



Criminal Justice Subcommittee

**Monday, January 25, 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: Monday, January 25, 2016 04:00 pm
End Date and Time: Monday, January 25, 2016 06:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs



Consideration of the following bill(s):

CS/HB 3 Civil Remedies for Terrorism by Civil Justice Subcommittee, Hill
HB 865 Abortion by Van Zant
HB 889 Contraband Forfeiture by Metz
HB 1043 Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability by Hager
HB 1089 Criminal History Information by Rooney
HB 1149 Alternative Sanctioning by Spano
HB 1333 Sexual Offenders by Baxley
HJR 1395 Purchase of Personal Firearms by Qualified Law Enforcement Officers by Avila
HB 1397 Exception to Waiting Period for Purchasing and Delivering Handguns by Avila

NOTICE FINALIZED on 01/21/2016 4:05PM by Denson.Karan

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 3 Civil Remedies for Terrorism
SPONSOR(S): Civil Justice Subcommittee; Hill
TIED BILLS: None **IDEN./SIM. BILLS:** SB 996

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|---------------------|--|---|
| 1) Civil Justice Subcommittee | 12 Y, 0 N, As CS | Malcolm | Bond |
| 2) Criminal Justice Subcommittee | | Keegan  | White  |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Current law provides a civil cause of action for a person who has been injured by specified criminal activities such as extortion, battery, elderly exploitation, and certain drug offenses. A plaintiff who prevails on such a claim is entitled to treble damages, specified minimum damages, and attorney fees and court costs.

The bill creates a separate civil cause of action for a person injured by an act of terrorism or any crime that facilitated or furthered an act of terrorism. A prevailing plaintiff is entitled to recover treble damages, minimum damages of \$1,000, and attorney fees and court costs. The cause of action is not available to a person whose injuries are the result of his or her participation in the act that caused the injury.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Terrorism-related Crimes in Florida

Terrorism is defined in current law as an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States, or that involves a violation of s. 815.06, F.S., related to computer crimes, and is intended to intimidate, injure, or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.¹ Terrorism is not an independent crime in Florida; rather, it is a predicate act for the crime of capital murder.²

Although terrorism is not an independent crime, if a person is convicted of committing a felony or misdemeanor that *facilitated or furthered* an act of terrorism, the court must reclassify the felony or misdemeanor to the next highest degree.³ Additionally, if the underlying crime that facilitated or furthered an act of terrorism is a first-degree misdemeanor or greater, the offense severity ranking⁴ is increased, thus further increasing the defendant's potential sentence.⁵

Intentional Torts

In Florida, "an intentional tort is one in which [a person] exhibits a deliberate intent to injure or engages in conduct which is substantially certain to result in injury or death."⁶ A defendant will be held liable for an intentional tort if the plaintiff's injuries were the natural and probable consequence of the defendant's intended actions.⁷ In addition to being liable for economic and non-economic damages, a defendant who commits an intentional tort may be liable for punitive damages.⁸ Intentional torts recognized in Florida include assault,⁹ battery,¹⁰ and intentional infliction of emotional distress.¹¹

Although there is no specific cause of action in Florida that expressly allows a victim of terrorism to recover damages caused by an individual terrorist, existing intentional torts, such as battery and

¹ ss. 775.30, 782.04(5), and 775.31(3), F.S.

² s. 782.04(1)(a)2.r., (3)(r), and (4)(s), F.S.

³ s. 775.31(1), F.S. For example, if a defendant is charged with a third-degree felony, the offense is reclassified as a second-degree felony.

⁴ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe), and are assigned points based on the severity of the offense. s. 921.0022, F.S. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. s. 921.0023, F.S.

⁵ s. 775.31(2), F.S.

⁶ *Boza v. Carter*, 993 So. 2d 561, 562 (Fla. 1st DCA 2008) (quoting *D'Amario v. Ford Motor Co.*, 806 So.2d 424, 438 (Fla.2001)).

⁷ 55 Fla. Jur 2d Torts § 6 (2015).

⁸ s. 768.72, F.S.

⁹ *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982) ("Assault is defined as an intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward another under such circumstances as to create a fear of imminent peril, coupled with the apparent present ability to effectuate the attempt.")

¹⁰ *Paul v. Holbrook*, 696 So. 2d 1311, 1312 (Fla. 5th DCA 1997) ("A battery consists of the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent.")

¹¹ *Gallogly v. Rodriguez*, 970 So. 2d 470 (Fla. 2d DCA 2007); see *Johnson v. Thigpen*, 788 So. 2d 410, 412 (Fla. 1st DCA 2001) (In order to state a cause of action for intentional infliction of emotional distress, the plaintiff must demonstrate that: 1) the wrongdoer acted recklessly or intentionally; 2) the conduct was extreme and outrageous; 3) the conduct caused the plaintiff's emotional distress; and 4) plaintiff's emotional distress was severe.)

intentional infliction of emotional distress, would likely apply. However, existing intentional torts may not allow a victim of terrorism to recover damages from individuals or organizations who provided material support to the terrorist.¹²

Civil Remedies for Criminal Practices

Chapter 772, F.S., provides a civil cause of action for persons injured by certain criminal activities. Section 772.104, F.S., provides a civil cause of action for a person who has been injured by “any person who has received proceeds derived . . . from a pattern of criminal activity.”¹³ The “criminal activity” for which a defendant may be liable encompasses a broad range of criminal conduct including public assistance fraud, use of explosives, homicide, extortion, and computer-related crimes.¹⁴ Chapter 772, F.S., also provides specific causes of action for a person injured by financial crimes such as theft, fraud, and elderly exploitation, and by certain drug crimes.¹⁵

Although punitive damages are generally not recoverable for claims raised pursuant to ch. 772, F.S., a plaintiff may recover treble damages and is entitled to minimum damages of \$200, or \$1,000 in the case of drug crimes, and attorney fees and court costs.¹⁶ However, a defendant may recover attorney fees and court costs if the court finds that the plaintiff’s claim was without substantial fact or legal support.¹⁷

The civil remedies in ch. 772, F.S., do not preclude any other remedy provided by law.¹⁸ In cases where the defendant has been found guilty or pled guilty or nolo contendere to the same criminal act that forms the basis of the plaintiff’s civil cause of action pursuant to ch. 772, F.S., the defendant is estopped from denying the essential elements of the criminal activity in the civil case.¹⁹

Effect of Proposed Changes

The bill creates s. 772.13, F.S., to provide a specific civil cause of action for a person injured by an act of terrorism or any crime that facilitated or furthered an act of terrorism. A prevailing plaintiff will be entitled to recover treble damages, minimum damages of \$1,000, and attorney fees and court costs. The cause of action created by the bill is not available to a person whose injuries are the result of his or her participation in the same act that resulted in the act of terrorism or crime that facilitated or furthered the act of terrorism.

If the court finds that the plaintiff raised a claim that lacked support in fact or law, the defendant is entitled to reasonable attorney fees and court costs

In awarding attorney fees and court costs pursuant to newly created s. 772.13, F.S., the court may not consider the ability of the opposing party to pay such fees and costs. Additionally, s. 772.13, F.S., does not limit any right to recover attorney fees or court costs provided under other provisions of law.²⁰

¹² See *Boza*, 993 So. 2d at 562 (“As a general principle, a party has no legal duty to control the conduct of a third person to prevent that person from causing harm to another.”).

¹³ ss. 772.103(1) and 772.104(1), F.S.

¹⁴ s. 772.102(1), F.S. “Criminal activity” also includes an attempt to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of the enumerated acts. *Id.* This cause of action is only available if the defendant engages in two or more similar acts of criminal activity within a five-year period. *Id.* at (4).

¹⁵ ss. 772.11 and 772.12, F.S.

¹⁶ ss. 772.104(1),(3), 772.11(1), and 772.12(2), F.S.

¹⁷ s. 772.104(3), F.S.

¹⁸ s. 772.18, F.S.

¹⁹ s. 772.14, F.S.; *J.P. Transp., Inc., v. Fidelity and Cas. Co. of New York*, 750 So. 2d 752, 753 (Fla. 5th DCA 2000); *Peterson v. Therma Building, Inc.*, 958 So. 2d 977, 979 (Fla. 2d DCA 2007).

²⁰ See ch. 57, F.S.; Fla. R. Civ. P. Taxation of Costs (2015).

B. SECTION DIRECTORY:

Section 1 creates s. 772.13, F.S., related to civil remedy for terrorism or facilitating or furthering terrorism.

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 does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Civil Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by removing the name of the act and creating a new section in ch. 772, F.S., to provide a separate civil cause of action for a person injured by an act of terrorism or any crime that facilitated or furthered an act of terrorism. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to civil remedies for terrorism;
 3 creating s. 772.13, F.S.; creating a cause of action
 4 relating to terrorism; specifying a measure of
 5 damages; prohibiting claims by specified individuals;
 6 providing for attorney fees and court costs; providing
 7 construction; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Section 772.13, Florida Statutes, is created to
 12 read:

13 772.13 Civil remedy for terrorism or facilitating or
 14 furthering terrorism.-

15 (1) A person who is injured by an act of terrorism as
 16 defined in s. 775.30 or a violation of a law for which the
 17 penalty is increased pursuant to s. 775.31 for facilitating or
 18 furthering terrorism has a cause of action for threefold the
 19 actual damages sustained and, in any such action, is entitled to
 20 minimum damages in the amount of \$1,000 and reasonable attorney
 21 fees and court costs in the trial and appellate courts.

22 (2) A person injured by reason of his or her participation
 23 in the same act or transaction that resulted in the act of
 24 terrorism or resulted in the defendant's penalty increase
 25 pursuant to s. 775.31 may not bring a claim under this section.

26 (3) The defendant is entitled to recover reasonable

27 attorney fees and court costs in the trial and appellate courts
 28 upon a finding that the claimant raised a claim that was without
 29 support in fact or law.

30 (4) In awarding attorney fees and court costs under this
 31 section, the court may not consider the ability of the opposing
 32 party to pay such fees and court costs.

33 (5) This section does not limit a right to recover
 34 attorney fees or court costs under other provisions of law.

35 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 Hill offered the following:

4
5 **Amendment**
6 Remove line 34 and insert:
7 attorney fees or costs under other provisions of law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 865 Abortion
SPONSOR(S): Van Zant and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1718

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|--|---|
| 1) Criminal Justice Subcommittee | | Keegan  | White  |
| 2) Justice Appropriations Subcommittee | | | |
| 3) Health & Human Services Committee | | | |

SUMMARY ANALYSIS

In 1973, the United States Supreme Court decided *Roe v. Wade*, establishing a fundamental constitutional right to abortion. Current federal constitutional law examines a state's abortion laws under the undue burden test. Restrictions on abortion in Florida, however, are evaluated under the more stringent compelling state interest standard.

Current state statutory law provides that an abortion performed in the first or second trimester of pregnancy is legal. In the third trimester, current law prohibits an abortion from being performed unless:

- Two physicians certify in writing that, in reasonable medical judgment, the termination of the pregnancy is necessary to save the woman's life or prevent a serious risk of substantial and irreversible physical impairment of a major bodily function of the woman; or
- The physician certifies in writing that, in reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or prevent serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.

The bill changes Florida's law on abortion to:

- Define key terms;
- Create a near full prohibition on abortion in any trimester, leaving a narrow exception for the life and health of the mother;
- Provide that performing an abortion, except where authorized, is a first degree felony;
- Repeal numerous sections of statute relating to termination of pregnancy;
- Revise the informed consent requirements for termination of pregnancy procedures, including requiring parental consent before performing an abortion on a minor (which requirement effectively repeals the statutory judicial bypass of parental notice); and
- Make conforming changes.

The Criminal Justice Impact Conference has not yet determined the prison bed impact of the bill. However, according to a preliminary estimate by the Criminal Justice Impact Conference, the bill will have a positive significant prison bed impact on the Department of Corrections (i.e., an increase of 25 or more prison beds).

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Constitutional Abortion Law

In 1973, *Roe v. Wade* was decided by the U.S. Supreme Court, establishing legal access to abortions throughout the nation.¹ Using a strict scrutiny analysis,² the Court determined that a woman's right to an abortion is part of the fundamental right to privacy guaranteed all persons under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.³ Further, the Court found that a state regulation limiting the exercise of this right must be justified by a compelling state interest, and must be narrowly drawn.⁴ The U.S. Supreme Court established a trimester framework for the regulation of abortions, prohibiting most state regulation of abortion in the first trimester while holding that in the third trimester a state could prohibit all abortions except where woman's life or health was at risk.⁵

In 1989, the Florida Supreme Court decided *In re T.W., A Minor*,⁶ establishing a state-specific approach to abortion law under the Florida Constitution's express right to privacy.⁷ The Florida Constitution provides in part, "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein."⁸ The Florida Supreme Court determined that Florida's constitutional right to privacy is "clearly implicated" in a woman's decision whether to terminate her pregnancy.⁹ Specifically, *In re T.W.* held:

[p]rior to the end of the first trimester, the abortion decision must be left to the woman and may not be significantly restricted by the state. Following this point, the state may impose significant restrictions only in the least intrusive manner designed to safeguard the health of the mother. Insignificant burdens during either period must substantially further important state interests...Under our Florida Constitution, the state's interest becomes compelling upon viability.¹⁰

Nineteen years after *Roe v. Wade*, and 3 years after *In re T.W.*, the United States Supreme Court changed the federal standard of review of a state's abortion laws in *Planned Parenthood v. Casey*.¹¹ There, the Court replaced the strict scrutiny standard of *Roe v. Wade* with the undue burden test when evaluating state laws impacting the right to abortion.¹² "An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability."¹³

¹ *Roe v. Wade*, 410 U.S. 113 (1973).

² "Strict scrutiny" is a standard of judicial review that is applied when evaluating the constitutionality of infringements on a fundamental right or to the peculiar disadvantage of a suspect class. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 312-13 (1976); see also *A.M. ex rel. McAllum v. Cash*, 585 F.3d 214 (5th Cir. 2009). Under the strict scrutiny standard, the government infringement in question is not entitled to the normal presumption of validity, rather the state must demonstrate that the infringement is necessary to promote a compelling government interest. *Burson v. Freeman*, 504 U.S. 191, 220-22 (1992); *Dunn v. Blumstein*, 405 U.S. 330, 338-39 (1972).

³ *Roe v. Wade*, 410 U.S. at 153-54.

⁴ *Id.* at 155-56.

⁵ *Id.* at 160-64.

⁶ *In re T.W. A Minor*, 551 So. 2d 1186 (Fla. 1989).

⁷ *Id.*

⁸ FLA. CONST. art. 1, s. 23.

⁹ *In re T.W., A Minor*, 551 So. 2d at 1192.

¹⁰ *Id.* at 1193-94.

¹¹ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

¹² *Id.* at 879.

¹³ *Id.* at 836.

In the years since, the U.S. Supreme Court has found a variety of abortion restrictions to constitute an undue burden. For instance, restrictions which amount to a third party veto on the mother's access to an abortion, such as a spousal notice requirement¹⁴ or a parental consent requirement,¹⁵ constitute an undue burden. Laws that restrict the use of common methods of abortion without demonstrating that they are necessary for the preservation of the health of the mother also constitute an undue burden.¹⁶ While states have a legitimate interest in protecting potential life through the pregnancy term,¹⁷ this interest is only a compelling interest after the fetus becomes viable.¹⁸

In 2000, the United States Supreme Court, in *Stenberg v. Carhart*, affirmed the continued validity of the ruling in *Casey* that a law that furthers the state's legitimate interest in the life of the fetus is nevertheless unconstitutional if the law imposes an undue burden.¹⁹

Importantly, however, Florida's constitutional right of privacy is more robust today than the federal right to privacy. The Florida courts continue to review abortion laws under the compelling state interest standard, rather than the less stringent undue burden standard required under the U.S. Constitution.²⁰

Statutory Abortion Law

Generally

In Florida, abortion is addressed in ch. 390, F.S. It is defined as the termination of a human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.²¹ An abortion must be consensual²² and must be performed by a physician licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States.²³

Abortion in the First or Second Trimester

In general, there is minimal regulation of abortion in the first and second trimester.

During the 2015 Legislative Session, HB 633 passed and was signed into law.²⁴ The bill amended s. 390.0111(3)(a), F.S., to require a doctor to verbally inform a woman seeking an abortion of statutorily-required information²⁵ while "physically present in the same room," at least 24 hours before the abortion procedure is performed.²⁶ The bill effectively created a 24-hour waiting period for women seeking abortions. Several interested parties filed suit in the Second Circuit Court of Florida in *Gainesville Woman Care, LLC, et al., v. Florida*, seeking to enjoin the state from enforcing the waiting period requirement.²⁷ On June 30, 2015, one day before the law was to take effect, a Circuit Court judge entered an order finding the new law unconstitutional under Florida's right to privacy.²⁸ In holding the provision unconstitutional, the court reaffirmed the more stringent compelling state interest standard

¹⁴ *Id.* at 887-88 (holding that a spousal notification statute was unconstitutional because requiring proof of notification would often be tantamount to giving the husband veto power over the mother's decision).

¹⁵ *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52 (1976); *Bellotti v. Baird*, 443 U.S. 622 (1979).

