeanor conviction.

Nonjudicial Expunction

The bill creates s. 943.0584, F.S., requiring specified records to be expunged without petitioning the court. The bill requires FDLE to approve the nonjudicial expunction of an unlimited number of criminal history records of a minor or adult relating to cases where a:

- No-Information was issued;
- Dismissal was issued by the state attorney or statewide prosecutor, or by a court of competent jurisdiction;
- Dismissal was granted by the state attorney or court based on the lawful self-defense exception; or
- Not-guilty verdict was rendered subsequent to a trial or adjudicatory hearing.

It should be noted that a person may not obtain a nonjudicial expunction unless all charges stemming from the arrest or alleged criminal activity to which the application for expunction pertains were not filed or issued, dismissed or discharged, or resulted in an acquittal.

Additionally, a record may not be approved for nonjudicial expunction if the:

- Case was dismissed pursuant to ss. 916.145 or 985.19, F.S., as a result of the person never being restored to competency; or

³⁰ When a defendant is found guilty after a trial or pleads guilty or nolo contendere, a judge is permitted to withhold the judgment of guilt for the offense. This is known as a withhold of adjudication. Section 948.01(2), F.S., provides that if it appears to a judge that a defendant is “not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by the law”, the judge may withhold the adjudication of guilt and place the defendant on probation. In Florida, a felony conviction impacts a person’s civil rights such as the right to vote and to possess a firearm. However, if adjudication of guilt is withheld, these rights are not suspended. Fla. Const. art. VI, s.4; s. 97.041, F.S.; and *See Snyder v. State*, 673 So.2d 9 (Fla. 1996).

³¹ s. 943.0585(2)(h), F.S.

³² This restriction is without regard to whether adjudication was withheld on any of the listed offenses. ss. 943.0585(1) and 943.059(1), F.S.

- Verdict at trial was not-guilty by reason of insanity.

The bill removes the current requirement that a record related to a not-guilty verdict be sealed for ten years prior to such record being eligible for expunction.

The bill does not alter current law as it relates to obtaining an expunction when the dismissal was based on the lawful self-defense exception, but moves this from a court-ordered process to the newly-created nonjudicial expunction process.

To apply for nonjudicial expunction under s. 943.0584, F.S., the bill requires a person to include:

- A written, certified statement from the appropriate state attorney or statewide prosecutor indicating that the criminal history record sought to be expunged is eligible; or
- If applicable, a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that the dismissal was based on the lawful self-defense exception;
- A \$75 processing fee to FDLE for placement in the FDLE Operating Trust Fund, unless such fee is waived by the executive director;
- A certified copy of the disposition of the charge to which the application to expunge pertains; and
- A full set of fingerprints of the applicant taken by a law enforcement agency for purposes of identity verification.

An applicant seeking the nonjudicial expunction of multiple eligible records only needs to submit one application and one fee to FDLE. Upon receiving a complete application, FDLE must approve the nonjudicial expunction of all records pertaining to the applicant that are eligible for the nonjudicial expunction.

Upon approval of a nonjudicial expunction, FDLE must serve a certified copy of form approving the nonjudicial expunction to the state attorney or statewide prosecutor, the arresting agency, the clerk of the court, and the Federal Bureau of Investigation (FBI). The arresting agency must forward the approval form to any other agency that they disseminated the criminal history record information to which the form pertains. Lastly, the clerk of the court must forward a copy of the form to any other agency which the records of the court reflect has received the criminal history record from the court.

The bill provides that records that are approved for nonjudicial expunction pursuant to s. 943.0584, F.S., must have the same effect and be disclosed in the same manner as current law requires for records expunged pursuant to a court-order under s. 943.0585, F.S. (i.e., that the record must be destroyed by all parties except for FDLE, a person may not lawfully deny the existence of the record to specified parties, etc.).

The bill provides FDLE with authority to adopt a rule pursuant to ch. 120, F.S., for the nonjudicial expunction of any criminal history record of a minor or an adult described in this section.

Court-Ordered Expunction

Codified in s. 985.0585, F.S., the bill leaves the general process of court-ordered expunction intact. However, the bill limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication. A person must still obtain a certificate of eligibility from FDLE and petition the court to expunge the record. The bill does not alter current law as it relates to the processing of an order to expunge, how the record is treated once an order to expunge is granted, or the persons that have access to a record that has been expunged.

The bill amends s. 943.0585, F.S., to permit one record related to a withhold of adjudication to be expunged. A person no longer is required to first seal the withhold of adjudication for ten years to be eligible for an expunction. However, a court is prohibited from expunging a record pertaining to a withhold of adjudication if:

- The person seeking the expunction or sealing has, at any time prior to the date of filing the certificate of eligibility, been adjudicated guilty for a felony offense or adjudicated delinquent for an offense which, if committed by an adult, would be a felony; or
- The record relates to a list offense where the person was convicted of, adjudicated delinquent of, or pled nolo contendere to the offense, regardless of whether adjudication was withheld.

To obtain a certificate of eligibility from FDLE, a person seeking to expunge a record pertaining to a withhold of adjudication must submit the above-described information required under current law for a court-ordered expunction and meet two additional requirements, including:

- That the person has not been arrested for or charged with a criminal offense, in any jurisdiction of the state or within the United States, from the date the person completed all sentences of imprisonment or supervisory sanctions imposed by the court for the offense to which the petition to expunge pertains to the date of the application for the certificate of eligibility;³³ and
- Submit a full set of fingerprints taken by a law enforcement agency for purposes of identity verification.

The bill retains current law regarding the length of time the certificate of eligibility is valid and the reapplication process.

The bill requires the petition to expunge or seal for such records to include:

- A valid certificate of eligibility for sealing issued by FDLE; and
- The petitioner's sworn statement³⁴ attesting that:
 - The criminal history record sought to be sealed is related to an eligible offense;
 - The petitioner is eligible for the expunction; and
 - The petitioner has not been charged with a criminal offense, in any jurisdiction of the state or a foreign jurisdiction, from the date the person completed all sentences of imprisonment or supervisory sanctions imposed by the court for the offense to which the petition to expunge pertains to the date of the application for the certificate of eligibility. This period of time must be no less than one year in length.

The bill also retains the requirement that a court only expunge a record pertaining to one arrest or one incident of alleged criminal activity, unless the court finds that the additional arrests are directly related to the original arrest and provides written documentation of the intent to expunge such additional arrests.

Nonjudicial Sealing

The bill amends s. 943.059, F.S., requiring specified records to be sealed without petitioning the court. A person may apply to FDLE for the nonjudicial sealing of one criminal history record of a minor or adult relating to cases where a person:

- Received a withhold of adjudication from the court; or
- Was convicted of a "nonviolent misdemeanor."

The bill defines "nonviolent misdemeanor" to include misdemeanor violations of the following offenses:

- Misrepresent or misstate one's age or the age of any other person to induce another to sell, serve, etc. alcoholic beverages to a minor, or for any person under 21 years of age to purchase or attempt to purchase alcoholic beverages;
- Possession of alcohol by a minor;
- Make or cause a false fire alarm;
- Criminal mischief;
- Trespass in structure or conveyance;

³³ This provision is required to be no less than one year in length.

³⁴ The bill retains the criminal penalty for knowingly providing false information on this sworn statement to the court. Current law makes it a third degree felony to knowingly provide false information on this sworn statement. s. 943.0585(1)(b), F.S.

- Trespass on property other than structure or conveyance;
- Willful removal, destruction, etc. of a posted notice intended to legally enclose property;
- Unauthorized placement of signs upon land or trees adjacent to public highways;
- Breaking or injuring another property owner's fences;
- Cave vandalism and other related offenses;
- Petit Theft;
- Nuisances;
- Building bonfires within specified distance to a home or building;
- Disorderly intoxication;
- Open house parties;
- Unlawful assemblies;
- Delivery of 20 grams or less of cannabis;
- Possession of 20 grams or less of cannabis;
- Possession of drug paraphernalia; or
- Any offense found in chs. 316-324, F.S., unless the violation of such offense directly caused serious bodily injury or death to a person.

A criminal history record may not be approved for nonjudicial sealing if the:

- Person seeking the sealing has, at any time prior to the date of the application for nonjudicial sealing, been adjudicated guilty or delinquent for a felony; or
- Record relates to a list offense, regardless of whether the court withheld adjudication.

The bill authorizes FDLE to approve the nonjudicial sealing under s. 943.059, F.S., of a record related to one arrest or one incident of alleged criminal activity, unless the state attorney or statewide prosecutor provides supporting documentation that additional arrests are directly related to the arrest sought to be sealed. If FDLE approves the sealing of such additional arrests, the approval form must express the intent to do so. The bill provides the applicant the right to appeal to the circuit court if the state attorney or statewide prosecutors denies that the additional arrests are directly related.

