

Criminal Justice Subcommittee

**Tuesday January 19, 2016
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: Tuesday, January 19, 2016 04:00 pm
End Date and Time: Tuesday, January 19, 2016 06:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 685 Victim Assistance by Slosberg
HB 761 Fraudulent Activities Associated with Payment Systems by Young

Consideration of the following proposed committee bill(s):

PCB CRJS 16-03 -- Expunging and Sealing Criminal History Records
PCB CRJS 16-04 -- Public Records/Expunging and Sealing Criminal History Records
PCB CRJS 16-05 -- Victim and Witness Protections
PCB CRJS 16-06 -- Civil Citations and Similar Diversion Programs

Consideration of the following proposed committee substitute(s):

PCS for HB 475 -- Public Records/Identity of a Witness to a Felony
PCS for HB 739 -- Secondhand Dealers

NOTICE FINALIZED on 01/14/2016 4:06PM by Denson.Karan

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 475 Public Records/Identity of a Witness to a Felony
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Clark RC	White TW

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(2), F.S., in part, provides a public records exemption for various types of personal information of certain parties involved in the investigation of a crime. Such parties include confidential informants or confidential sources, a victim of a child abuse offense, and a victim of any sexual offense. This personal information includes their home addresses, telephone numbers, social security numbers, dates of birth, and photographs.

Currently, there is no exemption for the personal identification information of a witness to a felony.

The bill creates s. 119.071(2)(m), F.S., relating to a public records exemption for the personal identifying information of a witness to a felony.

The bill repeals the exemption on October 2, 2021, unless reviewed and saved by 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 the current public record exemption for certain information related to guardianship; thus, it requires a two-thirds vote for final passage.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

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

This state's statutes also address the public policy regarding access to government records. Section 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 "Legislature 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect 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
- Protect trade or business secrets.⁵

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 the Legislature reenacts the exemption.⁶

Public Record Exemption for Certain Investigation Information

Currently, s. 119.071(2), F.S., in relevant part, provides a public records exemption for various types of personal information of specified parties involved in the investigation of a crime. Information exempt from public records requirements include the personal information of a confidential informant or a confidential source,⁷ a victim of a child abuse offense,⁸ and a victim of any sexual offense.⁹ This

¹ FLA. CONST. art. I, s. 24(c).

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 s. 119.071(2)(f), F.S.

⁸ s. 119.071(2)(h)1.a., F.S.

⁹ s. 119.071(2)(h)1.b., F.S.

personal information includes home addresses, telephone numbers,¹⁰ social security numbers, dates of birth, and photographs.

News articles have recently reported on several homicides that occurred in 2015 in the Tampa area which remain unsolved.¹¹ The victim of one of the unsolved murders was Edward Harris, a 14-year-old boy who was murdered in a park.¹² A spokeswoman for the Tampa Police Department stated that between October 2014 and April 2015 Mr. Harris was the witness to multiple crimes that resulted in arrests.¹³ Mr. Harris's family has made statements indicating that they believe he was murdered as a result of talking to police.¹⁴ Detectives within the Hillsborough County area have been quoted in the media as stating that witnesses to crimes refuse to come forward, often out of fear of retaliation and for their safety.¹⁵

Currently, there is no exemption for the personal identification information of a witness to a crime.

Effect of the Bill

The bill creates s. 119.071(2)(m), F.S., to provide that the personal identifying information of a witness to a felony is exempt from s. 119.07(1), F.S., and article I, section 24(a), of the Florida Constitution for two years after the date on which the felony is observed by the witness.

The bill provides that the personal identifying information may be disclosed only to a criminal justice agency or governmental entity for use in the performance of official duties.

The public necessity statement specifies that the Legislature finds that personal identifying information of a witness to a felony should be made exempt to encourage "[c]omplete cooperation and truthful testimony of witnesses" because "[t]he judicial system cannot function without the participation of witnesses."

The bill repeals the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹⁶

B. SECTION DIRECTORY:

Section 1. Creates s. 119.071(2)(m), F.S., relating to general exemptions from inspection or copying of public records.

Section 2. Provides a public necessity statement.

Section 3. Provides that the bill is effective upon becoming a law.

¹⁰ Section 119.071(4)(d)1., F.S., states the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

¹¹ Dan Sullivan, *Federal officials increase rewards, offer protection, to solve four unsolved Tampa murders*, TAMPA BAY TIMES, (Oct. 29, 2012), <http://www.tampabay.com/news/publicsafety/crime/federal-officials-increase-rewards-offer-protection-to-solve-four-unsolved/2251784> (last visited Jan. 14, 2016); Sue Carlton, *Solutions to street violence elusive amid anti-snitching culture*, TAMPA BAY TIMES, (June 2, 2015), <http://www.tampabay.com/news/publicsafety/crime/carlton-no-snitching-no-answers/2232047> (last visited Jan. 14, 2016).

¹² Stephanie Slifer, *Dad believes son was killed in Tampa drive-by shooting for talking to cops*, CBS NEWS, (June 2, 2015), <http://www.cbsnews.com/news/dad-believes-son-was-killed-in-tampa-drive-by-shooting-for-talking-to-cops/> (last visited Jan. 14, 2016).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Keith Morelli, *Tampa lawmaker's bill would keep felony witnesses secret*, TAMPA TRIBUNE, (Nov. 2, 2015), <http://www.tbo.com/news/breaking-news/tampa-lawmakers-bill-would-keep-felony-witnesses-secret-20151102/> (last visited Jan. 15, 2016).

¹⁶ Article I, Sec. 24(c), FLA. CONST.

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 a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

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A bill to be entitled
An act relating to public records; amending s.
119.071, F.S.; providing an exemption from public
records requirements for personal identifying
information of a witness to a felony for a specified
period; authorizing specified entities to receive the
information; providing for future legislative review
and repeal of the exemption; providing a statement of
public necessity; providing an effective date.

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

Section 1. Paragraph (m) is added to subsection (2) of
section 119.071, Florida Statutes, to read:

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

(2) AGENCY INVESTIGATIONS.—

(m)1. Notwithstanding any other provision of this
subsection, the personal identifying information of a witness to
a felony is confidential and exempt from s. 119.07(1) and s.
24(a), Art. I of the State Constitution, for 2 years after the
date on which the felony is observed by the witness. The
personal identifying information may be disclosed only to a
criminal justice agency or governmental entity for use in the
performance of official duties.

2. This paragraph is subject to the Open Government Sunset

27 Review Act in accordance with s. 119.15 and shall stand repealed
 28 on October 2, 2021, unless reviewed and saved from repeal
 29 through reenactment by the Legislature

30 Section 2. The Legislature finds that it is a public
 31 necessity that personal identifying information of a witness to
 32 a felony be made confidential and exempt from s. 119.07(1),
 33 Florida Statutes, and s. 24(a), Article I of the State
 34 Constitution, for 2 years after the date on which the felony is
 35 observed by the witness. The judicial system cannot function
 36 without the participation of witnesses. Complete cooperation and
 37 truthful testimony of witnesses is essential to the
 38 determination of the facts of a case. The public disclosure of
 39 personal identifying information of a witness to a felony, could
 40 have an undesirable chilling effect on witnesses stepping
 41 forward and providing their accounts of felonies. A witness to a
 42 felony may be unwilling to cooperate fully with law enforcement
 43 officers if the witness knows his or her personal identifying
 44 information can be made publicly available. A witness may be
 45 less likely to call a law enforcement officer and report a crime
 46 if his or her personal identifying information is made available
 47 in connection with the felony that is being reported or under
 48 investigation. The Legislature further finds that a witness
 49 could become the subject of intimidation tactics or threats by
 50 the perpetrator of the felony if the witness's personal
 51 identifying information is publicly available. For these
 52 reasons, the Legislature finds that it is a public necessity

PCS for HB 475

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53 that the personal identifying information of a witness to a
54 felony be made confidential and exempt from public record
55 requirements.

56 Section 3. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 685 Victim Assistance
SPONSOR(S): Slosberg
TIED BILLS: None **IDEN./SIM. BILLS:** SB 360

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

SUMMARY ANALYSIS

Reports frequently surface about people using pawnbrokers to sell stolen jewelry and other goods. A "pawnbroker" is a person who is engaged in the business of making pawns; who makes a public display using the term "pawn," "pawnbroker," or "pawnshop" or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.

Florida law currently provides for notifying victims regarding a variety of matters that affect them, such as when hearings in the underlying criminal case are scheduled or when a defendant gets released. Such victim notification requirements are not currently required for any entity to notify a victim that his or her property has been located in the possession of a pawnbroker.

The bill amends s. 960.001(1)(h), F.S., to require a law enforcement agency to immediately notify a victim if the victim's property is determined to be in the possession of a pawnbroker. The agency is also required to give the victim the following information:

- The name and location of the pawn shop;
- Instructions outlining the process for an action of replevin; and
- Procedures specified in s. 539.001(15), F.S., for obtaining the property.

The bill requires law enforcement agencies to comply with new victim notice requirements. To the extent that state and local law enforcement agencies must carry out the new notification requirements, the bill may have a minimal fiscal impact on local government expenditures.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Pawnbrokers

Reports frequently surface about people using pawnbrokers to sell stolen jewelry and other goods.¹ A “pawnbroker” is a person engaged in the business of making pawns; who makes a public display using the term “pawn,”² “pawnbroker,” or “pawnshop” or any derivative thereof; or who publicly displays a sign or symbol historically identified with pawns. A pawnbroker may also engage in the business of purchasing goods which includes consignment and trade.³

Chapter 539, F.S., governs pawnbrokers and provides a specific procedure for a person to make claims against goods held by pawnbrokers when the ownership or rightful possession of the goods is contested.⁴ The procedure provides:

- The claimant must notify the pawnbroker by certified mail or in person of the claim to the goods and must be accompanied by the law enforcement report concerning the misappropriation of the goods.⁵
- If the claim isn't settled within 10 days of the notice, the claimant may file a lawsuit, and must serve the pawnbroker with a copy of the petition.⁶
- If the court finds that the claimant failed to comply with the above procedures,⁷ or finds against the claimant on any basis, the claimant is liable for the defendant's costs,⁸ including attorney fees.⁹

Victim Notification Statutes

Florida law currently provides for notifying victims regarding a variety of matters that affect them. Section 944.605(1), F.S., requires the state attorney or Department of Corrections to notify victims within six months before the release of an inmate from the Department of Corrections, a private correctional facility, a release program, or parole. Additionally, s. 394.926(1), F.S., requires the Department of Children and Families to notify the victim as soon as practicable when a person is released from involuntary civil commitment under Chapter 394, F.S.

Section 960.001, F.S., places a number of requirements on various government entities to ensure that victims are treated fairly and notified of important matters. For example:

- Victims are generally provided the right to be informed, be present,¹⁰ and be heard when relevant, at all crucial stages of criminal and juvenile proceedings.¹¹

¹ See Highlands Today Staff, *Woman Stole \$20,000 in Jewelry, Deputies Say*, HIGHLANDS TODAY (Dec. 15, 2015), <http://www.highlandstoday.com/hi/local-news/woman-stole-20000-in-jewelry-deputies-say-20151215/> (last visited Jan. 13, 2016); Staff, *ECSO: Pawnbroker Dealt in Stolen Goods*, PENSACOLA NEWS JOURNAL (Aug. 11, 2015), <http://www.pnj.com/story/news/crime/2015/08/11/ecso-pawnbroker-dealt-stolen-goods/31453783/> (last visited Jan 13, 2016); Deanna Bettineschi, *Over 200 Stolen Items Recovered in Pawn Shop Raid*, ACTION NEWS JAX (July 17, 2015), <http://www.actionnewsjax.com/news/news/local/over-200-stolen-items-recovered-pawn-shop-raid/nm2jh/> (last visited Jan. 13, 2015).

² “‘Pawn’ means any advancement of funds on the security of pledged goods on condition that the pledged goods are left in the possession of the pawnbroker for the duration of the pawn and may be redeemed by the pledgor on the terms and conditions contained in this section.” s. 539.001(2)(h), F.S.

³ s. 539.001(2)(i), F.S.

⁴ s. 539.001(15), F.S.

⁵ s. 539.001(15)(a), F.S.

⁶ *Id.*

⁷ The procedures that must be complied with are described in detail in s. 539.001(15)(a), F.S.

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⁹ s. 539.001(15)(c), F.S.

¹⁰ Victims who are incarcerated are provided the right to be informed and to submit written statements. s. 960.001(1)(a)6., F.S.

¹¹ s. 960.001(1)(a)5., F.S.

- In cases involving specified offenses,¹² the arresting law enforcement officer or victim assistance personnel must request the victim or the victim's next of kin to complete a victim notification card with various contact information.¹³ The appropriate party¹⁴ shall make a reasonable attempt to notify the alleged victim or next of kin of the alleged victim within four hours following the defendant's release.¹⁵
- A victim or witness must be provided information explaining the steps available to law enforcement officers and state attorneys to shield the victim or witness from intimidation.¹⁶
- Law enforcement agencies and the state attorney shall promptly return the victim's property when there is no compelling law enforcement reason for retaining it.¹⁷

While Florida requires victim notification for a variety of circumstances, it is not currently required for any entity to notify a victim that his or her property has been located in the possession of a pawnbroker.

Effect of the Bill

The bill amends s. 960.001(1)(h), F.S., to require a law enforcement agency to immediately notify a victim if the victim's property is determined to be in the possession of a pawnbroker. The agency is also required to give the victim the following information:

- The name and location of the pawn shop;
- Instructions outlining the process for an action of replevin; and
- Procedures specified in s. 539.001(15), F.S., for obtaining the property.

The bill is effective July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amends s. 960.001, F.S., relating to guidelines for fair treatment of victims and witnesses in the criminal justice and juvenile justice systems.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill requires law enforcement agencies to comply with new victim notification requirements. To the extent that state law enforcement agencies must carry out the notification requirements, the bill may have a minimal fiscal impact on state expenditures.

¹² This requirement applies in the case of a homicide, pursuant to ch. 782, F.S.; a sexual offense, pursuant to ch. 794, F.S.; an attempted murder or sexual offense, pursuant to ch. 777, F.S.; stalking, pursuant to s. 784.048, F.S.; or domestic violence, pursuant to s. 25.385, F.S.

¹³ s. 960.001(1)(b)1., F.S.

¹⁴ The chief administrator, or a person designated by the chief administrator, of a county jail, municipal jail, juvenile detention facility, or residential commitment facility is the appropriate party to provide notice under this subparagraph. s. 960.001(1)(b)3., F.S.

¹⁵ s. 960.001(1)(b)3., F.S.

¹⁶ s. 960.001(1)(c), F.S.

¹⁷ s. 960.001(1)(h), F.S.

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 requires law enforcement agencies to comply with new victim notice requirements. To the extent that local law enforcement agencies must carry out the new notification requirements, the bill may have a minimal fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The bill requires that a law enforcement agency shall "immediately notify" the victim, but does not indicate the proper procedure in the event of an impossibility, such as being unable to reach the victim.

The bill references "pawnbroker" but does not define it. Citing the definition of "pawnbroker" in s. 539.001(2)(i), F.S., would provide clarification.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to victim assistance; amending s.
 3 960.001, F.S.; requiring a law enforcement agency to
 4 immediately notify a victim if his or her property is
 5 determined to be in the possession of a pawnbroker;
 6 requiring the law enforcement agency to provide
 7 specified information to the victim; providing an
 8 effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

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 12 Section 1. Paragraph (h) of subsection (1) of section
 13 960.001, Florida Statutes, is amended to read:

14 960.001 Guidelines for fair treatment of victims and
 15 witnesses in the criminal justice and juvenile justice systems.-

16 (1) The Department of Legal Affairs, the state attorneys,
 17 the Department of Corrections, the Department of Juvenile
 18 Justice, the Florida Commission on Offender Review, the State
 19 Courts Administrator and circuit court administrators, the
 20 Department of Law Enforcement, and every sheriff's department,
 21 police department, or other law enforcement agency as defined in
 22 s. 943.10(4) shall develop and implement guidelines for the use
 23 of their respective agencies, which guidelines are consistent
 24 with the purposes of this act and s. 16(b), Art. I of the State
 25 Constitution and are designed to implement s. 16(b), Art. I of
 26 the State Constitution and to achieve the following objectives:

27 | (h) *Return of property to victim.*—

28 | 1. A law enforcement agency ~~agencies~~ and the state
29 | attorney shall promptly return a victim's property held for
30 | evidentiary purposes unless there is a compelling law
31 | enforcement reason for retaining it. The trial or juvenile court
32 | exercising jurisdiction over the criminal or juvenile proceeding
33 | may enter appropriate orders to implement this subsection,
34 | including allowing photographs of the victim's property to be
35 | used as evidence at the criminal trial or the juvenile
36 | proceeding in place of the victim's property if no related
37 | substantial evidentiary issue ~~related thereto~~ is in dispute.

38 | 2. A law enforcement agency shall immediately notify the
39 | victim if the victim's property is determined to be in the
40 | possession of a pawnbroker. The agency shall give the victim the
41 | name and location of the pawnshop and instructions outlining the
42 | process for a replevin action and the procedures specified in s.
43 | 539.001(15) for obtaining possession of the property.

44 | Section 2. This act shall take effect July 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Slosberg offered the following:

4
5 **Amendment**

6 Remove lines 38-40 and insert:

7 2. A law enforcement agency shall promptly make reasonable
 8 efforts to notify the victim if the victim's property is
 9 determined to be in the possession of a pawnbroker as defined in
 10 s. 539.001(2). The law enforcement agency shall give the victim
 11 the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 739 Secondhand Dealers
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 948

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Keegan <i>JW</i>	White <i>TW</i>

SUMMARY ANALYSIS

Sections 538.03-538.17, F.S., regulate specific types of secondhand dealers and their business practices. These secondhand dealers must meet detailed recording and reporting requirements for any secondhand dealer transaction. Secondhand dealers must keep secondhand goods for at least 15 days before they can be modified, transferred, disposed of, or used in any way.

The bill amends the secondhand dealers transaction form requirements to include digital photos of the relevant goods and expands the holding period for the following secondhand goods from 15 to 30 days: a gemstone, jewelry, an antique furnishing, fixture, or decorative object, or an item of art.

Section 538.08, F.S., authorizes a person alleging ownership of secondhand goods in the possession of a secondhand dealer to file a civil action of replevin when a secondhand dealer contests the identification or ownership of the property. The bill amends the process for this action by authorizing lienors alleging a right of possession to be plaintiffs and entitling claimants to the process of summary procedure provided in s. 51.011, F.S.

The bill also creates a noncriminal violation punishable pursuant to s. 775.083, F.S., by a fine of up to \$2,500, which is committed by a secondhand dealer if:

- The owner or lienor who prevailed in the replevin action made a written demand for return of the property and provided proof of ownership or proof of the right of possession to the secondhand dealer at least five calendar days before filing the replevin action;
- The secondhand dealer knew or should have known based on the proof that the property belonged to the owner or lienor; and
- The secondhand dealer did not file an action for interpleader to determine conflicting claims to the property.

The bill may have an economic impact on secondhand dealers because the bill requires them to take digital photos for each secondhand goods transaction and to hold certain secondhand goods for 30, rather than 15, days. The bill also creates a noncriminal violation that may result in the imposition of a fine against the secondhand dealer. Additionally, the bill expands requirements under ch. 538, F.S., any violation of which is a first degree misdemeanor. Therefore, the bill may increase the need for jail beds.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sections 538.03-538.17, F.S., regulate secondhand dealers and their business practices. A "secondhand dealer" is defined as any person, corporation, or other business entity that is engaged in the business of purchasing, consigning, or trading secondhand goods, but that is not a secondary metals recycler subject to Part II of Chapter 538, F.S.¹ Additionally, the following persons and business entities that fall under the definition of a secondhand dealer are excluded from the requirements of ch. 538, F.S.:

- A secondhand goods transaction involving an organization or entity registered with the state as a nonprofit, religious, or charitable organization or any school-sponsored association or organization other than a secondary metals recycler;²
- A law enforcement officer acting in an official capacity;
- A trustee in bankruptcy, executor, administrator, or receiver;³
- A public official acting under judicial process or authority;⁴
- A sale on the execution, or by virtue of any process issued by a court;⁵
- A garage sale operator who holds garage sales less than 10 weekends per year;
- A person at antique, coin, or collectible shows or sales;
- A person selling household personal property as agent of the property owner or the property owner's representative;⁶
- The purchase, consignment, or trade of secondhand goods from one secondhand dealer to another secondhand dealer when the seller complies with ch. 538, F.S.;
- A person accepting a secondhand good as a trade-in for a similar item of greater value;
- An auction business⁷ operating as an auction business in the buying and selling of specified property;
- A business that is registered as an antique dealer⁸ that purchases secondhand goods from the property owner or her or his representative at the property owner's residence pursuant to a written agreement;
- A business that contracts with another party to offer its secondhand goods for sale, purchase, consignment, or trade via an Internet website, and that maintains a shop, store, or other business premises for this purpose, if the business meets statutory requirements;⁹
- Any person offering his or her own personal property for sale, purchase, consignment, or trade via an Internet website, or a person or entity offering the personal property of others for sale, purchase, consignment, or trade via an Internet website, when that person or entity does not have, and is not required to have, a local occupational or business license for this purpose;
- A business whose primary business is the sale, rental, or trade of motion picture videos or video games, if the business meets statutory requirements; and¹⁰
- A motor vehicle dealer as defined in s. 320.27, F.S.¹¹

¹ s. 538.03(1)(g), F.S.