¹⁶ *Stenberg v. Carhart*, 530 U.S. 914, 936-37 (2000).

¹⁷ *Webster v. Reproductive Health Servs.*, 492 U.S. 490 (1989).

¹⁸ *City of Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416 (1983).

¹⁹ *Stenberg v. Carhart*, 530 U.S. at 914.

²⁰ *North Fla. Women's Health & Counseling Servs., Inc. v. Florida*, 866 So. 2d 612, 620-21 (Fla. 2003).

²¹ s. 390.011(1), F.S.

²² A termination of pregnancy may not be performed or induced except with the voluntary and informed written consent of the pregnant woman or, in the case of a mental incompetent, the voluntary and informed written consent of her court-appointed guardian. s. 390.0111(3), F.S.

²³ s. 390.0111(2), F.S.

²⁴ ch. 15-118, Laws of Fla.

²⁵ Pursuant to s. 390.011(3)(a)1., F.S., the physician must inform the woman of 1) the nature and risks of undergoing or abstaining from the procedure that a reasonable patient would consider material to making a knowing and willful decision, 2) the estimated gestational age of the fetus, confirmed by an ultrasound that has been taken at the time the procedure is to be performed, and 3) the medical risks the woman and fetus are exposed to by carrying the pregnancy to term.

²⁶ s. 390.011(3)(a), F.S.

²⁷ *Gainesville Woman Care, LLC, et al., v. Florida*, 22 Fla. L. Weekly Supp. 1149 (Fla. 2d Cir. June, 30, 2016).

²⁸ *Id.*

that was established by *In re T.W.*²⁹ In light of this standard, the court determined that this new law created an additional and unjustified burden on a woman's right of privacy under the Right of Privacy Clause³⁰ in the Florida Constitution.³¹ Defendants in the case filed a notice of appeal with Florida's First District Court of Appeal on July 1, 2015, and the case is currently pending before that court.³²

Section 627.64995, F.S., prohibits providing coverage for an abortion³³ with an insurance policy under which coverage is purchased in any part with state or federal funds through an exchange created under the Patient Protection and Affordable Care Act. An exception exists for pregnancies resulting from:

- Rape;
- Incest; or
- A circumstance where a woman has a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, which would, as certified by a physician, place the woman in danger of death unless an abortion is performed.³⁴

A health insurance policy may offer separate coverage for abortions, if the coverage is not purchased in any part with state or federal funds.³⁵

Abortion in the Third Trimester

Section 390.0111, F.S., prohibits an abortion from being performed in the third trimester³⁶ unless:

- Two physicians certify in writing that, in his or her reasonable medical judgment, the termination of the pregnancy is necessary to save the woman's life or prevent a serious risk of substantial and irreversible physical impairment of a major bodily function of the woman;³⁷ or
- A physician certifies in writing that, in his or her reasonable medical judgment, there is a medical necessity for legitimate emergency medical procedures for termination of the pregnancy to save the pregnant woman's life or prevent serious risk of imminent substantial and irreversible physical impairment of a major bodily function of the pregnant woman other than a psychological condition, and another physician is not available for consultation.³⁸

Section 390.0111(10), F.S., specifies that any person who willfully performs, or actively participates in, a termination of pregnancy procedure in violation of the requirements of s. 390.0111, F.S.,³⁹ or s. 390.01112, F.S.,⁴⁰ commits a third degree felony.⁴¹ If doing so results in the death of the woman, the person commits a second degree felony.⁴²

Parental Notice and Consent of Abortion by a Minor

In general, no medical procedure may be performed on a minor without the consent of the parents. However, there are two exceptions: a medical emergency,⁴³ and a minor female may consent to an abortion.⁴⁴ Where a minor female consents on her own to an abortion, s. 390.01114, F.S., requires that

²⁹ *Id.* at 1150.

³⁰ Art. I, sec. 23, FLA. CONST.

³¹ *Gainesville Women Care, et al., v. Florida*, at 1151.

³² *Id.* at 1149 (*editor's note*).

³³ For purposes of this section, "abortion" is defined pursuant to s. 390.011(1), F.S., discussed in detail above.

³⁴ s. 627.64995(1), F.S.

³⁵ s. 627.64995(2), F.S.

³⁶ s. 390.011(11), F.S., defines "third trimester" as the weeks of pregnancy after the 24th week of pregnancy.

³⁷ "Physical impairment of a major bodily function" does not include a psychological condition. s. 390.0111(1)(b), F.S.

³⁸ s. 390.0111(1), F.S.

³⁹ This prohibition does not apply to subsections (3) (relating to consent), (7) (relating to disposition of fetal remains), and (12), relating to infants born alive.

⁴⁰ Section 390.01112, F.S., relates to the termination of pregnancies during viability.

⁴¹ 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.

⁴² 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.

⁴³ s. 743.064, F.S.

⁴⁴ s. 743.065, F.S.

the parents of the minor be given advance notice of the abortion procedure to be performed on the minor, with two exceptions: where there is a medical emergency or where a court waives the parental notification requirement. The judicial waiver procedure is required by article X, s. 22 of the state constitution.

Office of Adoption and Child Protection

Section 39.001(9), F.S., establishes the Office of Adoption and Child Protection (OACP) within the Executive Office of the Governor to create a comprehensive approach to promoting adoption, supporting adoptive families, and preventing child abuse, abandonment, and neglect.⁴⁵ The OACP handles a wide variety of responsibilities, such as:

- Overseeing the preparation and implementation of the comprehensive state plan for the promotion of adoption, support of adoptive families, and prevention of abuse, abandonment, and neglect of children, pursuant to s. 39.001(10), F.S.;
- Providing continuing professional education and training in the prevention of child abuse and neglect; and
- Securing funding for the promotion of adoption, support of adoptive families, and child abuse prevention.

While the OACP has a primary focus of promoting adoption, the OACP is not currently required to maintain databases of information related to legal adoption assistance, or provide such information to the public.

Contraceptives

“Emergency contraception” (EC) is any device or drug that is used as a method to prevent pregnancy after unprotected sexual intercourse.⁴⁶ An “abortifacient” is any device or drug that acts *after* implantation of a zygote⁴⁷ in the uterus.⁴⁸ Reliable scientific research does not indicate that contraceptives, including EC, act as an abortifacient.⁴⁹ However, there are differing scientific views on the impact that contraceptives may have on the implantation of a zygote.

The Western Journal of Medicine published an article in 2002 concluding that certain ECs may act, in part, to prevent the implantation of a zygote;⁵⁰ however, the article conceded that the precise mechanism for how these contraceptives work has not been determined.⁵¹ A more recent article published in Ethics & Medicine in 2012 found that the prevailing scientific conclusion about compliant combination oral contraceptive⁵² use was that such agents do not have any measureable effect once fertilization has occurred.⁵³ The article recognized that the scientific conclusions regarding ECs were not as clear, but after a review of the available research, determined that there is a lack of any substantial evidence for post-fertilization effects.⁵⁴ In spite of these peer-reviewed conclusions, the

⁴⁵ s. 39.001(9)(a), F.S.

⁴⁶ Marisa N. Mendez, *Emergency Contraception: A Review of Current Oral Options*, 176.3 WEST. J. MEDICINE 188, 188 (May 2002).

⁴⁷ A “zygote” is the cell created by the union of a sperm cell and an ovum. MEDICINENET, *Definition of Zygote*, <http://www.medicinenet.com/script/main/art.asp?articlekey=6074> (last visited Jan. 19, 2016).

⁴⁸ Mendez, *supra* note 46.

⁴⁹ Pam Belluck, *Abortion Qualms on Morning-After Pill May be Unfounded*, THE NEW YORK TIMES (June 5, 2012), http://www.nytimes.com/2012/06/06/health/research/morning-after-pills-dont-block-implantation-science-suggests.html?_r=0 (last visited Jan. 18, 2016).

⁵⁰ Mendez, *supra* note 46 (stating that ECs are thought to act primarily by inhibiting or disrupting ovulation, and may also act by interfering with transport of the ova and/or sperm, or by preventing implantation by changing the structure of the endometrium).

⁵¹ Mendez, *supra* note 46 (stating that the “precise mechanism of action of [the emergency contraceptive pills available on the market] has not been fully elucidated...”).

⁵² A combination oral contraceptive, often known as “the pill,” is an oral contraceptive that contains estrogen and progestin. EC. MAYO CLINIC, *Combination Birth Control Pills*, <http://www.mayoclinic.org/tests-procedures/combination-birth-control-pills/basics/definition/prc-20014056> (last visited Jan. 18, 2016); *see* Lewis, et al., *infra* note 53.

⁵³ Jeffrey D. Lewis, et al., *Abortifacient Potential of Emergency Contraceptives*, 28.3 ETHICS & MEDICINE: AN INTERNATIONAL JOURNAL OF BIOETHICS 113 (Fall 2012).

⁵⁴ Lewis, *supra* note 53.

United States Food and Drug Administration (FDA) currently labels both commonly-used ECs, Plan B (0.75mg levonorgestrel) and Plan B One-Step (1.5mg levonorgestrel) tablets as possibly interfering with implantation of a zygote in the uterus.⁵⁵

Effect of the Bill

The bill provides numerous whereas clauses related to the subject of the bill, as well as a statement of legislative intent.

The bill provides the following definitions:

- "Abortion" means the termination of human pregnancy with an intention other than to produce a live birth or to remove a fetus that has died of natural causes.
- "Human life" means a human person and is the biological development of the species homo sapiens that begins when a human egg is fertilized by a human sperm and continues to develop as a living organism.
- "Induced abortion" means a medically initiated termination of a human pregnancy with the intent to kill a living human organism, zygote, embryo, or fetus. For purposes of this subsection, the term "medically initiated" means the ingestion or administration of pharmaceutical abortifacients by any means, performance of a surgical procedure, or use of any device or instrument and any combination thereof.
- "Medical emergency" means a condition that, on the basis of a physician's good faith clinical judgment, so complicates the medical condition of a patient as to necessitate the immediate termination of her pregnancy to avert her death, or for which a delay in the termination of her pregnancy will create serious risk of substantial and irreversible impairment of a major bodily function or unreasonably reduce the likelihood of successful treatment of a life-threatening disease.
- "Patient" means the woman or minor upon whom an abortion or termination of pregnancy is to be performed or induced.
- "Physician" means a physician licensed under ch. 458, F.S., or ch. 459, F.S., or a physician practicing medicine or osteopathic medicine in the employment of the United States who is attending to the patient.
- "Pregnancy" means the process by which a human egg is fertilized by a human sperm and continues to develop.
- "Reasonable medical judgment" means a medical judgment made by a practicing physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.
- "Termination of pregnancy" means the termination of a human pregnancy under circumstances not prohibited by this chapter.
- "Viable" or "viability" means the stage of fetal development when, in the judgment of the physician, based on the particular facts of the case before him or her and in light of the most advanced medical technology and information available, there is a reasonable probability of sustained survival of the unborn human person outside his or her mother's womb with or without artificial support.

The bill prohibits induced abortions during the entire term of any pregnancy for any purpose, except as provided in s. 390.01112, F.S. The bill provides criminal penalties for violations of this section, as follows:

- A person who induces an abortion or performs, attempts to perform, or assists another in the performance of an induced abortion on another person commits a first degree felony.⁵⁶

⁵⁵ U.S. FOOD & DRUG ADMIN., *Plan B (0.75mg levonorgestrel) and Plan B One-Step (1.5 mg levonorgestrel) Tablets Information*, <http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm109775.htm> (last visited Jan. 18, 2016).

⁵⁶ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. ss. 775.082, and 775.083, F.S.

- A person who during the course of performing an induced abortion on another person inflicts serious bodily injury on the person commits a life felony.⁵⁷
- A person who during the course of performing an induced abortion on another person inflicts serious bodily injury on the person which results in the death of the person commits a life felony.
- A person who operates any facility, business, or service from any location within this state for the purpose of providing induced abortion services commits a first degree felony.

The bill prohibits performing a termination of pregnancy on any human being unless one of the following exceptions is met:

- Two physicians certify in writing that, to a reasonable degree of medical certainty, the termination of the pregnancy is necessary to prevent the death of the patient;
- Two physicians certify in writing that, to a reasonable degree of medical certainty, the termination of pregnancy is necessary because to continue the pregnancy would unreasonably reduce the likelihood of successful treatment of an already life-threatening disease of the patient; or
- The attending physician certifies in writing that one of the aforementioned medical emergencies existed and another physician was not available for consultation before the time necessary to perform the termination of pregnancy. The physician's written certification must clearly describe the details of the medical emergency in the patient's medical records.

Violation of these requirements by a physician may also be punished by professional disciplinary action under ss. 458.331, F.S., or 459.015, F.S.

The bill amends the informed consent requirements for terminations of pregnancy as follows:

- Requires voluntary informed written consent of the minor patient's parent or legal guardian before performing an abortion.
- Adds the court-appointed guardian of a mentally incompetent patient or the parent or legal guardian of a minor patient to the parties who can be provided with the information and materials required to be provided by the physician at least 24 hours prior to an abortion.
- Repeals the provision prohibiting the person performing the required pre-abortion ultrasound from offering the opportunity to view the images or hear the explanation of the images in qualifying cases of rape, incest, domestic violence, human trafficking, or medical need.
- Removes the provision waiving the 24-hour waiting period in qualifying cases of rape, incest, domestic violence, or human trafficking.
- Adds the following to the list of printed materials that must be provided to a woman at least 24 hours before an abortion:
 - An accurate estimate of the stage of biological development, gestational age, length, weight, and viability of the unborn human person.
 - The address and telephone number of the Office of Adoption and Child Protection within the Executive Office of the Governor and information on the existence of a statewide list of attorneys available to provide volunteer legal services for adoption.
- Expands the defenses available to a physician subject to professional disciplinary action for a violation of the informed consent provisions in s. 390.0111(5), F.S., to include circumstances that would unreasonably reduce the successful treatment of an already life-threatening disease of the patient.

The bill makes the following miscellaneous changes:

- Adds professional disciplinary action under s. 458.331, F.S., or s. 459.015, F.S., as a penalty for physicians who violate s. 390.0111(6), F.S., relating to prohibitions against experimentation on a fetus.

⁵⁷ A life felony committed on or after July 1, 1995, is punishable by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment and a \$15,000 fine. ss. 775.082 and 775.083, F.S.

- Increases the penalty for failure to dispose of fetal remains in accordance with the rules of the Department of Health from a second degree misdemeanor⁵⁸ to a third degree felony.
- Creates an exception to the prohibitions in s. 390.0111, F.S., for performance of procedures which terminate a pregnancy in order to deliver a live child or to remove a dead child whose demise was not the result of a termination of pregnancy or an induced abortion from the patient's body.
- Requires any physician or authorized personnel of a medical facility who learns that a patient wishes to obtain an abortion, or who had a termination of pregnancy where the fetus survived, must provide the patient with information concerning the availability of adoption for the child. This may be accomplished by providing contact information for the OACP.
- Provides authorization for the Department of Health and the Agency for Healthcare Administration to adopt rules.
- Subjects a physician who violates s. 390.0112, F.S. to professional disciplinary action under ss. 458.331 and 459.015, F.S.
- Requires that a termination of pregnancy be performed in a hospital or medical establishment.
- Makes it a first degree felony to knowingly and willfully misrepresent the gestational age or stage of fetal development of a viable fetus once viability has been determined.

The bill establishes legislative intent to provide assistance to women and minors with unwanted pregnancies who would have obtained an abortion if doing so were legal. The bill also requires the OACP to create and manage a statewide list of attorneys that provide volunteer adoption services, and have deposited, directed, and budgeted in the full amount for use by the office, all moneys received by or otherwise awarded to the state from the Federal Government, the U.S. Treasury, or any other federal agency as a result of efforts made by the office to provide legal or other services for adoption.

The bill repeals the following sections:

- Sections 390.0111(4), F.S., relating to standards of medical care owed to the infant in a third trimester abortion; s. 390.0111(5), F.S., prohibiting partial birth abortion; s. 390.0111(10), F.S., relating to penalties for violations of s. 390.0111, F.S.; and s. 390.0000(11), F.S., creating a civil cause of action against a person who performs a partial birth abortion.
- Section 390.01114, F.S., the Parental Notice of Abortion Act, and the corresponding provision in s. 27.511(5)(a), F.S., providing private counsel to attend judicial bypass hearings.
- Section 390.01116, F.S., providing a public record exemption for identifying information of a minor petitioning a circuit court under s. 390.01114, F.S.
- Section 390.0112, F.S., providing reporting requirements for medical facilities in which any pregnancy termination is performed.
- Section 390.012, F.S., providing regulations for disposal of fetal remains.
- Section 390.014, F.S., providing licensing requirements and restrictions for clinics that provide termination of pregnancy procedures.
- Section 390.015, F.S., providing requirements for applying for a license to operate an abortion clinic.
- Section 390.018, F.S., providing for fines against abortion clinics.
- Section 390.025, F.S., providing regulations applicable to abortion referral or counseling agencies.
- Section 782.30, F.S., providing a short title for ss. 782.30-782.36, F.S., the Partial Birth Abortion Act.
- Section 782.32, F.S., providing definitions for "partially born," "living fetus," and "suction or sharp curettage abortion."
- Section 782.34, F.S., providing a prohibition against partial birth abortion.
- Section 782.36, F.S., providing exceptions to the prohibition against partial birth abortion.