To apply for a nonjudicial sealing under s. 943.059, F.S., the bill requires a person to include:

- A written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record sought to be sealed is eligible;
- If applicable, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that any additional arrests the applicant seeks to seal are directly related to the original arrest;
- A \$75 processing fee to FDLE for placement in the FDLE Operating Trust Fund, unless such fee is waived by the executive director;
- A certified copy of the disposition of the charge to which the application to seal pertains;
- A full set of fingerprints of the applicant taken by a law enforcement agency for purposes of identity verification; and
- A sworn, written statement³⁵ from the person seeking the sealing that he or she:
 - Is no longer under court supervision applicable to the disposition of the arrest or alleged criminal activity to which the application to seal pertains;
 - Has never secured a prior sealing or expunction of a criminal history record under ss. 943.0585 or 943.059, F.S., or former ss. 893.14, 901.33, or 943.058, F.S.; and
 - Has not been arrested for or charged with a criminal offense, in any jurisdiction of the state or within the United States, from the date the person completed all sentences of imprisonment or supervisory sanctions imposed by the court for the offense to which the petition to expunge pertains to the date of the application for the certificate of eligibility.³⁶

³⁵ The bill provides it is a third degree felony for a person to knowingly provide false information on this sworn statement.

³⁶ This period of time must be no less than one year in length.

Upon approval of a nonjudicial sealing, FDLE must forward a certified copy of the form approving the nonjudicial sealing to the state attorney or statewide prosecutor, the arresting agency, the clerk of the court, and the FBI. The arresting agency must forward the approval form to any other agency that they disseminated the criminal history record information to which the form pertains. Lastly, the clerk of the court must forward a copy of the form to any other agency which the records of the court reflect has received the criminal history record from the court.

The bill does not alter current law as it relates to how the record is treated once an order to seal is granted, or the persons that have access to the record that has been sealed (i.e. that the record continues to be maintained by FDLE and other criminal justice agencies, specified persons can access the sealed record, and the list of entities to which the person may not lawfully deny the existence of the sealed record).

It should be noted that a person whose record related to a withhold of adjudication is nonjudicially sealed under s. 943.059, F.S., is not barred from subsequently obtaining a court-ordered expunction of that same record.

The bill provides FDLE with authority to adopt a rule pursuant to ch. 120, F.S., for the nonjudicial sealing of any criminal history record of a minor or an adult described in this section.

Automatic Expunction of Criminal History Records of Minors

Section 943.0515, F.S., requires the automatic expunction of the records of specified juveniles at age 24 or 26. For juveniles who are classified as serious or habitual juvenile offenders, or that have been committed to a juvenile correctional facility or juvenile prison, the Criminal Justice Information Program (CJIP)³⁷ must retain their record until the age of 26, at which time it is automatically expunged.³⁸ For all other juveniles, CJIP must retain the record until the juvenile reaches the age of 24, at which time it is automatically expunged.³⁹

A juvenile's record is prohibited from being automatically expunged if:

- A person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed;
- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S.^{40,41}

In these three instances, the person's record as a minor must be merged with and retained as part of their adult record.⁴²

Effect of the Bill

The bill amends s. 943.0515, F.S., to require all records related to minors that are not classified as serious or habitual juvenile offenders to be automatically expunged when the minor reaches the age of 21, so long as one of the three above-mentioned exceptions does not apply. The automatic expunction of records related to juveniles who are classified as serious or habitual juvenile offenders remains at age 26.

Lastly, the bill makes citation conforming changes to ss. 776.09, 790.23, 943.0582, 948.08, 948.16, 961.06, 985.04, 985.045, and 985.345, F.S.

³⁷ Section 943.05, F.S., creates CJIP within FDLE to act as the state's central criminal justice information repository, including the maintenance of a statewide automated biometric identification system. Identifying information of persons arrested and prosecuted in this state is sent to FDLE for inclusion in CJIP, which can then transmit this information between criminal justice agencies.

³⁸ s. 943.0515(1)(a), F.S.

³⁹ s. 943.0515(1)(b), F.S.

⁴⁰ s. 943.0515(2) and (3), F.S.

⁴¹ Section 943.0435, F.S., defines a "sexual offender" and proscribes when a sexual offender is required to register with FDLE.

⁴² *Id.*

B. SECTION DIRECTORY:

- Section 1. Amends s. 943.0515, F.S., relating to retention of criminal history records of minors.
- Section 2. Creates s. 943.0584, F.S., relating to nonjudicial expunction of criminal history records.
- Section 3. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.
- Section 4. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.
- Section 5. Amends s. 776.09, F.S., relating to retention of records pertaining to persons found to be acting in lawful self-defense; expunction of criminal history records.
- Section 6. Amends s. 790.23, F.S., relating to felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.
- Section 7. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.
- Section 8. Amends s. 948.08, F.S., relating to pretrial intervention program.
- Section 9. Amends s. 948.16, F.S., relating to misdemeanor pretrial substance abuse education and treatment intervention program; misdemeanor pretrial veterans' treatment intervention program.
- Section 10. Amends s. 961.06, F.S., relating to compensation for wrongful incarceration.
- Section 11. Amends s. 985.04, F.S., relating to oaths; records; confidential information.
- Section 12. Amends s. 985.045, F.S., relating to court records.
- Section 13. Amends s. 985.345, F.S., relating to delinquency pretrial intervention program.
- Section 14. Provides an effective date of October 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill expands the expunction and sealing process by making more offenses eligible for expunction and sealing. The bill also increases the number of times a person may have a record expunged or sealed. To the extent that this results in more people submitting the \$75 fee to FDLE to obtain a certificate of eligibility, the bill may result in a positive fiscal impact on FDLE.

2. Expenditures:

The bill creates nonjudicial processes for expunction and sealing. FDLE will have to train staff on how to conduct these programs in accordance with the provision of the bill. Additionally, the expansion of the expunction and sealing laws will likely result in an increased workload to FDLE as it will require staff to process more applications for certificates of eligibility. To the extent that expanding these provisions results in an increased workload, the bill will likely result in a negative fiscal impact on FDLE.

FDLE will also be required to update the CJIP program where criminal history information is stored to update the new age requirements for expunction of juvenile records under s. 943.0515, F.S. This will likely result in a negative fiscal impact on FDLE.

By creating the nonjudicial expunction and sealing processes, courts will no longer need to conduct hearings to determine if it is appropriate to grant a petition. To the extent that the bill results in the courts conducting less hearings, the decreased workload will likely result in a positive fiscal impact on the court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires FDLE to create rules related to the newly-created nonjudicial expunction and sealing processes. The bill provides the necessary authority to FDLE to create such rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

27 eligibility for court-ordered expunction; providing
 28 specified documentation that must be submitted to the
 29 court for a petition to expunge; requiring sworn
 30 statement from petitioner; providing a criminal
 31 penalty for perjury on such sworn statement; providing
 32 guidelines for the processing of an order to expunge
 33 once issued; providing the effect of the order to
 34 expunge on the criminal history record; specifying
 35 exceptions to the confidential and exempt status of an
 36 expunged criminal history record; requiring criminal
 37 justice agencies to destroy copies of records that
 38 have been expunged; amending s. 943.059, F.S.;
 39 establishing a nonjudicial process for sealing of
 40 specified records; specifying types of records that
 41 are eligible for the nonjudicial sealing process;
 42 providing exceptions to eligibility for obtaining a
 43 nonjudicial seal; establishing an application process
 44 and requiring specified documentation be submitted to
 45 FDLE when seeking a nonjudicial sealing; requiring
 46 sworn statement from petitioner; providing a criminal
 47 penalty for perjury on such sworn statement;
 48 specifying how the nonjudicial sealing must be
 49 processed; providing for the effect of a record that
 50 has been sealed under this section; amending ss.
 51 776.09, 790.23, 943.0582, 948.08, 948.16, 961.06, and
 52 985.345, F.S.; making changes to conform cross-

53 references to changes made in the act; providing an
 54 effective date.

55
 56 Be It Enacted by the Legislature of the State of Florida:

57
 58 Section 1. Paragraph (b) of subsection (1) of section
 59 943.0515, Florida Statutes, is amended to read:

60 943.0515 Retention of criminal history records of minors.—

61 (1)

62 (b) If the minor is not classified as a serious or
 63 habitual juvenile offender or committed to a juvenile
 64 correctional facility or juvenile prison under chapter 985, the
 65 program shall retain the minor's criminal history record for 2 ~~5~~
 66 years after the date the minor reaches 19 years of age, at which
 67 time the record shall be expunged unless it meets the criteria
 68 of paragraph (2)(a) or paragraph (2)(b).