² "Secondary metals recycler" as used in this analysis means a secondary metals recycler subject to Part II of Chapter 538, F.S.

³ The party must present proof of such status to the secondhand dealer for the exclusion to apply. s. 538.03(2)(c), F.S.

⁴ The party must present proof of such status to the secondhand dealer for the exclusion to apply. s. 538.03(2)(d), F.S.

⁵ Proof thereof must be presented to the secondhand dealer for the exclusion to apply. s. 538.03(2)(e), F.S.

⁶ Such a sale must be pursuant to a written agreement. s. 538.03(2)(h), F.S.

⁷ An "auction business" means a sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions." s. 468.382(1), F.S.

⁸ The business must be registered with the Department of Revenue for sales tax purposes as an antique dealer. ch. 212, F.S.

⁹ Section 538.03(2)(m), F.S., provides a detailed list of the requirements a business must meet for the exclusion to apply.

¹⁰ Section 538.03(2)(o), F.S., provides a detailed list of the requirements a business must meet for the exclusion to apply.

¹¹ s. 538.03(2), F.S.

A "secondhand good" is defined as meaning "personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. Such secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number. For purposes of this paragraph, 'secondhand sports equipment' does not include golf clubs."¹²

Records and Reporting Requirements

Secondhand dealers must maintain detailed records related to each secondhand dealer transaction.¹³ To ensure compliance with these requirements, a law enforcement officer is statutorily authorized to inspect the entire registered premises and required records of any secondhand dealer during normal business hours.¹⁴ A "transaction" is defined as "any purchase, consignment, or trade of secondhand goods by a secondhand dealer."¹⁵ When a secondhand dealer conducts a transaction, the dealer must complete a secondhand dealers transaction form at the time the transaction is completed.¹⁶ Dealers are required to keep copies of completed transaction forms for at least three years and must keep copies on the registered secondhand dealer premises for at least one year after the transaction.¹⁷

Secondhand dealers are required to present completed transaction forms to the appropriate law enforcement official¹⁸ within 24 hours of the transaction, and must include a wide variety of information relating to the transaction, the seller or buyer, and the secondhand property involved.¹⁹ The required information includes:

- A complete description of the goods acquired;
- The location, date, and time of the transaction;
- A description of the person from whom the goods were acquired; and
- Any other information required on the secondhand dealer transaction form.

The reporting requirements currently do not require a secondhand dealer to include photographs of the goods with the secondhand dealer transaction form.

Holding Period

A secondhand dealer is prohibited from selling, bartering, exchanging, altering, adulterating, using, or disposing of any secondhand goods within 15 calendar days of acquiring the goods.²⁰ This holding period does not apply to the person known to the secondhand dealer to be the same person who provided the goods to the secondhand dealer, when the person wishes to recover the goods.²¹ If a law enforcement officer has probable cause that goods in a secondhand dealer's possession were stolen, the law enforcement officer may issue a 90-day hold order²² to prevent the stolen goods from being sold while an investigation is conducted.²³

¹² s. 583.03(1)(h), F.S.

¹³ s. 583.04, F.S.

¹⁴ s. 538.05(1), F.S.

¹⁵ s. 538.03(1)(j), F.S.

¹⁶ s. 538.04(1), F.S.

¹⁷ *Id.*

¹⁸ "'Appropriate law enforcement official' means the sheriff of the county in which a secondhand dealer is located or, if the secondhand dealer is located within a municipality, both the police chief of the municipality and the sheriff; however, the sheriff or police chief may designate as the appropriate law enforcement official for that county or municipality, as applicable, any law enforcement officer working within that respective county or municipality." s. 538.03(1)(b), F.S.

¹⁹ s. 538.04(1), F.S.

²⁰ s. 538.06(1), F.S.

²¹ The holding period is inapplicable only if the secondhand dealer can produce the record of the original transaction. s. 538.06(1), F.S.

²² s. 538.06(3), F.S.

²³ Adam Sacasa, *Stolen Items at Pawn Shops Often a Challenge to Get Back*, SUNSENTINEL (July 13, 2014), http://articles.sun-sentinel.com/2014-07-13/news/fl-pawn-stolen-property-recovery-20140712_1_pawn-shops-palm-beach-county-sheriff-property (last visited Dec. 30, 2015).

Petition for Return of Stolen Goods

If a person is alleging ownership of property in the possession of a secondhand dealer, and the secondhand dealer is contesting the identification or ownership of the property, the person may file a civil action of replevin²⁴ in the county or circuit court.²⁵ The petition must contain statutorily-prescribed allegations.²⁶ For example, the petition must include a description of the property and indicate that the plaintiff is entitled to possession of the property under a security agreement and that the property is wrongfully held by the defendant.²⁷ The court is required to award the prevailing party attorney fees and costs, and when the petitioner is the prevailing party, the court must order payment of filing fees to the clerk and service fees to the sheriff.²⁸

Summary Procedure

Summary procedure is an expedited process for considering civil disputes.²⁹ Summary procedure is provided for in statute,³⁰ and it streamlines civil litigation in a number of ways. For example, the time period for responding to a complaint is significantly shortened,³¹ fewer pleadings are permitted to be filed,³² and reasons for postponing a case are restricted.³³ Summary procedure is only available in those actions specified by statute or rule.³⁴ Summary procedure is not currently authorized in statute or rule to apply to actions of replevin against a secondhand dealer.

Criminal Liability and Punishment

Unless otherwise provided, any person who knowingly violates the regulations of ch. 538, F.S., commits a first degree misdemeanor, punishable by up to one year in jail and a \$10,000 fine.³⁵ When a secondhand dealer returns stolen property to a lawful owner, and the person who transacted the property to the secondhand dealer is convicted of theft, a violation of ch. 538, F.S., or dealing in stolen property, the court must order the defendant to pay restitution to the secondhand dealer or the owner of the stolen property.³⁶

Effect of the Bill

The bill amends the secondhand dealers transaction form requirements specified in s. 538.04(1), F.S., to include a requirement for digital photos of the goods involved in the transaction, which clearly depict the items.

The bill expands the holding period specified in s. 538.06(1), F.S., from 15 days to 30 days for a precious metal,³⁷ a gemstone, jewelry, an antique furnishing, fixture, or decorative object, or an item of art as defined in s. 686.501, F.S.³⁸ The bill defines the term "antique" as meaning "the item is at least 30 years old and has special value because of its age."

²⁴ An action of replevin is a lawsuit by someone claiming the right to have personal property returned from another person's possession. THE LEGAL DICTIONARY, *Replevin*, <http://legal-dictionary.thefreedictionary.com/replevin> (last visited Dec. 30, 2015). Replevin actions in this state are governed by ch. 78, F.S.

²⁵ s. 538.08(1), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ s. 538.08(2), F.S.

²⁹ Daniel Morman, *Application of Summary Procedure by Agreement*, 76-Feb. FLA. BAR. J. 12, 12 (Feb. 2002).

³⁰ s. 51.011, F.S.

³¹ s. 51.011(1), F.S.

³² *Id.*

³³ s. 51.011(2), F.S.

³⁴ s. 51.011, F.S.

³⁵ s. 538.07(1), F.S.

³⁶ s. 538.07(2), F.S.

³⁷ Section 538.03(1)(e), F.S., defines "precious metals" to mean "any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts."

³⁸ Section 686.501(1), F.S., defines "art" as "a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macrame, quilt, print, photograph, or craft work executed in materials including, but not limited to, clay, textile, paper, fiber, wood, tile, metal, plastic, or glass. The term shall also include a rare map which is offered as a limited edition or a map 80 years old or older; or a rare

The bill amends the process for an action of replevin against a secondhand dealer specified in s. 538.08, F.S., by:

- Expanding the action of replevin to include lienors with a right of possession as plaintiffs;
- Removing the term “petition” and replacing it with the term “complaint,” as “complaint” is the term utilized in ch. 78, F.S., which governs replevin actions.³⁹
- Entitling claimants to the process of summary procedure provided in s. 51.011, F.S.
- Specifying that a secondhand dealer commits a noncriminal violation punishable pursuant to s. 775.083, F.S., by a fine of up to \$2,500, if:
 - The owner or lienor who prevailed in the replevin action made a written demand for return of the property and provided proof of ownership or proof of the right of possession to the secondhand dealer at least five calendar days before filing the replevin action;
 - The secondhand dealer knew or should have known based on the proof that the property belonged to the owner or lienor; and
 - The secondhand dealer did not file an action for interpleader⁴⁰ to determine conflicting claims to the property.

The bill takes effect on July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Amending s. 538.04, F.S., relating to recordkeeping requirements; penalties.

Section 2. Amending s. 538.06, F.S., relating to holding period.

Section 3. Amending s. 538.08, F.S., relating to stolen goods; petition for return.

Section 4. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

document or rare print which includes, but is not limited to, a print, engraving, etching, woodcut, lithograph, or serigraph which is offered as a limited edition, or one 80 years old or older.”

³⁹ See, e.g., s. 78.055, F.S.

⁴⁰ The procedure of interpleader allows conflicting claimants seeking a judgment for a single fund or piece of property to litigate their claims in a single civil suit. FLA. R. CIV. P. 1.240; 32 FLA. JUR. 2d *Interpleader, or Third- and Fourth-Party Practice* § 1 (Nov. 2015).

2. Expenditures:

As noted above, the bill expands various requirements under ch. 538, F.S., any violation of which is a first degree misdemeanor. Therefore, this bill may have a positive jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires a secondhand dealer to hold specified property for 30 days instead of 15 days, and requires secondhand dealers to take digital photos for each transaction. These new requirements may increase operating costs for secondhand dealers. Additionally, the bill provides that a secondhand dealer commits a noncriminal violation if the dealer has failed to return property to an owner or lienor under specified circumstances. A secondhand dealer who commits such violation may be liable for a fine up to \$2,500.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to secondhand dealers; amending s.
 3 538.04, F.S.; requiring that the record of a
 4 secondhand dealer transaction include digital photos
 5 of the items; amending s. 538.06, F.S.; increasing the
 6 required holding period for certain goods acquired by
 7 a dealer; amending s. 538.08, F.S.; authorizing an
 8 action in replevin against a secondhand dealer based
 9 on a right of possession to stolen goods; revising the
 10 form for a complaint for return of stolen goods;
 11 providing that a claimant in a replevin action is
 12 entitled to certain summary procedure; providing that
 13 is a noncriminal violation for a secondhand dealer to
 14 have not previously returned property under certain
 15 circumstances to an owner or lienor who prevailed in a
 16 replevin action; providing a penalty; providing an
 17 effective date.

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

20
 21 Section 1. Paragraphs (c) and (d) of subsection (1) of
 22 section 538.04, Florida Statutes, are redesignated as paragraphs
 23 (d) and (e), respectively, and a new paragraph (c) is added to
 24 that subsection to read:

25 538.04 Recordkeeping requirements; penalties.—

26 (1) A secondhand dealer shall complete a secondhand

27 dealers transaction form at the time of the actual transaction.
 28 A secondhand dealer shall maintain a copy of a completed
 29 transaction form on the registered premises for at least 1 year
 30 after the date of the transaction. However, the secondhand
 31 dealer shall maintain a copy of the transaction form for not
 32 less than 3 years. Unless other arrangements are agreed upon by
 33 the secondhand dealer and the appropriate law enforcement
 34 official, the secondhand dealer shall, within 24 hours after
 35 acquiring any secondhand goods, deliver to such official a
 36 record of the transaction on a form approved by the Department
 37 of Law Enforcement. Such record shall contain:

38 (c) Digital photos of the goods, clearly showing the items
 39 required to be included on the record as provided in paragraph
 40 (b).

41 Section 2. Subsection (1) of section 538.06, Florida
 42 Statutes, is amended to read:

43 538.06 Holding period.-

44 (1) (a) A secondhand dealer shall not sell, barter,
 45 exchange, alter, adulterate, use, or in any way dispose of any
 46 secondhand good that is:

47 1. A precious metal, a gemstone, jewelry, an antique
 48 furnishing, fixture, or decorative object, or an item of art as
 49 defined in s. 686.501 within 30 calendar days after the date on
 50 which the good was acquired.

51 2. Not described in subparagraph 1. ~~goods~~ within 15
 52 calendar days ~~after~~ ~~of~~ the date on which the good was acquired

53 ~~of acquisition of the goods.~~

54
 55 Such holding periods are not applicable when the person known by
 56 the secondhand dealer to be the person from whom the goods were
 57 acquired desires to redeem, repurchase, or recover the goods,
 58 provided the dealer can produce the record of the original
 59 transaction with verification that the customer is the person
 60 from whom the goods were originally acquired.

61 (b) As used in this subsection, the term "antique" means
 62 the item is at least 30 years old and has special value because
 63 of its age.

64 Section 3. Section 538.08, Florida Statutes, is amended to
 65 read:

66 538.08 Stolen goods; complaint ~~petition~~ for return.-

67 (1) If the secondhand dealer contests the identification,
 68 ~~or~~ ownership, or right of possession of the property, the person
 69 alleging ownership or right of possession of the property may,
 70 provided that a timely report of the theft of the goods was made
 71 to the proper authorities, bring an action for replevin in the
 72 county or circuit court. The complaint may be ~~by petition~~ in
 73 substantially the following form:

74 Plaintiff A. B. sues defendant C. D., and alleges:

75 1. This is an action to recover possession of personal
 76 property in County, Florida.

77 2. The description of the property is: ...(list
 78 property).... To the best of plaintiff's knowledge, information,

79 and belief, the value of the property is \$.....

80 3. Plaintiff is the lawful owner of the property or is
 81 entitled to ~~the~~ possession of the property under a security
 82 agreement dated, ...(year)...., a copy of which is
 83 attached.

84 4. To plaintiff's best knowledge, information, and belief,
 85 the property is located at

86 5. The property is wrongfully detained by defendant.
 87 Defendant came into possession of the property by ...(describe
 88 method of possession).... To plaintiff's best knowledge,
 89 information, and belief, defendant detains the property because
 90 ...(give reasons)....

91 6. The property has not been taken under an execution or
 92 attachment against plaintiff's property.

93 (2) The filing fees shall be waived by the clerk of the
 94 court, and the service fees shall be waived by the sheriff. The
 95 court shall award the prevailing party attorney ~~attorney's~~ fees
 96 and costs. In addition, when the filing party prevails in the
 97 replevin action, the court shall order payment of filing fees to
 98 the clerk and service fees to the sheriff.

99 (3) Upon the filing of the complaint ~~petition~~, the court
 100 shall set a hearing to be held at the earliest possible time.
 101 The claimant is entitled to the summary procedure provided in s.
 102 51.011. Upon ~~the~~ receipt of the complaint ~~a petition for a writ~~
 103 ~~by a secondhand dealer~~, the secondhand dealer shall hold the
 104 property at issue until the court determines the respective

105 interests of the parties.

106 (4) In addition to the civil complaint ~~petition~~ for return
 107 remedy, the state may file a motion as part of a pending
 108 criminal case related to the property. The criminal court has
 109 jurisdiction to determine ownership, ~~to~~ order return or other
 110 disposition of the property, and ~~to~~ order any appropriate
 111 restitution to any person. Such order shall be entered upon
 112 hearing after proper notice has been given to the secondhand
 113 dealer, the victim, and the defendant in the criminal case.

114 (5) A secondhand dealer commits a noncriminal violation,
 115 punishable pursuant to s. 775.083 by a fine of up to \$2,500, if:

116 (a) The owner or lienor who prevailed in the replevin
 117 action made a written demand for return of the property and
 118 provided proof of ownership or proof of the right of possession
 119 to the secondhand dealer at least five calendar days before
 120 filing the replevin action;

121 (b) The secondhand dealer knew or should have known based
 122 on the proof provided under paragraph (a) that the property
 123 belonged to the owner or lienor; and

124 (c) The secondhand dealer did not file an action for
 125 interpleader to determine conflicting claims to the property.

126 Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 761 Fraudulent Activities Associated with Payment Systems
SPONSOR(S): Young and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 912

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

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is responsible for inspecting measuring devices, i.e., fuel pumps, which are used in this state to sell fuel at wholesale and retail. In executing this responsibility, DACS also inspects the pumps for devices, commonly referred to as "skimmers," which steal payment information from customers paying for their gas at the pump.

During recent investigations, DACS has found that skimmed payment information is being used as part of elaborate fraud schemes to purchase hundreds of gallons of gas that is pumped into unapproved, hidden gas tanks in vans, SUVs, and trucks. Such gas is then usually resold by the criminals to independent truck drivers at a fraction of its usual cost.

To establish greater protection for consumer payment information and enhance penalties for crimes involved in the fraud schemes, the bill:

- Requires owners and operators of retail fuel pumps in this state to install a security measure that hinders or prohibits the unauthorized opening of the panel on the fuel pump which leads to the scanning device used for customer payment.
- Increases the penalty for the offense of unlawfully conveying and fraudulently obtaining fuel from an unranked third degree felony to a second degree felony ranked as a Level 5 offense on the Offense Severity Ranking Chart (OSRC).
- Reduces the number of counterfeit credit cards or related specified documents required to constitute second degree felony trafficking from 10 to five and ranks this felony as a Level 5 offense on the OSRC.
- Creates a second degree felony ranked as a Level 5 offense on the OSRC for the offense of possessing five or more counterfeit credit cards or related specified documents.

On January 5, 2016, the Criminal Justice Impact Conference determined that this bill will have a positive insignificant fiscal impact on state prison beds (i.e., will increase the number of prison beds needed by less than 10). The bill may also have a positive jail bed impact and minimal fiscal impact on the owners and operators of retail petroleum fuel pumps. Please see "Fiscal Analysis & Economic Impact Statement," *infra*.

The bill takes effect on October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Skimming

As discussed below, the Department of Agriculture and Consumer Services (DACS) is responsible for inspecting measuring devices, i.e., fuel pumps, which are used in this state to sell fuel at wholesale and retail.¹ In executing this responsibility, DACS also inspects the fuel pumps for devices, commonly referred to as “skimmers,” which steal payment information from customers paying for their gas at the pump.²

In addition to being used for typical fraudulent purchases, skimmed payment information has also been used, according to DACS, as part of elaborate schemes to purchase hundreds of gallons of gas that is pumped into unapproved, hidden gas tanks in vans, SUVs, and trucks. Such gas is then usually resold by the criminals to independent truck drivers at a fraction of its usual cost.³

The DACS has been working in cooperation with local, state, and federal law enforcement officials to investigate the criminals operating the above-described schemes.⁴ Since March 2015, DACS has found 166 skimmers statewide and estimates that between 100 and 5,000 consumers are victimized by each skimmer with an average of \$1,000 stolen from each victim.⁵ Additionally, since 2008, DACS has arrested 47 persons for the theft of fuel using skimmed credit card information.⁶

Regulation of Petroleum Fuel Measuring Devices

Under s. 525.07(1), F.S., DACS is required to inspect all measuring devices used in selling or distributing petroleum fuel⁷ at wholesale and retail. The section further authorizes DACS to establish by rule the tolerances, in excess or deficiency, to be allowed for such measuring devices and requires each person who owns or operates a measuring device to ensure accurate measurement and to place an appropriate security seal on each device so that the metering adjustment cannot be changed without breaking the seal.⁸

If DACS determines that a measuring device is operating outside the tolerances established in rule, DACS is authorized to:

- Give written notice to the operator or owner of the measuring device which provides a reasonable time to repair the measuring device; or

¹ s. 525.07, F.S.

² See Florida Department of Agriculture and Consumer Services, *Protecting Consumers at the Pump* (on file with the House Criminal Justice Subcommittee).

³ *Id.*

⁴ *Id.*

⁵ Florida Department of Agriculture and Consumer Services, *Commissioner Putnam Highlights "Protection at the Pump" Legislation, Announces Six Skimmers Found in Tampa Bay Area*, <http://www.freshfromflorida.com/News-Events/Press-Releases/2015-Press-Releases/Commissioner-Putnam-Highlights-Protection-at-the-Pump-Legislation-Announces-Six-Skimmers-Found-in-Tampa-Bay-Area> (last visited Jan. 16, 2016).

⁶ See Florida Department of Agriculture and Consumer Services, *Protecting Consumers at the Pump* (on file with the House Criminal Justice Subcommittee).