⁵⁸ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

The bill prohibits specified health insurance policies for which coverage is purchased in any part with state or federal funds through the exchange created under the Patient Protection and Affordable Care Act, from being used to cover an induced abortion or a termination of pregnancy. The bill also removes the current exception under these sections for cases of rape, incest, or where the woman suffers from a physical disorder, physical injury, or physical illness, which is certified by a physician to place the woman in danger of death unless an abortion is performed.

The bill removes references to sections of statute repealed by the bill and changes statutory citations to conform to other changes in the bill.

The bill is effective on July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Provides the act may be cited as the "Florida for Life Act."

Section 2. Provides legislative findings.

Section 3. Amends s. 390.011, F.S., relating to definitions.

Section 4. Amends s. 390.0111, F.S., relating to abortion unlawful; termination of pregnancies; circumstances authorized.

Section 5. Amends s. 390.01112, F.S., relating to termination of pregnancies during viability.

Section 6. Amends s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.

Section 7. Repeals ss. 390.01114, 390.01116, 390.0112, 390.012, 390.014, 390.015, 390.018, 390.025, 782.30, 782.32, 782.34, and 782.36, F.S.

Section 8. Amends s. 27.511, F.S., offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

Section 9. Amends s. 627.64995, F.S., relating to restrictions on use of state and federal funds for state exchanges.

Section 10. Amends s. 627.6699, F.S., relating to Employee Health Care Access Act.

Section 11. Amends s. 627.66996, F.S., relating to restrictions on use of state and federal funds for state exchanges.

Section 12. Amends s. 641.31099, F.S., relating to restrictions on use of state and federal funds for state exchanges.

Section 13. Amends s. 743.065, F.S., relating to unwed pregnant minor or minor mother; consent to medical services for minor or minor's child valid.

Section 14. Amends 743.067, F.S., relating to unaccompanied homeless youths.

Section 15. Amends s. 765.113, F.S., relating to restrictions on providing consent.

Section 16. 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 a fiscal impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference has not yet determined the prison bed impact of the bill. However, according to a preliminary estimate by the Criminal Justice Impact Conference, the bill will have a positive significant prison bed impact on the Department of Corrections (i.e., an increase of 25 or more prison beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill increases the penalty for failure to dispose of fetal remains from a second degree misdemeanor to a third degree felony. Thus, the bill may have a negative jail bed impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates a broad prohibition against abortion, which will reduce or completely eliminate business revenue for businesses engaged in providing abortion services. Such businesses may suffer losses related to the cost of equipment, licenses, personnel training and retention, and overhead expenses.

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:

Right to privacy under the Florida Constitution

The bill prohibits abortion except in narrow circumstances implicating the life and health of the mother. The bill also prohibits operation of a business to provide abortion services, even for the life or health of the mother, effectively eliminating access to abortion. Florida's constitutional right to privacy is "clearly implicated" in a woman's decision whether to terminate her pregnancy.⁵⁹ The

Florida Supreme Court has repeatedly held that burdens on abortion must meet the compelling state interest standard in order to comply with the Florida Constitution.⁶⁰

Right to privacy under the U.S. Constitution

The bill prohibits abortion except in narrow circumstances implicating the life and health of the mother. *Roe v. Wade* established the fundamental right to abortion.⁶¹ After the U.S. Supreme Court's decision in *Planned Parenthood v. Casey*, this fundamental right is evaluated under the U.S. Constitution using the undue burden test.⁶² A law governing abortion is struck down as an undue burden "if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability."⁶³

The bill creates a first degree felony for any person to "operate any facility, business, or service from any location within this state for the purpose of providing induced abortion services" but does not create an exception for induced abortions that are performed in accordance with the life and health of the mother exception in s. 390.01112, F.S. Therefore, the prohibition against any person operating a facility, business, or service to perform such legal abortions appears to effectively eliminate all access to abortions for any reason, including an abortion necessary to save the life or health of the mother. The U.S. Supreme Court has established that a state may not restrict access to an abortion at any time during the pregnancy if the abortion is "necessary, in appropriate medical judgment, for the preservation of the life or health of the mother."⁶⁴

Specific Right of a Minor to Abortion

Separate and apart from the right of any woman to an abortion that is presumed to be a part of the right of privacy found in art. I, s. 23 of the state constitution, the state constitution specifically provides abortion rights for minors. Art. X, s. 22 of the state constitution reads:

SECTION 22. Parental notice of termination of a minor's pregnancy.—The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

B. RULE-MAKING AUTHORITY:

The bill amends s. 390.0111, F.S., to authorize the Agency for Healthcare Administration to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement s. 390.0111, F.S., except for subsection (7). The bill also authorizes the Department of Health to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S. to implement s. 390.0111(7), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The whereas clauses make a wide variety of statements that cannot be conclusively verified. The facts asserted by the whereas clauses may warrant review.

⁶⁰ *North Fla. Women's Health & Counseling Servs., Inc. v. Florida*, 866 So. 2d 612, 620-21 (Fla. 2003); *In re T.W.*, 551 So. 2d at 1186.

⁶¹ *Roe v. Wade*, 410 U.S. 113 (1973).

⁶² *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

⁶³ *Planned Parenthood*, 505 U.S. at 836.

⁶⁴ *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320 (2006) (quoting *Planned Parenthood v. Casey*, 505 U.S. at 880); *Gonzales v. Carhart*, 550 U.S. 124 (2007).

The bill's definition of abortion makes it a first degree felony to remove a dead fetus that died of unnatural causes, which could include many events, such as involvement in a car accident or blunt force trauma to the mother's abdomen.

The bill's definition of "human life" includes a zygote that has not yet implanted. As discussed above, there is disagreement whether certain ECs may prevent a zygote from implanting in the uterus. The bill could prohibit the use and administration of ECs.

The bill provides a definition of "medical emergency," but in s. 390.0111(3)(c), F.S., the bill refers to medical emergencies as described in s. 390.0111, F.S., which is inconsistent with the definition of the term created by the bill in s. 390.011, F.S.

The bill amends s. 390.0111(1), F.S. to prohibit induced abortions for any purpose, *except as provided in s. 390.01112, F.S.* In subsection (3), the bill specifically provides a life and health of the mother exception to the prohibition against induced abortions. Because subsection (1) only makes an exception for s. 390.01112, F.S., the life and health exception created in (3) cannot be applied.

The bill creates a first degree felony for any person to "operate any facility, business, or service from any location within this state for the purpose of providing induced abortion services" but does not create an exception for induced abortions that are performed in accordance with the life and health of the mother exception in s. 390.01112, F.S. Therefore, the prohibition against any person operating a facility, business, or service to perform such legal abortions effectively eliminates access to such abortions.

Historically, most bills regarding criminal offenses have an effective date of October 1, whereas this bill has an effective date of July 1.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled

2 An act relating to abortion; creating the "Florida for

3 Life Act"; creating s. 390.0001, F.S.; providing

4 legislative findings regarding abortion; amending s.

5 390.011, F.S.; revising and providing definitions;

6 amending s. 390.0111, F.S.; prohibiting inducing an

7 abortion or performing, attempting to perform, or

8 assisting in an induced abortion; providing criminal

9 penalties; prohibiting inflicting serious bodily

10 injury on a person in the course of performing an

11 abortion; providing criminal penalties; providing

12 enhanced criminal penalties if the serious bodily

13 injury results in death; prohibiting operation of any

14 facility, business, or service for the purpose of

15 providing induced abortion services; providing

16 criminal penalties; prohibiting termination of a

17 pregnancy unless specified conditions are met;

18 requiring that a termination of pregnancy be performed

19 only by a physician; requiring voluntary, informed

20 consent for a termination of pregnancy; deleting an

21 exemption from the requirement to view an ultrasound

22 for women who are the victims of rape, incest,

23 domestic violence, or human trafficking or for women

24 who have a serious medical condition; deleting a

25 provision authorizing a physician to provide certain

26 information within a specified timeframe if the

27 patient presents certain documentation that she is a
 28 victim of rape, incest, domestic violence, or human
 29 trafficking; providing an exception for medical
 30 emergencies; providing for documentation of a medical
 31 emergency; providing that violations may subject
 32 physicians to discipline under specified provisions;
 33 prohibiting fetal experimentation; providing an
 34 exception; requiring that fetal remains be disposed of
 35 according to specified standards; providing criminal
 36 penalties; excluding specified procedures from
 37 applicability of this section; requiring physicians
 38 and personnel at a medical facility to provide certain
 39 women and minors who have been treated by the facility
 40 with information regarding adoption and access to a
 41 statewide list of attorneys available to provide
 42 volunteer legal services for adoption; authorizing the
 43 Agency for Health Care Administration and the
 44 Department of Health to adopt rules; amending s.
 45 390.01112, F.S.; providing grounds for disciplinary
 46 action against a physician performing a termination of
 47 pregnancy during viability under certain
 48 circumstances; specifying where a termination of
 49 pregnancy during viability may be performed;
 50 prohibiting misrepresentation of the gestational age
 51 or developmental stage of a viable fetus in any
 52 medical record or failure to use the prescribed

53 standard of care on a viable fetus by a physician;
 54 providing criminal penalties; amending s. 39.001,
 55 F.S.; providing legislative intent concerning adoption
 56 services for women and minors with unwanted
 57 pregnancies; requiring the Office of Adoption and
 58 Child Protection to create and manage a statewide list
 59 of attorneys providing volunteer adoption services for
 60 women and minors with unwanted pregnancies who would
 61 have selected abortion, if lawful, rather than
 62 adoption; providing that the full amount of all
 63 federal moneys received by the state as a result of
 64 efforts made by the office to provide legal and other
 65 services for adoption are deposited, directed, and
 66 budgeted for use by the office; repealing ss.
 67 390.01114, 390.01116, 390.0112, 390.012, 390.014,
 68 390.015, 390.018, and 390.025, F.S., relating to
 69 provisions regulating the termination of pregnancies
 70 and definitions applying thereto, the Parental Notice
 71 of Abortion Act, public records exemptions for
 72 identifying information regarding minors seeking a
 73 waiver of notice requirements under such act,
 74 reporting requirements for terminated pregnancies, the
 75 licensure and operation of abortion clinics, the
 76 disposal of fetal remains, the imposition of
 77 administrative fines for violations by abortion
 78 clinics, and provisions regulating abortion referral

79 or counseling agencies and prescribing penalties for
 80 violations by such agencies; repealing ss. 782.30,
 81 782.32, 782.34, and 782.36, F.S., relating to the
 82 Partial-Birth Abortion Act and the short title,
 83 definitions, criminal penalties for the intentional
 84 killing of a living fetus while that fetus is
 85 partially born, and exceptions to such act; amending
 86 s. 27.511, F.S.; conforming language relating to
 87 court-appointed counsel for minors under the Parental
 88 Notice of Abortion Act to the repeal of s. 390.01114,
 89 F.S.; amending ss. 627.64995, 627.6699, 627.66996, and
 90 641.31099, F.S.; providing restrictions on use of
 91 state and federal funds for state exchanges that
 92 provide coverage for induced abortions and
 93 terminations of pregnancies under certain conditions;
 94 amending ss. 743.065, 743.067, and 765.113, F.S.;

95 conforming cross-references; providing an effective
 96 date.

97
 98 Be It Enacted by the Legislature of the State of Florida:

99
 100 Section 1. This act may be cited as the "Florida for Life
 101 Act."

102 Section 2. Section 390.0001, Florida Statutes, is created
 103 to read:

104 390.0001 Legislative findings regarding abortion.-

105 (1) The Legislature acknowledges that all persons are
 106 endowed by their Creator with certain unalienable rights, and
 107 that first among these is their right to life.

108 (2) The Legislature finds that all human life comes from
 109 the Creator, has an inherent value that cannot be quantified by
 110 man, and begins at the earliest biological development of a
 111 fertilized human egg.

112 (3) The Legislature finds that the United States
 113 Constitution expresses no qualification for, or limitation on,
 114 the protection of human life by laws passed by state
 115 legislatures which regard human life as the most fundamental
 116 gift from God and deserving of paramount importance among all
 117 other unalienable rights expressed or implied in the United
 118 States Constitution.

119 (4) The Legislature finds that personal liberty is not a
 120 license to kill or otherwise destroy any form of human life
 121 under any provision of the United States Constitution.

122 (5) The Legislature finds that once human life begins,
 123 there is a compelling state interest in protecting its
 124 development from that moment through birth. Any act of a person
 125 detrimental to unborn human life, when not necessary in defense
 126 of the life of the mother bearing such unborn human life, which
 127 unnaturally terminates that unborn human life is a deprivation
 128 of that unborn human's unalienable right to life.

129 (6) The Legislature finds that the establishment of
 130 viability as the point at which the state may restrict

131 abortions, as well as the "undue burden" standard of *Planned*
 132 *Parenthood of Southern Pennsylvania v. Casey*, 505 U.S. 833
 133 (1992) is arbitrary and provides inadequate guidance for this
 134 state to enact meaningful protections for unborn human life.

135 (7) The Legislature finds that the health exception
 136 required of post-viability abortion regulations inadequately
 137 protects the health of women and minors seeking post-viability
 138 abortions and impedes the state's protection of viable unborn
 139 human life.

140 (8) The Legislature finds that the people of Florida seek
 141 to protect all human life and prohibit unnecessary abortion
 142 through the exercise of their right to self-government.

143 (9) The Legislature urges the United States Supreme Court
 144 to overturn *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned*
 145 *Parenthood of Southern Pennsylvania v. Casey*, 505 U.S. 833
 146 (1992).

147 Section 3. Section 390.011, Florida Statutes, is amended
 148 to read:

149 390.011 Definitions.—As used in this chapter, the term:

150 (1) "Abortion" means the termination of human pregnancy
 151 with an intention other than to produce a live birth or to
 152 remove a ~~dead~~ fetus that has died of natural causes.

153 (2) "Abortion clinic" or "clinic" means any facility,
 154 location, or structure in which abortions are performed. The
 155 term does not include+

156 ~~(a)~~ a hospital or medical establishment, as defined in

157 subsection (6) ~~or~~

158 ~~(b) A physician's office, provided that the office is not~~
 159 ~~used primarily for the performance of abortions.~~

160 (3) "Agency" means the Agency for Health Care
 161 Administration.

162 (4) "Born alive" means the complete expulsion or
 163 extraction from the mother of a human infant, at any stage of
 164 development, who, after such expulsion or extraction, breathes
 165 or has a beating heart, or definite and voluntary movement of
 166 muscles, regardless of whether the umbilical cord has been cut
 167 and regardless of whether the expulsion or extraction occurs as
 168 a result of natural or induced labor, caesarean section, induced
 169 abortion, or other method.

170 (5) "Department" means the Department of Health.

171 (6) "Hospital" means a medical establishment ~~facility~~ as
 172 defined in s. 395.002(12) and licensed under chapter 395 and
 173 part II of chapter 408.

174 (7) "Human life" means a human person and is the
 175 biological development of the species homo sapiens that begins
 176 when a human egg is fertilized by a human sperm and continues to
 177 develop as a living organism. For the purposes of this chapter,
 178 the terms "human life" and "human person" may be used
 179 interchangeably.

180 (8) "Induced abortion" means a medically initiated
 181 termination of a human pregnancy with the intent to kill a
 182 living human organism, zygote, embryo, or fetus. For purposes of

183 this subsection, the term "medically initiated" means the
 184 ingestion or administration of pharmaceutical abortifacients by
 185 any means, performance of a surgical procedure, or use of any
 186 device or instrument and any combination thereof.

187 (9) "Medical emergency" means a condition that, on the
 188 basis of a physician's good faith clinical judgment, so
 189 complicates the medical condition of a patient as to necessitate
 190 the immediate termination of her pregnancy to avert her death,
 191 or for which a delay in the termination of her pregnancy will
 192 create serious risk of substantial and irreversible impairment
 193 of a major bodily function or unreasonably reduce the likelihood
 194 of successful treatment of a life-threatening disease.

195 (10)(7) "Partial-birth abortion" means a termination of
 196 pregnancy in which the physician performing the termination of
 197 pregnancy partially vaginally delivers a living fetus and then
 198 kills before killing the fetus before and completing the
 199 delivery.

200 (11) "Patient" means the woman or minor upon whom an
 201 abortion or termination of pregnancy is to be performed or
 202 induced.

203 (12)(8) "Physician" means a physician licensed under
 204 chapter 458 or chapter 459 or a physician practicing medicine or
 205 osteopathic medicine in the employment of the United States who
 206 is attending to the patient.

207 (13) "Pregnancy" means the process by which a human egg is
 208 fertilized by a human sperm and continues to develop.

209 ~~(14)(9)~~ "Reasonable medical judgment" means a medical
 210 judgment ~~that would be~~ made by a practicing ~~reasonably prudent~~
 211 physician, knowledgeable about the case and the treatment
 212 possibilities with respect to the medical conditions involved.