69 Section 2. Section 943.0584, Florida Statutes, is created
 70 to read:

71 943.0584 Nonjudicial expunction of criminal history
 72 records.—

73 (1) Notwithstanding any law dealing generally with the
 74 preservation and destruction of public records, the department
 75 may adopt a rule pursuant to chapter 120 for the nonjudicial
 76 expunction of any criminal history record of a minor or an adult
 77 described in this section.

78 (2) ELIGIBILITY.—The department must approve the

79 nonjudicial expunction of a criminal history record where:

80 (a) An indictment, information, or other charging document
 81 was not filed or issued in the case;

82 (b)1. Except as provided in subparagraph 2., an
 83 indictment, information, or other charging document was filed or
 84 issued in the case, but was subsequently dismissed or nolle
 85 prosequi by the state attorney or statewide prosecutor, or was
 86 dismissed or discharged by a court of competent jurisdiction;

87 2. A person may not obtain an expunction under this
 88 paragraph for a dismissal pursuant to ss. 916.145 or 985.19;

89 (c) An information, indictment, or other charging document
 90 was not filed or was dismissed by the state attorney, or
 91 dismissed by the court, because it was found that the person
 92 acted in lawful self-defense pursuant to the provisions related
 93 to justifiable use of force in chapter 776; or

94 (d)1. Except as provided in subparagraph 2., a not-guilty
 95 verdict was rendered subsequent to a trial or adjudicatory
 96 hearing.

97 2. A person may not obtain an expunction under this
 98 paragraph for a verdict of not guilty by reason of insanity.

99 (e) A person may not obtain a nonjudicial expunction under
 100 this section unless all charges stemming from the arrest or
 101 alleged criminal activity to which the application for
 102 expunction pertains were not filed or issued, dismissed or
 103 discharged, or resulted in an acquittal, as provided herein.

104 (3) LIMITATIONS.-There is no limitation on the number of

105 times a person may obtain a nonjudicial expunction for a
 106 criminal history record described in paragraphs (2)(a), (b),
 107 (c), or (d). An applicant seeking to have multiple records
 108 expunged need only submit one application to the department
 109 under this section. The department must approve the nonjudicial
 110 expunction of all records pertaining to the applicant that are
 111 eligible for expunction under this section.

112 (4) APPLICATION FOR NONJUDICIAL EXPUNCTION.-An adult or,
 113 in the case of a minor child, the parent or legal guardian of
 114 the minor child, seeking to expunge a criminal history record
 115 under this section shall apply to the department in the manner
 116 prescribed by rule. An application for a nonjudicial expunction
 117 shall include a:

118 (a)1. Written, certified statement from the appropriate
 119 state attorney or statewide prosecutor which indicates that the
 120 criminal history record sought to be expunged is eligible under
 121 this section; or

122 2. For expunction of a record described in paragraph
 123 (2)(c), a written, certified statement from the appropriate
 124 state attorney or statewide prosecutor which states that an
 125 information, indictment, or other charging document was not
 126 filed or was dismissed by the state attorney, or dismissed by
 127 the court, because it was found that the person acted in lawful
 128 self-defense pursuant to the provisions related to justifiable
 129 use of force in chapter 776;

130 (b) \$75 processing fee to the department for placement in

131 the Department of Law Enforcement Operating Trust Fund, unless
 132 such fee is waived by the executive director;

133 (c) Certified copy of the disposition of the charge to
 134 which the application to expunge pertains; and

135 (d) Full set of fingerprints of the applicant taken by a
 136 law enforcement agency for purposes of identity verification.

137 (5) PROCESSING OF A NONJUDICIAL EXPUNCTION.-If the
 138 department approves an application for nonjudicial expunction, a
 139 certified copy of the form approving the nonjudicial expunction
 140 shall be forwarded to the appropriate state attorney or the
 141 statewide prosecutor, the arresting agency, and the clerk of the
 142 court. The arresting agency is responsible for forwarding the
 143 form approving the nonjudicial expunction to any other agency to
 144 which the arresting agency disseminated the criminal history
 145 record information to which the form pertains. The department
 146 shall forward the form approving the nonjudicial expunction to
 147 the Federal Bureau of Investigation. The clerk of the court
 148 shall forward a copy of the form to any other agency which the
 149 records of the court reflect has received the criminal history
 150 record from the court.

151 (6) EFFECT OF A NONJUDICIAL EXPUNCTION.-

152 (a) A confidential and exempt criminal history record
 153 expunged under this section shall have the same effect, and such
 154 record may be disclosed by the department in the same manner, as
 155 a record expunged under s. 943.0585.

156 (7) STATUTORY REFERENCES.-Any reference to any other

157 chapter, section, or subdivision of the Florida Statutes in this
 158 section constitutes a general reference under the doctrine of
 159 incorporation by reference.

160 Section 3. Section 943.0585, Florida Statutes, is amended
 161 to read:

162 (Substantial rewording of section. See s. 943.0585, F.S.,
 163 for present text.)

164 943.0585 Court-ordered expunction of criminal history
 165 records.-

166 (1) JURISDICTION.-The courts of this state have
 167 jurisdiction over their own procedures, including the
 168 maintenance, expunction, and correction of judicial records
 169 containing criminal history information to the extent such
 170 procedures are not inconsistent with the conditions,
 171 responsibilities, and duties established by this section. Any
 172 court of competent jurisdiction may order a criminal justice
 173 agency to expunge the criminal history record of a minor or an
 174 adult who complies with the requirements of this section.

175 (2) ELIGIBILITY.-

176 (a)1. Except as provided in paragraph (b), a court may
 177 order the expunction of a criminal history record where the
 178 person was found guilty of or found to have committed, or pled
 179 guilty or pled nolo contendere to an offense; and

180 2. None of the charges stemming from the arrest or alleged
 181 criminal activity to which the petition to expunge pertains
 182 resulted in an adjudication of guilt or delinquency.

183 (b) A court may not order the expunction of a criminal
 184 history record:

185 1. If the person has, at any time prior to the date on
 186 which the application for a certificate of eligibility is filed,
 187 been adjudicated guilty for a felony offense or adjudicated
 188 delinquent for an offense which would be a felony if committed
 189 by an adult prior to applying for a certificate of eligibility;
 190 or

191 2. Relating to a serious offense in which the person was
 192 found guilty of or adjudicated delinquent of, or pled guilty or
 193 pled nolo contendere to the offense, regardless of whether
 194 adjudication was withheld. For purposes of this section, the
 195 term "serious offense" means a violation of s. 393.135, s.
 196 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04,
 197 s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
 198 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a
 199 violation enumerated in s. 907.041, or any violation specified
 200 as a predicate offense for registration as a sexual predator
 201 pursuant to s. 775.21, without regard to whether that offense
 202 alone is sufficient to require such registration, or for
 203 registration as a sexual offender pursuant to s. 943.0435.

204 (3) LIMITATIONS.-A court may only order the expunction of
 205 one criminal history record described in paragraph (2)(a). A
 206 person seeking an expunction under this section is not barred
 207 from relief if the same criminal history record has previously
 208 been approved for a nonjudicial sealing pursuant to s. 943.059.

209 The record expunged must pertain to one arrest or one incident
 210 of alleged criminal activity. However, the court may, at its
 211 sole discretion, order the expunction of a criminal history
 212 record pertaining to more than one arrest or one incident of
 213 alleged criminal activity if the additional arrests directly
 214 relate to the original arrest. If the court intends to order the
 215 expunction of records pertaining to such additional arrests,
 216 such intent must be specified in the order. A criminal justice
 217 agency may not expunge any record pertaining to such additional
 218 arrests if the order to expunge does not articulate the
 219 intention of the court to expunge a record pertaining to more
 220 than one arrest. This section does not prevent the court from
 221 ordering the expunction of only a portion of a criminal history
 222 record pertaining to one arrest.