⁷ The term “petroleum fuel” is defined to mean “all gasoline, kerosene (except when used as aviation turbine fuel), diesel fuel, benzene, other like products of petroleum under whatever name designated, or an alternative fuel used for illuminating, heating, cooking, or power purposes, sold, offered, or exposed for sale in this state.” s. 525.01(1)(b), F.S. “Alternative fuel” is defined to mean “1. Methanol, denatured ethanol, or other alcohols; 2. Mixtures of gasoline or other fuels with methanol, denatured ethanol, or other alcohols; 3. Hydrogen; 4. Coal-derived liquid fuels; and 5. Fuels, other than alcohol, derived from biological materials.” s. 525.01(1)(c), F.S.

⁸ s. 525.07(2) and (3), F.S.

- Condemn or prohibit the further use of the measuring device by using an appropriate security seal to obstruct the mechanism so that it cannot be operated without breaking the seal.⁹

The section further specifies that it is unlawful for any person to:

- Operate any measuring device that has been condemned or prohibited from further use by the department without the written consent of the department.
- Install or operate a petroleum fuel measuring device in this state which gives short measure.
- Break, cut, or remove any seal applied by the department to a petroleum fuel measuring device or container, except under specified circumstances involving repair of the device.¹⁰

A violation of the section's provisions:

- May result in the imposition of administrative fines by DACS and suspension or revocation of the registration issued by DACS to the owner or operator of a measuring device.
- Constitutes a first degree misdemeanor¹¹ if knowingly committed.¹²

Effect of Bill

The bill adds a new subsection (10) to s. 525.07, F.S., to require each owner or operator of a retail petroleum fuel measuring device to affix a security measure to the device to hinder or prohibit the unauthorized access of customer payment card¹³ information. At a minimum, such security measure must include the placement of pressure-sensitive security tape over the panel opening that leads to the scanning device¹⁴ for the retail petroleum fuel measuring device in a manner that hinders or prohibits the unauthorized opening of the panel.

If DACS determines that an owner or operator has not complied with the security measure requirement, the owner or operator shall have five days after notice from DACS to achieve compliance. If the noncompliance continues after five days, DACS may prohibit further use of the retail petroleum fuel measuring device until compliance is achieved. If a repeat violation occurs, DACS may take the measuring device out of service.

The bill requires DACS to enforce the aforementioned requirements and authorizes DACS to adopt rules to implement the new subsection.

Unlawful Conveyance of Fuel/Fraudulent Obtainment of Fuel

Section 316.80(1), F.S., states that it is unlawful for any person to maintain or possess any conveyance or vehicle that is equipped with fuel tanks, bladders, drums, or other containers that do not conform to federal regulations¹⁵ or have not been approved by the United States Department of Transportation for the purpose of hauling, transporting, or conveying fuel over any public highway. A person who violates this prohibition commits a third degree felony¹⁶ and is subject to the revocation of driver license privileges as provided in s. 322.26, F.S.

Additionally, s. 316.80(2), F.S., specifies that it is a third degree felony for any person to violate the above-described offense and to have or attempted to have fraudulently obtained fuel by:

⁹ s. 525.07(4), F.S.

¹⁰ s. 525.07(5)-(7), F.S.

¹¹ 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.

¹² s. 525.16, F.S.

¹³ The bill defines "payment card" as meaning "a credit card, charge card, debit card, or any other card that is issued to an authorized card user and that allows the user to obtain, purchase, or receive goods, services, money, or anything else of value from a merchant." ss. 525.07(10)(b) and 817.625(1)(c), F.S.

¹⁴ The bill defines "scanning device" as meaning "a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card." ss. 525.07(10)(b) and 817.625(1)(a), F.S.

¹⁵ These regulations are set forth in Title 49 of the Code of Federal Regulations, entitled "Transportation."

¹⁶ 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.

- Presenting a credit card or a credit card account number in violation of Part II of ch. 817, F.S., entitled the “State Credit Card Crime Act”;
- Using unauthorized access to any computer network in violation of s. 815.06;¹⁷ or
- Using a fraudulently scanned or lost or stolen payment access device, whether credit card or contactless device.¹⁸

The third degree felony offenses established in s. 316.80(1) and (2), F.S., are not currently ranked in the Offense Severity Ranking Chart (OSRC),¹⁹ and, as such, default to Level 1 offenses for purposes of a defendant’s sentencing scoresheet.²⁰

Effect of Bill

The bill amends s. 316.80(2), F.S., to make it a second degree felony, rather than third degree felony as in current law, to unlawfully convey and fraudulently obtain fuel. The bill also amends s. 921.0022(3)(e), F.S., to rank this second degree felony as a Level 5 on the OSRC, which is one level higher than the Level 4 default ranking that applies to an unranked second degree felony offense.

State Credit Card Crime Act

Part II of ch. 817, F.S., entitled the “State Credit Card Crime Act,” sets forth various criminal offenses prohibiting the theft, fraudulent use, and trafficking of credit cards²¹ and counterfeit credit cards.²² Relevant to this bill is s. 817.611, F.S., which specifies that it is a second degree felony²³ for any person to traffic in or attempt to traffic in 10 or more counterfeit credit cards, invoices, vouchers, sales drafts, or other representations or manifestations of counterfeit credit cards, or credit card account numbers of another in any six-month period. The term “traffic” means “to sell, transfer, distribute, dispense, or otherwise dispose of a property or to buy, receive, possess, obtain control of, or use property with the intent to sell, transfer, distribute, dispense, or otherwise dispose of such property.”²⁴

This second degree felony offense is not currently ranked on the OSRC, and, as such, defaults to a Level 4 offense for purposes of a defendant’s sentencing scoresheet.²⁵

Effect of Bill

The bill amends s. 817.611, F.S., to reduce the number of counterfeit credit cards or related specified documents required to constitute a trafficking offense from 10 to five. It also amends the section to make the possession of, in addition to the trafficking of, such counterfeit credit cards or related

¹⁷ Section 815.06, F.S., specifies multiple offenses relating to unauthorized access of computer networks which range from a first degree misdemeanor to a first degree felony, e.g., it is a third degree felony to access a network with the knowledge that such access is unauthorized.

¹⁸ Section 316.80(2), F.S.

¹⁹ The Offense Severity Ranking Chart ranges from a Level 1 (least severe) to a Level 10 (most severe). A higher level results in a greater number of sentencing points being calculated on a defendant’s sentencing scoresheet. The scoresheet determines the lowest permissible sentence that a defendant may receive, unless the trial court is statutorily-authorized to depart from such sentence. ss. 921.0022 and 921.0024, F.S.

²⁰ If an offense is not listed in the ranking chart, it defaults to a: (a) Level 1 for a third degree felony; (b) Level 4 for a second degree felony; (c) Level 7 for a first degree felony; (d) Level 9 for a first degree felony punishable by life; and (e) Level 10 for a life felony s. 921.0023, F.S.

²¹ The term “credit card” is defined to mean, “any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer (EBT) card, or debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit or for use in an automated banking device to obtain any of the services offered through the device.” s. 817.58(4), F.S.

²² The term “counterfeit credit card” is defined as, “any credit card which is fictitious, altered, or forged; any facsimile or false representation, depiction, or component of a credit card; or any credit card which is stolen, obtained as part of a scheme to defraud, or otherwise unlawfully obtained, and which may or may not be embossed with account information or a company logo.” s. 817.58(3), F.S.

²³ 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.

²⁴ s. 817.58(10), F.S.

²⁵ s. 921.0023, F.S.

specified documents a second degree felony. Finally, the bill amends s. 921.0022(3)(e), F.S., to rank the second degree felony violation of s. 817.611, F.S., as a Level 5 on the OSRC.

B. SECTION DIRECTORY:

Section 1. Amending s. 316.80, F.S., relating to unlawful conveyance of fuel and obtaining fuel fraudulently.

Section 2. Amending s. 525.07, F.S., relating to the powers and duties of DACS, inspections, and unlawful acts.

Section 3. Amending s. 817.611, F.S., relating to trafficking in counterfeit credit cards.

Section 4. Amending s. 921.0022, F.S., relating to the OSRC.

Section 5. Providing an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on January 5, 2016, and determined that this bill will have a positive insignificant prison bed impact on the Department of Corrections (i.e., the bill will increase the number of prison beds needed by less than 10) due to its: (a) increase in s. 316.80(2), F.S., of the penalties applicable to the offense of unlawfully conveying and fraudulently obtaining fuel from an unranked third degree felony to a second degree felony ranked at a Level 5; (b) reduction in s. 817.611, F.S., of the number of counterfeit credit cards or related specified documents necessary to constitute trafficking; (c) creation in s. 817.611, F.S., of the second degree felony for possession of counterfeit credit cards or related specified documents; and (d) ranking of the currently unranked second degree felonies in s. 817.611, F.S., as Level 5 offenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Due to the bill's addition of a requirement for an owner or operator of a retail petroleum fuel measuring device to install a security measure, the bill may have a positive jail bed impact (i.e., may increase the need for jail beds) because a knowing violation of this requirement constitutes a first degree misdemeanor under s. 525.16(2), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a fiscal impact on owners or operators of retail petroleum fuel measuring devices due to its requirement for the installation of security measure on such device. As this requirement may be satisfied by the installation of pressure-sensitive security tape, the fiscal impact is anticipated to be minimal.

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 authorizes the DACS to adopt rules to implement s. 525.07(10), F.S., relating to the bill's new requirement for implementation of a security measure to protect customer payment information for each retail petroleum measuring device in this state.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

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A bill to be entitled

An act relating to fraudulent activities associated with payment systems; amending s. 316.80, F.S.; revising the felony classification for unlawful conveyance of fuel; amending s. 525.07, F.S; requiring retail petroleum fuel measuring devices fitted with scanning devices to have certain security measures; providing requirements for such measures; requiring the owner or operator of a device to have certain security measures in place within a specified timeframe upon notice from the Department of Agriculture and Consumer Services; authorizing the department, under certain circumstances, to prohibit use of or to remove from service such devices that are noncompliant; defining terms; providing applicability; requiring the Department of Agriculture and Consumer Services to enforce provisions; providing for rulemaking; amending s. 817.611, F.S.; reducing the number of counterfeit credit cards that a person can be in possession of to qualify as unlawful; amending s. 921.0022, F.S.; ranking unlawful conveyance or fraudulent acquisition of fuel as a level 5 offense; ranking trafficking in or possession of counterfeit credit cards as a level 5 offense; providing an effective date.

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

28

29 Section 1. Subsection (2) of section 316.80, Florida
30 Statutes, is amended to read:

31 316.80 Unlawful conveyance of fuel; obtaining fuel
32 fraudulently.-

33 (2) A ~~Any~~ person who violates subsection (1) commits a
34 felony of the second ~~third~~ degree, punishable as provided in s.
35 775.082, s. 775.083, or s. 775.084, if he or she has attempted
36 to or has fraudulently obtained motor or diesel fuel by:

37 (a) Presenting a credit card or a credit card account
38 number in violation of ss. 817.57-817.685;

39 (b) Using unauthorized access to any computer network in
40 violation of s. 815.06; or

41 (c) Using a fraudulently scanned or lost or stolen payment
42 access device, whether credit card or contactless device.

43 Section 2. Subsection (10) is added to section 525.07,
44 Florida Statutes, to read:

45 525.07 Powers and duties of department; inspections;
46 unlawful acts.-

47 (10) (a) A person who owns or operates a retail petroleum
48 fuel measuring device shall have affixed to the measuring device
49 a security measure to hinder or prohibit the unauthorized access
50 of customer payment card information. At a minimum, such
51 security measure must include the placement of pressure-
52 sensitive security tape over the panel opening that leads to the

53 | scanning device for the retail petroleum fuel measuring device
 54 | in a manner that will hinder or prohibit the unauthorized
 55 | opening of the panel. The owner or operator of a device without
 56 | a security measure, upon notice from the department of such
 57 | noncompliance, shall have 5 days to comply with this subsection.
 58 | After the fifth day of noncompliance, the department may
 59 | prohibit further use of the retail petroleum fuel measuring
 60 | device until a security measure is installed. A repeat violation
 61 | found on the same retail petroleum fuel measuring device will be
 62 | cause for the department to immediately take the measuring
 63 | device out of service.

64 | (b) For purposes of this subsection, the terms "scanning
 65 | device" and "payment card" have the same meanings as defined in
 66 | s. 817.625.

67 | (c) This subsection only applies to retail petroleum fuel
 68 | measuring devices that have a scanning device.

69 | (d) The Department of Agriculture and Consumer Services
 70 | shall enforce, and may adopt rules to implement, this
 71 | subsection.

72 | Section 3. Section 817.611, Florida Statutes, is amended
 73 | to read:

74 | 817.611 Traffic in or possess counterfeit credit cards.—
 75 | Any person who traffics in, ~~or~~ attempts to traffic in, or
 76 | possesses 5 ~~10~~ or more counterfeit credit cards, invoices,
 77 | vouchers, sales drafts, or other representations or
 78 | manifestations of counterfeit credit cards, or credit card

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79 | account numbers of another in any 6-month period is guilty of a
 80 | felony of the second degree, punishable as provided in s.
 81 | 775.082, s. 775.083, or s. 775.084.

82 | Section 4. Paragraph (e) of subsection (3) of section
 83 | 921.0022, Florida Statutes, is amended to read:

84 | 921.0022 Criminal Punishment Code; offense severity
 85 | ranking chart.—

86 | (3) OFFENSE SEVERITY RANKING CHART

87 | (e) LEVEL 5

88

Florida Statute	Felony Degree	Description
316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
<u>316.80(2)</u>	<u>2nd</u>	<u>Unlawful conveyance; obtaining fuel fraudulently.</u>

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322.34 (6)

3rd

Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.

95

96

327.30 (5)

3rd

Vessel accidents involving personal injury; leaving scene.

97

379.367 (4)

3rd

Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

98

379.3671
(2) (c) 3.

3rd

Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.

99

381.0041 (11) (b)

3rd

Donate blood, plasma, or organs

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knowing HIV
positive.

100

440.10(1)(g) 2nd Failure to obtain workers' compensation coverage.

101

440.105(5) 2nd Unlawful solicitation for the purpose of making workers' compensation claims.

102

440.381(2) 2nd Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

103

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

104

626.902(1)(c) 2nd Representing an

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			unauthorized insurer; repeat offender.
105	790.01 (2)	3rd	Carrying a concealed firearm.
106	790.162	2nd	Threat to throw or discharge destructive device.
107	790.163 (1)	2nd	False report of deadly explosive or weapon of mass destruction.
108	790.221 (1)	2nd	Possession of short- barreled shotgun or machine gun.
109	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
110	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
111	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less

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112			than 18 years of age.
113	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
114	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
115	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
116	812.015 (8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
117	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
	812.131 (2) (b)	3rd	Robbery by sudden

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			snatching.
118	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
119	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
120	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
121	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
122			
123	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided,

or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.

124

817.611

2nd

Traffic in or possess counterfeit credit cards.

125

126

817.625 (2) (b)

2nd

Second or subsequent fraudulent use of scanning device or reencoder.

127

825.1025 (4)

3rd

Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

128

827.071 (4)

2nd

Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

129

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130	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
131	839.13 (2) (b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
132	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
133	847.0135 (5) (b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
134	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by

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135	874.05 (1) (b)	2nd	<p>electronic device or equipment.</p> <p>Encouraging or recruiting another to join a criminal gang; second or subsequent offense.</p>
136	874.05 (2) (a)	2nd	<p>Encouraging or recruiting person under 13 years of age to join a criminal gang.</p>
137	893.13 (1) (a) 1.	2nd	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).</p>
138	893.13 (1) (c) 2.	2nd	<p>Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs) within 1,000 feet</p>

139	893.13(1)(d)1.	1st	of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
140	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university. Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

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893.13(1)(f)1.

1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.

142

893.13(4)(b)

2nd Deliver to minor cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).

143

893.1351(1)

3rd Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

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146

Section 5. This act shall take effect October 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Spano offered the following:

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

6 Remove lines 43-69 and insert:

7 Section 2. Subsections (3) and (4) of section 525.07,
 8 Florida Statutes, are amended, and a new subsection (10) is
 9 added to that section, to read:

10 525.07 Powers and duties of department; inspections;
 11 unlawful acts.—

12 (3) Each person who owns or manages ~~All persons who own or~~
 13 ~~operate~~ a petroleum fuel measuring device shall be responsible
 14 for ensuring accurate measure by the device within the
 15 tolerances defined by the rule. An appropriate security seal
 16 shall be placed on all measuring devices found to be giving
 17 accurate measure within the tolerances defined by the department



Amendment No. 1

18 in such a way that the metering adjustment cannot be changed
19 without breaking the seal.

20 (4) A ~~Any~~ measuring device that is found to be operating
21 outside the tolerances defined by the department shall be deemed
22 inaccurate and the department, at its discretion, shall either:

23 (a) Give, in writing, the ~~operator or owner~~ or manager of
24 the measuring device a reasonable time to repair the measuring
25 device; or

26 (b) Condemn or prohibit the further use of the measuring
27 device by using an appropriate security seal to obstruct the
28 mechanism so that it cannot be operated without breaking the
29 seal. The measuring device shall not be operated in this state
30 again

31 (10) (a) Each person who owns or manages a retail petroleum
32 fuel measuring device shall have affixed to or installed onto
33 the measuring device a security measure to restrict the
34 unauthorized access of customer payment card information. The
35 security measure must include one or more of the following:

36 1. The placement of pressure-sensitive security tape over
37 the panel opening that leads to the scanning device for the
38 retail petroleum fuel measuring device in a manner that will
39 restrict the unauthorized opening of the panel.

40 2. A device or system that will render the retail
41 petroleum fuel measuring device or the scanning device in the
42 measuring device inoperable if there is an unauthorized opening
43 of the panel.



Amendment No. 1

44 3. A device or system that encrypts the customer payment
45 card information in the scanning device.

46 4. Another security measure approved by the department.

47 (b) The owner or manager of a retail petroleum fuel
48 measuring device without a security measure or with an altered
49 or damaged security measure, upon written notice from the
50 department of such noncompliance, shall have 5 calendar days to
51 comply with this subsection. After the fifth day of
52 noncompliance, the department may prohibit further use of the
53 retail petroleum fuel measuring device until a security measure
54 is installed, replaced, or repaired. A repeat violation found on
55 the same retail petroleum fuel measuring device will be cause
56 for the department to immediately take the measuring device out
57 of service.

58 (b) For purposes of this subsection, the terms "scanning
59 device" and "payment card" have the same meanings as defined in
60 s. 817.625.

61 (c) This subsection applies only to retail petroleum fuel
62 measuring devices that have a scanning device.

63 (d) The department

64

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

Remove line 5 and insert:



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 761 (2016)

Amendment No. 1

69 conveyance of fuel; amending s. 525.07, F.S.; specifying
70 requirements for managers of petroleum fuel measuring devices
71 with respect to accurate measurement; requiring

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 16-03 Expunging and Sealing Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: PCB CRJS 16-04 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cox <i>Kae</i>	White <i>TW</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 retains the court-ordered expunction and sealing processes, but expands both of their applications. The bill also creates a nonjudicial process for the sealing of criminal history records.

The bill expands the types of records that may be expunged or sealed by permitting a person to obtain:

- One court-ordered expunction for a record that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered sealing of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; or
- One court-ordered sealing of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction.

Additionally, a person may obtain an unlimited number of "nonjudicial sealings" for records that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions.

The bill will likely have both a positive and a negative fiscal impact on FDLE and the state court system. See "Fiscal Impact on State Government," *infra*.

The bill is effective October 1, 2016.

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 exempt⁵ from the public records law.⁶ It is a first degree misdemeanor⁷ to divulge their existence.⁸

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,⁹ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.¹⁰

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 eligibility¹¹ 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;

¹ s. 943.0585(4), F.S.

² *Id.*

³ *Id.*

⁴ s. 943.059(4), F.S.

⁵ 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); *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. (1985).

⁶ ss. 943.059(4)(c) and 943.0585(4)(c), F.S.

⁷ 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.

⁸ Sections 943.059 and 943.0585, F.S., require FDLE to disclose sealed and expunged criminal history records to specified entities for specified purposes.

⁹ 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.

¹⁰ ss. 943.0585(4)(a) and 943.059(4)(a), F.S.

¹¹ 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.

- 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
 - A felony or misdemeanor specified in s. 943.051(3)(b), F.S.;¹²
- 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.;¹³ and
- No longer be under any court supervision related to the disposition of the record they wish to have expunged.¹⁴

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.”^{15,16}

¹² 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.

¹³ 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.

¹⁴ ss. 943.0585(2) and 943.059(2), F.S.

¹⁵ s. 943.0585(2)(a), F.S.

¹⁶ 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.