213 ~~(15)(10)~~ "Standard medical measure" means the medical care
 214 that a physician would provide based on the particular facts of
 215 the pregnancy, the information available to the physician, and
 216 the technology reasonably available in a hospital, as defined in
 217 s. 395.002, with an obstetrical department, to preserve the life
 218 and health of the fetus, with or without temporary artificial
 219 life-sustaining support, if the fetus were born at the same
 220 stage of fetal development.

221 (16) "Termination of pregnancy" means the termination of a
 222 human pregnancy under circumstances not prohibited by this
 223 chapter.

224 ~~(17)(11)~~ "Third trimester" means the weeks of pregnancy
 225 after the 24th week of pregnancy.

226 ~~(18)(12)~~ "Viable" or "viability" means the stage of fetal
 227 development when, in the judgment of the physician, based on the
 228 particular facts of the case before him or her and in light of
 229 the most advanced medical technology and information available,
 230 there is a reasonable probability of sustained survival of the
 231 unborn human person outside his or her mother's womb with or
 232 without artificial support ~~the life of a fetus is sustainable~~
 233 ~~outside the womb through standard medical measures.~~

234 Section 4. Section 390.0111, Florida Statutes, is amended
 235 to read:

236 390.0111 Abortion unlawful; termination of pregnancies;
 237 circumstances authorized.-

238 (1) INDUCED ABORTION PROHIBITED; PENALTIES.-

239 (a) Induced abortion for any purpose is unlawful, except
 240 as provided in s. 390.01112. Any person who induces an abortion
 241 or performs, attempts to perform, or assists another in the
 242 performance of an induced abortion on another person commits a
 243 felony of the first degree, punishable as provided in s.
 244 775.082, s. 775.083, or s. 775.084.

245 (b) Any person who during the course of performing an
 246 induced abortion on another person inflicts serious bodily
 247 injury on the person commits a felony of the first degree,
 248 punishable by imprisonment for a term of years not exceeding
 249 life, as provided in s. 775.082, s. 775.083, or s. 775.084.

250 (c) Any person who during the course of performing an
 251 induced abortion on another person inflicts serious bodily
 252 injury on the person which results in the death of the person
 253 commits a life felony, punishable as provided in s. 775.082, s.
 254 775.083, or s. 775.084.

255 (2) OPERATING ABORTION CLINICS AND SERVICES PROHIBITED.-A
 256 person or persons who operate any facility, business, or service
 257 from any location within this state for the purpose of providing
 258 induced abortion services commits a felony of the first degree,

259 punishable by imprisonment for a term of years not exceeding
 260 life, as provided in s. 775.082, s. 775.083, or s. 775.084.

261 ~~(3)(1) TERMINATION OF PREGNANCY IN THIRD TRIMESTER; WHEN~~
 262 ~~ALLOWED.~~ A ~~No~~ termination of pregnancy may not ~~shall~~ be
 263 performed on any human being ~~in the third trimester of pregnancy~~
 264 unless one of the following conditions is met:

265 (a) Two physicians certify in writing that, to a
 266 reasonable degree of medical certainty ~~in reasonable medical~~
 267 ~~judgment~~, the termination of the pregnancy is necessary to
 268 prevent the death of the patient; ~~save the pregnant woman's life~~
 269 ~~or avert a serious risk of substantial and irreversible physical~~
 270 ~~impairment of a major bodily function of the pregnant woman~~
 271 ~~other than a psychological condition.~~

272 (b) Two physicians certify ~~The physician certifies~~ in
 273 writing that, to a reasonable degree of medical certainty, the
 274 termination of pregnancy is necessary because to continue the
 275 pregnancy would unreasonably reduce the likelihood of successful
 276 treatment of an already life-threatening disease of the patient;
 277 or

278 (c) The attending physician certifies in writing that a
 279 medical emergency existed as described in paragraph (a) or
 280 paragraph (b) and another physician was not available for
 281 consultation before the time necessary to perform the
 282 termination of pregnancy. The physician's written certification
 283 must clearly describe the details of the medical emergency in
 284 the patient's medical records.

285
 286 Violation of this subsection by a physician constitutes grounds
 287 for disciplinary action under s. 458.331 or s. 459.015 in
 288 ~~reasonable medical judgment, there is a medical necessity for~~
 289 ~~legitimate emergency medical procedures for termination of the~~
 290 ~~pregnancy to save the pregnant woman's life or avert a serious~~
 291 ~~risk of imminent substantial and irreversible physical~~
 292 ~~impairment of a major bodily function of the pregnant woman~~
 293 ~~other than a psychological condition, and another physician is~~
 294 ~~not available for consultation.~~

295 (4)(2) PERFORMANCE BY PHYSICIAN REQUIRED.-A ~~No~~ termination
 296 of pregnancy may not shall be performed at any time except by a
 297 physician as defined in s. 390.011.

298 (5)(3) CONSENTS REQUIRED.-A termination of pregnancy may
 299 not be performed or induced except with the voluntary and
 300 informed written consent of the patient ~~pregnant woman~~ or, in
 301 the case of a mentally ~~mental~~ incompetent patient, the voluntary
 302 and informed written consent of her court-appointed guardian or,
 303 in the case of a minor patient, notwithstanding s. 743.065, the
 304 voluntary informed written consent of her parent or legal
 305 guardian.

306 (a) Except in the case of a medical emergency, consent to
 307 a termination of pregnancy is voluntary and informed only if:

308 1. The physician who is to perform the procedure, or the
 309 referring physician, has, at a minimum, orally, while physically
 310 present in the same room, and at least 24 hours before the

311 procedure, informed the patient, or the court-appointed guardian
 312 if the patient is mentally incompetent or the parent or legal
 313 guardian if the patient is a minor, ~~woman~~ of:

314 a. The nature and risks of undergoing or not undergoing
 315 the proposed procedure that a reasonable patient would consider
 316 material to making a knowing and willful decision of whether to
 317 terminate a pregnancy.

318 b. The probable gestational age of the fetus, verified by
 319 an ultrasound, at the time the termination of pregnancy is to be
 320 performed.

321 (I) The ultrasound must be performed by the physician who
 322 is to perform the abortion or by a person having documented
 323 evidence that he or she has completed a course in the operation
 324 of ultrasound equipment as prescribed by rule and who is working
 325 in conjunction with the physician.

326 (II) The person performing the ultrasound must offer the
 327 patient ~~woman~~ the opportunity to view the live ultrasound images
 328 and hear an explanation of them. If the patient ~~woman~~ accepts
 329 the opportunity to view the images and hear the explanation, a
 330 physician or a registered nurse, licensed practical nurse,
 331 advanced registered nurse practitioner, or physician assistant
 332 working in conjunction with the physician must contemporaneously
 333 review and explain the images to the patient ~~woman~~ before the
 334 patient ~~woman~~ gives informed consent to having an abortion
 335 procedure performed.

336 (III) The patient ~~woman~~ has a right to decline to view and

337 hear the explanation of the live ultrasound images after she is
 338 informed of her right and offered an opportunity to view the
 339 images and hear the explanation. If the patient ~~woman~~ declines,
 340 the patient ~~woman~~ shall complete a form acknowledging that she
 341 was offered an opportunity to view and hear the explanation of
 342 the images but that she declined that opportunity. The form must
 343 also indicate that the patient's ~~woman's~~ decision was not based
 344 on any undue influence from any person to discourage her from
 345 viewing the images or hearing the explanation and that she
 346 declined of her own free will.

347 ~~(IV) Unless requested by the woman, the person performing~~
 348 ~~the ultrasound may not offer the opportunity to view the images~~
 349 ~~and hear the explanation and the explanation may not be given~~
 350 ~~if, at the time the woman schedules or arrives for her~~
 351 ~~appointment to obtain an abortion, a copy of a restraining~~
 352 ~~order, police report, medical record, or other court order or~~
 353 ~~documentation is presented which provides evidence that the~~
 354 ~~woman is obtaining the abortion because the woman is a victim of~~
 355 ~~rape, incest, domestic violence, or human trafficking or that~~
 356 ~~the woman has been diagnosed as having a condition that, on the~~
 357 ~~basis of a physician's good faith clinical judgment, would~~
 358 ~~create a serious risk of substantial and irreversible impairment~~
 359 ~~of a major bodily function if the woman delayed terminating her~~
 360 ~~pregnancy.~~

361 c. The medical risks to the patient ~~woman~~ and fetus of
 362 carrying the pregnancy to term.

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~~The physician may provide the information required in this subparagraph within 24 hours before the procedure if requested by the woman at the time she schedules or arrives for her appointment to obtain an abortion and if she presents to the physician a copy of a restraining order, police report, medical record, or other court order or documentation evidencing that she is obtaining the abortion because she is a victim of rape, incest, domestic violence, or human trafficking.~~

2. Printed materials prepared and provided by the department have been provided to the patient, or the court-appointed guardian if the patient is mentally incompetent or the parent or legal guardian if the patient is a minor pregnant woman, if she chooses to view these materials, including:

a. An accurate estimate of the stage of biological development, gestational age, length, weight, and viability of the unborn human person ~~A description of the fetus, including a description of the various stages of development.~~

b. A list of entities that offer alternatives to terminating the pregnancy.

c. Detailed information on the availability of medical assistance benefits for prenatal care, childbirth, and neonatal care.

3. The patient, or the court-appointed guardian if the patient is mentally incompetent or the parent or legal guardian if the patient is a minor, has been given, in writing, the

389 address and telephone number of the Office of Adoption and Child
 390 Protection within the Executive Office of the Governor and
 391 informed of the existence of a statewide list of attorneys
 392 available to provide volunteer legal services for adoption.

393 4.3. The person required to give consent under this
 394 subsection ~~woman~~ acknowledges in writing, before the termination
 395 of pregnancy, that the information required to be provided under
 396 this subsection has been provided.

397
 398 Nothing in this paragraph is intended to prohibit a physician
 399 from providing any additional information which the physician
 400 deems material to the patient's ~~woman's~~ informed decision to
 401 terminate her pregnancy.

402 (b) If a medical emergency exists and a physician cannot
 403 comply with the requirements for informed consent, the attending
 404 ~~a~~ physician may terminate a pregnancy if he or she has obtained
 405 at least one physician's corroborative written medical opinion
 406 attesting to the medical necessity for emergency medical
 407 procedures and to the fact that to a reasonable degree of
 408 medical certainty the continuation of the pregnancy would
 409 threaten the physical life of the patient ~~pregnant woman~~. If a
 410 second physician is not available for a corroborating written
 411 opinion before the time necessary to perform the termination of
 412 pregnancy, the physician may proceed but must ~~shall~~ document all
 413 reasons for the medical emergency and must clearly describe the
 414 details of the medical emergency ~~necessity~~ in the patient's

415 medical records as described in paragraph (3)(c).

416 (c) Violation of this subsection by a physician
 417 constitutes grounds for disciplinary action under s. 458.331 or
 418 s. 459.015. Substantial compliance or reasonable belief that
 419 complying with the requirements of informed consent would
 420 threaten the life ~~or health~~ of the patient as described in
 421 paragraph (3)(a) or would unreasonably reduce the successful
 422 treatment of an already life-threatening disease of the patient
 423 as described in paragraph (3)(b) may be raised as is a defense
 424 to any action brought under this subsection ~~paragraph.~~

425 ~~(4) STANDARD OF MEDICAL CARE TO BE USED IN THIRD~~
 426 ~~TRIMESTER. If a termination of pregnancy is performed in the~~
 427 ~~third trimester, the physician performing the termination of~~
 428 ~~pregnancy must exercise the same degree of professional skill,~~
 429 ~~care, and diligence to preserve the life and health of the fetus~~
 430 ~~which the physician would be required to exercise in order to~~
 431 ~~preserve the life and health of a fetus intended to be born and~~
 432 ~~not aborted. However, if preserving the life and health of the~~
 433 ~~fetus conflicts with preserving the life and health of the~~
 434 ~~pregnant woman, the physician must consider preserving the~~
 435 ~~woman's life and health the overriding and superior concern.~~

436 ~~(5) PARTIAL BIRTH ABORTION PROHIBITED; EXCEPTION.~~

437 ~~(a) No physician shall knowingly perform a partial-birth~~
 438 ~~abortion.~~

439 ~~(b) A woman upon whom a partial-birth abortion is~~
 440 ~~performed may not be prosecuted under this section for a~~

441 ~~conspiracy to violate the provisions of this section.~~

442 ~~(c) This subsection shall not apply to a partial-birth~~
 443 ~~abortion that is necessary to save the life of a mother whose~~
 444 ~~life is endangered by a physical disorder, illness, or injury,~~
 445 ~~provided that no other medical procedure would suffice for that~~
 446 ~~purpose.~~

447 (6) EXPERIMENTATION ON FETUS PROHIBITED; EXCEPTION.—A ~~No~~
 448 person may not shall use any live fetus or live, premature
 449 infant for any type of scientific, research, laboratory, or
 450 other kind of experimentation either prior to or subsequent to
 451 any termination of pregnancy procedure except as necessary to
 452 protect or preserve the life and health of such fetus or
 453 premature infant. Violation of this subsection by a physician
 454 constitutes grounds for disciplinary action under s. 458.331 or
 455 s. 459.015.

456 (7) FETAL REMAINS.—Fetal remains shall be disposed of in a
 457 sanitary and appropriate manner and in accordance with standard
 458 health practices, as provided by rule of the Department of
 459 Health. A person who fails ~~Failure~~ to dispose of fetal remains
 460 in accordance with department rules commits a felony of the
 461 third degree ~~is a misdemeanor of the second degree,~~ punishable
 462 as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

463 (8) REFUSAL TO PARTICIPATE IN TERMINATION PROCEDURE.—
 464 Nothing in this section shall require any hospital or any person
 465 to participate in the termination of a pregnancy, nor shall any
 466 hospital or any person be liable for such refusal. A ~~No~~ person

467 | who is a member of, or associated with, the staff of a hospital,
 468 | or ~~nor~~ any employee of a hospital or physician in which or by
 469 | whom the termination of a pregnancy has been authorized or
 470 | performed, who states ~~shall state~~ an objection to such procedure
 471 | on moral or religious grounds is not ~~shall be~~ required to
 472 | participate in the procedure which will result in the
 473 | termination of pregnancy. The refusal of any such person or
 474 | employee to participate does ~~shall~~ not form the basis for any
 475 | disciplinary or other recriminatory action against such person.

476 | (9) EXCEPTION. ~~The provisions of This section~~ does ~~shall~~
 477 | not apply to the performance of a procedure which terminates a
 478 | pregnancy in order to deliver a live child or to remove a dead
 479 | child whose demise was not the result of a termination of
 480 | pregnancy or an induced abortion from the patient's body.

481 | ~~(10) PENALTIES FOR VIOLATION. Except as provided in~~
 482 | ~~subsections (3), (7), and (12):~~

483 | ~~(a) Any person who willfully performs, or actively~~
 484 | ~~participates in, a termination of pregnancy in violation of the~~
 485 | ~~requirements of this section or s. 390.01112 commits a felony of~~
 486 | ~~the third degree, punishable as provided in s. 775.082, s.~~
 487 | ~~775.083, or s. 775.084.~~

488 | ~~(b) Any person who performs, or actively participates in,~~
 489 | ~~a termination of pregnancy in violation of this section or s.~~
 490 | ~~390.01112 which results in the death of the woman commits a~~
 491 | ~~felony of the second degree, punishable as provided in s.~~
 492 | ~~775.082, s. 775.083, or s. 775.084.~~

493 ~~(11) CIVIL ACTION PURSUANT TO PARTIAL-BIRTH ABORTION;~~
 494 ~~RELIEF.—~~

495 ~~(a) The father, if married to the mother at the time she~~
 496 ~~receives a partial-birth abortion, and, if the mother has not~~
 497 ~~attained the age of 18 years at the time she receives a partial-~~
 498 ~~birth abortion, the maternal grandparents of the fetus may, in a~~
 499 ~~civil action, obtain appropriate relief, unless the pregnancy~~
 500 ~~resulted from the plaintiff's criminal conduct or the plaintiff~~
 501 ~~consented to the abortion.~~

502 ~~(b) In a civil action under this section, appropriate~~
 503 ~~relief includes:~~

504 ~~1. Monetary damages for all injuries, psychological and~~
 505 ~~physical, occasioned by the violation of subsection (5).~~

506 ~~2. Damages equal to three times the cost of the partial-~~
 507 ~~birth abortion.~~

508 (10) ~~(12)~~ INFANTS BORN ALIVE.—

509 (a) An infant born alive during or immediately after an
 510 attempted abortion is entitled to the same rights, powers, and
 511 privileges as are granted by the laws of this state to any other
 512 child born alive in the course of natural birth.

513 (b) If an infant is born alive during or immediately after
 514 an attempted abortion, any health care practitioner present at
 515 the time shall humanely exercise the same degree of professional
 516 skill, care, and diligence to preserve the life and health of
 517 the infant as a reasonably diligent and conscientious health
 518 care practitioner would render to an infant born alive at the

519 same gestational age in the course of natural birth.