223 (4) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—

224 (a) A person seeking to expunge a criminal history record
 225 under this section shall apply to the department for a
 226 certificate of eligibility for expunction prior to petitioning
 227 the court for expunction. The department shall issue a
 228 certificate of eligibility for expunction to a person who is the
 229 subject of a criminal history record if that person:

- 230 1. Has obtained and submitted to the department a written,
 231 certified statement from the appropriate state attorney or
 232 statewide prosecutor which indicates that the criminal history
 233 record sought to be expunged is eligible under subsection (2);
- 234 2. Remits a \$75 processing fee to the department for

235 placement in the Department of Law Enforcement Operating Trust
 236 Fund, unless such fee is waived by the executive director;

237 3. Has submitted to the department a certified copy of the
 238 disposition of the charge to which the petition to expunge
 239 pertains;

240 4. Has never secured a prior sealing or expunction of a
 241 criminal history record under this section, s. 943.059, former
 242 s. 893.14, former 901.33, or former 943.058, unless expunction
 243 is sought of a criminal history record that has been previously
 244 sealed under former paragraph (2)(h) and the record is otherwise
 245 eligible for expunction;

246 5. Is no longer under court supervision applicable to the
 247 disposition of the arrest or alleged criminal activity to which
 248 the petition to expunge pertains;

249 6. Has not been arrested for or charged with a criminal
 250 offense, in any jurisdiction of the state or within the United
 251 States, from the date the person completed all sentences of
 252 imprisonment or supervisory sanctions imposed by the court for
 253 the offense to which the petition to expunge pertains to the
 254 date of the application for the certificate of eligibility. This
 255 period of time must be no less than one year in length; and

256 7. Has submitted a full set of fingerprints taken by a law
 257 enforcement agency for purposes of identity verification.

258 (b) A certificate of eligibility for expunction is valid
 259 for 12 months after the date stamped on the certificate when
 260 issued by the department. After that time, the petitioner must

261 reapply to the department for a new certificate of eligibility.
 262 Eligibility for a renewed certification of eligibility must be
 263 based on the status of the applicant and the law in effect at
 264 the time of the renewal application.

265 (c) The department shall, by rule adopted pursuant to
 266 chapter 120, establish procedures pertaining to the application
 267 for and issuance of certificates of eligibility for expunction.

268 (5) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.-

269 (a) The court shall not order a criminal justice agency to
 270 expunge a criminal history record under this section until the
 271 person seeking to expunge the record has applied for and
 272 received a certificate of eligibility for expunction pursuant to
 273 subsection (4). Each petition to a court to expunge a criminal
 274 history record is complete only when accompanied by:

275 1. A valid certificate of eligibility for expunction
 276 issued by the department pursuant to subsection (4).

277 2. The petitioner's sworn statement attesting that:

278 a. The criminal history record sought to be expunged is
 279 eligible under subsection (2);

280 b. The petitioner is eligible for the expunction under
 281 subsection (3); and

282 c. He or she has not been arrested for or charged with a
 283 criminal offense, in any jurisdiction of the state or within the
 284 United States, from the date the person completed all sentences
 285 of imprisonment or supervisory sanctions imposed by the court
 286 for the offense to which the petition to expunge pertains to the

287 date of the application for the certificate of eligibility. This
 288 period of time must be no less than one year in length.

289 (b) Any person who knowingly provides false information on
 290 the sworn statement required by subparagraph (a)2. commits a
 291 felony of the third degree, punishable as provided in s.
 292 775.082, s. 775.083, or s. 775.084.

293 (6) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.-

294 (a) In judicial proceedings under this section, a copy of
 295 the completed petition to expunge shall be served upon the
 296 appropriate state attorney or the statewide prosecutor and upon
 297 the arresting agency; however, it is not necessary to make any
 298 agency other than the state a party. The appropriate state
 299 attorney or the statewide prosecutor and the arresting agency
 300 may respond to the court regarding the completed petition to
 301 expunge.

302 (b) If relief is granted by the court, the clerk of the
 303 court shall certify copies of the order to the appropriate state
 304 attorney or the statewide prosecutor and the arresting agency.
 305 The arresting agency is responsible for forwarding the order to
 306 any other agency to which the arresting agency disseminated the
 307 criminal history record information to which the order pertains.
 308 The department shall forward the order to expunge to the Federal
 309 Bureau of Investigation. The clerk of the court shall certify a
 310 copy of the order to any other agency which the records of the
 311 court reflect has received the criminal history record from the
 312 court.

313 (c) The department or any other criminal justice agency is
 314 not required to act on an order to expunge entered by a court
 315 when such order does not comply with the requirements of this
 316 section. Upon receipt of such an order, the department must
 317 notify the issuing court, the appropriate state attorney or
 318 statewide prosecutor, the petitioner or the petitioner's
 319 attorney, and the arresting agency of the reason for
 320 noncompliance. The appropriate state attorney or statewide
 321 prosecutor shall take action within 60 days to correct the
 322 record and petition the court to void the order. No cause of
 323 action, including contempt of court, shall arise against any
 324 criminal justice agency for failure to comply with an order to
 325 expunge when the petitioner for such order failed to obtain the
 326 certificate of eligibility as required by this section or such
 327 order does not otherwise comply with the requirements of this
 328 section.

329 (7) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.-

330 (a) Any criminal history record of a minor or an adult
 331 which is ordered expunged by a court of competent jurisdiction
 332 pursuant to this section must be physically destroyed or
 333 obliterated by any criminal justice agency having custody of
 334 such record; except that any criminal history record in the
 335 custody of the department must be retained in all cases.

336 (b) The person who is the subject of a criminal history
 337 record that is expunged under this section or under other
 338 provisions of law, including s. 943.0584, former s. 893.14,

339 former s. 901.33, and former s. 943.058, may lawfully deny or
 340 fail to acknowledge the arrests covered by the expunged record,
 341 except when the subject of the record:

342 1. Is a candidate for employment with a criminal justice
 343 agency;

344 2. Is a defendant in a criminal prosecution;

345 3. Concurrently or subsequently seeks relief under this
 346 section, s. 943.0583 or s. 943.059;

347 4. Is a candidate for admission to The Florida Bar;

348 5. Is seeking to be employed or licensed by or to contract
 349 with the Department of Children and Families, the Division of
 350 Vocational Rehabilitation within the Department of Education,
 351 the Agency for Health Care Administration, the Agency for
 352 Persons with Disabilities, the Department of Health, the
 353 Department of Elderly Affairs, or the Department of Juvenile
 354 Justice or to be employed or used by such contractor or licensee
 355 in a sensitive position having direct contact with children, the
 356 disabled, or the elderly;

357 6. Is seeking to be employed or licensed by the Department
 358 of Education, any district school board, any university
 359 laboratory school, any charter school, any private or parochial
 360 school, or any local governmental entity that licenses child
 361 care facilities;

362 7. Is seeking to be licensed by the Division of Insurance
 363 Agent and Agency Services within the Department of Financial
 364 Services; or

365 8. Is seeking to be appointed as a guardian pursuant to s.
 366 744.3125.

367 (c) Subject to the exceptions in paragraph (c), a person
 368 who has been granted an expunction under this section, s.
 369 943.0584, former s. 893.14, former s. 901.33, or former s.
 370 943.058 may not be held under any provision of law of this state
 371 to commit perjury or to be otherwise liable for giving a false
 372 statement by reason of such person's failure to recite or
 373 acknowledge an expunged criminal history record.

374 (d) Notwithstanding any law to the contrary, a criminal
 375 justice agency may comply with laws, court orders, and official
 376 requests of other jurisdictions relating to expunction,
 377 correction, or confidential handling of criminal history records
 378 or information derived therefrom.

379 (8) STATUTORY REFERENCES.—Any reference to any other
 380 chapter, section, or subdivision of the Florida Statutes in this
 381 section constitutes a general reference under the doctrine of
 382 incorporation by reference.

383 (9) This section does not confer any right to the
 384 expunction of any criminal history record, and any request for
 385 expunction of a criminal history record may be denied at the
 386 sole discretion of the court.

387 Section 4. Section 943.059, Florida Statutes, is amended
 388 to read:

389 (Substantial rewording of section. See s. 943.059, F.S.,
 390 for present text.)

391 943.059 Nonjudicial sealing of criminal history records.-

392 (1) Notwithstanding any law dealing generally with the
 393 preservation and destruction of public records, the department
 394 may adopt a rule pursuant to chapter 120 for the nonjudicial
 395 sealing of any criminal history record of a minor or an adult
 396 described in this section.

397 (2) ELIGIBILITY.-

398 (a) Except as provided in paragraph (b), the department
 399 must approve the nonjudicial sealing of a criminal history
 400 record where:

401 1.a. The person was found guilty of, found to have
 402 committed, pled guilty to, or pled nolo contendere to an
 403 offense; and

404 b. None of the charges stemming from the arrest or alleged
 405 criminal activity to which the application for nonjudicial
 406 sealing pertains resulted in an adjudication of guilt or
 407 delinquency; or

408 2. The person was adjudicated guilty or adjudicated
 409 delinquent for a nonviolent misdemeanor. For purposes of this
 410 section, the term "nonviolent misdemeanor" means a misdemeanor
 411 violation of:

412 a. Section 562.11(2), s. 562.111, s. 806.101, s. 806.13,
 413 s. 810.08, s. 810.09, s. 810.10, s. 810.11, s. 810.115, s.
 414 810.13, s. 812.014(3)(a), s. 823.01, s. 823.02, s. 856.011, s.
 415 856.015, s. 870.02, s. 893.13(3), s. 893.13(6)(b), or s.
 416 893.147(1), in which the petitioner was adjudicated guilty or

417 adjudicated delinquent; or

418 b. Any offense found in chs. 316-324 in which the
 419 petitioner was adjudicated guilty or adjudicated delinquent,
 420 unless the violation of such offense directly caused serious
 421 bodily injury or death to a person.