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 (DHSMV) to determine the person's eligibility to have the record expunged or sealed.¹⁷ FDLE reports that the process is completed within 90 days and each applicant either receives a certificate of eligibility or a denial letter.¹⁸

Once a person has received a certificate of eligibility from FDLE, he or she must file a petition to expunge or seal the record with the court.¹⁹ In addition to the certificate of eligibility, a petition to expunge or seal a record must also include the petitioner's sworn statement²⁰ 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;²¹ and
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before any court.²²

It is up to the court to decide whether the expunction or sealing is appropriate.²³ Generally, the court will grant the expunction or sealing if the state attorney does not object at a hearing.²⁴ 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.²⁵ 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.²⁶

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);²⁷
- 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),²⁸ 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

¹⁷ *Florida's Adult Criminal History Records Restriction Process*, OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY, January 30, 2015, at pg. 14.(on file with the Criminal Justice Subcommittee) (hereinafter cited as "OPPAGA Report").

¹⁸ *Id.*

¹⁹ 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.

²⁰ 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.

²¹ Unless the prior sealing was in accordance with s. 985.0585(2)(h), F.S.

²² 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.

²³ ss. 943.0585(1) and 943.059(1), F.S.

²⁴ OPPAGA Report at pg. 4.

²⁵ ss. 943.0585(1) and 943.059(1), F.S.

²⁶ *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.

²⁷ See s. 943.0585(2), F.S.

²⁸ *Id.*

self-defense pursuant to the provisions related to justifiable use of force in ch. 776, F.S.²⁹ (dismissal based on lawful self-defense exception).³⁰

If a person proceeded to trial, received a not-guilty verdict, or received a withhold of adjudication³¹ 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.³²

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.³³

Effect of the Bill

The bill retains the court-ordered expunction and sealing processes, but expands the application of both. The bill also creates a nonjudicial process for the sealing of criminal history records.

The bill permits a person to obtain:

- One court-ordered expunction for a record that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered sealing of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; or
- One court-ordered sealing of a record that resulted in a conviction for a specified “nonviolent misdemeanor,” regardless of whether the person has a previous misdemeanor conviction.

Additionally, a person may obtain an unlimited number of “nonjudicial sealings” for records that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions.

Court-Ordered Expunction

Codified in s. 943.0585, F.S., the bill leaves the general process of court-ordered expunction intact. 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 who have access to a record that has been expunged.

However, the bill expands the application of court-ordered expunction by removing 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 also removes the current requirement that a person seeking to

²⁹ 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.

³⁰ See s. 943.0585(2), F.S.

³¹ 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).

³² s. 943.0585(2)(h), F.S.

³³ 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.

expunge a record pursuant to this section must not have previously been adjudicated guilty of a criminal offense or been adjudicated delinquent for committing any felony or a specified misdemeanor.³⁴

The bill provides that a person may not obtain a court-ordered 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. A record may not be expunged if the:

- Case was dismissed as a result of a judicial finding or adjudication that the person is incompetent to proceed; or
- Verdict at trial was not-guilty by reason of insanity.

Additionally, a person may not obtain a court-ordered expunction if he or she:

- Has previously obtained 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., unless expunction is sought for a specified record related to a withhold of adjudication or was previously nonjudicially sealed; or
- Is still under court supervision applicable to the disposition of the arrest or incident of alleged criminal activity to which the petition to expunge pertains.

To obtain a certificate of eligibility from FDLE, a person seeking to expunge a record pertaining to a no-information, a dismissal, or a not-guilty verdict must submit a:

- Written, certified statement from the appropriate state attorney or statewide prosecutor which indicates that the criminal history record sought to be expunged is related to an eligible offense;
- A \$75 processing fee to FDLE for placement in the FDLE Operating Trust Fund, unless such fee is waived by the executive director;
- Certified copy of the disposition of the charge to which the petition to expunge pertains; and
- 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 an eligible record to include:

- A valid certificate of eligibility for sealing issued by FDLE; and
- The petitioner's sworn statement³⁵ attesting that:
 - The criminal history record sought to be expunged is related to an eligible offense;
 - The petitioner has not previously obtained a sealing or expunction of an unrelated offense; and
 - The petitioner is eligible for the expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

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.

It should be noted that 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.

³⁴ The specified misdemeanors are those offenses listed in s. 943.051(3)(b), F.S., which include: assault; battery; carrying a concealed weapon; unlawful use of destructive devices or bombs; open carrying of a weapon; exposure of sexual organs; unlawful possession of a firearm; petit theft; cruelty to animals; and arson.

³⁵ 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.

Court-ordered Sealing

Codified in s. 943.059, F.S., the bill leaves the general process of court-ordered sealing intact. As with the court-ordered expunction process, a person must still obtain a certificate of eligibility from FDLE and petition the court to seal the record. The bill does not alter current law as it relates to the processing of an order to seal or how the record is treated once an order to seal is granted. The bill does not impact the persons that have access to a record that has been sealed. However, the bill adds DHSMV as an entity that has access to court-ordered sealed records for the limited purpose of making necessary determinations related to a person seeking to obtain a restricted driver license or to be employed or licensed by or to contract with DHSMV.

The bill expands the application of court-ordered sealing by permitting the court to seal one criminal history record of a minor or adult relating to cases where a person was convicted of a "nonviolent misdemeanor." The bill retains current law regarding a person sealing a record when the record to be sealed pertains to a withhold of adjudication.

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;³⁶
- Possession of alcohol by a minor;³⁷
- Make or cause a false fire alarm;³⁸
- Criminal mischief;³⁹
- Trespass in structure or conveyance;⁴⁰
- Trespass on property other than structure or conveyance;⁴¹
- Willful removal, destruction, etc. of a posted notice intended to legally enclose property;⁴²
- Unauthorized placement of signs upon land or trees adjacent to public highways;⁴³
- Breaking or injuring another property owner's fences;⁴⁴
- Cave vandalism and other related offenses;⁴⁵
- Petit Theft;⁴⁶
- Nuisances;⁴⁷
- Building bonfires within specified distance to a home or building;⁴⁸
- Disorderly intoxication;⁴⁹
- Open house parties;⁵⁰
- Unlawful assemblies;⁵¹
- Delivery of 20 grams or less of cannabis;⁵²
- Possession of 20 grams or less of cannabis;⁵³

³⁶ s. 562.11(2), F.S.

³⁷ s. 562.111, F.S.

³⁸ s. 806.101, F.S.

³⁹ s. 806.13, F.S.

⁴⁰ s. 810.08, F.S.

⁴¹ s. 810.09, F.S.

⁴² s. 810.10, F.S.

⁴³ s. 810.11, F.S.

⁴⁴ s. 810.115, F.S.

⁴⁵ s. 810.13, F.S.

⁴⁶ s. 812.014(3)(a), F.S.

⁴⁷ s. 823.01, F.S.

⁴⁸ s. 823.02, F.S.

⁴⁹ s. 856.011, F.S.

⁵⁰ s. 856.015, F.S.

⁵¹ s. 870.02, F.S.

⁵² s. 893.13(3), F.S.

⁵³ s. 893.13(6)(b), F.S.

- Possession of drug paraphernalia;⁵⁴ 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;
 - Was committed by a person holding a commercial driver license as defined in s. 322.01, F.S.;⁵⁵ or
 - Was committed by a person driving a commercial motor vehicle as defined in s. 316.003, F.S.⁵⁶

A criminal history record may not be approved for court-ordered sealing if the:

- Person seeking the sealing has, at any time prior to the date of the application for certificate of eligibility, been adjudicated guilty or adjudicated delinquent for a felony; or
- Record relates to a list offense, regardless of whether the court withheld adjudication.

To obtain a certificate of eligibility from FDLE, a person seeking to seal a record pertaining to a withhold of adjudication or a conviction of a nonviolent misdemeanor must submit a:

- 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;
- 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 statement 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 seal pertains to the date of the application for the certificate of eligibility.⁵⁷

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 seal an eligible record to include:

- A valid certificate of eligibility for sealing issued by FDLE; and
- The petitioner's sworn statement⁵⁸ attesting that:
 - The criminal history record sought to be sealed is related to an eligible offense;

⁵⁴ s. 893.147, F.S.

⁵⁵ Section 322.01(7), F.S., defines "commercial driver license" to mean a Class A, Class B, or Class C driver license issued in accordance with the requirements of ch. 322, F.S.

⁵⁶ Section 316.003(66), F.S., defines "commercial motor vehicle" to mean any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle: (a) has a gross vehicle weight rating of 10,000 pounds or more; (b) is designed to transport more than 15 passengers, including the driver; or (c) is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended (49 U.S.C. ss. 1801 et seq.). A vehicle that occasionally transports personal property to and from a closed-course motorsport facility, as defined in s. 549.09 (1)(a), F.S., is not a commercial motor vehicle if it is not used for profit and corporate sponsorship is not involved. The term "corporate sponsorship" means a payment, donation, gratuity, in-kind service, or other benefit provided to or derived by a person in relation to the underlying activity, other than the display of product or corporate names, logos, or other graphic information on the property being transported.

⁵⁷ The bill requires this time frame to be a minimum of three years.

⁵⁸ 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.

- The petitioner has not previously obtained a sealing or expunction of an unrelated offense;
- The petitioner has not been arrested for or charged with a criminal offense, in this state or any other jurisdiction within the United States between the date that the person completed the sentence imposed by the court for the offense to which the petition to seal pertains and the date of the petition for court-ordered sealing; and
- The petitioner is eligible for the expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

The bill also retains the requirement that a court only seal 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 seal such additional arrests.

The bill provides that a sealed criminal history record continues to be considered a prior conviction⁵⁹ for purposes of any statute that uses a prior conviction as a basis for determining:

- The applicable degree of felony or misdemeanor for a criminal offense;
- The penalty for a criminal offense; or
- Any other issue with respect to a criminal offense.

Nonjudicial Sealing

The bill creates s. 943.0595, F.S., requiring specified records to be sealed without petitioning the court. The bill requires FDLE to approve the nonjudicial sealing 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; or
- Not-guilty verdict was rendered subsequent to a trial or adjudicatory hearing.

It should be noted that, as in court-ordered expunction, a person may not obtain a nonjudicial sealing:

- Unless all charges stemming from the arrest or alleged criminal activity to which the application for sealing pertains were not filed or issued, dismissed or discharged, or resulted in an acquittal; or
- For a record related to a:
 - Case dismissed as a result of a judicial finding or adjudication that the person is incompetent to proceed; or
 - Verdict of not-guilty by reason of insanity at trial.

To apply for a nonjudicial sealing under s. 943.0595, 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;
- 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; and
- A full set of fingerprints of the applicant taken by a law enforcement agency for purposes of identity verification.

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

⁵⁹ The bill defines “conviction” to mean a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. However, whether a conviction for which adjudication is withheld may be considered a prior conviction is controlled by the statute using the prior conviction as the basis for determining the applicable degree of offense, penalty, or other issue.

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). However, unlike a record that is sealed through the court-ordered process, DHSMV does not have access to a record sealed through the nonjudicial process.

It should be noted that a person whose eligible record is nonjudicially sealed under s. 943.0595, F.S., may subsequently obtain a court-ordered expunction of that same record.

The bill provides FDLE with authority to adopt rules 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.

Lastly, the bill provides language related to statutory references in all three of the processes addressed in the bill: court-ordered expunction and sealing and nonjudicial sealing. Specifically, the bill provides that any reference to another chapter, section, or other subdivision of the Florida Statutes found in ss. 943.0585, 943.059, or 943.0595, F.S., is considered a general reference under the doctrine of incorporation by reference. Additionally, the bill provides that any reference of ss. 943.0585, 943.059, and 943.0595, F.S., found in another chapter, section, or other subdivision of the Florida Statutes also a general reference under the doctrine of incorporation by reference.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 2. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 3. Creates s. 943.0595, F.S., relating to nonjudicial sealing of criminal history records.

Section 4. 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 5. Amends s. 943.053, F.S., relating dissemination of criminal justice information; fees.

Section 6. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 7. Provides an effective date of July 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 a nonjudicial process for sealing. FDLE will have to train staff on how to conduct this program in accordance with this 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.

Persons who would have previously had to restrict a record related to a no-information, dismissal, or not guilty sealed through the court-ordered processes, may now choose to have the same record restricted through the nonjudicial sealing process. However, the bill also expands the types of records that are eligible for court-ordered expunction and court-ordered sealing. This expansion will likely result in an increased workload to the state courts as a result of conducting more hearings related to petitions to seal or expunge. Thus, to the extent the bill results in an overall increase in hearings that must be conducted by the courts, the bill will likely result in a negative 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 sealing process. The bill provides the necessary authority to FDLE to create such rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to expunging and sealing criminal
 3 history records; amending s. 943.0585, F.S.; providing
 4 jurisdiction of the courts over expunction procedures;
 5 specifying types of records that are eligible for
 6 court-ordered expunction; providing limitations upon
 7 when a court may expunge such records; requiring
 8 specified documentation be submitted to the Department
 9 of Law Enforcement when seeking a certificate of
 10 eligibility for court-ordered expunction; providing
 11 specified documentation that must be submitted to the
 12 court for a petition to expunge; requiring sworn
 13 statement from petitioner; providing a criminal
 14 penalty for perjury on such sworn statement; providing
 15 guidelines for the processing of an order to expunge
 16 once issued; providing the effect of the order to
 17 expunge on the criminal history record; specifying
 18 exceptions to the confidential and exempt status of an
 19 expunged criminal history record; requiring criminal
 20 justice agencies to destroy copies of records that
 21 have been expunged; providing for the treatment of
 22 certain cross-references; providing construction;
 23 amending s. 943.059, F.S.; providing jurisdiction of
 24 the courts over sealing procedures; specifying types
 25 of records that are eligible for court-ordered
 26 sealing; providing limitations upon when a court may

27 seal such specified records; requiring specified
 28 documentation be submitted to the Department of Law
 29 Enforcement when seeking a certificate of eligibility
 30 for court-ordered sealing; providing specified
 31 documentation that must be submitted to the court for
 32 a petition to seal; requiring sworn statement from
 33 petitioner; providing a criminal penalty for perjury
 34 on such sworn statement; providing guidelines for the
 35 processing of an order to seal once issued; providing
 36 the effect of the order to seal on the criminal
 37 history record; specifying exceptions to the
 38 confidential and exempt status of a sealed criminal
 39 history record; providing for the treatment of certain
 40 cross-references; providing construction; creating s.
 41 943.0595, F.S.; establishing a nonjudicial process for
 42 the sealing of specified records; specifying types of
 43 records that are eligible for the nonjudicial sealing
 44 process; providing exceptions to eligibility for
 45 obtaining a nonjudicial seal; establishing an
 46 application process and requiring specified
 47 documentation be submitted to the Department of Law
 48 Enforcement when seeking a nonjudicial sealing;
 49 requiring sworn statement from petitioner; providing a
 50 criminal penalty for perjury on such sworn statement;
 51 specifying how the nonjudicial sealing must be
 52 processed; providing for the effect of a record that

53 has been sealed under this section; providing for the
 54 treatment of certain cross-references; amending ss.
 55 776.09, 943.053, and 943.0582, F.S.; conforming cross-
 56 references; providing an effective date.

57
 58 Be It Enacted by the Legislature of the State of Florida:

59
 60 Section 1. Section 943.0585, Florida Statutes, is amended
 61 to read:

62 (Substantial rewording of section. See
 63 s. 943.0585, F.S., for present text.)
 64 943.0585 Court-ordered expunction of criminal history
 65 records.-

66 (1) JURISDICTION.-The courts of this state have
 67 jurisdiction over their own procedures, including the
 68 maintenance, expunction, and correction of judicial records
 69 containing criminal history information to the extent such
 70 procedures are not inconsistent with the conditions,
 71 responsibilities, and duties established by this section. A
 72 court of competent jurisdiction may order a criminal justice
 73 agency to expunge the criminal history record of a minor or an
 74 adult who complies with the requirements of this section.

75 (2) ELIGIBILITY.-

76 (a) Except as provided in paragraph (b), a court may order
 77 the expunction of a criminal history record if:

78 1. An indictment, information, or other charging document

79 was not filed or issued in the case.

80 2. An indictment, information, or other charging document
 81 was filed or issued in the case, but was subsequently dismissed
 82 or nolle prosequi by the state attorney or statewide prosecutor,
 83 or was dismissed or discharged by a court of competent
 84 jurisdiction. However, a person may not obtain an expunction
 85 under this subparagraph for a dismissal by reason of a judicial
 86 finding or adjudication that he or she is incompetent to proceed
 87 in a criminal or delinquency case, unless the person is a minor
 88 who is adjudicated incompetent to proceed because of age or
 89 immaturity.

90 3. A not guilty verdict was rendered subsequent to a trial
 91 or an adjudicatory hearing, except that a person may not obtain
 92 an expunction under this subparagraph for a verdict of not
 93 guilty by reason of insanity.

94 4. A person has obtained a court-ordered sealing for a
 95 criminal history record in which adjudication was withheld
 96 pursuant to s. 943.059 and such criminal history record has been
 97 sealed for at least 10 years. A person may not obtain an
 98 expunction under this subparagraph for a criminal history record
 99 in which there was an adjudication of guilt or adjudication of
 100 delinquency.

101 5. A person has obtained a nonjudicial sealing pursuant to
 102 s. 943.0595.

103 (b) A person may not obtain a court-ordered expunction
 104 under this section unless all charges stemming from the arrest

105 or incident of alleged criminal activity to which the expunction
 106 pertains were disposed of in a manner described in paragraph
 107 (a).

108 (3) LIMITATIONS.—A court may only order the expunction of
 109 one criminal history record described in paragraph (2)(a). The
 110 record expunged must pertain to one arrest or one incident of
 111 alleged criminal activity, except that the court may, at its
 112 sole discretion, order the expunction of a criminal history
 113 record pertaining to more than one arrest or one incident of
 114 alleged criminal activity if the additional arrests directly
 115 relate to the original arrest or incident of alleged criminal
 116 activity. If the court intends to order the expunction of
 117 records pertaining to such additional arrests or incidents of
 118 alleged criminal activity, such intent must be specified in the
 119 order. A criminal justice agency may not expunge a record
 120 pertaining to such additional arrests or incidents of alleged
 121 criminal activity if the order to expunge does not articulate
 122 the intention of the court to expunge such record. This
 123 subsection does not prevent the court from ordering the
 124 expunction of only a portion of a criminal history record
 125 pertaining to one arrest or incident of alleged criminal
 126 activity.

127 (4) CERTIFICATE OF ELIGIBILITY FOR COURT-ORDERED
 128 EXPUNCTION.—

129 (a) A person seeking to expunge a criminal history record
 130 under this section must apply to the department for a

131 certificate of eligibility for expunction before petitioning the
 132 court for expunction. The department shall issue a certificate
 133 of eligibility for expunction to a person who is the subject of
 134 a criminal history record if that person:

135 1. Has submitted to the department a written, certified
 136 statement from the appropriate state attorney or statewide
 137 prosecutor which indicates that the criminal history record
 138 sought to be expunged is eligible under subsection (2).

139 2. Remits a \$75 processing fee to the department for
 140 placement in the Department of Law Enforcement Operating Trust
 141 Fund, unless such fee is waived by the executive director.

142 3. Has submitted to the department a certified copy of the
 143 disposition of the charge to which the petition to expunge
 144 pertains.

145 4. Has never secured a prior sealing or expunction of a
 146 criminal history record under this section, s. 943.059, former
 147 s. 893.14, former s. 901.33, or former s. 943.058, unless
 148 expunction is sought for a sealed record pursuant to
 149 subparagraph (2)(a)4. or subparagraph (2)(a)5.

150 5. Is no longer under court supervision applicable to the
 151 disposition of the arrest or incident of alleged criminal
 152 activity to which the petition to expunge pertains.

153 6. Has submitted to the department a full set of
 154 fingerprints taken by a law enforcement agency for purposes of
 155 identity verification.

156 (b) A certificate of eligibility for expunction is valid

157 for 12 months after the date that the certificate is issued by
 158 the department. After that time, the petitioner must reapply to
 159 the department for a new certificate of eligibility. Eligibility
 160 for a renewed certification of eligibility must be based on the
 161 status of the applicant and the law in effect at the time of the
 162 renewal application.

163 (c) The department shall adopt rules establishing
 164 procedures pertaining to the application for and issuance of
 165 certificates of eligibility for expunction.

166 (5) PETITION FOR COURT-ORDERED EXPUNCTION.—

167 (a) The court shall not order a criminal justice agency to
 168 expunge a criminal history record under this section until the
 169 person seeking to expunge the record has received a certificate
 170 of eligibility for expunction pursuant to subsection (4). Each
 171 petition to a court to expunge a criminal history record is
 172 complete only when accompanied by:

173 1. A valid certificate of eligibility for expunction
 174 issued by the department pursuant to subsection (4).

175 2. The petitioner's sworn statement attesting that:

176 a. The criminal history record sought to be expunged is
 177 eligible under subsection (2).

178 b. The petitioner meets the requirement of subparagraph
 179 (4)(a)4.

180 c. The petitioner is eligible for the expunction to the
 181 best of his or her knowledge or belief and does not have any
 182 other petition to expunge or a petition to seal pending before a

183 court.