520 (c) An infant born alive during or immediately after an
 521 attempted abortion must be immediately transported and admitted
 522 to a hospital pursuant to s. 390.012(3)(c) or rules adopted
 523 thereunder.

524 (d) A health care practitioner or any employee of a
 525 hospital, a physician's office, or an abortion clinic who has
 526 knowledge of a violation of this subsection must report the
 527 violation to the department.

528 (e) A person who violates this subsection commits a
 529 misdemeanor of the first degree, punishable as provided in s.
 530 775.082 or s. 775.083. This subsection shall not be construed as
 531 a specific provision of law relating to a particular subject
 532 matter that would preclude prosecution of a more general
 533 offense, regardless of the penalty.

534 (f) This subsection does not affirm, deny, expand, or
 535 contract any legal status or legal right applicable to any
 536 member of the species Homo sapiens at any point prior to being
 537 born alive as defined in s. 390.011.

538 ~~(11)(13)~~ FAILURE TO COMPLY.—Failure to comply with the
 539 requirements of this section or s. 390.01112 constitutes grounds
 540 for disciplinary action under each respective practice act and
 541 under s. 456.072.

542 (12) ADOPTION ALTERNATIVE INFORMATION.—Any physician or
 543 authorized personnel of a medical facility who learns that a
 544 patient wishes to obtain an induced abortion, or that a patient

545 has had a termination of pregnancy where the fetus survived,
 546 shall provide the patient with information concerning the
 547 availability of adoption for her unwanted child. Compliance with
 548 this subsection may be accomplished by providing the patient or,
 549 in the case of a mentally incompetent patient, her court-
 550 appointed guardian or, in the case of a minor patient, her
 551 parent or legal guardian with the address and telephone number
 552 of the Office of Adoption and Child Protection within the
 553 Executive Office of the Governor and inform the patient or, in
 554 the case of a mentally incompetent patient, her court-appointed
 555 guardian or, in the case of a minor patient, her parent or legal
 556 guardian of the existence of the statewide list of attorneys
 557 available to provide volunteer legal services for adoption.

558 (13) ~~(14)~~ RULEMAKING AUTHORITY RULES.-

559 (a) Except for subsection (7), the agency may adopt rules
 560 pursuant to ss. 120.536(1) and 120.54 to administer this
 561 section. These rules must be for the purpose of protecting the
 562 health and safety of pregnant women and minors and unborn human
 563 persons. These rules are also for the purpose of securing
 564 compliance with the requirements of this section and to
 565 facilitate the enforcement of sanctions for those violations to
 566 which administrative penalties apply.

567 (b) The department may adopt rules pursuant to ss.
 568 120.536(1) and 120.54 to administer subsection (7) ~~The~~
 569 ~~applicable boards, or the department if there is no board, shall~~
 570 ~~adopt rules necessary to implement the provisions of this~~

571 ~~section.~~

572 Section 5. Section 390.01112, Florida Statutes, is amended
573 to read:

574 390.01112 Termination of pregnancies during viability.—

575 (1) A ~~No~~ termination of pregnancy may not ~~shall~~ be
576 performed on any human being if the physician determines that,
577 in reasonable medical judgment, the fetus has achieved
578 viability, unless:

579 (a) Two physicians certify in writing that, in their
580 reasonable medical judgments ~~judgment~~, the termination of the
581 pregnancy is necessary to save the pregnant woman's life or
582 avert a serious risk of substantial and irreversible physical
583 impairment of a major bodily function of the pregnant woman
584 other than a psychological condition; or

585 (b) The physician certifies in writing that, in his or her
586 reasonable medical judgment, there is a medical necessity for
587 legitimate emergency medical procedures for termination of the
588 pregnancy to save the pregnant woman's life or avert a serious
589 risk of imminent substantial and irreversible physical
590 impairment of a major bodily function of the pregnant woman
591 other than a psychological condition, and another physician is
592 not available for consultation.

593 (2) Before performing a termination of pregnancy, a
594 physician must determine if the fetus is viable by, at a
595 minimum, performing a medical examination of the pregnant woman
596 and, to the maximum extent possible through reasonably available

597 tests and the ultrasound required under s. 390.0111(5)
 598 ~~390.0111(3)~~, an examination of the fetus. The physician must
 599 document in the pregnant woman's medical file the physician's
 600 determination and the method, equipment, fetal measurements, and
 601 any other information used to determine the viability of the
 602 fetus.

603 (3) If a termination of pregnancy is performed while the
 604 patient's fetus is viable ~~during viability~~, the physician
 605 performing the termination of pregnancy must exercise the same
 606 degree of professional skill, care, and diligence to preserve
 607 the life and health of the fetus that the physician would be
 608 required to exercise in order to preserve the life and health of
 609 a fetus intended to be born and not aborted. However, if
 610 preserving the life and health of the fetus conflicts with
 611 preserving the life and health of the woman, the physician must
 612 consider preserving the woman's life and health the overriding
 613 and superior concern. Violation of this subsection by a
 614 physician constitutes grounds for disciplinary action under s.
 615 458.331 or s. 459.015.

616 (4) A termination of pregnancy involving a viable fetus,
 617 when not prohibited under s. 390.0111(3), must be performed in a
 618 hospital or other medical establishment as defined in s.
 619 390.011(6) that is capable of providing all necessary lifesaving
 620 and life-sustaining medical services to the viable fetus.

621 (5) A physician who, once the matter of the viability or
 622 nonviability of the fetus is determined within a reasonable

623 degree of medical probability, knowingly and willfully
 624 misrepresents the gestational age or stage of fetal development
 625 of a viable fetus in an entry into any medical record and who
 626 fails to use the standard of care required under subsection (3)
 627 on any fetus determined to be viable commits a felony of the
 628 first degree, punishable as provided in s. 775.082, s. 775.083,
 629 or s. 775.084.

630 Section 6. Subsection (8) of section 39.001, Florida
 631 Statutes, is amended, and paragraph (d) is added to subsection
 632 (9) of that section, to read:

633 39.001 Purposes and intent; personnel standards and
 634 screening.-

635 (8) LEGISLATIVE INTENT FOR THE PREVENTION OF ABUSE,
 636 ABANDONMENT, AND NEGLECT OF CHILDREN; ADOPTION SERVICES FOR
 637 WOMEN AND MINORS WITH UNWANTED PREGNANCIES.-The incidence of
 638 known child abuse, abandonment, and neglect has increased
 639 rapidly in recent ~~over the past 5~~ years. The impact that abuse,
 640 abandonment, or neglect has on the victimized child, siblings,
 641 family structure, and inevitably on all citizens of the state
 642 has caused the Legislature to determine that the prevention of
 643 child abuse, abandonment, and neglect shall be a priority of
 644 this state. In addition, to provide assistance for women and
 645 minors with unwanted pregnancies who would have selected
 646 abortion, if lawful in this state, rather than adoption as an
 647 alternative for their unborn children, the Legislature has
 648 determined to offer such women and minors information regarding

649 volunteer legal services to accomplish an appropriate adoptive
 650 placement for their newborn children. ~~To further this end,~~ It is
 651 the intent of the Legislature that the ~~an~~ Office of Adoption and
 652 Child Protection be established and maintained to accomplish
 653 these purposes established.

654 (9) OFFICE OF ADOPTION AND CHILD PROTECTION.—

655 (d) In connection with the provision of volunteer legal
 656 services for women and minors with unwanted pregnancies who
 657 would have selected abortion, if lawful in this state, rather
 658 than adoption, the office shall:

659 1. Create and manage a statewide list of attorneys that
 660 provide volunteer adoption services for such women and minors.

661 2. Have deposited, directed, and budgeted in the full
 662 amount for use by the office, in addition to funds that would
 663 have or are otherwise budgeted for the office, all moneys
 664 received by or otherwise awarded to the state from the Federal
 665 Government, the United States Treasury, or any other federal
 666 agency as a result of efforts made by the office to provide
 667 legal or other services for adoption.

668 Section 7. Sections 390.01114, 390.01116, 390.0112,
 669 390.012, 390.014, 390.015, 390.018, 390.025, 782.30, 782.32,
 670 782.34, and 782.36, Florida Statutes, are repealed.

671 Section 8. Paragraph (a) of subsection (6) of section
 672 27.511, Florida Statutes, is amended to read:

673 27.511 Offices of criminal conflict and civil regional
 674 counsel; legislative intent; qualifications; appointment;

675 duties.—

676 (6)(a) The office of criminal conflict and civil regional
 677 counsel has primary responsibility for representing persons
 678 entitled to court-appointed counsel under the Federal or State
 679 Constitution or as authorized by general law in civil
 680 proceedings, including, but not limited to, proceedings under s.
 681 393.12 and chapters 39, 392, 397, 415, 743, 744, and 984 and
 682 proceedings to terminate parental rights under chapter 63.

683 ~~Private court-appointed counsel eligible under s. 27.40 have~~
 684 ~~primary responsibility for representing minors who request~~
 685 ~~counsel under s. 390.01114, the Parental Notice of Abortion Act;~~
 686 ~~however, the office of criminal conflict and civil regional~~
 687 ~~counsel may represent a minor under that section if the court~~
 688 ~~finds that no private court-appointed attorney is available.~~

689 Section 9. Subsection (1) of section 627.64995, Florida
 690 Statutes, is amended to read:

691 627.64995 Restrictions on use of state and federal funds
 692 for state exchanges.—

693 (1) A health insurance policy under which coverage is
 694 purchased in whole or in part with any state or federal funds
 695 through an exchange created pursuant to the federal Patient
 696 Protection and Affordable Care Act, Pub. L. No. 111-148, may not
 697 provide coverage for an induced abortion as defined in s.
 698 390.011 and prohibited under s. 390.0111, or for a termination
 699 of pregnancy in violation of s. 390.0111(3) ~~390.011(1), except~~
 700 ~~if the pregnancy is the result of an act of rape or incest, or~~

701 ~~in the case where a woman suffers from a physical disorder,~~
 702 ~~physical injury, or physical illness, including a life-~~
 703 ~~endangering physical condition caused by or arising from the~~
 704 ~~pregnancy itself, which would, as certified by a physician,~~
 705 ~~place the woman in danger of death unless an abortion is~~
 706 ~~performed.~~ Coverage is deemed to be purchased with state or
 707 federal funds if any tax credit or cost-sharing credit is
 708 applied toward the health insurance policy.

709 Section 10. Paragraph (a) of subsection (16) of section
 710 627.6699, Florida Statutes, is amended to read:

711 627.6699 Employee Health Care Access Act.—

712 (16) RESTRICTIONS ON COVERAGE.—

713 (a) A plan under which coverage is purchased in whole or
 714 in part with any state or federal funds through an exchange
 715 created pursuant to the federal Patient Protection and
 716 Affordable Care Act, Pub. L. No. 111-148, may not provide
 717 coverage for an induced abortion, as defined in s. 390.011 and
 718 prohibited under s. 390.0111, or for a termination of pregnancy
 719 in violation of s. 390.0111(3) 390.011(1), except if the
 720 ~~pregnancy is the result of an act of rape or incest, or in the~~
 721 ~~case where a woman suffers from a physical disorder, physical~~
 722 ~~injury, or physical illness, including a life-endangering~~
 723 ~~physical condition caused by or arising from the pregnancy~~
 724 ~~itself, which would, as certified by a physician, place the~~
 725 ~~woman in danger of death unless an abortion is performed.~~
 726 Coverage is deemed to be purchased with state or federal funds

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727 if any tax credit or cost-sharing credit is applied toward the
728 plan.

729 Section 11. Subsection (1) of section 627.66996, Florida
730 Statutes, is amended to read:

731 627.66996 Restrictions on use of state and federal funds
732 for state exchanges.—

733 (1) A group, franchise, or blanket health insurance policy
734 under which coverage is purchased in whole or in part with any
735 state or federal funds through an exchange created pursuant to
736 the federal Patient Protection and Affordable Care Act, Pub. L.
737 No. 111-148, may not provide coverage for an induced abortion as
738 defined in s. 390.011 and prohibited under s. 390.0111, or for
739 a termination of pregnancy in violation of s. 390.0111(3)
740 ~~390.011(1), except if the pregnancy is the result of an act of~~
741 ~~rape or incest, or in the case where a woman suffers from a~~
742 ~~physical disorder, physical injury, or physical illness,~~
743 ~~including a life-endangering physical condition caused by or~~
744 ~~arising from the pregnancy itself, which would, as certified by~~
745 ~~a physician, place the woman in danger of death unless an~~
746 ~~abortion is performed.~~ Coverage is deemed to be purchased with
747 state or federal funds if any tax credit or cost-sharing credit
748 is applied toward the group, franchise, or blanket health
749 insurance policy.

750 Section 12. Subsection (1) of section 641.31099, Florida
751 Statutes, is amended to read:

752 641.31099 Restrictions on use of state and federal funds

753 for state exchanges.—

754 (1) A health maintenance contract under which coverage is
 755 purchased in whole or in part with any state or federal funds
 756 through an exchange created pursuant to the federal Patient
 757 Protection and Affordable Care Act, Pub. L. No. 111-148, may not
 758 provide coverage for an induced abortion as defined in s.
 759 390.011 and prohibited under s. 390.0111, or for a termination
 760 of pregnancy in violation of s. 390.0111(3) 390.011(1), except
 761 ~~if the pregnancy is the result of an act of rape or incest, or~~
 762 ~~in the case where a woman suffers from a physical disorder,~~
 763 ~~physical injury, or physical illness, including a life-~~
 764 ~~endangering physical condition caused by or arising from the~~
 765 ~~pregnancy itself, which would, as certified by a physician,~~
 766 ~~place the woman in danger of death unless an abortion is~~
 767 ~~performed.~~ Coverage is deemed to be purchased with state or
 768 federal funds if any tax credit or cost-sharing credit is
 769 applied toward the health maintenance contract.

770 Section 13. Subsection (3) of section 743.065, Florida
 771 Statutes, is amended to read:

772 743.065 Unwed pregnant minor or minor mother; consent to
 773 medical services for minor or minor's child valid.—

774 (3) Nothing in this act shall affect the provisions of s.
 775 390.0111 or s. 390.01112.

776 Section 14. Subsection (4) of section 743.067, Florida
 777 Statutes, is amended to read:

778 743.067 Unaccompanied homeless youths.—

779 ~~(4) This section does not affect the requirements of s.~~
 780 ~~390.01114.~~

781 Section 15. Subsection (2) of section 765.113, Florida
 782 Statutes, is amended to read:



783 765.113 Restrictions on providing consent.—Unless the
 784 principal expressly delegates such authority to the surrogate in
 785 writing, or a surrogate or proxy has sought and received court
 786 approval pursuant to rule 5.900 of the Florida Probate Rules, a
 787 surrogate or proxy may not provide consent for:

788 (2) Withholding or withdrawing life-prolonging procedures
 789 from a pregnant patient before ~~prior to~~ viability as defined in
 790 s. 390.011(18) ~~390.0111(4)~~.

791 Section 16. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 889 Contraband Forfeiture
SPONSOR(S): Metz
TIED BILLS: None **IDEN./SIM. BILLS:** SB 220

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

SUMMARY ANALYSIS

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

The bill amends the requirements that apply to seizure and the review of seizures, in a number of ways, including:

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

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

The bill creates reporting requirements for seizing agencies and the Florida Department of Law Enforcement (FDLE). Any law enforcement agency that does not comply with the reporting requirements is subject to a civil fine up to \$5,000.

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

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Contraband Forfeiture Act

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

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

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

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

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

² s. 932.701(2)(a), F.S.

³ s. 932.703(1), F.S.

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

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

Seizure

As mentioned above, the property specified in the Act may be seized and forfeited when the property has been used in violation of the Act, or in, upon, or by means of which a violation of the Act has or is taking place.⁶ Personal property may be seized when the violation occurs or after the violation, if the person entitled to be notified⁷ is notified at the time of the seizure or by certified mail.⁸ Real property can only be seized by the process of *lis pendens*⁹ after a violation of the Act has occurred, and prior to when the person entitled to notice has been given the opportunity to attend a pre-seizure adversarial hearing¹⁰ to determine the validity of the seizure.¹¹ As soon as a seizure takes place, all rights to, interest in, and title to contraband articles used in violation of the Act shall immediately vest¹² in the law enforcement agency that performed the seizure.¹³

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

Forfeiture Proceedings

The seizing agency must promptly proceed¹⁶ against the property by filing a complaint¹⁷ in the circuit court in the jurisdiction where the seizure or the offense occurred.¹⁸ Forfeiture proceedings must be decided by a jury trial unless the claimant waives that right.¹⁹ Unlike the probable cause standard used in adversarial preliminary hearings, property may not be forfeited unless the seizing agency proves by a

⁴ s. 932.702, F.S.

⁵ *Dept. of Law Enforcement v. Real Property*, 588 So. 2d 957 (Fla. 1991).

⁶ s. 932.703(1), F.S.

⁷ A person entitled to notice includes any owner, entity, bona fide lienholder, or person in possession of the property subject to forfeiture when seized, who is known to the seizing agency after a diligent search and inquiry. s. 932.701(2)(e), F.S.

⁸ s. 932.703(2)(a), F.S.