422 (b) A criminal history record may not be approved for a
 423 nonjudicial sealing pursuant to this section if:

424 1. The person seeking the sealing has, at any time prior
 425 to the date on which the application for nonjudicial sealing is
 426 filed, been adjudicated guilty for a felony offense or
 427 adjudicated delinquent for an offense which would be a felony if
 428 committed by an adult; or

429 2. The record relates to a serious offense in which the
 430 person was found guilty of or adjudicated delinquent of, or pled
 431 guilty or pled nolo contendere to the offense, regardless of
 432 whether adjudication was withheld. For purposes of this
 433 section, the term "serious offense" means a violation of s.
 434 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
 435 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
 436 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
 437 s. 916.1075, a violation enumerated in s. 907.041, or any
 438 violation specified as a predicate offense for registration as a
 439 sexual predator pursuant to s. 775.21, without regard to whether
 440 that offense alone is sufficient to require such registration,
 441 or for registration as a sexual offender pursuant to s.
 442 943.0435.

443 (3) LIMITATIONS.-The department may only approve the
 444 sealing of one criminal history record described in paragraph
 445 (2) (a). Each record sealed must pertain to one arrest or one
 446 incident of alleged criminal activity. However, if the
 447 department receives supporting documentation as described in
 448 paragraph (4) (b) stating that additional arrests are directly
 449 related to the arrest sought to be expunged, the department must
 450 approve the sealing of a criminal history record pertaining to
 451 the additional arrests. If the department approves the sealing
 452 of records pertaining to such additional arrests, such intent
 453 must be specified in the approval form. A criminal justice
 454 agency may not seal any record pertaining to such additional
 455 arrests if the department has not approved sealing records
 456 pertaining to more than one arrest.

457 (4) APPLICATION FOR NONJUDICIAL SEALING.-An adult or, in
 458 the case of a minor child, the parent or legal guardian of the
 459 minor child, seeking to seal a criminal history record under
 460 this section shall apply to the department in the manner
 461 prescribed by rule. An application for nonjudicial sealing shall
 462 include a:

463 (a) Written, certified statement from the appropriate
 464 state attorney or statewide prosecutor which indicates that the
 465 criminal history record sought to be sealed is eligible under
 466 subsection (2);

467 (b) If applicable, written, certified statement from the
 468 appropriate state attorney or statewide prosecutor that

469 indicates any additional arrests the applicant seeks to seal are
 470 directly related to the original arrest. If the state attorney
 471 or statewide prosecutor does not confirm that the additional
 472 arrests are directly related, the person applying for the
 473 sealing has the right to appeal this decision to the circuit
 474 court;

475 (c) \$75 processing fee to the department for placement in
 476 the Department of Law Enforcement Operating Trust Fund, unless
 477 such fee is waived by the executive director;

478 (d) Certified copy of the disposition of the charge to
 479 which the application to seal pertains;

480 (e) Full set of fingerprints of the applicant taken by a
 481 law enforcement agency for purposes of identity verification;
 482 and

483 (f) Sworn, written statement from the person seeking the
 484 sealing that he or she:

485 1. Is no longer under court supervision applicable to the
 486 disposition of the arrest or alleged criminal activity to which
 487 the application to seal pertains;

488 2. Has never secured a prior sealing or expunction of a
 489 criminal history record under this section, s. 943.0585, former
 490 s. 893.14, former 901.33, or former 943.058; and

491 3. Has not been arrested for or charged with a criminal
 492 offense, in any jurisdiction of the state or within the United
 493 States, from the date the person completed all sentences of
 494 imprisonment or supervisory sanctions imposed by the court for

495 the offense to which the application for nonjudicial sealing
 496 pertains to the date of the application for the nonjudicial
 497 sealing. This period of time must be no less than one year in
 498 length.

499 (g) Any person who knowingly provides false information on
 500 the sworn statement required by paragraph (f) commits a felony
 501 of the third degree, punishable as provided in s. 775.082, s.
 502 775.083, or s. 775.084.

503 (6) PROCESSING OF A NONJUDICIAL SEAL.-

504 (a) If the department approves an application for a
 505 nonjudicial sealing, a certified copy of the form approving the
 506 nonjudicial sealing shall be forwarded to the appropriate state
 507 attorney or the statewide prosecutor, the arresting agency, and
 508 the clerk of the court. The arresting agency is responsible for
 509 forwarding the form approving the nonjudicial sealing to any
 510 other agency to which the arresting agency disseminated the
 511 criminal history record information to which the form pertains.
 512 The department shall forward the form approving the nonjudicial
 513 sealing to the Federal Bureau of Investigation. The clerk of the
 514 court shall forward a copy of the form to any other agency which
 515 the records of the court reflect has received the criminal
 516 history record from the court.

517 (b) The nonjudicial sealing of a criminal history record
 518 pursuant to this section does not require that such record be
 519 surrendered to the court, and such record shall continue to be
 520 maintained by the department and other criminal justice

521 agencies.

522 (7) EFFECT OF CRIMINAL HISTORY RECORD SEALING.-

523 (a) The person who is the subject of a criminal history
 524 record that is sealed under this section or under other
 525 provisions of law, including former s. 893.14, former s. 901.33,
 526 and former s. 943.058, may lawfully deny or fail to acknowledge
 527 the arrests covered by the sealed record, except when the
 528 subject of the record:

529 1. Is a candidate for employment with a criminal justice
 530 agency;

531 2. Is a defendant in a criminal prosecution;

532 3. Concurrently or subsequently seeks relief under this
 533 section, s. 943.0583, s. 943.0584, or s. 943.0585;

534 4. Is a candidate for admission to The Florida Bar;

535 5. Is seeking to be employed or licensed by or to contract
 536 with the Department of Children and Families, the Division of
 537 Vocational Rehabilitation within the Department of Education,
 538 the Agency for Health Care Administration, the Agency for
 539 Persons with Disabilities, the Department of Health, the
 540 Department of Elderly Affairs, or the Department of Juvenile
 541 Justice or to be employed or used by such contractor or licensee
 542 in a sensitive position having direct contact with children, the
 543 disabled, or the elderly;

544 6. Is seeking to be employed or licensed by the Department
 545 of Education, any district school board, any university
 546 laboratory school, any charter school, any private or parochial

547 school, or any local governmental entity that licenses child
 548 care facilities;

549 7. Is attempting to purchase a firearm from a licensed
 550 importer, licensed manufacturer, or licensed dealer and is
 551 subject to a criminal history check under state or federal law;

552 8. Is seeking to be licensed by the Division of Insurance
 553 Agent and Agency Services within the Department of Financial
 554 Services;

555 9. Is seeking to be appointed as a guardian pursuant to s.
 556 744.3125; or

557 10. Is seeking to be licensed by the Bureau of License
 558 Issuance of the Division of Licensing within the Department of
 559 Agriculture and Consumer Services to carry a concealed weapon or
 560 concealed firearm. This subparagraph applies only in the
 561 determination of an applicant's eligibility under s. 790.06.

562 (b) Subject to the exceptions in paragraph (b), a person
 563 who has been granted a sealing under this section, former s.
 564 893.14, former s. 901.33, or former s. 943.058 may not be held
 565 under any provision of law of this state to commit perjury or to
 566 be otherwise liable for giving a false statement by reason of
 567 such person's failure to recite or acknowledge a sealed criminal
 568 history record.

569 (c) Notwithstanding any law to the contrary, a criminal
 570 justice agency may comply with laws, court orders, and official
 571 requests of other jurisdictions relating to sealing, correction,
 572 or confidential handling of criminal history records or

573 information derived therefrom.

574 (8) STATUTORY REFERENCES.—Any reference to any other
 575 chapter, section, or subdivision of the Florida Statutes in this
 576 section constitutes a general reference under the doctrine of
 577 incorporation by reference.

578 Section 5. Subsection (3) of section 776.09, Florida
 579 Statutes, is amended to read:

580 776.09 Retention of records pertaining to persons found to
 581 be acting in lawful self-defense; expunction of criminal history
 582 records.—

583 (3) Under either condition described in subsection (1) or
 584 subsection (2), the person accused may apply for the nonjudicial
 585 expunction of a certificate of eligibility to expunge the
 586 associated criminal history record, pursuant to s.
 587 943.0584(2)(c) ~~943.0585(5)~~, notwithstanding the eligibility
 588 requirements prescribed in s. 943.0584(2) and (4)(a)2
 589 ~~943.0585(1)(b) or (2)~~.