184 (b) A person who knowingly provides false information on
 185 the sworn statement required by subparagraph (a)2. commits a
 186 felony of the third degree, punishable as provided in s.
 187 775.082, s. 775.083, or s. 775.084.

188 (6) PROCESSING OF COURT-ORDERED EXPUNCTION.-

189 (a) In judicial proceedings under this section, a copy of
 190 the completed petition to expunge shall be served upon the
 191 appropriate state attorney or the statewide prosecutor and upon
 192 the arresting agency; however, it is not necessary to make any
 193 agency other than the state a party. The appropriate state
 194 attorney or the statewide prosecutor and the arresting agency
 195 may respond to the court regarding the completed petition to
 196 expunge.

197 (b) If relief is granted by the court, the clerk of the
 198 court shall certify copies of the order to the appropriate state
 199 attorney or the statewide prosecutor and the arresting agency.
 200 The arresting agency is responsible for forwarding the order to
 201 any other agency to which the arresting agency disseminated the
 202 criminal history record information to which the order pertains.
 203 The department shall notify the Federal Bureau of Investigation
 204 of the order to expunge, as needed. The clerk of the court shall
 205 certify a copy of the order to any other agency which the
 206 records of the court reflect has received the criminal history
 207 record from the court.

208 (c) The department or any other criminal justice agency is

209 not required to act on an order to expunge entered by a court if
 210 such order does not comply with the requirements of this
 211 section. Upon receipt of such an order, the department must
 212 notify the issuing court, the appropriate state attorney or
 213 statewide prosecutor, the petitioner or the petitioner's
 214 attorney, and the arresting agency of the reason for
 215 noncompliance. The appropriate state attorney or statewide
 216 prosecutor shall take action within 60 days after receiving such
 217 order to correct the record and petition the court to void the
 218 order. A cause of action, including contempt of court, does not
 219 arise against a criminal justice agency for failure to comply
 220 with an order to expunge if the petitioner for such order failed
 221 to obtain the certificate of eligibility as required by this
 222 section or such order does not otherwise comply with the
 223 requirements of this section.

224 (7) EFFECT OF COURT-ORDERED EXPUNCTION.-

225 (a) A criminal history record of a minor or an adult which
 226 is ordered expunged by a court of competent jurisdiction
 227 pursuant to this section must be physically destroyed or
 228 obliterated by each criminal justice agency having custody of
 229 such record, except that a criminal history record in the
 230 custody of the department must be retained in all cases.

231 (b) The person who is the subject of a criminal history
 232 record that is expunged under this section or under other
 233 provisions of law, including former s. 893.14, former s. 901.33,
 234 and former s. 943.058, may lawfully deny or fail to acknowledge

235 the criminal history covered by the expunged record, except when
 236 the subject of the record:

237 1. Is a candidate for employment with a criminal justice
 238 agency;

239 2. Is a defendant in a criminal prosecution;

240 3. Concurrently or subsequently seeks relief under this
 241 section, s. 943.0583, or s. 943.059;

242 4. Is a candidate for admission to The Florida Bar;

243 5. Is seeking to be employed or licensed by or to contract
 244 with the Department of Children and Families, the Division of
 245 Vocational Rehabilitation within the Department of Education,
 246 the Agency for Health Care Administration, the Agency for
 247 Persons with Disabilities, the Department of Health, the
 248 Department of Elderly Affairs, or the Department of Juvenile
 249 Justice or to be employed or used by such contractor or licensee
 250 in a sensitive position having direct contact with children,
 251 persons with disabilities, or elderly persons;

252 6. Is seeking to be employed or licensed by the Department
 253 of Education, a district school board, a university laboratory
 254 school, a charter school, a private or parochial school, or a
 255 local governmental entity that licenses child care facilities;

256 7. Is seeking to be licensed by the Division of Insurance
 257 Agent and Agency Services within the Department of Financial
 258 Services; or

259 8. Is seeking to be appointed as a guardian pursuant to s.
 260 744.3125.

261 (c) Subject to the exceptions in paragraph (b), a person
 262 who has been granted an expunction under this section, former s.
 263 893.14, former s. 901.33, or former s. 943.058 may not be held
 264 under a law of this state to commit perjury or to be otherwise
 265 liable for giving a false statement by reason of such person's
 266 failure to recite or acknowledge an expunged criminal history
 267 record.

268 (d) Notwithstanding any law to the contrary, a criminal
 269 justice agency may comply with laws, court orders, and official
 270 requests of other jurisdictions relating to expunction,
 271 correction, or confidential handling of criminal history records
 272 or information derived therefrom.

273 (8) EXCEPTION FOR LAWFUL SELF-DEFENSE.—

274 (a) Notwithstanding subsections (2), (4), and (5):

275 1. The department shall issue a certificate of eligibility
 276 for expunction under this subsection to a person who is the
 277 subject of a criminal history record if that person has
 278 submitted to the department, on a form provided by the
 279 department, a written, certified statement from the appropriate
 280 state attorney or statewide prosecutor which states whether an
 281 information, indictment, or other charging document was not
 282 filed or was dismissed by the state attorney, or dismissed by
 283 the court, because it was found that the person acted in lawful
 284 self-defense pursuant to the provisions related to justifiable
 285 use of force in chapter 776.

286 2. Each petition to a court to expunge a criminal history

287 record pursuant to this subsection is complete only when
 288 accompanied by:

289 a. A valid certificate of eligibility for expunction
 290 issued by the department pursuant to this subsection.

291 b. The petitioner's sworn statement attesting that the
 292 petitioner is eligible for such an expunction to the best of his
 293 or her knowledge or belief.

294
 295 A person who knowingly provides false information on such sworn
 296 statement to the court commits a felony of the third degree,
 297 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

298 (b) This subsection does not confer any right to the
 299 expunction of a criminal history record, and any request for
 300 expunction of a criminal history record may be denied at the
 301 discretion of the court.

302 (c) Subsections (1), (3), (6), and (7) apply to an
 303 expunction ordered under this subsection, except that a person
 304 may obtain an expunction of one or more criminal history records
 305 described under subparagraph (a)1.

306 (d) The department shall adopt rules to establish
 307 procedures pertaining to the application for and issuance of
 308 certificates of eligibility for expunction under this
 309 subsection.

310 (9) STATUTORY REFERENCES.—Any reference to:

311 (a) Another chapter, section, or other subdivision of the
 312 Florida Statutes in this section constitutes a general reference

313 under the doctrine of incorporation by reference.

314 (b) This section or a subdivision of this section in
 315 another chapter, section, or other subdivision of the Florida
 316 Statutes constitutes a general reference under the doctrine of
 317 incorporation by reference.

318 (10) NO RIGHT TO EXPUNCTION.—This section does not confer
 319 a right to the expunction of a criminal history record, and a
 320 request for expunction of a criminal history record may be
 321 denied at the sole discretion of the court.

322 Section 2. Section 943.059, Florida Statutes, is amended
 323 to read:

324 (Substantial rewording of section. See
 325 s. 943.059, F.S., for present text.)

326 943.059 Court-ordered sealing of criminal history
 327 records.—

328 (1) JURISDICTION.—The courts of this state have
 329 jurisdiction over their own procedures, including the
 330 maintenance, sealing, and correction of judicial records
 331 containing criminal history information to the extent such
 332 procedures are not inconsistent with the conditions,
 333 responsibilities, and duties established by this section. A
 334 court of competent jurisdiction may order a criminal justice
 335 agency to seal the criminal history record of a minor or an
 336 adult who complies with the requirements of this section.

337 (2) ELIGIBILITY.—

338 (a) Except as provided in paragraph (b), a court may order

339 the sealing of a criminal history record if the person was:

340 1. Found guilty of, found to have committed, pled guilty
 341 to, or pled nolo contendere to an offense and none of the
 342 charges stemming from the arrest or alleged criminal activity to
 343 which the sealing pertains resulted in an adjudication of guilt
 344 or delinquency; or

345 2. Adjudicated guilty or adjudicated delinquent for a
 346 nonviolent misdemeanor. For purposes of this subparagraph, the
 347 term "nonviolent misdemeanor" means a misdemeanor violation of:

348 a. Section 562.11(2), s. 562.111, s. 806.101, s. 806.13,
 349 s. 810.08, s. 810.09, s. 810.10, s. 810.11, s. 810.115, s.
 350 810.13, s. 812.014(3)(a), s. 823.01, s. 823.02, s. 856.011, s.
 351 856.015, s. 870.02, s. 893.13(3), s. 893.13(6)(b), or s.
 352 893.147(1); or

353 b. An offense specified in chapters 316-324, unless the
 354 violation directly caused serious bodily injury or death to a
 355 person or the violation is an offense specified in chapter 316
 356 or chapter 322 which was committed by a person driving a
 357 commercial motor vehicle as defined in s. 316.003 or holding a
 358 commercial driver license as defined in s. 322.01.

359 (b) A person may not obtain a court-ordered sealing of a
 360 criminal history record under this section if:

361 1. The person seeking the sealing has, at any time before
 362 the date on which the application for a certificate of
 363 eligibility is filed, been adjudicated guilty for a felony
 364 offense or adjudicated delinquent for an offense that would be a

365 felony if committed by an adult; or
 366 2. The record relates to a serious offense for which the
 367 person was found guilty or adjudicated delinquent, or pled
 368 guilty or pled nolo contendere, regardless of whether
 369 adjudication was withheld. For purposes of this subparagraph,
 370 the term "serious offense" means a violation of s. 393.135, s.
 371 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04,
 372 s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
 373 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a
 374 violation enumerated in s. 907.041, or any violation specified
 375 as a predicate offense for registration as a sexual predator
 376 pursuant to s. 775.21, without regard to whether that offense
 377 alone is sufficient to require such registration, or for
 378 registration as a sexual offender pursuant to s. 943.0435.
 379 (c) A criminal history record that is sealed under this
 380 section shall continue to be considered a prior conviction for
 381 purposes of any statute that uses a prior conviction as a basis
 382 for determining the applicable degree of felony or misdemeanor
 383 for a criminal offense, the penalty for a criminal offense, or
 384 any other issue with respect to a criminal offense. For purposes
 385 of this paragraph, the term "conviction" means a determination
 386 of guilt that is the result of a plea or trial, regardless of
 387 whether adjudication is withheld. However, whether a conviction
 388 for which adjudication is withheld may be considered a prior
 389 conviction shall be controlled by the statute using the prior
 390 conviction as the basis for determining the applicable degree of

391 offense, penalty, or other issue.

392 (3) LIMITATIONS.—A court may only order the sealing of one
 393 criminal history record described in paragraph (2)(a). The
 394 record sealed must pertain to one arrest or one incident of
 395 alleged criminal activity, except that the court may, at its
 396 sole discretion, order the sealing of a criminal history record
 397 pertaining to more than one arrest or one incident of alleged
 398 criminal activity if the additional arrests or incidents of
 399 alleged criminal activity directly relate to the original
 400 arrest. If the court intends to order the sealing of records
 401 pertaining to such additional arrests or incidents of alleged
 402 criminal activity, such intent must be specified in the order. A
 403 criminal justice agency may not seal a record pertaining to such
 404 additional arrests or incidents of alleged criminal activity if
 405 the order to seal does not articulate the intention of the court
 406 to seal such record. This subsection does not prevent the court
 407 from ordering the sealing of only a portion of a criminal
 408 history record pertaining to one arrest or incident of alleged
 409 criminal activity.

410 (4) CERTIFICATE OF ELIGIBILITY FOR COURT-ORDERED SEALING.—

411 (a) A person seeking to seal a criminal history record
 412 under this section shall apply to the department for a
 413 certificate of eligibility for sealing before petitioning the
 414 court for sealing. The department shall issue a certificate of
 415 eligibility for sealing to a person who is the subject of a
 416 criminal history record if that person:

417 1. Has submitted to the department a written, certified
 418 statement from the appropriate state attorney or statewide
 419 prosecutor which indicates that the criminal history record
 420 sought to be sealed is eligible under subsection (2).

421 2. Remits a \$75 processing fee to the department for
 422 placement in the Department of Law Enforcement Operating Trust
 423 Fund, unless such fee is waived by the executive director.

424 3. Has submitted to the department a certified copy of the
 425 disposition of the charge to which the petition to seal
 426 pertains.

427 4. Has never secured a prior sealing or expunction of a
 428 criminal history record under this section, s. 943.0585, former
 429 s. 893.14, former s. 901.33, or former s. 943.058.

430 5. Is no longer under court supervision applicable to the
 431 disposition of the arrest or incident of alleged criminal
 432 activity to which the petition to seal pertains.

433 6. Has not been arrested for or charged with a criminal
 434 offense, in this state or any other jurisdiction within the
 435 United States between the date that the person completed the
 436 sentence imposed by the court for the offense to which the
 437 petition to seal pertains and the date of the application for
 438 the certificate of eligibility. This period of time must be at
 439 least 3 years.

440 7. Has submitted to the department a full set of
 441 fingerprints taken by a law enforcement agency for purposes of
 442 identity verification.

443 (b) A certificate of eligibility for sealing is valid for
 444 12 months after the date that the certificate is issued by the
 445 department. After that time, the petitioner must reapply to the
 446 department for a new certificate of eligibility. Eligibility for
 447 a renewed certificate of eligibility must be based on the status
 448 of the applicant and the law in effect at the time of the
 449 renewal application.

450 (c) The department shall adopt rules to establish
 451 procedures pertaining to the application for and issuance of
 452 certificates of eligibility for sealing.

453 (5) PETITION FOR COURT-ORDERED SEALING.—

454 (a) The court may not order a criminal justice agency to
 455 seal a criminal history record under this section until the
 456 person seeking to seal the record has received a certificate of
 457 eligibility for sealing pursuant to subsection (4). Each
 458 petition to a court to seal a criminal history record is
 459 complete only when accompanied by:

460 1. A valid certificate of eligibility for sealing issued
 461 by the department pursuant to subsection (4).

462 2. The petitioner's sworn statement attesting that:

463 a. The criminal history record sought to be sealed is
 464 eligible under subsection (2).

465 b. The petitioner meets the requirement of subparagraph
 466 (4)(a)4.

467 c. The petitioner has not been arrested for or charged
 468 with a criminal offense in this state or any other jurisdiction

469 within the United States between the date that the person
 470 completed the sentence imposed by the court for the offense to
 471 which the petition to seal pertains and the date of the petition
 472 for court-ordered sealing, which period must be at least 3
 473 years.

474 d. The petitioner is eligible for the expunction to the
 475 best of his or her knowledge or belief and does not have any
 476 other petition to expunge or any petition to seal pending before
 477 any court.

478 (b) A person who knowingly provides false information on
 479 the sworn statement required by subparagraph (a)2. commits a
 480 felony of the third degree, punishable as provided in s.
 481 775.082, s. 775.083, or s. 775.084.

482 (6) PROCESSING OF COURT-ORDERED SEALING.—

483 (a) In judicial proceedings under this section, a copy of
 484 the completed petition to seal shall be served upon the
 485 appropriate state attorney or the statewide prosecutor and upon
 486 the arresting agency; however, it is not necessary to make any
 487 agency other than the state a party. The appropriate state
 488 attorney or the statewide prosecutor and the arresting agency
 489 may respond to the court regarding the completed petition to
 490 seal.

491 (b) If relief is granted by the court, the clerk of the
 492 court shall certify copies of the order to the appropriate state
 493 attorney or the statewide prosecutor and the arresting agency.
 494 The arresting agency is responsible for forwarding the order to

495 any other agency to which the arresting agency disseminated the
 496 criminal history record information to which the order pertains.
 497 The department shall notify the Federal Bureau of Investigation
 498 of the order to seal, as needed. The clerk of the court shall
 499 certify a copy of the order to any other agency which the
 500 records of the court reflect has received the criminal history
 501 record from the court.

502 (c) The department or any other criminal justice agency is
 503 not required to act on an order to seal entered by a court if
 504 such order does not comply with the requirements of this
 505 section. Upon receipt of such an order, the department must
 506 notify the issuing court, the appropriate state attorney or
 507 statewide prosecutor, the petitioner or the petitioner's
 508 attorney, and the arresting agency of the reason for
 509 noncompliance. The appropriate state attorney or statewide
 510 prosecutor shall take action within 60 days after receiving such
 511 order to correct the record and petition the court to void the
 512 order. A cause of action, including contempt of court, does not
 513 arise against a criminal justice agency for failure to comply
 514 with an order to seal when the petitioner for such order failed
 515 to obtain the certificate of eligibility as required by this
 516 section or such order does not otherwise comply with the
 517 requirements of this section.

518 (d) An order sealing a criminal history record pursuant to
 519 this section does not require that such record be surrendered to
 520 the court, and such record shall continue to be maintained by

521 the department and other criminal justice agencies.

522 (7) EFFECT OF COURT-ORDERED 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 criminal history covered by the sealed record, unless 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 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,
 543 persons with disabilities, or elderly persons;

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 11. Is seeking authorization to use a restricted driver
 563 license from, to be employed or licensed by or to contract with,
 564 or to obtain a commercial driver license through, the Department
 565 of Highway Safety and Motor Vehicles.

566 (b) Subject to the exceptions in paragraph (a), a person
 567 who has been granted a sealing under this section, former s.
 568 893.14, former s. 901.33, or former s. 943.058 may not be held
 569 under any provision of law of this state to commit perjury or to
 570 be otherwise liable for giving a false statement by reason of
 571 such person's failure to recite or acknowledge a sealed criminal
 572 history record.

573 (c) Notwithstanding any law to the contrary, a criminal
 574 justice agency may comply with laws, court orders, and official
 575 requests of other jurisdictions relating to sealing, correction,
 576 or confidential handling of criminal history records or
 577 information derived therefrom.

578 (8) STATUTORY REFERENCES.—Any reference to:

579 (a) Another chapter, section, or other subdivision of the
 580 Florida Statutes in this section constitutes a general reference
 581 under the doctrine of incorporation by reference.

582 (b) This section or a subdivision of this section in
 583 another chapter, section, or other subdivision of the Florida
 584 Statutes constitutes a general reference under the doctrine of
 585 incorporation by reference.

586 (9) NO RIGHT TO SEALING.—This section does not confer a
 587 right to the sealing of a criminal history record, and a request
 588 for sealing of a criminal history record may be denied at the
 589 sole discretion of the court.

590 Section 3. Section 943.0595, Florida Statutes, is created
 591 to read:

592 943.0595 Nonjudicial sealing of criminal history records.—

593 (1) NONJUDICIAL SEALING.—Notwithstanding any provision of
 594 law relating generally to the preservation and destruction of
 595 public records, the department shall adopt rules to establish
 596 procedures pertaining to the nonjudicial sealing of any criminal
 597 history record of a minor or an adult described in this section.

598 (2) ELIGIBILITY.—

599 (a) The department must approve the nonjudicial sealing of
 600 a criminal history record if:

601 1. An indictment, information, or other charging document
 602 was not filed or issued in the case.

603 2. An indictment, information, or other charging document
 604 was filed or issued in the case, but was subsequently dismissed
 605 or nolle prosequi by the state attorney or statewide prosecutor,
 606 or was dismissed or discharged by a court of competent
 607 jurisdiction. However, a person may not obtain a sealing under
 608 this subparagraph for a dismissal by reason of a judicial
 609 finding or adjudication that he or she is incompetent to proceed
 610 in a criminal or delinquency case, unless the person is a minor
 611 who is adjudicated incompetent to proceed because of age or
 612 immaturity.

613 3. A not guilty verdict was rendered subsequent to a trial
 614 or adjudicatory hearing, except that a person may not obtain a
 615 sealing under this subparagraph for a verdict of not guilty by
 616 reason of insanity.

617 (b) A person may not obtain a nonjudicial sealing under
 618 this section unless all charges stemming from the arrest or
 619 alleged incident of criminal activity to which the application
 620 for sealing pertains were disposed of in a manner described in
 621 paragraph (a).

622 (3) LIMITATIONS.—There is no limitation on the number of
 623 times that a person may obtain a nonjudicial sealing for a
 624 criminal history record described in paragraph (2)(a). An

625 applicant may seek to have multiple criminal history records
 626 sealed through the submission of a single application to the
 627 department. The department shall approve each application for
 628 nonjudicial sealing which satisfies the requirements of this
 629 section.

630 (4) APPLICATION FOR NONJUDICIAL SEALING.—An adult or, in
 631 the case of a minor, the parent or legal guardian of or legal
 632 counsel for the minor, seeking to seal a criminal history record
 633 under this section shall apply to the department in the manner
 634 prescribed by rule. An application for a nonjudicial sealing
 635 must be accompanied by a:

636 (a) Written, certified statement from the appropriate
 637 state attorney or statewide prosecutor which indicates that the
 638 criminal history record sought to be sealed is eligible under
 639 this section.

640 (b) Processing fee of \$75 to the department for placement
 641 in the Department of Law Enforcement Operating Trust Fund,
 642 unless such fee is waived by the executive director.