⁹ *Lis pendens* is Latin for “a suit pending.” In modern usage it means a written notice that a lawsuit has been filed to decide the title to, or property interest in, real property. THE FREE DICTIONARY, *Lis Pendens*, <http://legal-dictionary.thefreedictionary.com/lis+pendens> (last visited Jan. 21, 2016).

¹⁰ Pre-seizure adversarial hearings are provided under s. 932.703(2)(c) and (d), F.S., discussed in further detail under the Forfeiture section, herein.

¹¹ s. 932.703(2)(b), F.S.

¹² “Vested” means “[a]ccrued; fixed; settled; absolute; having the character or giving the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. THE LAW DICTIONARY, *Vested*, <http://thelawdictionary.org/vested/> (last visited Jan. 11, 2016).

¹³ s. 932.703(c), F.S.

¹⁴ s. 932.703(2)(c), F.S.

¹⁵ *Id.*

¹⁶ s. 932.701(2)(c), F.S.

¹⁷ A “complaint” is a petition for forfeiture filed in the civil division of the circuit court by the seizing agency requesting the court to issue a judgment of forfeiture. s. 932.701(2)(d), F.S.

¹⁸ s. 932.704(4), F.S.

¹⁹ s. 932.704(3), F.S.; *Dept. of Law Enforcement v. Real Property*, 588 So. 2d 967.

preponderance of the evidence²⁰ that the owner either knew, or should have known that the property was being used or was likely to be used for criminal activity.²¹ Upon clear and convincing evidence that the contraband article was being used in violation of the Act, the court shall order the seized property forfeited to the seizing agency.²² Once this occurs, the right, title, and interest in and to such property shall be perfected in the seizing agency, subject only to the rights of bona fide lienholders.²³

Use and Disposition of Forfeited Assets

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

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

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

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

- Satisfaction of any liens preserved by the court during forfeiture proceedings.
- Payment of the cost incurred to the seizing agency for storage, maintenance, security and forfeiture of the property.
- Payment of the court costs incurred from the forfeiture proceeding.
- For the 2015-2016 fiscal year only, the funds in a special law enforcement trust fund established by a municipality may be used to reimburse the general fund of the municipality for advances from the general fund to the special law enforcement trust fund prior to October 1, 2001.²⁸

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

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

²⁰ “Preponderance of the evidence” is a legal standard that means the evidence presented in court is more convincing of a point or position than other evidence that is presented to the contrary. THE LAW DICTIONARY, *Preponderance of Evidence*, <http://thelawdictionary.org/preponderance-of-evidence/> (last visited Jan. 11, 2016).

²¹ s. 932.703(6)(a), F.S.

²² s. 932.704(8), F.S.

²³ *Id.*

²⁴ s. 932.7055, F.S.

²⁵ s. 932.703(6)(b), F.S.

²⁶ s. 932.7055(3)(a) and (b), F.S.

²⁷ s. 932.7055(5)(a), F.S.

²⁸ s. 932.7055(4)(a), F.S.

²⁹ s. 932.7055(5)(a), F.S.

³⁰ s. 932.7055(5)(c)1., F.S.

³¹ s. 932.7055(5)(c)2., F.S.

³² s. 932.7055(5)(c)3., F.S.

Effect of the Bill

The bill amends the requirements that apply to seizure and the review of seizures, as follows:

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

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

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

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

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

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

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

B. SECTION DIRECTORY:

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

Section 2. Amends s. 932.704, F.S., relating to forfeiture proceedings.

Section 3. Amends s. 932.7055, F.S., relating to disposition of liens and forfeited property.

Section 4. Creates s. 932.7061, F.S., relating to reporting seized property for forfeiture.

Section 5. Creates s. 732.7062, F.S., relating to penalty for noncompliance with reporting.

Section 6. Amends s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.

Section 7. Amends s. 323.011, F.S., relating to wrecker operator storage facilities; vehicle holds.

Section 8. Amends s. 328.07, F.S., relating to hull identification number required.

Section 9. Amends s. 817.625, F.S., relating to use of scanning device or reencoder to defraud.

Section 10. Reenacts s. 27.3451, F.S., relating to State Attorney's Forfeiture and Investigating Support Trust Fund.

Section 11. Reenacts s. 874.08, F.S., relating to criminal gang activity and recruitment; forfeiture.

Section 12. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
2 An act relating to contraband forfeiture; amending s.
3 932.701, F.S.; revising the applicability of a short
4 title; amending s. 932.704, F.S.; requiring that
5 specified persons approve a settlement once property
6 has been seized; specifying when a settlement
7 agreement must be reviewed; requiring each state or
8 local law enforcement agency that seizes property for
9 the purpose of forfeiture to perform a specified
10 review at least annually; prohibiting certain
11 compensation or benefit to any law enforcement officer
12 from being dependent upon attaining a quota of
13 seizures; requiring a seizing agency to adopt certain
14 written policies, procedures, and training to ensure
15 compliance; requiring that supervisory personnel
16 review seizures to determine whether probable cause
17 existed; requiring prompt notification of the seizing
18 agency's legal counsel after a determination is made
19 regarding seizure; requiring that the legal counsel
20 conduct a specified review; requiring each seizing
21 agency to adopt and implement specified written
22 policies and procedures for the prompt release of
23 seized property under certain circumstances; requiring
24 that the settlement of forfeiture actions be
25 consistent with certain mandates and with the seizing
26 agency's policy; requiring specified training and the

27 maintenance of related records; amending s. 932.7055,
 28 F.S.; increasing the minimum amount of forfeiture
 29 proceeds that certain law enforcement agencies must
 30 donate to certain programs; creating s. 932.7061,
 31 F.S.; requiring each state or local law enforcement
 32 agency that seizes property for the purpose of
 33 forfeiture to complete an annual report; requiring
 34 certain information to be included in the annual
 35 report; requiring the Department of Law Enforcement to
 36 make an annual report to the Office of Program Policy
 37 Analysis and Government Accountability compiling the
 38 information; prohibiting a law enforcement agency and
 39 an entity having budgetary control over the law
 40 enforcement agency from anticipating proceeds from
 41 forfeitures in their budgeting processes; creating s.
 42 732.7062, F.S.; providing a monetary penalty for
 43 seizing agencies that fail to comply with reporting
 44 requirements; providing an exception; providing for
 45 enforcement; amending ss. 322.34, 323.001, 328.07, and
 46 817.625, F.S.; conforming cross-references; reenacting
 47 ss. 27.3451 and 874.08, F.S., relating to the State
 48 Attorney's Forfeiture and Investigative Support Trust
 49 Fund, and criminal gang activity, recruitment, and
 50 forfeiture, respectively, to incorporate the amendment
 51 made to s. 932.704, F.S., in references thereto;
 52 providing an effective date.

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

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

932.701 Short title; definitions.—

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

Section 2. Subsections (7) and (11) of section 932.704, Florida Statutes, are amended to read:

932.704 Forfeiture proceedings.—

(7) Once property is seized pursuant to the Florida Contraband Forfeiture Act, regardless of whether the civil complaint has been filed, all settlements must be personally approved by the head of the law enforcement agency making the seizure. If the agency head is unavailable and a delay would adversely affect the settlement, approval may be given by a subordinate of the agency head who is designated to grant such authority. When the claimant and the seizing law enforcement agency agree to settle the forfeiture action after the civil complaint has been filed and before ~~prior to~~ the conclusion of the forfeiture proceeding, the settlement agreement shall be reviewed, unless such review is waived by the claimant in writing, by the court or a mediator or arbitrator agreed upon by the claimant and the seizing law enforcement agency. If the claimant is unrepresented, the settlement agreement must include

79 a provision that the claimant has freely and voluntarily agreed
 80 to enter into the settlement without benefit of counsel.

81 (11)(a) The Department of Law Enforcement, in consultation
 82 with the Florida Sheriffs Association and the Florida Police
 83 Chiefs Association, shall develop guidelines and training
 84 procedures to be used by state and local law enforcement
 85 agencies and state attorneys in implementing the Florida
 86 Contraband Forfeiture Act. At least annually, each state or
 87 local law enforcement agency that seizes property for the
 88 purpose of forfeiture shall ~~periodically~~ review such seizures ~~of~~
 89 ~~assets made by the agency's law enforcement officers,~~ any
 90 settlements, and any forfeiture proceedings initiated by the law
 91 enforcement agency, ~~to~~ determine whether they ~~such seizures,~~
 92 ~~settlements, and forfeitures~~ comply with the Florida Contraband
 93 Forfeiture Act and the guidelines adopted under this subsection.
 94 If the review suggests deficiencies, the state or local law
 95 enforcement agency shall promptly take action to comply with the
 96 Florida Contraband Forfeiture Act.

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

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

104 (d) The employment, salary, promotion, or other

105 compensation of any law enforcement officer may not be dependent
 106 on the ability of the officer to meet a quota for seizures.

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

112 (f) When property is seized for forfeiture, the probable
 113 cause supporting the seizure must be promptly reviewed by
 114 supervisory personnel. The seizing agency's legal counsel must
 115 be notified as soon as possible of all seizures and shall
 116 conduct a review to determine whether there is legal sufficiency
 117 to proceed with a forfeiture action.

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

127 (h) The settlement of any forfeiture action must be
 128 consistent with the Florida Contraband Forfeiture Act and the
 129 agency's policy.

130 (i) Law enforcement agency personnel involved in the

131 seizure of property for forfeiture shall receive basic training
 132 and continuing education as required by the Florida Contraband
 133 Forfeiture Act. Each agency shall maintain records demonstrating
 134 each law enforcement officer's compliance with this requirement.
 135 Among other things, the training must address the legal aspects
 136 of forfeiture, including, but not limited to, search and seizure
 137 and other constitutional considerations.

138 Section 3. Paragraph (c) of subsection (5) of section
 139 932.7055, Florida Statutes, is amended to read:

140 932.7055 Disposition of liens and forfeited property.—

141 (5)

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

154 1. Such funds may be used only for school resource
 155 officer, crime prevention, safe neighborhood, drug abuse
 156 education, or drug prevention programs or such other law

157 enforcement purposes as the board of county commissioners or
 158 governing body of the municipality deems appropriate.

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

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

171
 172 Notwithstanding the drug abuse education, drug treatment, drug
 173 prevention, crime prevention, safe neighborhood, or school
 174 resource officer minimum expenditures or donations, the sheriff
 175 and the board of county commissioners or the chief of police and
 176 the governing body of the municipality may agree to expend or
 177 donate such funds over a period of years if the expenditure or
 178 donation of such minimum amount in any given fiscal year would
 179 exceed the needs of the county or municipality for such program
 180 or programs ~~program(s)~~. ~~Nothing in this section precludes~~ The
 181 minimum requirement for expenditure or donation of forfeiture
 182 proceeds in excess of the minimum amounts established in this

183 subparagraph does not preclude expenditures or donations in
184 excess of that amount herein.

185 Section 4. Section 932.7061, Florida Statutes, is created
186 to read:

187 932.7061 Reporting seized property for forfeiture.-

188 (1) Every law enforcement agency shall submit an annual
189 report to the Department of Law Enforcement indicating whether
190 the agency has seized or forfeited property under the Florida
191 Contraband Forfeiture Act. A law enforcement agency receiving or
192 expending forfeited property or proceeds from the sale of
193 forfeited property in accordance with the Florida Contraband
194 Forfeiture Act shall submit a completed annual report by October
195 10 documenting the receipts and expenditures. The report shall
196 be submitted in an electronic form, maintained by the Department
197 of Law Enforcement in consultation with the Office of Program
198 Policy Analysis and Government Accountability, to the entity
199 that has budgetary authority over such agency and to the
200 Department of Law Enforcement. The annual report must, at a
201 minimum, specify the type, approximate value, court case number,
202 type of offense, disposition of property received, and amount of
203 any proceeds received or expended.

204 (2) The Department of Law Enforcement shall submit an
205 annual report to the Office of Program Policy Analysis and
206 Government Accountability compiling the information and data in
207 the annual reports submitted by the law enforcement agencies.
208 The annual report shall also contain a list of law enforcement

209 agencies that have failed to meet the reporting requirements and
 210 a summary of any action taken against the noncomplying agency by
 211 the office of Chief Financial Officer.

212 (3) Neither the law enforcement agency nor the entity
 213 having budgetary control over the law enforcement agency shall
 214 anticipate future forfeitures or proceeds therefrom in the
 215 adoption and approval of the budget for the law enforcement
 216 agency.

217 Section 5. Section 732.7062, Florida Statutes, is created
 218 to read:

219 732.7062 Penalty for noncompliance with reporting
 220 requirements.—A seizing agency that fails to comply with the
 221 reporting requirements in s. 932.7061 is subject to a civil fine
 222 of \$5,000 payable to the General Revenue Fund. However, such
 223 agency is not subject to the fine if, within 60 days after
 224 receipt of written notification from the Department of Law
 225 Enforcement of noncompliance with the reporting requirements of
 226 the Florida Contraband Forfeiture Act, the agency substantially
 227 complies with those requirements. The Department of Law
 228 Enforcement shall submit any substantial noncompliance to the
 229 office of Chief Financial Officer, which shall be responsible
 230 for the enforcement of this section.

231 Section 6. Paragraph (a) of subsection (9) of section
 232 322.34, Florida Statutes, is amended to read:

233 322.34 Driving while license suspended, revoked, canceled,
 234 or disqualified.—

235 (9) (a) A motor vehicle that is driven by a person under
 236 the influence of alcohol or drugs in violation of s. 316.193 is
 237 subject to seizure and forfeiture under ss. 932.701-932.7062
 238 ~~932.706~~ and is subject to liens for recovering, towing, or
 239 storing vehicles under s. 713.78 if, at the time of the offense,
 240 the person's driver license is suspended, revoked, or canceled
 241 as a result of a prior conviction for driving under the
 242 influence.

243 Section 7. Subsection (4) of section 323.001, Florida
 244 Statutes, is amended to read:

245 323.001 Wrecker operator storage facilities; vehicle
 246 holds.-

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

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

252 (b) The officer has probable cause to believe the vehicle
 253 should be seized and forfeited under chapter 379;

254 (c) The officer has probable cause to believe the vehicle
 255 was used as the means of committing a crime;

256 (d) The officer has probable cause to believe that the
 257 vehicle is itself evidence that tends to show that a crime has
 258 been committed or that the vehicle contains evidence, which
 259 cannot readily be removed, which tends to show that a crime has
 260 been committed;

261 (e) The officer has probable cause to believe the vehicle
 262 was involved in a traffic accident resulting in death or
 263 personal injury and should be sealed for investigation and
 264 collection of evidence by a vehicular homicide investigator;

265 (f) The vehicle is impounded or immobilized pursuant to s.
 266 316.193 or s. 322.34; or

267 (g) The officer is complying with a court order.

268 Section 8. Paragraph (b) of subsection (3) of section
 269 328.07, Florida Statutes, is amended to read:

270 328.07 Hull identification number required.—

271 (3)

272 (b) If any of the hull identification numbers required by
 273 the United States Coast Guard for a vessel manufactured after
 274 October 31, 1972, do not exist or have been altered, removed,
 275 destroyed, covered, or defaced or the real identity of the
 276 vessel cannot be determined, the vessel may be seized as
 277 contraband property by a law enforcement agency or the division,
 278 and shall be subject to forfeiture pursuant to ss. 932.701-
 279 932.7062 ~~932.706~~. Such vessel may not be sold or operated on the
 280 waters of the state unless the division receives a request from
 281 a law enforcement agency providing adequate documentation or is
 282 directed by written order of a court of competent jurisdiction
 283 to issue to the vessel a replacement hull identification number
 284 which shall thereafter be used for identification purposes. No
 285 vessel shall be forfeited under the Florida Contraband
 286 Forfeiture Act when the owner unknowingly, inadvertently, or

287 neglectfully altered, removed, destroyed, covered, or defaced
 288 the vessel hull identification number.

289 Section 9. Paragraph (c) of subsection (2) of section
 290 817.625, Florida Statutes, is amended to read:

291 817.625 Use of scanning device or reencoder to defraud;
 292 penalties.—

293 (2)

294 (c) Any person who violates subparagraph (a)1. or
 295 subparagraph (a)2. shall also be subject to the provisions of
 296 ss. 932.701-932.7062 ~~932.706~~.

297 Section 10. For the purpose of incorporating the amendment
 298 made by this act to section 932.704, Florida Statutes, in a
 299 reference thereto, section 27.3451, Florida Statutes, is
 300 reenacted to read:

301 27.3451 State Attorney's Forfeiture and Investigative
 302 Support Trust Fund.—There is created for each of the several
 303 state attorneys a trust fund to be known as the State Attorney's
 304 Forfeiture and Investigative Support Trust Fund. Revenues
 305 received by a state attorney as a result of forfeiture
 306 proceedings, as provided under s. 932.704, shall be deposited in
 307 such trust fund and shall be used, when authorized by
 308 appropriation or action of the Executive Office of the Governor
 309 pursuant to s. 216.181(11), for the investigation of crime,
 310 prosecution of criminals, or other law enforcement purposes.