590 Section 6. Paragraphs (b) and (d) of subsection (1) of
 591 section 790.23, Florida Statutes, are amended to read:

592 790.23 Felons and delinquents; possession of firearms,
 593 ammunition, or electric weapons or devices unlawful.—

594 (1) It is unlawful for any person to own or to have in his
 595 or her care, custody, possession, or control any firearm,
 596 ammunition, or electric weapon or device, or to carry a
 597 concealed weapon, including a tear gas gun or chemical weapon or
 598 device, if that person has been:

599 (b)1. Found, in the courts of this state, to have
 600 committed a delinquent act that would be a felony if committed
 601 by an adult, such person meets the description of s.
 602 943.0515(1)(a), and such person is under 24 years of age; or

603 2. Found, in the courts of this state, to have committed a
 604 delinquent act that would be a felony if committed by an adult,
 605 such person meets the description of s. 943.0515(1)(b), and such
 606 person is under 21 years of age.

607 (d)1. Found to have committed a delinquent act in another
 608 state, territory, or country that would be a felony if committed
 609 by an adult and which was punishable by imprisonment for a term
 610 exceeding 1 year, such person meets the description of s.

611 943.0515(1)(a), and such person is under 24 years of age; or

612 2. Found to have committed a delinquent act in another
 613 state, territory, or country that would be a felony if committed
 614 by an adult and which was punishable by imprisonment for a term
 615 exceeding 1 year, such person meets the description of s.
 616 943.0515(1)(b), and such person is under 21 years of age; or

617 Section 7. Section 943.0582, Florida Statutes, is amended
 618 to read:

619 943.0582 Prearrest, postarrest, or teen court diversion
 620 program expunction.—

621 (1) Notwithstanding any law dealing generally with the
 622 preservation and destruction of public records, the department
 623 may provide, by rule adopted pursuant to chapter 120, for the
 624 expunction of any nonjudicial record of the arrest of a minor

625 | who has successfully completed a prearrest or postarrest
 626 | diversion program for minors as authorized by s. 985.125.

627 | (2)(a) As used in this section, the term "expunction" has
 628 | the same meaning ascribed in and effect as ss. 943.0584 and s-
 629 | 943.0585, except that:

630 | 1. The provisions of s. 943.0585(7)(c) ~~943.0585(4)(a)~~ do
 631 | not apply, except that the criminal history record of a person
 632 | whose record is expunged pursuant to this section shall be made
 633 | available only to criminal justice agencies for the purpose of
 634 | determining eligibility for prearrest, postarrest, or teen court
 635 | diversion programs; when the record is sought as part of a
 636 | criminal investigation; or when the subject of the record is a
 637 | candidate for employment with a criminal justice agency. For all
 638 | other purposes, a person whose record is expunged under this
 639 | section may lawfully deny or fail to acknowledge the arrest and
 640 | the charge covered by the expunged record.

641 | 2. Records maintained by local criminal justice agencies
 642 | in the county in which the arrest occurred that are eligible for
 643 | expunction pursuant to this section shall be sealed as the term
 644 | is used in s. 943.059.

645 | (b) As used in this section, the term "nonviolent
 646 | misdemeanor" includes simple assault or battery when prearrest
 647 | or postarrest diversion expunction is approved in writing by the
 648 | state attorney for the county in which the arrest occurred.

649 | (3) The department shall expunge the nonjudicial arrest
 650 | record of a minor who has successfully completed a prearrest or

651 postarrest diversion program if that minor:

652 (a) Submits an application for prearrest or postarrest
653 diversion expunction, on a form prescribed by the department,
654 signed by the minor's parent or legal guardian, or by the minor
655 if he or she has reached the age of majority at the time of
656 applying.

657 (b) Submits the application for prearrest or postarrest
658 diversion expunction no later than 12 months after completion of
659 the diversion program.

660 (c) Submits to the department, with the application, an
661 official written statement from the state attorney for the
662 county in which the arrest occurred certifying that he or she
663 has successfully completed that county's prearrest or postarrest
664 diversion program, that his or her participation in the program
665 was based on an arrest for a nonviolent misdemeanor, and that he
666 or she has not otherwise been charged by the state attorney with
667 or found to have committed any criminal offense or comparable
668 ordinance violation.

669 (d) Participated in a prearrest or postarrest diversion
670 program that expressly authorizes or permits such expunction to
671 occur.

672 (e) Participated in a prearrest or postarrest diversion
673 program based on an arrest for a nonviolent misdemeanor that
674 would not qualify as an act of domestic violence as that term is
675 defined in s. 741.28.

676 (f) Has never, prior to filing the application for

677 expunction, been charged by the state attorney with or been
 678 found to have committed any criminal offense or comparable
 679 ordinance violation.

680 (4) The department is authorized to charge a \$75
 681 processing fee for each request received for prearrest or
 682 postarrest diversion program expunction, for placement in the
 683 Department of Law Enforcement Operating Trust Fund, unless such
 684 fee is waived by the executive director.

685 (5) Expunction or sealing granted under this section does
 686 not prevent the minor who receives such relief from seeking
 687 ~~petitioning for~~ the expunction or sealing of a later criminal
 688 history record as provided for in ss. 943.0583, 943.0584,
 689 943.0585, and 943.059, if the minor is otherwise eligible under
 690 those sections.

691 Section 8. Paragraph (b) of subsection (6) and paragraph
 692 (b) of subsection (7) of section 948.08, Florida Statutes, is
 693 amended to read:

694 948.08 Pretrial intervention program.—

695 (6)

696 (b) While enrolled in a pretrial intervention program
 697 authorized by this subsection, the participant is subject to a
 698 coordinated strategy developed by a drug court team under s.
 699 397.334(4). The coordinated strategy may include a protocol of
 700 sanctions that may be imposed upon the participant for
 701 noncompliance with program rules. The protocol of sanctions may
 702 include, but is not limited to, placement in a substance abuse

703 treatment program offered by a licensed service provider as
 704 defined in s. 397.311 or in a jail-based treatment program or
 705 serving a period of incarceration within the time limits
 706 established for contempt of court. The coordinated strategy must
 707 be provided in writing to the participant before the participant
 708 agrees to enter into a pretrial treatment-based drug court
 709 program or other pretrial intervention program. Any person whose
 710 charges are dismissed after successful completion of the
 711 treatment-based drug court program, if otherwise eligible, may
 712 have his or her arrest record and plea of nolo contendere to the
 713 dismissed charges expunged under s. 943.0584 ~~943.0585~~.

714 (7)

715 (b) While enrolled in a pretrial intervention program
 716 authorized by this subsection, the participant shall be subject
 717 to a coordinated strategy developed by a veterans' treatment
 718 intervention team. The coordinated strategy should be modeled
 719 after the therapeutic jurisprudence principles and key
 720 components in s. 397.334(4), with treatment specific to the
 721 needs of servicemembers and veterans. The coordinated strategy
 722 may include a protocol of sanctions that may be imposed upon the
 723 participant for noncompliance with program rules. The protocol
 724 of sanctions may include, but need not be limited to, placement
 725 in a treatment program offered by a licensed service provider or
 726 in a jail-based treatment program or serving a period of
 727 incarceration within the time limits established for contempt of
 728 court. The coordinated strategy must be provided in writing to

729 the participant before the participant agrees to enter into a
 730 pretrial veterans' treatment intervention program or other
 731 pretrial intervention program. Any person whose charges are
 732 dismissed after successful completion of the pretrial veterans'
 733 treatment intervention program, if otherwise eligible, may have
 734 his or her arrest record of the dismissed charges expunged under
 735 s. 943.0584 ~~943.0585~~.

736 Section 9. Paragraph (b) of subsection (1) and paragraph
 737 (b) of subsection (2) of section 948.16, Florida Statutes, is
 738 amended to read:

739 948.16 Misdemeanor pretrial substance abuse education and
 740 treatment intervention program; misdemeanor pretrial veterans'
 741 treatment intervention program.—

742 (1)

743 (b) While enrolled in a pretrial intervention program
 744 authorized by this section, the participant is subject to a
 745 coordinated strategy developed by a drug court team under s.
 746 397.334(4). The coordinated strategy may include a protocol of
 747 sanctions that may be imposed upon the participant for
 748 noncompliance with program rules. The protocol of sanctions may
 749 include, but is not limited to, placement in a substance abuse
 750 treatment program offered by a licensed service provider as
 751 defined in s. 397.311 or in a jail-based treatment program or
 752 serving a period of incarceration within the time limits
 753 established for contempt of court. The coordinated strategy must
 754 be provided in writing to the participant before the participant

755 | agrees to enter into a pretrial treatment-based drug court
756 | program or other pretrial intervention program. Any person whose
757 | charges are dismissed after successful completion of the
758 | treatment-based drug court program, if otherwise eligible, may
759 | have his or her arrest record and plea of nolo contendere to the
760 | dismissed charges expunged under s. 943.0584 ~~943.0585~~.