643 (c) Certified copy of the disposition of the charge to
 644 which the application to seal pertains.

645 (d) Full set of fingerprints of the applicant taken by a
 646 law enforcement agency for purposes of identity verification.

647 (5) PROCESSING OF NONJUDICIAL SEALING.—

648 (a) If the department approves an application for a
 649 nonjudicial sealing, a certified copy of the form approving the
 650 nonjudicial sealing shall be forwarded to the appropriate state

651 attorney or the statewide prosecutor, the arresting agency, and
 652 the clerk of the court. The arresting agency is responsible for
 653 forwarding the form approving the nonjudicial sealing to any
 654 other agency to which the arresting agency disseminated the
 655 criminal history record information to which the form pertains.
 656 The department shall notify the Federal Bureau of Investigation
 657 of the nonjudicial sealing as needed. The clerk of the court
 658 shall forward a copy of the form to any other agency that the
 659 records of the court reflect has received the criminal history
 660 record from the court.

661 (b) The nonjudicial sealing of a criminal history record
 662 pursuant to this section does not require that such record be
 663 surrendered to the court, and such record shall continue to be
 664 maintained by the department and other criminal justice
 665 agencies.

666 (6) EFFECT OF NONJUDICIAL SEALING.—The sealing of a record
 667 under this section shall have the same effect, and such record
 668 may be disclosed by the department in the same manner, as a
 669 record sealed under s. 943.059, except that a record sealed
 670 under this section shall not be made available to the Department
 671 of Highway Safety and Motor Vehicles.

672 (7) STATUTORY REFERENCES.—Any reference to:

673 (a) Another chapter, section, or other subdivision of the
 674 Florida Statutes in this section constitutes a general reference
 675 under the doctrine of incorporation by reference.

676 (b) This section or a subdivision of this section in

677 another chapter, section, or other subdivision of the Florida
 678 Statutes constitutes a general reference under the doctrine of
 679 incorporation by reference.

680 Section 4. Subsection (3) of section 776.09, Florida
 681 Statutes, is amended to read:

682 776.09 Retention of records pertaining to persons found to
 683 be acting in lawful self-defense; expunction of criminal history
 684 records.—

685 (3) Under either condition described in subsection (1) or
 686 subsection (2), the person accused may apply for a certificate
 687 of eligibility to expunge the associated criminal history
 688 record, pursuant to s. 943.0585(8) ~~943.0585(5)~~, ~~notwithstanding~~
 689 ~~the eligibility requirements prescribed in s. 943.0585(1)(b) or~~
 690 ~~(2).~~

691 Section 5. Subsections (5), (8), (9), and (10) of section
 692 943.053, Florida Statutes, are amended to read:

693 943.053 Dissemination of criminal justice information;
 694 fees.—

695 (5) Notwithstanding the provisions of s. 943.0525, and any
 696 user agreements adopted pursuant thereto, and notwithstanding
 697 the confidentiality of sealed records as provided for in ss. s.
 698 943.059 and 943.0595, the department shall make online access to
 699 Florida criminal justice information available to each judge in
 700 the state courts system for the purpose of assisting judges in
 701 their case-related decisionmaking responsibilities. Such online
 702 access shall be provided without charge to the state courts

703 system. Sealed records received by the courts under this section
 704 remain confidential and exempt from the provisions of s.
 705 119.07(1). The information provided pursuant to this section
 706 shall not take the place of any information required to be
 707 provided to the courts by any other agency or entity.
 708 Information provided under this section shall be used only for
 709 the official court business for which it was requested and may
 710 not be further disseminated.

711 (8) Notwithstanding the provisions of s. 943.0525, and any
 712 user agreements adopted pursuant thereto, and notwithstanding
 713 the confidentiality of sealed records as provided for in ss. ~~s.~~
 714 943.059 and 943.0595, the sheriff of any county that has
 715 contracted with a private entity to operate a county detention
 716 facility pursuant to the provisions of s. 951.062 shall provide
 717 that private entity, in a timely manner, copies of the Florida
 718 criminal history records for its inmates. The sheriff may assess
 719 a charge for the Florida criminal history records pursuant to
 720 the provisions of chapter 119. Sealed records received by the
 721 private entity under this section remain confidential and exempt
 722 from the provisions of s. 119.07(1).

723 (9) Notwithstanding the provisions of s. 943.0525, and any
 724 user agreements adopted pursuant thereto, and notwithstanding
 725 the confidentiality of sealed records as provided for in ss. ~~s.~~
 726 943.059 and 943.0595, the Department of Corrections shall
 727 provide, in a timely manner, copies of the Florida criminal
 728 history records for inmates housed in a private state

729 correctional facility to the private entity under contract to
 730 operate the facility pursuant to the provisions of s. 944.105.
 731 The department may assess a charge for the Florida criminal
 732 history records pursuant to the provisions of chapter 119.
 733 Sealed records received by the private entity under this section
 734 remain confidential and exempt from the provisions of s.
 735 119.07(1).

736 (10) Notwithstanding the provisions of s. 943.0525 and any
 737 user agreements adopted pursuant thereto, and notwithstanding
 738 the confidentiality of sealed records as provided for in ss. s.
 739 943.059 and 943.0595, the Department of Juvenile Justice or any
 740 other state or local criminal justice agency may provide copies
 741 of the Florida criminal history records for juvenile offenders
 742 currently or formerly detained or housed in a contracted
 743 juvenile assessment center or detention facility or serviced in
 744 a contracted treatment program and for employees or other
 745 individuals who will have access to these facilities, only to
 746 the entity under direct contract with the Department of Juvenile
 747 Justice to operate these facilities or programs pursuant to the
 748 provisions of s. 985.688. The criminal justice agency providing
 749 such data may assess a charge for the Florida criminal history
 750 records pursuant to the provisions of chapter 119. Sealed
 751 records received by the private entity under this section remain
 752 confidential and exempt from the provisions of s. 119.07(1).
 753 Information provided under this section shall be used only for
 754 the criminal justice purpose for which it was requested and may

755 not be further disseminated.

756 Section 6. Paragraph (a) of subsection (2) and subsections
 757 (4) and (5) of section 943.0582, Florida Statutes, are amended
 758 to read:

759 943.0582 Prearrest, postarrest, or teen court diversion
 760 program expunction.—

761 (2)(a) As used in this section, the term "expunction" has
 762 the same meaning ascribed in and effect as s. 943.0585, except
 763 that:

764 1. The provisions of s. 943.0585(7)(b) ~~943.0585(4)(a)~~ do
 765 not apply, except that the criminal history record of a person
 766 whose record is expunged pursuant to this section shall be made
 767 available only to criminal justice agencies for the purpose of
 768 determining eligibility for prearrest, postarrest, or teen court
 769 diversion programs; when the record is sought as part of a
 770 criminal investigation; or when the subject of the record is a
 771 candidate for employment with a criminal justice agency. For all
 772 other purposes, a person whose record is expunged under this
 773 section may lawfully deny or fail to acknowledge the arrest and
 774 the charge covered by the expunged record.

775 2. Records maintained by local criminal justice agencies
 776 in the county in which the arrest occurred that are eligible for
 777 expunction pursuant to this section shall be sealed as the term
 778 is used in s. 943.059.

779 (4) The department may ~~is authorized to~~ charge a \$75
 780 processing fee for each request received for prearrest or

781 postarrest diversion program expunction, for placement in the
 782 Department of Law Enforcement Operating Trust Fund, unless such
 783 fee is waived by the executive director.

784 (5) Expunction or sealing granted under this section does
 785 not prevent the minor who receives such relief from seeking
 786 ~~petitioning for~~ the expunction or sealing of a later criminal
 787 history record as provided for in ss. 943.0583, 943.0585, ~~and~~
 788 943.059, and 943.0595, if the minor is otherwise eligible under
 789 those sections.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 16-04 Public Records/Expunging and Sealing Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: PCB CRJS 16-03 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cox <i>Kaa</i>	White <i>W</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 16-03, which is tied to this PCB, makes substantial changes to Florida's expunge and seal laws by creating a nonjudicial process for the sealing of criminal history records and expanding application of the court-ordered expunction and sealing processes to additional types of criminal history records.

PCB CRJS 16-03 expands the types of records that may be expunged or sealed by permitting a person to obtain:

- One court-ordered expunction for a record that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered sealing of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction;
- One court-ordered sealing of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction; and
- An unlimited number of "nonjudicial sealings" for records that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions.

This PCB makes records expunged or sealed pursuant to PCB CRJS 16-03 confidential and exempt from public records. The PCB repeals the exemptions on October 2, 2021, 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.

The bill takes effect on the same date as PCB CRJS 16-03 or similar legislation relating to expunging and sealing of criminal history records takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes 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 passes 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. When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record.⁵ Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order.⁶ FDLE is required to retain expunged records.⁷

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.⁸

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 s. 943.0585(4), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ s. 943.059(4), F.S.

Records that have been sealed or expunged are confidential and exempt⁹ from the public records law.¹⁰ It is a first degree misdemeanor¹¹ to divulge their existence.¹²

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,¹³ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.¹⁴

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 16-03, which is tied to this PCB, makes substantial changes to Florida's expunge and seal laws by creating a nonjudicial process for the sealing of criminal history records. The bill retains the court-ordered expunction and sealing processes, but expands their application to additional types of criminal history records.

PCB CRJS 16-03 expands the types of records that may be expunged or sealed by:

- Amending s. 943.0585, F.S., to permit a person obtain one court-ordered expunction for a record that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- Amending s. 943.059, F.S., to permit a person to obtain one court-ordered sealing of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction;
- Amending s. 943.059, F.S., to permit a person to obtain one court-ordered sealing of a record that resulted in a conviction for a specified "nonviolent misdemeanor," regardless of whether the person has a previous misdemeanor conviction; and
- Creating s. 943.0595, F.S., which permits a person to obtain an unlimited number of "nonjudicial sealings" for records that resulted in a no-information, a dismissal, or a not-guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions.

Effect of the Bill

The PCB makes records expunged or sealed pursuant to PCB CRJS 16- confidential and exempt from public records.

The PCB repeals the exemptions on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

⁹ 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); *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. (1985).

¹⁰ ss. 943.059(4)(c) and 943.0585(4)(c), F.S.

¹¹ 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.

¹² Sections 943.059 and 943.0585, F.S., require FDLE to disclose sealed and expunged criminal history records to specified entities for specified purposes.

¹³ 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, the 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.

¹⁴ ss. 943.0585(4)(a) and 943.059(4)(a), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0585, F.S., relating to court-ordered expunction of criminal history records.

Section 2. Amends s. 943.059, F.S., relating to court-ordered sealing of criminal history records.

Section 3. Amends s. 943.0595, 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 16- or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

N/A

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 943.0585, F.S.; providing an exemption from public
 4 records requirements for an adult's or minor's
 5 criminal history records related to a not-guilty
 6 verdict that have been expunged pursuant to s.
 7 943.0585, F.S.; providing for future legislative
 8 review and repeal of the exemption; amending s.
 9 943.059, F.S.; providing an exemption from public
 10 records requirements for an adult's or minor's record
 11 related to a withhold of adjudication or nonviolent
 12 misdemeanor conviction that has been sealed pursuant
 13 to s. 943.059, F.S.; providing for future legislative
 14 review and repeal of the exemption; amending s.
 15 943.0595, F.S.; providing an exemption from public
 16 records requirements for an adult's or minor's
 17 specified records that have been approved for
 18 nonjudicial sealing pursuant to s. 943.0595, F.S.;
 19 providing for future legislative review and repeal of
 20 the exemption; amending s. 943.0582, F.S.; conforming
 21 cross-references; providing a statement of public
 22 necessity; providing a contingent effective date.

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

26 Section 1. Paragraphs (b), (c), and (d) of subsection (7)

27 of section 943.0585, Florida Statutes, as amended by PCB CRJS
 28 16-03, are redesignated as paragraphs (c), (d), and (f),
 29 respectively, new paragraphs (b) and (e) are added to that
 30 subsection, and present paragraph (c) of that subsection is
 31 amended, to read:

32 943.0585 Court-ordered expunction of criminal history
 33 records.—

34 (7) EFFECT OF COURT-ORDERED EXPUNCTION.—

35 (b) A criminal history record that is ordered expunged and
 36 that is retained by the department is confidential and exempt
 37 from the provisions of s. 119.07(1) and s. 24(a), Art. I of the
 38 State Constitution and is not available to any person or entity
 39 except upon order of a court of competent jurisdiction. A
 40 criminal justice agency may retain a notation indicating
 41 compliance with an order to expunge. This paragraph is subject
 42 to the Open Government Sunset Review Act in accordance with s.
 43 119.15 and shall stand repealed on October 2, 2021, unless
 44 reviewed and saved from repeal through reenactment by the
 45 Legislature.

46 ~~(d)(e)~~ Subject to the exceptions in paragraph (c) ~~(b)~~, a
 47 person who has been granted an expunction under this section,
 48 former s. 893.14, former s. 901.33, or former s. 943.058 may not
 49 be held under a law of this state to commit perjury or to be
 50 otherwise liable for giving a false statement by reason of such
 51 person's failure to recite or acknowledge an expunged criminal
 52 history record.

53 (e) Information relating to the existence of an expunged
54 criminal history record which is provided in accordance with
55 paragraph (c) is confidential and exempt from the provisions of
56 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

57 1. The existence of a confidential and exempt criminal
58 history record expunged under this section may be disclosed by
59 the department to the entities set forth in subparagraphs (c)1.,
60 4., 5., 6., 7., and 8. for their respective licensing, access
61 authorization, and employment purposes, and to criminal justice
62 agencies for their respective criminal justice purposes. It is
63 unlawful for an employee of an entity set forth in subparagraph
64 (c)1., subparagraph (c)4., subparagraph (c)5., subparagraph
65 (c)6., subparagraph (c)7., or subparagraph(c)8. to disclose
66 information relating to the existence of an expunged criminal
67 history record of a person seeking employment, access
68 authorization, or licensure with such entity or contractor,
69 except to the person to whom the criminal history record relates
70 or to a person having direct responsibility for employment,
71 access authorization, or licensure decisions.

72 2. A person who violates this paragraph commits a
73 misdemeanor of the first degree, punishable as provided in s.
74 775.082 or s. 775.083.

75 3. This paragraph is subject to the Open Government Sunset
76 Review Act in accordance with s. 119.15 and shall stand repealed
77 on October 2, 2021, unless reviewed and saved from repeal
78 through reenactment by the Legislature.

79 Section 2. Paragraphs (a), (b), and (c) of subsection (7)
 80 of section 943.059, Florida Statutes, as amended by PCB CRJS 16-
 81 03, are redesignated as paragraphs (b), (c), and (e),
 82 respectively, new paragraphs (a) and (d) are added to that
 83 subsection, and present paragraph (b) of that subsection is
 84 amended, to read:

85 943.059 Court-ordered sealing of criminal history
 86 records.-

87 (7) EFFECT OF COURT-ORDERED SEALING.-

88 (a) A criminal history record that is ordered sealed by a
 89 court is confidential and exempt from the provisions of s.
 90 119.07(1) and s. 24(a), Art. I of the State Constitution.

91 1. A confidential and exempt criminal history record may
 92 be disclosed by the department to:

93 a. The person who is the subject of the record or to the
 94 subject's attorney.

95 b. A criminal justice agency in the furtherance of its
 96 lawful duties and responsibilities, which include conducting a
 97 criminal history background check for approval of firearms
 98 purchases or transfers as authorized by state or federal law.

99 c. A judge in the state courts system for the purpose of
 100 assisting in case-related decisionmaking responsibilities as set
 101 forth in s. 943.053(5).

102 d. Those entities set forth in subparagraphs (c)1., 4.,
 103 5., 6., 8., 9., 10. and 11. for their respective licensing,
 104 access authorization, and employment purposes.

105 2. This paragraph is subject to the Open Government Sunset
 106 Review Act in accordance with s. 119.15 and shall stand repealed
 107 on October 2, 2021, unless reviewed and saved from repeal
 108 through reenactment by the Legislature.

109 (c) ~~(b)~~ Subject to the exceptions in paragraph (b) ~~(a)~~, a
 110 person who has been granted a sealing under this section, former
 111 s. 893.14, former s. 901.33, or former s. 943.058 may not be
 112 held under any provision of law of this state to commit perjury
 113 or to be otherwise liable for giving a false statement by reason
 114 of such person's failure to recite or acknowledge a sealed
 115 criminal history record.

116 (d) Information relating to the existence of a sealed
 117 criminal history record which is provided in accordance with
 118 paragraph (b) is confidential and exempt from the provisions of
 119 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 120 except that the department shall disclose the sealed criminal
 121 history record to the entities set forth in subparagraphs (b)1.,
 122 4., 5., 6., 8., 9., 10., and 11. for their respective licensing,
 123 access authorization, and employment purposes, and to criminal
 124 justice agencies for their respective criminal justice purposes.

125 1. It is unlawful for an employee of an entity set forth
 126 in subparagraph (b)1., subparagraph (b)4., subparagraph (b)5.,
 127 subparagraph (b)6., subparagraph (b)8., subparagraph (b)9.,
 128 subparagraph (b)10., or subparagraph (b)11. 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.

135 2. A person who violates this paragraph commits a
 136 misdemeanor of the first degree, punishable as provided in s.
 137 775.082 or s. 775.083.

138 3. This paragraph is subject to the Open Government Sunset
 139 Review Act in accordance with s. 119.15 and shall stand repealed
 140 on October 2, 2021, unless reviewed and saved from repeal
 141 through reenactment by the Legislature.

142 Section 3. Subsection (6) of section 943.0595, Florida
 143 Statutes, as created by PCB CRJS 16-03, is amended to read:

144 943.0595 Nonjudicial sealing of criminal history records.-

145 (6) EFFECT OF NONJUDICIAL SEALING.-

146 (a) A criminal history record of an adult or a minor
 147 described under paragraph (2)(a) which is approved for
 148 nonjudicial sealing by the department pursuant to this section
 149 is confidential and exempt from the provisions of s. 119.07(1)
 150 and s. 24(a), Art. I of the State Constitution.

151 (b) The sealing of a record under this section shall have
 152 the same effect, and such record may be disclosed by the
 153 department in the same manner, as a record sealed under s.
 154 943.059, except that a record sealed under this section shall
 155 not be made available to the Department of Highway Safety and
 156 Motor Vehicles.

157 (c) This subsection is subject to the Open Government
 158 Sunset Review Act in accordance with s. 119.15 and shall stand
 159 repealed on October 2, 2021, unless reviewed and saved from
 160 repeal through reenactment by the Legislature.

161 Section 4. Paragraph (a) of subsection (2) of section
 162 943.0582, Florida Statutes, as amended by PCB CRJS 16-03, is
 163 amended to read:

164 943.0582 Prearrest, postarrest, or teen court diversion
 165 program expunction.-

166 (2)(a) As used in this section, the term "expunction" has
 167 the same meaning ascribed in and effect as s. 943.0585, except
 168 that:

169 1. The provisions of s. 943.0585(7)(c) ~~943.0585(7)(b)~~ do
 170 not apply, except that the criminal history record of a person
 171 whose record is expunged pursuant to this section shall be made
 172 available only to criminal justice agencies for the purpose of
 173 determining eligibility for prearrest, postarrest, or teen court
 174 diversion programs; when the record is sought as part of a
 175 criminal investigation; or when the subject of the record is a
 176 candidate for employment with a criminal justice agency. For all
 177 other purposes, a person whose record is expunged under this
 178 section may lawfully deny or fail to acknowledge the arrest and
 179 the charge covered by the expunged record.

180 2. Records maintained by local criminal justice agencies
 181 in the county in which the arrest occurred that are eligible for
 182 expunction pursuant to this section shall be sealed as the term



183 is used in s. 943.059.

184 Section 5. The Legislature finds that it is a public
 185 necessity that the criminal history records of an adult or minor
 186 which have been expunged or sealed be made confidential and
 187 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 188 Article I of the State Constitution. Many people whose
 189 prosecutions have been abandoned, were found not guilty
 190 subsequent to a jury trial, or who have completed any sanctions
 191 imposed by the court in the criminal or juvenile justice system
 192 have found it difficult to obtain employment. The presence of a
 193 criminal history record in these individuals' pasts creates an
 194 unnecessary barrier to becoming productive members of society
 195 and can jeopardize individuals' ability to achieve a safe
 196 livelihood. The Legislature therefore finds that it is in the
 197 best interest of the public that persons are given the
 198 opportunity to become contributing members of society.