311 Section 11. For the purpose of incorporating the amendment
 312 made by this act to section 932.704, Florida Statutes, in a

313 reference thereto, section 874.08, Florida Statutes, is
 314 reenacted to read:

315 874.08 Criminal gang activity and recruitment;
 316 forfeiture.—All profits, proceeds, and instrumentalities of
 317 criminal gang activity and all property used or intended or
 318 attempted to be used to facilitate the criminal activity of any
 319 criminal gang or of any criminal gang member; and all profits,
 320 proceeds, and instrumentalities of criminal gang recruitment and
 321 all property used or intended or attempted to be used to
 322 facilitate criminal gang recruitment are subject to seizure and
 323 forfeiture under the Florida Contraband Forfeiture Act, s.
 324 932.704.

325 Section 12. This act shall take effect July 1, 2016.



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COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

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

10 932.701 Short title; definitions.—

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

13 Section 2. Subsections (1), (2), and (6) of section
 14 932.703, Florida Statutes, are amended to read:

15 932.703 Forfeiture of contraband article; exceptions.—

16 (1) (a) A ~~Any~~ contraband article, vessel, motor vehicle,
 17 aircraft, other personal property, or real property ~~used in~~



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18 ~~violation of any provision of the Florida Contraband Forfeiture~~
19 ~~Act, or in, upon, or by means of which any violation of the~~
20 ~~Florida Contraband Forfeiture Act has taken or is taking place,~~
21 ~~may be seized only upon the arrest of the owner of the property~~
22 ~~for a violation of a criminal law that renders the property a~~
23 ~~contraband article and shall be forfeited subject to the~~
24 ~~provisions of the Florida Contraband Forfeiture Act.~~

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

40 (c)1. At the time of seizure or entry of a restraining
41 order, the state acquires provisional title to the seized
42 property. A forfeiture under the Florida Contraband Forfeiture
43 Act is not final, and title or other indicia of ownership, other



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44 than provisional title, do not pass to the seizing agency until
45 the title to the seized property is perfected in accordance with
46 the Florida Contraband Forfeiture Act ~~All rights to, interest~~
47 ~~in, and title to contraband articles used in violation of s.~~
48 ~~932.702 shall immediately vest in the seizing law enforcement~~
49 ~~agency upon seizure.~~

50 2. If at least 90 days has elapsed since the arrest of the
51 owner of the property, and the seizing agency has failed to
52 locate the owner after making a diligent effort, the seized
53 property will be deemed a contraband article and is subject to
54 forfeiture under the Florida Contraband Forfeiture Act.

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

62 (2) (a) Personal property may be seized at the time the
63 property owner is arrested ~~of the violation~~ or subsequent to the
64 arrest ~~violation~~, if the person entitled to notice is notified
65 at the time of the seizure or by certified mail, return receipt
66 requested, that there is a right to an adversarial preliminary
67 hearing after the seizure to determine whether probable cause
68 exists to believe that such property has been or is being used
69 in violation of a criminal law that renders the property a



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

83 (b) Real property may not be seized or restrained, other
84 than by lis pendens, subsequent to the arrest of the owner of
85 the property for a violation of a criminal law that renders the
86 property a contraband article ~~the Florida Contraband Forfeiture~~
87 ~~Act~~ until the persons entitled to notice are afforded the
88 opportunity to attend the preseizure adversarial preliminary
89 hearing. A lis pendens may be obtained by any method authorized
90 by law. Notice of the adversarial preliminary hearing shall be
91 by certified mail, return receipt requested. The purpose of the
92 adversarial preliminary hearing is to determine whether probable
93 cause exists to believe that such property has been used in
94 violation of a criminal law that renders the property a
95 contraband article ~~the Florida Contraband Forfeiture Act.~~ The

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96 | seizing agency shall make a diligent effort to notify any person
97 | entitled to notice of the seizure. The preseizure adversarial
98 | preliminary hearing provided herein shall be held within 10 days
99 | of the filing of the lis pendens or as soon as practicable.

100 | (c) When an adversarial preliminary hearing is held, the
101 | court shall review the verified affidavit and any other
102 | supporting documents and take any testimony to determine whether
103 | there is probable cause to believe that the owner of the
104 | property violated a criminal law that renders the property a
105 | contraband article ~~property was used, is being used, was~~
106 | ~~attempted to be used, or was intended to be used in violation of~~
107 | ~~the Florida Contraband Forfeiture Act~~. If probable cause is
108 | established, the court shall authorize the seizure or continued
109 | seizure of the subject contraband. A copy of the findings of the
110 | court shall be provided to any person entitled to notice.

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



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

127 ~~(b)~~ A bona fide lienholder's interest that has been
128 perfected in the manner prescribed by law prior to the seizure
129 may not be forfeited under the Florida Contraband Forfeiture Act
130 ~~unless the seizing agency establishes by a preponderance of the~~
131 ~~evidence that the lienholder had actual knowledge, at the time~~
132 ~~the lien was made, that the property was being employed or was~~
133 ~~likely to be employed in criminal activity.~~ If a lienholder's
134 interest is not subject to forfeiture under the requirements of
135 this section, such interest shall be preserved by the court by
136 ordering the lienholder's interest to be paid as provided in s.
137 932.7055.

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



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146 ~~(c)(d)~~ A vehicle that is rented or leased from a company
147 engaged in the business of renting or leasing vehicles, which
148 vehicle was rented or leased in the manner prescribed by law
149 prior to the seizure, may not be forfeited under the Florida
150 Contraband Forfeiture Act, and no fine, penalty, or
151 administrative charge, other than reasonable and customary
152 charges for towing and storage, shall be imposed by any
153 governmental agency on the company which rented or leased the
154 vehicle, ~~unless the seizing agency establishes by preponderance~~
155 ~~of the evidence that the renter or lesser had actual knowledge,~~
156 ~~at the time the vehicle was rented or leased, that the vehicle~~
157 ~~was being employed or was likely to be employed in criminal~~
158 ~~activity.~~ When a vehicle that is rented or leased from a company
159 engaged in the business of renting or leasing vehicles is seized
160 under the Florida Contraband Forfeiture Act, upon learning the
161 address or phone number of the company, the seizing law
162 enforcement agency shall, as soon as practicable, inform the
163 company that the vehicle has been seized and is available for
164 the company to take possession upon payment of the reasonable
165 and customary charges for towing and storage.

166 Section 3. Subsections (8), (9), and (11) of section
167 932.704, Florida Statutes, are amended to read:

168 932.704 Forfeiture proceedings.—

169 ~~(8)(a) Upon clear and convincing evidence that the~~
170 ~~contraband article was being used in violation of the Florida~~
171 ~~Contraband Forfeiture Act, the The court shall order the seized~~



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172 property forfeited to the seizing law enforcement agency upon
173 clear and convincing evidence that:

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

176 2. The claimant is the owner of the property; and

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

179 a. Been placed into a pretrial intervention program;

180 b. Been placed into a diversion program;

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

183 d. Entered a plea of guilty;

184 e. Entered a plea of nolo contendere; or

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

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

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



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198 basis for the forfeiture proceeding was discharged by acquittal,
199 dismissal, or nolle prosequi, the seizing agency shall return
200 the property to the owner within 5 days ~~Under such~~
201 ~~circumstances, the seizing agency shall not assess any towing~~
202 ~~charges, storage fees, administrative costs, or maintenance~~
203 ~~costs against the claimant with respect to the seized property~~
204 ~~or the forfeiture proceeding.~~

205 (b) When the claimant prevails at the conclusion of the
206 forfeiture proceeding, any decision to appeal must be made by
207 the chief administrative official of the seizing agency, or his
208 or her designee. The trial court shall require the seizing
209 agency to pay to the claimant the reasonable loss of value of
210 the seized property when the claimant prevails at trial or on
211 appeal and the seizing agency retained the seized property
212 during the trial or appellate process. The trial court shall
213 also require the seizing agency to pay to the claimant any loss
214 of income directly attributed to the continued seizure of
215 income-producing property during the trial or appellate process.
216 If the claimant prevails under this subsection ~~on appeal~~, the
217 seizing agency shall immediately release the seized property to
218 the person entitled to possession of the property as determined
219 by the court, pay any cost as assessed by the court, and may not
220 assess any towing charges, storage fees, administrative costs,
221 or maintenance costs against the claimant with respect to the
222 seized property or the forfeiture proceeding.

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223 (11) (a) The Department of Law Enforcement, in consultation
224 with the Florida Sheriffs Association and the Florida Police
225 Chiefs Association, shall develop guidelines and training
226 procedures to be used by state and local law enforcement
227 agencies and state attorneys in implementing the Florida
228 Contraband Forfeiture Act. At least annually, each state or
229 local law enforcement agency that seizes property for the
230 purpose of forfeiture shall ~~periodically~~ review such seizures ~~of~~
231 ~~assets made by the agency's law enforcement officers,~~ any
232 settlements, and any forfeiture proceedings initiated by the law
233 enforcement agency, ~~to determine whether they such seizures,~~
234 ~~settlements, and forfeitures~~ comply with the Florida Contraband
235 Forfeiture Act and the guidelines adopted under this subsection.
236 If the review suggests deficiencies, the state or local law
237 enforcement agency shall promptly take action to comply with the
238 Florida Contraband Forfeiture Act.

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

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

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



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

254 (f) When property is seized for forfeiture, the probable
255 cause supporting the seizure must be promptly reviewed by
256 supervisory personnel. The seizing agency's legal counsel must
257 be notified as soon as possible of all seizures and shall
258 conduct a review to determine whether there is legal sufficiency
259 to proceed with a forfeiture action.

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

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

272 (i) Law enforcement agency personnel involved in the
273 seizure of property for forfeiture shall receive basic training
274 and continuing education as required by the Florida Contraband

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275 Forfeiture Act. Each agency shall maintain records demonstrating
276 each law enforcement officer's compliance with this requirement.
277 Among other things, the training must address the legal aspects
278 of forfeiture, including, but not limited to, search and seizure
279 and other constitutional considerations.

280 Section 4. Paragraph (c) of subsection (5) of section
281 932.7055, Florida Statutes, is amended to read:

282 932.7055 Disposition of liens and forfeited property.—

283 (5)

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

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

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

303 3. ~~After July 1, 1992, and during every fiscal year~~
304 ~~thereafter, any~~ Any local law enforcement agency that acquires
305 at least \$15,000 pursuant to the Florida Contraband Forfeiture
306 Act within a fiscal year must expend or donate no less than 25
307 ~~15~~ percent of such proceeds for the support or operation of any
308 drug treatment, drug abuse education, drug prevention, crime
309 prevention, safe neighborhood, or school resource officer
310 program or programs ~~program(s)~~. The local law enforcement agency
311 has the discretion to determine which program or programs
312 ~~program(s)~~ will receive the designated proceeds.

313
314 Notwithstanding the drug abuse education, drug treatment, drug
315 prevention, crime prevention, safe neighborhood, or school
316 resource officer minimum expenditures or donations, the sheriff
317 and the board of county commissioners or the chief of police and
318 the governing body of the municipality may agree to expend or
319 donate such funds over a period of years if the expenditure or
320 donation of such minimum amount in any given fiscal year would
321 exceed the needs of the county or municipality for such program
322 or programs ~~program(s)~~. ~~Nothing in this section precludes the~~
323 The minimum requirement for expenditure or donation of
324 forfeiture proceeds in excess of the minimum amounts established
325 in this subparagraph does not preclude expenditures or donations
326 in excess of that amount herein.

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

329 932.7061 Reporting seized property for forfeiture.-

330 (1) Every law enforcement agency shall submit an annual
331 report to the Department of Law Enforcement indicating whether
332 the agency has seized or forfeited property under the Florida
333 Contraband Forfeiture Act. A law enforcement agency receiving or
334 expending forfeited property or proceeds from the sale of
335 forfeited property in accordance with the Florida Contraband
336 Forfeiture Act shall submit a completed annual report by October
337 10 documenting the receipts and expenditures. The report shall
338 be submitted in an electronic form, maintained by the Department
339 of Law Enforcement in consultation with the Office of Program
340 Policy Analysis and Government Accountability, to the entity
341 that has budgetary authority over such agency and to the
342 Department of Law Enforcement. The annual report must, at a
343 minimum, specify the type, approximate value, court case number,
344 type of offense, disposition of property received, and amount of
345 any proceeds received or expended.

346 (2) The Department of Law Enforcement shall submit an
347 annual report to the Office of Program Policy Analysis and
348 Government Accountability compiling the information and data in
349 the annual reports submitted by the law enforcement agencies.
350 The annual report shall also contain a list of law enforcement
351 agencies that have failed to meet the reporting requirements and



Amendment No. 1

352 a summary of any action taken against the noncomplying agency by
353 the office of Chief Financial Officer.

354 (3) The law enforcement agency and the entity having
355 budgetary control over the law enforcement agency shall not
356 anticipate future forfeitures or proceeds therefrom in the
357 adoption and approval of the budget for the law enforcement
358 agency.

359 Section 6. Section 732.7062, Florida Statutes, is created
360 to read:

361 732.7062 Penalty for noncompliance with reporting
362 requirements.—A seizing agency that fails to comply with the
363 reporting requirements in s. 932.7061 is subject to a civil fine
364 of \$5,000, to be determined by the Chief Financial Officer and
365 payable to the General Revenue Fund. However, such agency is not
366 subject to the fine if, within 60 days after receipt of written
367 notification from the Department of Law Enforcement of
368 noncompliance with the reporting requirements of the Florida
369 Contraband Forfeiture Act, the agency substantially complies
370 with those requirements. The Department of Law Enforcement shall
371 submit any substantial noncompliance to the office of Chief
372 Financial Officer, which shall be responsible for the
373 enforcement of this section.

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

376 322.34 Driving while license suspended, revoked, canceled,
377 or disqualified.—

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378 (9) (a) A motor vehicle that is driven by a person under
379 the influence of alcohol or drugs in violation of s. 316.193 is
380 subject to seizure and forfeiture under ss. 932.701-932.7062
381 ~~932.706~~ and is subject to liens for recovering, towing, or
382 storing vehicles under s. 713.78 if, at the time of the offense,
383 the person's driver license is suspended, revoked, or canceled
384 as a result of a prior conviction for driving under the
385 influence.

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

397 Section 8. Subsection (4) of section 323.001, Florida
398 Statutes, is amended to read:

399 323.001 Wrecker operator storage facilities; vehicle
400 holds.-

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



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

406 (b) The officer has probable cause to believe the vehicle
407 should be seized and forfeited under chapter 379;

408 (c) The officer has probable cause to believe the vehicle
409 was used as the means of committing a crime;

410 (d) The officer has probable cause to believe that the
411 vehicle is itself evidence that tends to show that a crime has
412 been committed or that the vehicle contains evidence, which
413 cannot readily be removed, which tends to show that a crime has
414 been committed;

415 (e) The officer has probable cause to believe the vehicle
416 was involved in a traffic accident resulting in death or
417 personal injury and should be sealed for investigation and
418 collection of evidence by a vehicular homicide investigator;

419 (f) The vehicle is impounded or immobilized pursuant to s.
420 316.193 or s. 322.34; or

421 (g) The officer is complying with a court order.

422 Section 9. Paragraph (b) of subsection (3) of section
423 328.07, Florida Statutes, is amended to read:

424 328.07 Hull identification number required.-

425 (3)

426 (b) If any of the hull identification numbers required by
427 the United States Coast Guard for a vessel manufactured after
428 October 31, 1972, do not exist or have been altered, removed,

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429 destroyed, covered, or defaced or the real identity of the
430 vessel cannot be determined, the vessel may be seized as
431 contraband property by a law enforcement agency or the division,
432 and shall be subject to forfeiture pursuant to ss. 932.701-
433 932.7062 ~~932.706~~. Such vessel may not be sold or operated on the
434 waters of the state unless the division receives a request from
435 a law enforcement agency providing adequate documentation or is
436 directed by written order of a court of competent jurisdiction
437 to issue to the vessel a replacement hull identification number
438 which shall thereafter be used for identification purposes. No
439 vessel shall be forfeited under the Florida Contraband
440 Forfeiture Act when the owner unknowingly, inadvertently, or
441 neglectfully altered, removed, destroyed, covered, or defaced
442 the vessel hull identification number.

443 Section 10. Paragraph (c) of subsection (2) of section
444 817.625, Florida Statutes, is amended to read:

445 817.625 Use of scanning device or reencoder to defraud;
446 penalties.—

447 (2)

448 (c) Any person who violates subparagraph (a)1. or
449 subparagraph (a)2. shall also be subject to the provisions of
450 ss. 932.701-932.7062 ~~932.706~~.