761 | (2)

762 | (b) While enrolled in a pretrial intervention program
763 | authorized by this section, the participant shall be subject to
764 | a coordinated strategy developed by a veterans' treatment
765 | intervention team. The coordinated strategy should be modeled
766 | after the therapeutic jurisprudence principles and key
767 | components in s. 397.334(4), with treatment specific to the
768 | needs of veterans and servicemembers. The coordinated strategy
769 | may include a protocol of sanctions that may be imposed upon the
770 | participant for noncompliance with program rules. The protocol
771 | of sanctions may include, but need not be limited to, placement
772 | in a treatment program offered by a licensed service provider or
773 | in a jail-based treatment program or serving a period of
774 | incarceration within the time limits established for contempt of
775 | court. The coordinated strategy must be provided in writing to
776 | the participant before the participant agrees to enter into a
777 | misdemeanor pretrial veterans' treatment intervention program or
778 | other pretrial intervention program. Any person whose charges
779 | are dismissed after successful completion of the misdemeanor
780 | pretrial veterans' treatment intervention program, if otherwise

781 eligible, may have his or her arrest record of the dismissed
 782 charges expunged under s. 943.0584 ~~943.0585~~.

783 Section 10. Paragraph (e) of subsection (1) of section
 784 961.06, Florida Statutes, is amended to read:

785 961.06 Compensation for wrongful incarceration.—

786 (1) Except as otherwise provided in this act and subject
 787 to the limitations and procedures prescribed in this section, a
 788 person who is found to be entitled to compensation under the
 789 provisions of this act is entitled to:

790 (e) Notwithstanding any provision to the contrary in s.
 791 943.0583, 943.0584, or s. 943.0585, immediate administrative
 792 expunction of the person's criminal record resulting from his or
 793 her wrongful arrest, wrongful conviction, and wrongful
 794 incarceration. The Department of Legal Affairs and the
 795 Department of Law Enforcement shall, upon a determination that a
 796 claimant is entitled to compensation, immediately take all
 797 action necessary to administratively expunge the claimant's
 798 criminal record arising from his or her wrongful arrest,
 799 wrongful conviction, and wrongful incarceration. All fees for
 800 this process shall be waived.

801
 802 The total compensation awarded under paragraphs (a), (c), and
 803 (d) may not exceed \$2 million. No further award for attorney's
 804 fees, lobbying fees, costs, or other similar expenses shall be
 805 made by the state.

806 Section 11. Paragraph (b) of subsection (7) of section

807 985.04, Florida Statutes, is amended to read:

808 985.04 Oaths; records; confidential information.—

809 (7)

810 (b) The destruction of records pertaining to children
 811 committed to or supervised by the department pursuant to a court
 812 order, which records are retained until a child reaches the age
 813 of 21 ~~24~~ years or until a serious or habitual delinquent child
 814 reaches the age of 26 years, shall be subject to chapter 943.

815 Section 12. Subsection (1) of section 985.045, Florida
 816 Statutes, is amended to read:

817 985.045 Court records.—

818 (1) The clerk of the court shall make and keep records of
 819 all cases brought before it under this chapter. The court shall
 820 preserve the records pertaining to a child charged with
 821 committing a delinquent act or violation of law until the child
 822 reaches 21 ~~24~~ years of age or reaches 26 years of age if he or
 823 she is a serious or habitual delinquent child, until 5 years
 824 after the last entry was made, or until 3 years after the death
 825 of the child, whichever is earlier, and may then destroy them,
 826 except that records made of traffic offenses in which there is
 827 no allegation of delinquency may be destroyed as soon as this
 828 can be reasonably accomplished. The court shall make official
 829 records of all petitions and orders filed in a case arising
 830 under this chapter and of any other pleadings, certificates,
 831 proofs of publication, summonses, warrants, and writs that are
 832 filed pursuant to the case.

833 Section 13. Subsection (2) of section 985.345, Florida
 834 Statutes, is amended to read:

835 985.345 Delinquency pretrial intervention program.—

836 (2) While enrolled in a delinquency pretrial intervention
 837 program authorized by this section, a child is subject to a
 838 coordinated strategy developed by a drug court team under s.
 839 397.334(4). The coordinated strategy may include a protocol of
 840 sanctions that may be imposed upon the child for noncompliance
 841 with program rules. The protocol of sanctions may include, but
 842 is not limited to, placement in a substance abuse treatment
 843 program offered by a licensed service provider as defined in s.
 844 397.311 or serving a period of secure detention under this
 845 chapter. The coordinated strategy must be provided in writing to
 846 the child before the child agrees to enter the pretrial
 847 treatment-based drug court program or other pretrial
 848 intervention program. Any child whose charges are dismissed
 849 after successful completion of the treatment-based drug court
 850 program, if otherwise eligible, may have his or her arrest
 851 record and plea of nolo contendere to the dismissed charges
 852 expunged under s. 943.0584 ~~943.0585~~.

853 Section 14. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 15-06 Pub.Rec./Expunging and Sealing Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: PCB CRJS 15-05 **IDEN./SIM. BILLS:** None

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|----------------|--|
| Orig. Comm.: Criminal Justice Subcommittee | | Cox <i>jac</i> | Cunningham <i>su</i> |

SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes guarantee every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24 of the State Constitution after meeting certain requirements.

Currently, every person seeking to expunge or seal a record must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) and then petition a court to expunge or seal the record. When a court orders a criminal history record to be expunged, criminal justice agencies other than FDLE must physically destroy the record. Only FDLE may retain expunged records. When the court orders a record to be sealed, it is not destroyed, but access is limited to specified entities.

Expunged and sealed records are confidential and exempt from public records, and it is a first degree misdemeanor to divulge their existence.

PCB CRJS 15-05, which is tied to this PCB, makes substantial changes to Florida's expunge and seal laws by creating nonjudicial processes for the expunction and sealing of criminal history records. The bill retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication.

PCB CRJS 15-05 expands the types of records that may be expunged or sealed by:

- Creating s. 943.0584, F.S., which permits a person to obtain an unlimited number of "nonjudicial expunctions" for records that resulted in a no-information, a dismissal, a dismissal based on the lawful self-defense exception, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- Amending ss. 943.0585 and 943.059, F.S., to permit a person to obtain one court-ordered expunction or "nonjudicial sealing" of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; and
- Amending s. 943.059, F.S., to permit a person to obtain one "nonjudicial sealing" of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction.

The PCB makes records expunged or sealed pursuant to PCB CRJS 15-05 confidential and exempt from public records. The PCB repeals the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, section 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24 of the State Constitution, provided the exemption is passed by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to accomplish its purpose.²

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act³ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

The Open Government Sunset Review Act requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁴ The Act also requires specified questions to be considered during the review process.

Sealing and Expunging Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for expunging and sealing criminal history records.⁵ Currently, every person seeking to expunge or seal a record must obtain a certificate of eligibility from the Florida Department of Law Enforcement (FDLE) and then petition a court to expunge or seal the record.⁶ When a court orders a criminal history record to be expunged, criminal justice agencies other than FDLE must physically destroy the record.⁷ Only FDLE may retain expunged records.⁸ When the court orders a record to be sealed, it is not destroyed, but access is limited to specified entities.⁹

¹ FLA. CONST. art. I, s. 24(a).

² FLA. CONST. art. I, s. 24(c).

³ See s. 119.15, F.S.

⁴ s. 119.15(3), F.S.

⁵ A "criminal history record," for this purpose, is any nonjudicial record maintained by a criminal justice agency containing criminal history information. "Criminal history information" means information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system. s. 943.045(5) and (6), F.S.

⁶ ss. 943.0585 and 943.059, F.S.

⁷ s. 943.0585(4), F.S.

⁸ *Id.*

⁹ s. 943.059(4), F.S.

Records that are expunged under s. 943.0585, F.S., are confidential and exempt from public records laws and are not available to any person or entity except as provided by a court order.¹⁰ In contrast, records that are sealed under s. 943.059, F.S., are also confidential and exempt from public records laws, but are available to specified entities.¹¹

Persons who have had their record expunged or sealed may lawfully deny or fail to acknowledge arrests in the record, except when applying for certain types of employment, petitioning the court for an expunge or seal, or when they are a defendant in a criminal prosecution.¹²

Currently, a person may only expunge or seal one record, may not expunge or seal any record that resulted in a conviction, and may not expunge or seal a record if he or she has previous convictions. Additionally, only the court can order a record to be expunged or sealed.