199 Section 6. This act shall take effect on the same date
 200 that PCB CRJS 16-03 or similar legislation relating to expunging
 201 and sealing of criminal history records takes effect, if such
 202 legislation is adopted in the same legislative session or an
 203 extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 16-05 Victim and Witness Protections
SPONSOR(S): Criminal Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Keegan 	White 

SUMMARY ANALYSIS

Florida law currently has a number of statutes providing for the fair treatment of victims and witnesses. Sections 92.53, 92.54, and 92.55, F.S., authorize the court to provide special protections to a victim or witness who is under 16 years of age or who has an intellectual disability or to a victim or witness of a sexual offense who is under 16 years of age. For example, protective orders may be entered by the court to allow protected persons to testify via closed circuit television or to limit the frequency or nature of depositions to which the protected person has to attend. Additionally, s. 794.022, F.S., Florida's Rape Shield law, prevents most evidence regarding a victim's prior sexual conduct from being admitted at trial in a prosecution for sexual battery under s. 794.011, F.S. Currently, the Rape Shield law does not apply in other sexual misconduct prosecutions.

The bill broadens the application of ss. 92.53, 92.54, and 92.55, F.S., by increasing the age range for protected persons from victims or witnesses under 16 years of age to victims or witnesses under 18 years of age. Additionally, the bill adds advocates appointed by the court under s. 914.17, F.S., to the list of persons authorized to make a motion for protection under s. 92.55, F.S.

The bill expands the application of the Florida's Rape Shield law to prosecutions under s. 787.06, F.S., relating to human trafficking, and s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of children under 16 years of age.

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

The bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Testimony by Victims and Witnesses

Florida law currently has several statutes providing for the fair treatment of victims and witnesses.¹ A number of these statutes authorize the court to provide special protections to a victim or witness who is under 16 years of age or who has an intellectual disability or to a victim or witness of a sexual offense who is under 16 years of age.

Sections 92.53 and 92.54, F.S., authorize a court to enter a protective order after a motion and hearing in camera² if the court finds that the protected individual is a victim or witness who is under the age of 16 or has an intellectual disability,³ and that:

- It is substantially likely the protected individual would suffer at least moderate emotional or mental harm due to the presence of the defendant if the protected individual were required to testify in open court; or
- The court determines that the protected individual is unavailable⁴ to testify.

When the above circumstances are met, the court has several options. The court may order the protected individual's testimony be videotaped and used in lieu of testimony in open court.⁵ In the event of such an order, the defendant and the defendant's counsel must be permitted to be present at any videotaping, but the court may order the defendant to view the testimony from outside the presence of the protected individual.⁶ Alternatively, the court may require that the protected individual's testimony be taken outside the courtroom and shown in the courtroom by means of closed circuit television.⁷ Only the specified parties⁸ may be permitted in the room when the testimony is recorded.⁹ The judge may require the defendant to view the testimony from the courtroom, but must permit the defendant to observe and hear the person's testimony.¹⁰

Section 92.55, F.S., authorizes the court to enter a wide variety of protective orders to protect victims and witnesses under 16 years of age, sexual offense¹¹ victims or witnesses under 16 years of age,¹²

¹ See, e.g., FLA. CONST. art. I, s. 16; ss. 92.53-55, F.S.; s. 914.25, F.S.; s. 914.27.

² A hearing "in camera" means the hearing is held in the judge's chambers or held in a courtroom where all spectators are excluded from being present. DUHAIME'S LAW DICTIONARY, *In Camera Definition*, <http://www.duhaime.org/LegalDictionary/I/InCamera.aspx> (last visited Jan. 14, 2016).

³ Under the procedure provided in s. 92.53, F.S., "intellectual disability" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. s. 393.063, F.S.

⁴ A witness or potential witness is considered unavailable to testify when he or she: 1) Is exempted from testifying by a ruling of a court due to a legal privilege; 2) Refuses to testify concerning the subject matter of his or her statement despite a court order to testify; 3) Has suffered a lack of memory of the subject matter of his or her statement; 4) Is unable to be present or to testify at the hearing because of death, illness or infirmity; or 5) Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance by reasonable means. s. 90.804(1), F.S.

⁵ s. 92.53(1), F.S.

⁶ s. 92.53(4), F.S.

⁷ s. 92.54(1), F.S.

⁸ Only the judge, prosecutor, the defendant and his or her attorney, any video equipment operators, and interpreter, or any other person who is not going to be a witness in the case and, in the opinion of the court, benefits the well-being of the protected individual. .s. 92.54(3), F.S.

⁹ s. 92.54(3), F.S.

¹⁰ s. 92.54(4), F.S.

¹¹ "Sexual offense" means any offense specified in s. 775.21(4)(a)1., or s. 943.0435(1)(a)1.a.(I).

¹² A "sexual offense victim or witness" means a person who was under 16 years old when he or she was the victim of or a witness to a sexual offense. s. 92.55(1)(a), F.S.

and persons with an intellectual disability.¹³ A motion for protection can be raised by any party to the case, a parent, a guardian, an attorney, a guardian ad litem, or the court.¹⁴ The court must find that such order is necessary to protect the person from severe emotional or mental harm due to the defendant's presence if the person is required to testify in open court.¹⁵ The court is required to consider a lengthy list of factors, including, but not limited to the age of the person, the nature of the offense, and the functional capacity of the person if he or she has an intellectual disability.¹⁶ The court may enter orders taking the following actions, in addition to any other relief available under the law:

- Limit the number of times that the person may be interviewed;
- Prohibit depositions of the person;
- Require the submission of questions prior to examination of the person;
- Set the place and conditions for interviewing the person or for other proceedings;
- Permit or prohibit the attendance of any person at a proceeding; and
- Permit the use of a service animal during the person's testimony in any sexual offense proceeding.¹⁷

Rape Shield

In many U.S. jurisdictions, laws exist to prevent specific instances of the victim's prior sexual conduct from being admitted at trial in a prosecution for sexual battery or other sexual misconduct charges.¹⁸ These laws are commonly referred to as "Rape Shield" laws.¹⁹ Section 794.022, F.S., is Florida's Rape Shield law, and it has long been considered a codification of the rule of relevancy that a victim's prior sexual conduct is generally irrelevant in determining the defendant's guilt.²⁰ It applies only to criminal prosecutions for sexual battery under s. 794.011, F.S.,²¹ and provides that:

- The victim's testimony doesn't have to be corroborated by other evidence;
- Specific instances of the victim's sexual history with people other than the offender are inadmissible unless:
 - The evidence is introduced to prove that the defendant wasn't the source of physical evidence, such as semen; or
 - When consent is at issue, the evidence proves a pattern of the victim's conduct or behavior that is so similar to the conduct or behavior in the case that it is relevant to the issue of consent.
- The victim's reputation for sexual behavior is inadmissible;
- Evidence presented to prove the victim's appearance prompted the sexual battery is inadmissible;
- When consent is a defense, evidence of the victim's mental incapacity or defect can be admitted to prove that consent was not given;
- An offender's use of a prophylactic device, or a victim's request that an offender use a prophylactic device, is not independently relevant.²²

The United States Code also has a Rape Shield statute. In contrast to Florida's Rape Shield law, the federal statute is not limited to sexual battery offenses; rather, the federal statute applies to *any* criminal

¹³ s. 92.55(1)(b), F.S.

¹⁴ s. 92.55(2), F.S.

¹⁵ *Id.*

¹⁶ s. 92.55(3), F.S.

¹⁷ s. 92.55(4) and (5), F.S.

¹⁸ Nat'l Dist. Attorney's Ass'n, *Rape Shield Statutes*, NAT'L DIST. ATTORNEY'S ASS'N (March 2011) (available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiMI-Xc06XKAhWFHD4KHVs-ByAQFggcMAA&url=http%3A%2F%2Fwww.ndaa.org%2Fpdf%2FNCPCA%2520Rape%2520Shield%25202011.pdf&usq=AFQjCNGB9ME_OADBM-qIDOCmtYCs3dYB7g) (last visited Jan. 12, 2016).

¹⁹ See *Lewis v. State*, 591 So. 2d 922, 924 (Fla. 1991); see also ENCYCLOPEDIA BRITANNICA, *Rape Shield Law*, <http://www.britannica.com/topic/rape-shield-law> (last visited Jan. 12, 2016).

²⁰ *Marr v. Florida*, 494 So. 2d 1139, 1142-43 (Fla. 1986).

²¹ Section 794.011, F.S., prohibits various forms of sexual battery.

²² s. 794.022, F.S.

or civil proceeding involving alleged sexual misconduct.²³ As such, federal courts have repeatedly held that a victim's prior history of sexual behavior, such as exotic dancing or prostitution, is irrelevant and inadmissible in prosecutions for crimes such as sex trafficking, forced labor, sex trafficking by force, fraud, or coercion, and sex trafficking of a child.²⁴ The Fourth Circuit illustrated this concept in *United States v. Saunders*, by holding that 28 U.S.C. 412(b)(1)(B) "manifests the policy that it is unreasonable for a defendant to base his belief of consent on the victim's past sexual experiences with third persons, since it is intolerable to suggest that because the victim is a prostitute, she automatically is assumed to have consented with anyone at any time."²⁵

Effect of the Bill

The bill broadens the application of ss. 92.53, 92.54, and 92.55, F.S., by increasing the age range for protected persons from victims or witnesses under 16 years of age to victims or witnesses under 18 years of age. Additionally, the bill adds advocates appointed by the court under s. 914.17, F.S.,²⁶ to the list of persons authorized to make a motion for protection under s. 92.55, F.S.

The bill expands the application of s. 794.022, F.S., Florida's Rape Shield law, to prosecutions under s. 787.06, F.S., relating to human trafficking, and s. 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of children under 16 years of age.

Finally, the bill reenacts s. 90.404, F.S., to incorporate amendments made by the bill to s. 794.022, F.S., that are cross-referenced in the reenacted section.

B. SECTION DIRECTORY:

Section 1. Amending s. 92.53, F.S., relating to videotaping the testimony of a victim or witness under age 16 or who has an intellectual disability.

Section 2. Amending s. 92.54, F.S., relating to use of closed circuit television in proceedings involving a victim or witness under the age 16 or who has an intellectual disability.

Section 3. Amending s. 92.55, F.S., relating to judicial and other proceedings involving victim or witness under the age of 16, a person who has an intellectual disability, or a sexual offense victim or witness; special protections; use of registered service or therapy animals.

Section 4. Amending s. 794.022, F.S., relating to rules of evidence.

Section 5. Reenacting s. 90.404, F.S., relating to character evidence; when admissible.

Section 6. Provides an effective date of October 1, 2016.

²³ 28 U.S.C. § 412.

²⁴ See *United States v. Rivera*, 799 F.3d 180, 185 (2d Cir. 2015) (holding that "[e]vidence of victims' prior acts of commercial sex is irrelevant to whether those victims were coerced into working as prostitutes."); *United States v. Roy*, 781 F.3d 416, 420 (8th Cir. 2015) (holding that the victim's participation in prostitution before or after the alleged incident is irrelevant to whether the defendant threatened her, beat her, or took her money); *United States v. Cephus*, 684 F.3d 703, 708 (7th Cir. 2012) (holding that the victim's prior history of prostitution was irrelevant to proving that she consented to having her wages withheld and be beaten).

²⁵ *United States v. Saunders*, 943 F.2d 388, 392 (4th Cir. 1991).

²⁶ Section 914.17, F.S., provides for a guardian ad litem or other advocate to be appointed by the court to represent the interests of a minor in a criminal proceeding where the minor is a victim of or a witness to child abuse or neglect, a victim of a sexual offense, or a witness to a sexual offense committed against another minor. "Advocate" is not defined in Chapter 914, 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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to victim and witness protection;
 3 amending ss. 92.53 and 92.54, F.S.; increasing the age
 4 limit for the use of videotaped testimony and closed
 5 circuit television in court proceedings by victims or
 6 witnesses; amending s. 92.55, F.S.; revising the
 7 definition of the term "sexual offense victim or
 8 witness"; increasing the age limit for victims and
 9 witnesses for whom the court may enter protective
 10 orders; authorizing certain advocates to file motions
 11 for such orders; amending s. 794.022, F.S.; revising
 12 the corroboration requirements for certain victim
 13 testimony and the admissibility of certain evidence in
 14 prosecutions for specified human trafficking and lewd
 15 or lascivious offenses; reenacting s. 90.404(1)(b),
 16 F.S., relating to character evidence, to incorporate
 17 the amendment made by the act to s. 794.022, F.S., in
 18 a reference thereto; providing an effective date.

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

21
 22 Section 1. Subsection (1) of section 92.53, Florida
 23 Statutes, is amended to read:

24 92.53 Videotaping the testimony of a victim or witness
 25 under age 18 ~~16~~ or who has an intellectual disability.—

26 (1) On motion and hearing in camera and a finding that

27 | there is a substantial likelihood that a victim or witness who
 28 | is under the age of 18 ~~16~~ or who has an intellectual disability
 29 | as defined in s. 393.063 would suffer at least moderate
 30 | emotional or mental harm due to the presence of the defendant if
 31 | such victim or witness is required to testify in open court, or
 32 | is unavailable as defined in s. 90.804(1), the trial court may
 33 | order the videotaping of the testimony of the victim or witness
 34 | in a case, whether civil or criminal in nature, in which
 35 | videotaped testimony is to be used at trial in lieu of trial
 36 | testimony in open court.

37 | Section 2. Subsection (1) of section 92.54, Florida
 38 | Statutes, is amended to read:

39 | 92.54 Use of closed circuit television in proceedings
 40 | involving a victim or witness under the age of 18 ~~16~~ or who has
 41 | an intellectual disability.-

42 | (1) Upon motion and hearing in camera and upon a finding
 43 | that there is a substantial likelihood that a victim or witness
 44 | under the age of 18 ~~16~~ or who has an intellectual disability
 45 | will suffer at least moderate emotional or mental harm due to
 46 | the presence of the defendant if such victim or witness is
 47 | required to testify in open court, or is unavailable as defined
 48 | in s. 90.804(1), the trial court may order that the testimony of
 49 | the victim or witness be taken outside of the courtroom and
 50 | shown by means of closed circuit television.

51 | Section 3. Paragraph (a) of subsection (1) and subsection
 52 | (2) of section 92.55, Florida Statutes, are amended to read:

53 92.55 Judicial or other proceedings involving victim or
 54 witness under the age of ~~18~~ 16, a person who has an intellectual
 55 disability, or a sexual offense victim or witness; special
 56 protections; use of registered service or therapy animals.-

57 (1) For purposes of this section, the term:

58 (a) "Sexual offense victim or witness" means a person who
 59 was under the age of ~~18~~ 16 when he or she was the victim of or a
 60 witness to a sexual offense.

61 (2) Upon motion of any party, upon motion of a parent,
 62 guardian, attorney, or guardian ad litem or other advocate
 63 appointed by the court under s. 914.17 for a victim or witness
 64 under the age of ~~18~~ 16, a person who has an intellectual
 65 disability, or a sexual offense victim or witness, or upon its
 66 own motion, the court may enter any order necessary to protect
 67 the victim or witness in any judicial proceeding or other
 68 official proceeding from severe emotional or mental harm due to
 69 the presence of the defendant if the victim or witness is
 70 required to testify in open court. Such orders must relate to
 71 the taking of testimony and include, but are not limited to:

72 (a) Interviewing or the taking of depositions as part of a
 73 civil or criminal proceeding.

74 (b) Examination and cross-examination for the purpose of
 75 qualifying as a witness or testifying in any proceeding.

76 (c) The use of testimony taken outside of the courtroom,
 77 including proceedings under ss. 92.53 and 92.54.

78 Section 4. Subsections (1) through (4) of section 794.022,

PCB CRJS 16-05

ORIGINAL

2016

79 Florida Statutes, are amended to read:

80 794.022 Rules of evidence.—

81 (1) The testimony of the victim need not be corroborated
82 in a prosecution under s. 787.06, s. 794.011, or s. 800.04.

83 (2) Specific instances of prior consensual sexual activity
84 between the victim and any person other than the offender shall
85 not be admitted into evidence in a prosecution under s. 787.06,
86 s. 794.011, or s. 800.04. However, such evidence may be admitted
87 if it is first established to the court in a proceeding in
88 camera that such evidence may prove that the defendant was not
89 the source of the semen, pregnancy, injury, or disease; or, when
90 consent by the victim is at issue, such evidence may be admitted
91 if it is first established to the court in a proceeding in
92 camera that such evidence tends to establish a pattern of
93 conduct or behavior on the part of the victim which is so
94 similar to the conduct or behavior in the case that it is
95 relevant to the issue of consent.

96 (3) Notwithstanding any other provision of law, reputation
97 evidence relating to a victim's prior sexual conduct or evidence
98 presented for the purpose of showing that manner of dress of the
99 victim at the time of the offense incited the offense ~~sexual~~
100 ~~battery~~ shall not be admitted into evidence in a prosecution
101 under s. 787.06, s. 794.011, or s. 800.04.

102 (4) When consent of the victim is a defense to prosecution
103 under s. 787.06, s. 794.011, or s. 800.04, evidence of the
104 victim's mental incapacity or defect is admissible to prove that

105 the consent was not intelligent, knowing, or voluntary; and the
 106 court shall instruct the jury accordingly.

107 Section 5. For the purpose of incorporating the amendment
 108 made by this act to section 794.022, Florida Statutes, in a
 109 reference thereto, paragraph (b) of subsection (1) of section
 110 90.404, Florida Statutes, is reenacted to read:

111 90.404 Character evidence; when admissible.—

112 (1) CHARACTER EVIDENCE GENERALLY.—Evidence of a person's
 113 character or a trait of character is inadmissible to prove
 114 action in conformity with it on a particular occasion, except:

115 (b) Character of victim.—

116 1. Except as provided in s. 794.022, evidence of a
 117 pertinent trait of character of the victim of the crime offered
 118 by an accused, or by the prosecution to rebut the trait; or

119 2. Evidence of a character trait of peacefulness of the
 120 victim offered by the prosecution in a homicide case to rebut
 121 evidence that the victim was the aggressor.

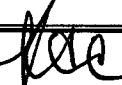

122 Section 6. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CRJS 16-06 Civil Citations and Similar Diversion Programs

SPONSOR(S): Criminal Justice Subcommittee

TIED BILLS: None **IDEN./SIM. BILLS:** SB 408; SB 506

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cox 	White 

SUMMARY ANALYSIS

Civil Citation Programs (CCPs) give law enforcement officers (LEO) an alternative to arresting youth who have committed non-serious delinquent acts. Under a CCP, a LEO has discretion to:

- Issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents; or
- Arrest the juvenile, conditioned upon the LEO providing written documentation as to why an arrest was warranted.

The above-mentioned options are available to a LEO that comes into contact with a juvenile who admits to committing a first-, second-, or third-time misdemeanor.

If the LEO issues a civil citation to a juvenile, the juvenile is assessed not more than 50 community service hours, and must participate in intervention services appropriate to any identified needs of the juvenile.

Currently, law enforcement agencies are not required to issue civil citations and there is variation in current use of the program among agencies and counties.

As of January 2016, CCPs were operational in 61 of Florida's 67 counties.

The bill *requires* a law enforcement officer to issue a civil citation or similar diversion program to a juvenile that admits to having committed one or more specified first-time "eligible offenses" that are part of the same criminal episode. The bill permits a LEO to issue a CCP for first-time misdemeanor offenses that are not enumerated as an "eligible offense," and for any second- or third-time misdemeanors.

The bill defines "eligible offense," "episode," and "law enforcement officer."

The bill also provides that the existence of CCP does not modify the authority of a LEO to issue a warning or inform the juvenile's guardian or parent of the alleged offense.

To the extent the bill prevents youth from being arrested and placed in detention at a JAC, the bill will result in a positive fiscal impact on local government expenditures.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Justice Process

The juvenile justice process usually starts when a law enforcement officer (LEO) arrests a youth¹ for a criminal offense.² Depending on the seriousness of the offense and the LEO's view of what is needed to appropriately address the offense, the LEO may:

- Deliver the youth to a Juvenile Assessment Center (JAC) for intake screening to further assess the youth's risk to the community and to determine if some type of detention is necessary;
- Call an "on call screener" to assess the youth's risk and determine if detention is necessary (this is done in localities where a JAC is not available);
- Release the youth to a parent or guardian and forward the charges to the local clerk of court and Department of Juvenile Justice (DJJ) Probation office; or
- Release the youth to parent or guardian with a direct referral to a diversion program.³

In lieu of arresting a youth, LEOs have the option of issuing certain youth a civil citation.

Civil Citation Program

The Civil Citation Program (CCP), created by s. 985.12, F.S., gives law enforcement an alternative to taking juveniles who have committed non-serious delinquent acts into custody while ensuring swift and appropriate consequences.⁴ CCPs are open to juveniles with no offense history who admit to committing a qualifying misdemeanor.⁵ Misdemeanors involving sex or firearm offenses are currently exempt from civil citation under DJJ's guidelines.⁶ Law enforcement agencies are not required to issue civil citations and there is variation in current use of CCPs among agencies and counties.⁷

Under a CCP, a LEO has discretion to:

- Issue a warning or inform the juvenile's parent when a juvenile admits to having committed a misdemeanor;
- Issue a civil citation or require participation in a similar diversion program if he or she decides not to issue a warning or notify the juvenile's parents; or
- Arrest the juvenile, conditioned upon the LEO providing written documentation as to why an arrest was warranted.⁸

The above-mentioned options are available to a LEO that comes into contact with a juvenile who admits to committing a first-time, second-time, or third-time misdemeanor.⁹

If a civil citation is issued under a CCP, the LEO must assess not more than 50 community service hours and require participation in intervention services appropriate to identified needs of the juvenile.