PCB CRJS 15-05, which is tied to this PCB, makes substantial changes to Florida's expunge and seal laws by creating nonjudicial processes for the expunction and sealing of criminal history records. The bill retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case where a court issued a withhold of adjudication.

PCB CRJS 15-05 expands the types of records that may be expunged or sealed by:

- Creating s. 943.0584, F.S., which permits a person to obtain an unlimited number of "nonjudicial expunctions" for records that resulted in a no-information, a dismissal, a dismissal based on the lawful self-defense exception, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- Amending ss. 943.0585 and 943.059, F.S., to permit a person to obtain one court-ordered expunction or "nonjudicial sealing" of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; and
- Amending s. 943.059, F.S., to permit a person to obtain one "nonjudicial sealing" of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction.

Effect of the Bill

The PCB makes records expunged or sealed pursuant to PCB CRJS 15-05 confidential and exempt from public records.

The PCB repeals the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0584, F.S., relating to nonjudicial expunction of criminal history records.

Section 2. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 3. Amends s. 943.059, F.S., relating to nonjudicial sealing of criminal history records.

Section 4. Provides a public necessity statement.

Section 5. Provides an effective date to be the same as that of PCB CRJS 15-05 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

¹⁰ s. 943.0585(4)(c), F.S.

¹¹ s. 943.059(4)(c), F.S.

¹² ss. 943.0585(4)(a) and 943.059(4)(a), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

Requirements for Legislative Review

Section 119.15(3), F.S., requires that any public records exemption must be repealed five years after the enactment or substantial amendment of the exemption unless reviewed and saved from repeal by the Legislature. When reviewing an exemption, s. 119.15(6)(a), F.S., requires the Legislature to consider the following matters:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

28

29 Section 1. Paragraph (a) of subsection (7) is renumbered
30 as paragraph (b) and a new paragraph (a) and (c) are added to
31 subsection (7) of section 943.0584, Florida Statutes, as created
32 by PCB CRJS 15-05, to read:

33 943.0584 Nonjudicial expunction of criminal history
34 records.-

35 (6) EFFECT OF A NONJUDICIAL EXPUNCTION.-

36 (a) Any criminal history record of an adult or a minor
37 described in paragraph (2) which is approved for nonjudicial
38 expunction by the department pursuant to this section is
39 confidential and exempt from the provisions of s. 119.07(1) and
40 s. 24(a), Art. I of the State Constitution.

41 (c) This subsection is subject to the Open Government
42 Sunset Review Act in accordance with s. 119.15 and shall stand
43 repealed on October 2, 2020, unless reviewed and saved from
44 repeal through reenactment by the Legislature.

45 Section 2. Paragraphs (b), (c), and (d) of subsection (7)
46 are renumbered as paragraphs (c), (d), and (f), and new
47 paragraphs (b) and (e) are added to subsection (7) of section
48 943.0585, Florida Statutes, as amended by PCB CRJS 15-05, to
49 read:

50 943.0585 Court-ordered expunction of criminal history
51 records.-

52 (7)(b)1. A criminal history record that is ordered

53 expunged and that is retained by the department is confidential
 54 and exempt from the provisions of s. 119.07(1) and s. 24(a),
 55 Art. I of the State Constitution and is not available to any
 56 person or entity except upon order of a court of competent
 57 jurisdiction. A criminal justice agency may retain a notation
 58 indicating compliance with an order to expunge.

59 2. This paragraph is subject to the Open Government Sunset
 60 Review Act in accordance with s. 119.15 and shall stand repealed
 61 on October 2, 2020, unless reviewed and saved from repeal
 62 through reenactment by the Legislature.

63 (e)1. Information relating to the existence of an expunged
 64 criminal history record which is provided in accordance with
 65 paragraph (c) is confidential and exempt from the provisions of
 66 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

67 2. The existence of a confidential and exempt criminal
 68 history record expunged under this section may be disclosed by
 69 the department to the entities set forth in subparagraphs (c)1.,
 70 4., 5., 6., 7., and 8. for their respective licensing, access
 71 authorization, and employment purposes, and to criminal justice
 72 agencies for their respective criminal justice purposes. It is
 73 unlawful for any employee of an entity set forth in
 74 subparagraphs (c)1., 4., 5., 6., 7., or 8. to disclose
 75 information relating to the existence of an expunged criminal
 76 history record of a person seeking employment, access
 77 authorization, or licensure with such entity or contractor,
 78 except to the person to whom the criminal history record relates

79 or to persons having direct responsibility for employment,
 80 access authorization, or licensure decisions.

81 3. Any person who violates this paragraph commits a
 82 misdemeanor of the first degree, punishable as provided in s.
 83 775.082 or s. 775.083.

84 4. This paragraph is subject to the Open Government Sunset
 85 Review Act in accordance with s. 119.15 and shall stand repealed
 86 on October 2, 2020, unless reviewed and saved from repeal
 87 through reenactment by the Legislature.

88 Section 3. Paragraphs (a), (b), and (c) of subsection (7)
 89 are renumbered as paragraphs (b), (c), and (e), and new
 90 paragraphs (a) and (d) are added to subsection (7) of section
 91 943.059, Florida Statutes, as amended by PCB CRJS 15-05, to
 92 read:

93 943.059 Nonjudicial sealing of criminal history records.-

94 (7) EFFECT OF CRIMINAL HISTORY RECORD SEALING.-

95 (a)1. Any criminal history record of an adult or a minor
 96 described in paragraph (2)(a) which is approved for nonjudicial
 97 sealing by the department pursuant to this section is
 98 confidential and exempt from the provisions of s. 119.07(1) and
 99 s. 24(a), Art. I of the State Constitution.

100 2. A confidential and exempt criminal history record may
 101 be disclosed by the department to:

102 a. The person who is the subject of the record or to the
 103 subject's attorney;

104 b. To a criminal justice agency in the furtherance of its

105 lawful duties and responsibilities, which include conducting a
 106 criminal history background check for approval of firearms
 107 purchases or transfers as authorized by state or federal law.

108 c. To a judge in the state courts system for the purpose
 109 of assisting in case-related decisionmaking responsibilities as
 110 set forth in s. 943.053(5).

111 d. To those entities set forth in subparagraphs (c)1., 4.,
 112 5., 6., 8., 9., and 10. for their respective licensing, access
 113 authorization, and employment purposes.

114 3. This paragraph is subject to the Open Government Sunset
 115 Review Act in accordance with s. 119.15 and shall stand repealed
 116 on October 2, 2020, unless reviewed and saved from repeal
 117 through reenactment by the Legislature.

118 (d) Information relating to the existence of a sealed
 119 criminal history record which is provided in accordance with
 120 paragraph (b) is confidential and exempt from the provisions of
 121 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 122 except that the department shall disclose the sealed criminal
 123 history record to the entities set forth in subparagraphs (b)1.,
 124 4., 5., 6., 8., 9., and 10. for their respective licensing,
 125 access authorization, and employment purposes, and to criminal
 126 justice agencies for their respective criminal justice purposes.
 127 It is unlawful for any employee of an entity set forth in
 128 subparagraphs (b)1., 4., 5., 6., 8., 9., or 10. to disclose
 129 information relating to the existence of a sealed criminal
 130 history record of a person seeking employment, access

131 authorization, or licensure with such entity or contractor,
132 except to the person to whom the criminal history record relates
133 or to persons having direct responsibility for employment,
134 access authorization, or licensure decisions. Any person who
135 violates this paragraph commits a misdemeanor of the first
136 degree, punishable as provided in s. 775.082 or s. 775.083.

137 Section 4. The Legislature finds that it is a public
138 necessity that the criminal history records of an adult or minor
139 that have been expunged or sealed be made confidential and
140 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
141 Article I of the State Constitution. Many people whose
142 prosecutions have been abandoned, were found not guilty
143 subsequent to a jury trial, or who have completed any sanctions
144 imposed by the court in the criminal or juvenile justice system
145 have found it difficult to obtain employment. The presence of a
146 criminal history record in these individuals' past creates an
147 unnecessary barrier to becoming productive members of society
148 and can jeopardize individuals' ability to achieve a safe
149 livelihood. The Legislature therefore finds that it is in the
150 best interest of the public that persons are given the
151 opportunity to become contributing members of society.

152 Section 5. This act shall take effect on the same date
153 that PCB CRJS 15-05 or similar legislation relating to expunging
154 and sealing of criminal history records takes effect, if such
155 legislation is adopted in the same legislative session or an
156 extension thereof and becomes a law.