¹ "Child" or "juvenile" or "youth" means any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years. s. 985.03(7), F.S.

² Florida Department of Juvenile Justice, Probation and Community Intervention, General. <http://www.djj.state.fl.us/faqs/probation-community-intervention> (last visited January 13, 2016).

³ *Id.*

⁴ s. 985.12(1), F.S.

⁵ Department of Juvenile Justice (DJJ), Agency Analysis of 2016 SB 408, p. 2 (November 5, 2015)(hereinafter cited as "DJJ Analysis").

⁶ DJJ, *Civil Citation Model Plan, A Guide to Implementation*, DJJ (October 2015) <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-model-plan.pdf?Status=Master&sfvrsn=4> (last visited January 12, 2016).

⁷ *Id.*

⁸ s. 985.12, F.S.

⁹ *Id.*

The statute requires the LEO issuing the civil citation¹⁰ to advise the juvenile of his or her option to refuse the citation and instead be arrested and referred to a DJJ intake office.¹¹

A juvenile that elects to participate in the CCP must report to a community service performance monitor within seven working days after the date of issuance of the civil citation, and must complete the work assignment at a rate of not less than five hours per week.¹² Upon completion of the program, the agency operating the CCP must report the outcome to DJJ.¹³

If the juvenile fails to report timely for a work assignment, complete a work assignment, comply with assigned intervention services within the prescribed time, or commits a subsequent misdemeanor, the LEO must issue a report alleging the juvenile has committed a delinquent act.¹⁴ A juvenile probation officer must then process the original delinquent act as a referral to DJJ and refer the report to the state attorney for review.¹⁵

Currently, s. 985.12, F.S., requires CCPs or another similar diversion program¹⁶ to be established at the local level with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency. The program may be operated by a law enforcement agency, DJJ, a JAC, a county or municipality, or an entity selected by a county or municipality.¹⁷

The civil citation program has been implemented in 61 counties in Florida.¹⁸ The following five counties in Florida have no established civil citation program: Bradford, Calhoun, Gulf, Hardee, and Washington.¹⁹ These counties utilize a diversion program without the civil citation overlay.²⁰

For Fiscal Year 2014-15, 20,833 juveniles were eligible for civil citation (first-time misdemeanants who were not accused firearm or sex-related offenses) and 8,961 eligible juveniles (43%) were issued civil citation.

Effect of the Bill

As mentioned above, there are no circumstances under CCPs where a LEO is required to issue a civil citation or similar diversion program. The bill *requires* a LEO²¹ to issue a civil citation or require the juvenile's participation in a similar diversion program for specified first-time misdemeanor "eligible

¹⁰ If the LEO issues a civil citation, a copy must be provided to the county sheriff, state attorney, the appropriate DJJ intake office or the community performance monitor designated by DJJ, the parents or guardian of the youth, and the victim. s. 985.12(1), F.S.

¹¹ The youth has the right to opt out of the CCP and be referred to a DJJ intake office at any time before completion of the work assignment. s. 985.12(6), F.S.

¹² s. 985.12(4), F.S.

¹³ s. 985.12(1), F.S.

¹⁴ s. 985.12(5), F.S.

¹⁵ *Id.*

¹⁶ Diversion programs are non-judicial alternatives used to keep youth who have committed a delinquent act from being handled through the traditional juvenile justice system. Diversion programs may be pre-arrest or post-arrest programs and are established by law enforcement agencies or school districts in cooperation with state attorneys. See s. 985.125, F.S., and *DJJ Youth and Families, Glossary*, <http://www.djj.state.fl.us/youth-families/glossary> (last visited January 12, 2016).

¹⁷ s. 985.12(1), F.S.

¹⁸ Email from Meredith Stanfield, Legislative Affairs Director, Re: Civil Citation Reminder, January 13, 2016 (on file with the Criminal Justice Subcommittee) and DJJ Analysis at p. 2.

¹⁹ *Id.*

²⁰ DJJ Analysis at p. 2.

²¹ The bill defines "law enforcement officer" to have the same meaning as in s. 943.10, F.S. Section 943.10, F.S., defines the term to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

offenses” arising out of the same episode.²² The bill defines an “eligible offense” as a misdemeanor violation of:

- Possession of alcoholic beverages by a minor;²³
- Battery, provided the victim approves of the issuance of the civil citation or similar diversion program;²⁴
- Petit theft;²⁵
- Retail theft;²⁶
- Affrays and riots;²⁷
- Disorderly conduct;²⁸
- Possession of cannabis or other controlled substances;²⁹ and
- Possession, sale, manufacture, etc. of drug paraphernalia.³⁰

The bill *permits* the issuance of a civil citation or similar diversion program for:

- A first-time misdemeanor offense that does not meet the definition of an “eligible offense;” or
- Any second- or third-time misdemeanors, regardless of whether the offenses are considered “eligible offenses.”

Written documentation articulating why an arrest is warranted must be provided when a LEO arrests a juvenile in the above-referenced instances where CCP is permitted.

The bill retains current law regarding:

- The program requirements placed upon a juveniles participating in CCPs, including community service hours, intervention services, reporting to the community service performance monitor, and time frames to complete the program;
- The ability of juveniles to refuse participation in CCPs;
- Participation in CCPs not being considered a referral to DJJ;
- The requirement of DJJ and LEAs to forward civil citations to specified parties; and
- The requirement for CCPs to report the juveniles’ outcomes to DJJ.

The bill clarifies that each judicial circuit must establish one or more CCPs that must individually or collectively serve all juveniles who are alleged to have committed a misdemeanor offense. The bill also clarifies that CCPs do not apply to a:

- Juvenile who is currently alleged to have committed, or is currently charged with, and awaiting final disposition of an offense that would be a felony if committed by an adult.
- Juvenile who has entered a plea of nolo contendere or guilty to, or has been found to have committed, an offense that would be a felony if committed by an adult.
- Misdemeanor arising out of an episode in which the juvenile is also alleged to have committed an offense that would be a felony if committed by an adult.

The bill provides that s. 985.12, F.S., does not modify the authority of a LEO to issue only a simple warning to the juvenile or to notice the juvenile’s guardian or parent of the alleged offense.

Lastly, the bill makes conforming changes to ss. 943.051 and 985.11, F.S.

²² The bill defines “episode” to mean the same act, criminal episode, or transaction.

²³ s. 562.111, F.S.

²⁴ s. 784.03, F.S.

²⁵ s. 812.014(2)(e) and (3)(a), F.S.

²⁶ s. 812.015(2), F.S.

²⁷ s. 870.01, F.S.

²⁸ s. 877.03, F.S.

²⁹ s. 893.13(6)(b), F.S.

³⁰ s. 893.147, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 985.12, F.S., relating to civil citation.

Section 2. Amends s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

Section 3. Amends s. 985.11, F.S., relating to fingerprinting.

Section 4. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

To the extent the bill prevents youth from being arrested and placed in detention at a JAC, the bill will result in a positive fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to juvenile civil citation and similar
 3 diversion programs; amending s. 985.12, F.S.;
 4 requiring the establishment of civil citation or
 5 similar diversion programs for juveniles; providing
 6 definitions; specifying program eligibility,
 7 participation, and implementation requirements;
 8 providing exceptions; providing applicability;
 9 amending ss. 943.051 and 985.11, F.S.; conforming
 10 provisions to changes made by the act; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 985.12, Florida Statutes, is amended to
 16 read:

17 985.12 Civil citation and similar diversion programs.-

18 (1) (a) There is established a process for the use of
 19 juvenile civil citation and similar diversion programs to
 20 provide ~~process for the purpose of providing~~ an efficient and
 21 innovative alternative to custody by the department ~~of Juvenile~~
 22 ~~Justice~~ for juveniles ~~children~~ who commit nonserious delinquent
 23 acts and to ensure swift and appropriate consequences. The
 24 department shall encourage and assist in the implementation and
 25 improvement of civil citation and ~~programs or other~~ similar
 26 diversion programs in ~~around~~ the state.

27 (b) One or more ~~The~~ civil citation or similar diversion
 28 programs ~~program~~ shall be established in each judicial circuit
 29 which must individually or collectively serve all juveniles who
 30 are alleged to have committed a delinquent act which would be a
 31 misdemeanor if committed by an adult. Such programs must be
 32 established ~~at the local level~~ with the concurrence of the chief
 33 judge of the circuit, state attorney, public defender, and the
 34 head of each local law enforcement agency involved and. ~~The~~
 35 ~~program~~ may be operated by an entity such as a law enforcement
 36 agency, the department, a juvenile assessment center, the county
 37 or municipality, or another entity selected by the county or
 38 municipality. An entity operating such a ~~the civil citation or~~
 39 ~~similar diversion~~ program must do so in consultation and
 40 agreement with the state attorney and local law enforcement
 41 agencies.

42 (2) As used in this section, the term:

43 (a) "Eligible offense" means a misdemeanor violation of:

44 1. Section 562.111, relating to possession of alcoholic
 45 beverages by persons under age 21;

46 2. Section 784.03(1), relating to battery, if the victim
 47 approves the juvenile's participation in a civil citation or
 48 similar diversion program.

49 3. Section 812.014(2)(e) or s. 812.014(3)(a), relating to
 50 theft;

51 4. Section 812.015(2), relating to retail and farm theft;

52 5. Section 870.01(1), relating to affrays and riots;

53 6. Section 877.03, relating to disorderly conduct;
 54 7. Section 893.13(6)(b), relating to possession of certain
 55 amounts of cannabis or controlled substances; or
 56 8. Section 893.147, relating to use, possession,
 57 manufacture, delivery, transportation, advertisement, or retail
 58 sale of drug paraphernalia.
 59 (b) "Episode" means the same act, criminal episode, or
 60 transaction.
 61 (c) "Law enforcement officer" has the same meaning as
 62 provided in s. 943.10.
 63 (3) Each ~~Under such a~~ juvenile civil citation or similar
 64 diversion program ~~must:~~
 65 (a) ~~Require,~~ a law enforcement officer, upon making
 66 contact with a juvenile who admits having committed ~~for the~~
 67 first time one or more eligible offenses arising out of one
 68 episode, ~~to a misdemeanor, may choose to issue a simple warning~~
 69 ~~or inform the child's guardian or parent of the child's~~
 70 ~~infraction, or may~~ issue a civil citation to the juvenile or
 71 require the juvenile's participation in a similar diversion
 72 program.
 73 (b) Authorize a law enforcement officer to choose to
 74 implement paragraph (a) for a juvenile who admits having
 75 committed:
 76 1. For the first time, one or more misdemeanor offenses
 77 arising out of the same episode which are not enumerated in
 78 paragraph (2)(a).

79 2. For the second or third time, one or more misdemeanor
 80 offenses arising out of the same episode, regardless of whether
 81 such offenses are enumerated in paragraph (2)(a).

82
 83 If an arrest is made for a misdemeanor subject to this
 84 paragraph, a law enforcement officer must provide written
 85 documentation as to why an arrest was warranted.

86 (c) Require a law enforcement officer to advise a juvenile
 87 who is subject to paragraph (a) or (b) that the juvenile has the
 88 option to refuse the civil citation or other similar diversion
 89 program and be referred to the department. This option may be
 90 exercised at any time before completion of the community service
 91 assignment required under paragraph (e). Participation in a
 92 civil citation or similar diversion program is not considered a
 93 referral to the department.

94 (d) Require the law enforcement agency issuing the civil
 95 citation or documentation for a similar diversion program to
 96 send a copy of the citation or documentation to other law
 97 enforcement agencies within the judicial circuit; the state
 98 attorney; the department; if applicable, the community service
 99 performance monitor designated by the department; the parent or
 100 guardian of the juvenile; and the victim. The department shall
 101 enter such information into the juvenile offender information
 102 system.

103 (e) Require a juvenile to complete, and assess up to 50
 104 community service hours, and participate ~~require participation~~

105 in intervention services as indicated by an assessment of the
 106 needs of the juvenile, including family counseling, urinalysis
 107 monitoring, and substance abuse and mental health treatment
 108 services.

109 1. The juvenile shall report to the community service
 110 performance monitor within 7 working days after the date of
 111 issuance of the civil citation or documentation for a similar
 112 diversion program. The community service assignment shall be
 113 accomplished at a rate of at least 5 hours per week. The monitor
 114 shall advise the intake office of the department immediately
 115 that a juvenile has reported to the monitor and the expected
 116 date upon which completion of the community service assignment
 117 will be accomplished ~~A copy of each citation issued under this~~
 118 ~~section shall be provided to the department, and the department~~
 119 ~~shall enter appropriate information into the juvenile offender~~
 120 ~~information system. Use of the civil citation or similar~~
 121 ~~diversion program is not limited to first-time misdemeanors and~~
 122 ~~may be used in up to two subsequent misdemeanors. If an arrest~~
 123 ~~is made, a law enforcement officer must provide written~~
 124 ~~documentation as to why an arrest was warranted.~~

125 2. At the conclusion of a juvenile's civil citation
 126 ~~program~~ or similar diversion program, the entity agency
 127 operating the program shall report the outcome of the program to
 128 the department.

129 3. If the juvenile fails to report timely for a community
 130 service assignment, complete such assignment, or comply with

131 assigned intervention services within the prescribed time, or if
 132 the juvenile commits a subsequent misdemeanor, the law
 133 enforcement officer shall issue a report alleging the juvenile
 134 child has committed a delinquent act, at which time a juvenile
 135 probation officer shall process the original delinquent act as a
 136 referral to the department and refer the report to the state
 137 attorney for review ~~The issuance of a civil citation is not~~
 138 ~~considered a referral to the department.~~

139 (4)-(2) The department shall develop guidelines for ~~the~~
 140 civil citation and similar diversion programs ~~program~~ which
 141 include intervention services that are based on ~~upon~~ proven
 142 civil citation or similar diversion programs in ~~within~~ the
 143 state.

144 (5) This section does not apply to:

145 (a) A juvenile who is currently alleged to have committed,
 146 or is currently charged with, and awaiting final disposition of
 147 an offense that would be a felony if committed by an adult.

148 (b) A juvenile who has entered a plea of nolo contendere
 149 or guilty to, or has been found to have committed, an offense
 150 that would be a felony if committed by an adult.

151 (c) A misdemeanor arising out of an episode in which the
 152 juvenile is also alleged to have committed an offense that would
 153 be a felony if committed by an adult.

154 (6) This section does not modify the authority of a law
 155 enforcement officer who comes into contact with a juvenile who
 156 is alleged to have committed a misdemeanor to issue only a

157 simple warning to the juvenile or notice to a juvenile's
 158 guardian or parent of the alleged offense.

159 ~~(3) Upon issuing such citation, the law enforcement officer~~
 160 ~~shall send a copy to the county sheriff, state attorney, the~~
 161 ~~appropriate intake office of the department, or the community~~
 162 ~~service performance monitor designated by the department, the~~
 163 ~~parent or guardian of the child, and the victim.~~

164 ~~(4) The child shall report to the community service~~
 165 ~~performance monitor within 7 working days after the date of~~
 166 ~~issuance of the citation. The work assignment shall be~~
 167 ~~accomplished at a rate of not less than 5 hours per week. The~~
 168 ~~monitor shall advise the intake office immediately upon~~
 169 ~~reporting by the child to the monitor, that the child has in~~
 170 ~~fact reported and the expected date upon which completion of the~~
 171 ~~work assignment will be accomplished.~~

172 ~~(5) If the child fails to report timely for a work~~
 173 ~~assignment, complete a work assignment, or comply with assigned~~
 174 ~~intervention services within the prescribed time, or if the~~
 175 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~
 176 ~~officer shall issue a report alleging the child has committed a~~
 177 ~~delinquent act, at which point a juvenile probation officer~~
 178 ~~shall process the original delinquent act as a referral to the~~
 179 ~~department and refer the report to the state attorney for~~
 180 ~~review.~~

181 ~~(6) At the time of issuance of the citation by the law~~
 182 ~~enforcement officer, such officer shall advise the child that~~

183 ~~the child has the option to refuse the citation and to be~~
 184 ~~referred to the intake office of the department. That option may~~
 185 ~~be exercised at any time before completion of the work~~
 186 ~~assignment.~~

187 Section 2. Paragraph (b) of subsection (3) of section
 188 943.051, Florida Statutes, is amended to read:

189 943.051 Criminal justice information; collection and
 190 storage; fingerprinting.—

191 (3)

192 (b) A minor who is charged with or found to have committed
 193 the following offenses shall be fingerprinted and the
 194 fingerprints shall be submitted electronically to the
 195 department, unless the minor participates in ~~is issued~~ a civil
 196 citation or similar diversion program pursuant to s. 985.12:

- 197 1. Assault, as defined in s. 784.011.
- 198 2. Battery, as defined in s. 784.03.
- 199 3. Carrying a concealed weapon, as defined in s.
 200 790.01(1).
- 201 4. Unlawful use of destructive devices or bombs, as
 202 defined in s. 790.1615(1).
- 203 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 204 6. Assault or battery on a law enforcement officer, a
 205 firefighter, or other specified officers, as defined in s.
 206 784.07(2)(a) and (b).
- 207 7. Open carrying of a weapon, as defined in s. 790.053.
- 208 8. Exposure of sexual organs, as defined in s. 800.03.

- 209 9. Unlawful possession of a firearm, as defined in s.
 210 790.22(5).
- 211 10. Petit theft, as defined in s. 812.014(3).
- 212 11. Cruelty to animals, as defined in s. 828.12(1).
- 213 12. Arson, as defined in s. 806.031(1).
- 214 13. Unlawful possession or discharge of a weapon or
 215 firearm at a school-sponsored event or on school property, as
 216 provided in s. 790.115.
- 217 Section 3. Paragraph (b) of subsection (1) of section
 218 985.11, Florida Statutes, is amended to read:
- 219 985.11 Fingerprinting and photographing.—
 220 (1)
 221 (b) Unless the child is participating in ~~is issued~~ a civil
 222 citation or ~~is participating in a~~ similar diversion program
 223 pursuant to s. 985.12, a child who is charged with or found to
 224 have committed one of the following offenses shall be
 225 fingerprinted, and the fingerprints shall be submitted to the
 226 Department of Law Enforcement as provided in s. 943.051(3)(b):
- 227 1. Assault, as defined in s. 784.011.
 228 2. Battery, as defined in s. 784.03.
 229 3. Carrying a concealed weapon, as defined in s.
 230 790.01(1).
 231 4. Unlawful use of destructive devices or bombs, as
 232 defined in s. 790.1615(1).
 233 5. Neglect of a child, as defined in s. 827.03(1)(e).
 234 6. Assault on a law enforcement officer, a firefighter, or

- 235 other specified officers, as defined in s. 784.07(2)(a).
 236 7. Open carrying of a weapon, as defined in s. 790.053.
 237 8. Exposure of sexual organs, as defined in s. 800.03.
 238 9. Unlawful possession of a firearm, as defined in s.
 239 790.22(5).
 240 10. Petit theft, as defined in s. 812.014.
 241 11. Cruelty to animals, as defined in s. 828.12(1).
 242 12. Arson, resulting in bodily harm to a firefighter, as
 243 defined in s. 806.031(1).
 244 13. Unlawful possession or discharge of a weapon or
 245 firearm at a school-sponsored event or on school property as
 246 defined in s. 790.115.

247
 248 A law enforcement agency may fingerprint and photograph a child
 249 taken into custody upon probable cause that such child has
 250 committed any other violation of law, as the agency deems
 251 appropriate. Such fingerprint records and photographs shall be
 252 retained by the law enforcement agency in a separate file, and
 253 these records and all copies thereof must be marked "Juvenile
 254 Confidential." These records are not available for public
 255 disclosure and inspection under s. 119.07(1) except as provided
 256 in ss. 943.053 and 985.04(2), but shall be available to other
 257 law enforcement agencies, criminal justice agencies, state
 258 attorneys, the courts, the child, the parents or legal
 259 custodians of the child, their attorneys, and any other person
 260 authorized by the court to have access to such records. In

261 addition, such records may be submitted to the Department of Law
 262 Enforcement for inclusion in the state criminal history records
 263 and used by criminal justice agencies for criminal justice
 264 purposes. These records may, in the discretion of the court, be
 265 open to inspection by anyone upon a showing of cause. The
 266 fingerprint and photograph records shall be produced in the
 267 court whenever directed by the court. Any photograph taken
 268 pursuant to this section may be shown by a law enforcement
 269 officer to any victim or witness of a crime for the purpose of
 270 identifying the person who committed such crime.

271 Section 4. This act shall take effect July 1, 2016.