451 Section 11. Subsection (3) of section 932.7055, Florida
452 Statutes, is amended to read:

453 932.7055 Disposition of liens and forfeited property.—



Amendment No. 1

454 (3) If the forfeited property is subject to a lien
455 preserved by the court as provided in s. 932.703(6) (a) ~~(b)~~, the
456 agency shall:

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

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

461 Section 12. This act shall take effect July 1, 2016
462

463

464 -----
T I T L E A M E N D M E N T

465 Remove everything before the enacting clause and insert:
466 An act relating to contraband forfeiture; amending s. 932.701,
467 F.S.; revising the applicability of a short title; amending s.
468 932.703, F.S.; specifying that property may be seized only upon
469 the arrest of the owner of the property for a violation of a
470 criminal law that renders the property a contraband article;
471 requiring specified persons approve a settlement; specifying
472 nature of title interest in seized property; providing
473 circumstances when property can be deemed contraband; amending
474 s. 932.704, F.S.; providing circumstances when a court shall
475 order the forfeiture of seized property; providing circumstances
476 for return of seized property to the owner; requiring seizing
477 agency to be responsible for costs in specified circumstances;
478 requiring various review procedures for seizure records held by
479 a seizing agency; prohibiting compensation of law enforcement

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480 officers from being dependent on meeting a seizure quota;
481 requiring the adoption and implementation of written policies,
482 procedures, and training; requiring training for personnel
483 involved in property seizure; amending s. 932.7055, F.S.;
484 providing conforming changes; creating s. 932.7061, F.S.;
485 providing reporting requirements for seized property for
486 forfeiture; creating s. 932.7062, F.S.; providing penalties for
487 noncompliance with reporting requirements; amending ss. 322.34,
488 323.001, 328.07, 817.625, and 932.7055, F.S.; providing
489 conforming changes; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1043 Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability
SPONSOR(S): Hager and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 936

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

SUMMARY ANALYSIS

Autism spectrum disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication. The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM 5).

It has been estimated that individuals with ASD have up to seven times more contacts with law enforcement agencies during their lifetimes than other individuals. There is currently no requirement in Florida for any mental health or similar professional to assist during law enforcement interactions with individuals diagnosed with ASD.

The bill requires a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional, each of whom must have experience treating, teaching, or assisting patients or clients who have been diagnosed with autism, an autism spectrum disorder, or a related developmental disability, or must be certified in special education with a concentration focused on persons with autism, to be present to assist when:

- A law enforcement officer, correctional officer, or another public safety official is conducting an interview; and
- The interviewed person is an individual with autism, an autism spectrum disorder, or a related developmental disability.

The county/municipality mandates provision of article VII, section 18, of the Florida Constitution may apply because agencies will have to procure the services of a qualified professional in certain circumstances. This may result in an indeterminate positive fiscal impact; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

This bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Autism Spectrum Disorder

Autism spectrum disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication. The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD when the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM-5) was published.¹

Florida law defines several terms relating to autism:

- “Autism” is defined in s. 393.063(3), F.S., as “a pervasive, neurologically based developmentally based disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood, individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and non-verbal communication and imaginative ability, and markedly restrictive repertoire of activities and interests.”
- “Developmental disability” is defined in s. 393.063(9), F.S., defines “developmental as “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”
- “Autism spectrum disorder” is defined in ss. 627.6686(2)(b) and 641.31098(2)(b), F.S., as “any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association: 1. Autistic disorder. 2. Asperger’s syndrome. 3. Pervasive developmental disorder not otherwise specified.”

Although an exact population count of individuals with ASD does not exist, the Centers for Disease Control’s (CDC) Autism Developmental Disabilities Monitoring (ADDM) Network estimates that approximately one in 68 children have been identified with ASD.² This estimate is based on surveys of 8-year-old children who were living in 11 communities in the United States in 2010.³ Boys are five times more likely than girls to be identified with ASD and white children are more likely to be identified than black or Hispanic children.⁴

Law Enforcement and ASD

It has been estimated that individuals with ASD have up to seven times more contacts with law enforcement agencies during their lifetimes.⁵ These contacts occur under a variety of circumstances. Law enforcement officers often come into contact with persons with ASD through a call reporting a domestic disturbance, a suspicious person who is acting in an unusual manner, or when responding to a medical emergency.⁶

There is currently no requirement in Florida for any mental health or similar professional to assist law enforcement during interactions with individuals diagnosed with ASD.

¹ CENTERS FOR DISEASE CONTROL & PREVENTION, *Facts about ASD*, <http://www.cdc.gov/ncbddd/autism/facts.html> (last visited Jan. 22, 2016); AUTISM SPEAKS, *What is Autism*, <https://www.autismspeaks.org/what-autism> (last visited Jan. 22, 2016).

² CENTERS FOR DISEASE CONTROL & PREVENTION, *Data and Statistics*, <http://www.cdc.gov/ncbddd/autism/data.html> (last visited Jan. 22, 2016).

³ CENTERS FOR DISEASE CONTROL & PREVENTION, *10 Things You Need to Know about CDC’s Latest Report from The Autism and Developmental Disabilities Monitoring Network*, <http://www.cdc.gov/features/dsautismdata/index.html> (last visited Jan. 22, 2016).

⁴ *Id.*

⁵ Pamela Kulbarsh, *Law Enforcement and Autism*, OFFICER.COM (Feb. 15, 2013), <http://www.officer.com/article/10880086/law-enforcement-and-autism> (last visited Jan. 22, 2016).

⁶ *Id.*

Effect of the Bill

The bill cites the act as the "Wes Kleinert Fair Interview Act."

The bill provides legislative encouragement for various protections for individuals with certain medical conditions or disabilities.

The bill requires a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional, each of whom must have experience treating, teaching, or assisting patients or clients who have been diagnosed with autism, an autism spectrum disorder, or a related developmental disability, or must be certified in special education with a concentration focused on persons with autism, to be present to assist when:

- A law enforcement officer, correctional officer, or another public safety official is conducting an interview; and
- The interviewed person is an individual with autism, an autism spectrum disorder, or a related developmental disability.

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

B. SECTION DIRECTORY:

Section 1. Creating the "Wes Kleinert Fair Interview Act."

Section 2. Creating an unnumbered section of statute relating to legislative intent.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**A. FISCAL IMPACT ON STATE GOVERNMENT:****1. Revenues:**

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

2. Expenditures:

The bill may have an indeterminate impact on state government expenditures because state law enforcement agencies will have to procure the services of a qualified professional in certain circumstances.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**1. Revenues:**

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

2. Expenditures:

The bill may have an indeterminate impact on local government expenditures because local law enforcement agencies will have to procure the services of a qualified professional in certain circumstances.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The exact number of individuals diagnosed with ASD is unknown. Additionally, most law enforcement agencies do not collect data on the number or type of encounters that law enforcement officers have with individuals diagnosed with ASD. However, the bill requires law enforcement officers and other government employees to utilize a specified professional for *any* kind of interview with an individual who has specified disorders. While it is likely a fiscal impact on law enforcement agencies will occur, the amount of that fiscal impact is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of article VII, section 18, of the Florida Constitution may apply because this bill requires county and municipal law enforcement agencies to procure the services of a qualified professional in certain circumstances. To the extent that political subdivisions, including cities and counties (through the police department or the sheriff's department), are obligated to pay for a qualified professional's services, the bill could constitute a mandate as defined in Article VII, Section 18(a) of the Florida Constitution for which no funding source is provided to such political subdivisions.

Article VII, section 18(a), of the Florida Constitution, states that county and municipality governments are not bound by any general law requiring one or more county or municipality governments to spend funds, unless the Legislature has determined that such law fulfills an important state interest and meets one of a number of enumerated exceptions.⁷

Pursuant to article VII, section 18, of the Florida Constitution, laws that will have an "insignificant fiscal impact" are exempt from the requirements of Section 18.⁸ The term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. The 2010 United States census, which contains the most recent federal census data, indicates that the Florida population is 18,801,310.⁹ A bill having a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.88 million would be characterized as a mandate. It is unknown at this time the exact amount counties and cities would be required to spend to implement the requirements of the bill.

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 does not provide a statute reference for the language of the bill.

The bill requires law enforcement officers to have a specified professional present for interview of an individual with a specified disorder, but does not specify what types of interviews this requirement

⁷F.L.A. CONST. art. VII, s. 18(a).

⁸FLA. CONST. art. VII s. 18(d).

⁹U.S. Census Bureau, 2010 Census Interactive Population Search, <http://www.census.gov/2010census/popmap/ipmtext.php?fl=12> (last visited Jan. 22, 2016).

applies to. Additionally, the bill does not specify what options a law enforcement officer has available in an emergency situation involving an individual with a specified disorder.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

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27 autism, an autism spectrum disorder, or a related developmental
28 disability and notifying the family members, caregivers, and
29 primary intervention professionals of such individuals when a
30 crisis occurs.

31 (2) A psychiatrist, psychologist, mental health counselor,
32 special education instructor, clinical social worker, or related
33 professional, each of whom must have experience treating,
34 teaching, or assisting patients or clients who have been
35 diagnosed with autism, an autism spectrum disorder, or a related
36 developmental disability, or must be certified in special
37 education with a concentration focused on persons with autism,
38 an autism spectrum disorder, or a related developmental
39 disability, must be present to assist a law enforcement officer,
40 a correctional officer, or another public safety official during
41 all interviews of an individual with autism, an autism spectrum
42 disorder, or a related developmental disability, whether the
43 individual being interviewed is the victim of a crime, the
44 suspect in a crime, or the defendant formally accused of a crime
45 or is otherwise involved in the criminal justice system.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Criminal Justice
 2 Subcommittee

3 Representative Hager offered the following:
 4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. This act may be cited as the "Wes Kleinert Fair
 8 Interview Act."

9 Section 2. Section 943.0439, Florida Statutes, is created
 10 to read:

11 943.0439 Interviews of suspects or defendants with autism
 12 spectrum disorders.-

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

14 (a) "Autism spectrum disorder" has the same meaning as
 15 provided in s. 627.6686.

16 (b) "Law enforcement officer" has the same meaning as
 17 provided in s. 943.10.



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18 (c) "Qualified professional" means a mental health
19 counselor, a behavioral therapist, or a related professional
20 with professional experience teaching, treating, or caring for
21 patients or clients who have an autism spectrum disorder, or a
22 psychiatrist or psychologist.

23 (2) A qualified professional must be present to assist a
24 law enforcement officer, if practicable, during an interview of
25 an individual if:

26 (a) The individual is a suspect or defendant in a criminal
27 case;

28 (b) The individual has been diagnosed with an autism
29 spectrum disorder; and

30 (c) The law enforcement officer knows or should know that
31 the individual has been diagnosed with an autism spectrum
32 disorder.

33 Section 3. This act shall take effect July 1, 2016.
34

35 -----
36 **T I T L E A M E N D M E N T**

37 Remove everything before the enacting clause and insert:
38 An act relating to interviews of suspects or defendants with
39 autism spectrum disorders; creating the "Wes Kleinert Fair
40 Interview Act"; creating s. 943.0439, F.S.; providing
41 definitions; requiring a qualified professional to assist a law
42 enforcement officer during interviews in specified
43 circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1089 Criminal History Information
SPONSOR(S): Rooney, Jr.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 628

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

SUMMARY ANALYSIS

Section 943.053(3)(b), F.S., in relevant part, provides that the fee per record for criminal history information provided by the Florida Department of Law Enforcement (FDLE) is \$24.00 per name submitted, except that the fee for the vendors of the Department of Children and Families, the Department of Juvenile Justice, and the Department of Elderly Affairs is \$8.00 for each name submitted.

The bill adds the Agency for Persons with Disabilities (APD) to the list of other state agencies; thereby, authorizing APD's vendors to pay \$8.00 per background screening.

FDLE projects a revenue loss due to this bill. Please see "FISCAL IMPACT ON STATE GOVERNMENT," *infra*.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 943.053, F.S., in relevant part, provides that the fee per record for criminal history information provided by the Florida Department of Law Enforcement (FDLE) is \$24.00 per name submitted, except that the fee for the guardian ad litem program and vendors of the Department of Children and Families (DCF), the Department of Juvenile Justice, and the Department of Elderly Affairs is \$8.00 for each name submitted.¹

Until May 25, 2015, the DCF performed background screening services for the Agency for Persons with Disabilities (APD). As such, the screening fee for state criminal history records checks for APD's providers, vendors, employers, Consumer Directed Care Plus (CDC+) participants, and representatives (collectively hereinafter referred to as "vendors") was \$8.00.

On May 25, 2015, however, the APD began participating in the state Provider Background Screening Clearinghouse, which required APD's background screenings to be processed separately from the DCF's screenings. Due to this separation, APD's vendors are now required to pay \$24.00 per screening.

Effect of the Bill

The bill amends s. 943.053(3)(b), F.S., to include APD in the list of other state agencies; thereby, authorizing APD's vendors to pay \$8.00 per background screening.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

FDLE estimates a future loss of revenue of \$115,200 annually due to the bill's authorization for APD to pay \$8.00, rather than \$24.00 per record. FDLE began receiving such revenue from APD at the end of May 2015.

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.

¹ s. 943.053(3)(b), F.S.
STORAGE NAME: h1089.CRJS.DOCX
DATE: 1/22/2016

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill reduces the amount that the APD's vendors will have to pay for background screening fees from \$24.00 to \$8.00.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to criminal history information;
 3 amending s. 943.053, F.S.; providing a reduced fee for
 4 criminal history information provided to the Agency
 5 for Persons with Disabilities under specified
 6 provisions; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (b) of subsection (3) of section
 11 943.053, Florida Statutes, is amended to read:

12 943.053 Dissemination of criminal justice information;
 13 fees.—

14 (3)

15 (b) The fee per record for criminal history information
 16 provided pursuant to this subsection and s. 943.0542 is \$24 per
 17 name submitted, except that the fee for the guardian ad litem
 18 program and vendors of the Department of Children and Families,
 19 the Department of Juvenile Justice, the Agency for Persons with
 20 Disabilities, and the Department of Elderly Affairs shall be \$8
 21 for each name submitted; the fee for a state criminal history
 22 provided for application processing as required by law to be
 23 performed by the Department of Agriculture and Consumer Services
 24 shall be \$15 for each name submitted; and the fee for requests
 25 under s. 943.0542, which implements the National Child
 26 Protection Act, shall be \$18 for each volunteer name submitted.

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27 | The state offices of the Public Defender shall not be assessed a
28 | fee for Florida criminal history information or wanted person
29 | information.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1149 Alternative Sanctioning
SPONSOR(S): Spano
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1256

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

SUMMARY ANALYSIS

Any person who is found guilty by a jury or the court sitting without a jury, or who enters a plea of guilty or nolo contendere may be placed on probation regardless of whether adjudication is withheld. Section 948.06, F.S., provides procedures regarding a violation of the terms and conditions imposed on a person who is on probation. Upon violation, the probationer is arrested and brought before the sentencing court. At the first hearing on the violation, the probationer is advised of the charge. If the probationer admits the charge, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.

The bill creates an alternative sanctioning program ("program") for technical violations of probation. The bill defines "technical violation" as any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. The bill allows the chief judge of each judicial circuit, in consultation with the state attorney, public defender, and Department of Corrections, to establish an alternative sanctioning program and determine which technical violations will be eligible for alternative sanctioning.

An eligible probationer who commits a technical violation may choose to participate in the program and admit to the violation, comply with a probation officer's recommended sanctions, and waive his or her right to a hearing on the violation. A probation officer's recommended alternative sanction must be reviewed by the court, which may approve the sanction or remove the probationer from the program.

The bill does not appear to have a fiscal impact.

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Probation

Section 948.01, F.S., provides the circumstances under which the trial court can place a person on probation¹ or community control² (collectively, hereinafter referred to as “probation”). Any person who is found guilty by a jury or the court sitting without a jury or who enters a plea of guilty or nolo contendere may be placed on probation regardless of whether adjudication is withheld.³

The Department of Corrections (“Department”) supervises all probationers sentenced in circuit court.⁴ Section 948.03, F.S., provides a list of standard conditions of probation. In addition to the standard conditions of probation, the court may add additional conditions of probation that it deems proper.⁵

Section 948.06, F.S., provides procedures regarding a violation of the terms and conditions required of a person on probation. Upon violation, the probationer is arrested and brought before the sentencing court. At the first hearing on the violation, the probationer is advised of the charge. If the probationer admits the charge, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.⁶

If the probationer denies having violated the terms of the probation, the court may commit him or her to jail or release him or her with or without bail to await further hearing, or it may dismiss the charge of probation violation.⁷ Unless dismissed, the court must conduct a hearing and determine whether the probationer has violated the terms of his or her probation.⁸ If the court finds that the probationer has violated, the court may immediately revoke, modify, or continue the probation or place the probationer into a community control program.⁹

If probation is revoked, the court must adjudicate the probationer guilty of the offense charged and proven or admitted, unless he or she has previously been adjudicated guilty. The court may then impose any sentence that it might have originally imposed for the offense for which the probationer was placed on probation or into community control.

Technical Violations

Section 948.06(1)(g), F.S., describes technical violations as a violation of probation that is not a new felony or misdemeanor.¹⁰ During Fiscal Year 2014-15, approximately 94,000 violation reports were submitted due to probation violations. Of this number, 61,777 (or 66%) were technical violations.¹¹ Because of overcrowded court dockets, it often takes weeks and multiple hearings for a probationer to

¹ Section 948.001(5), F.S., defines “probation” as a form of community supervision requiring specified contacts with parole and probation officers and other terms and conditions as provided in s. 948.03, F.S.

² Section 948.001(3), F.S., defines “community control” as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.

³ s. 948.01(1), F.S.

⁴ *Id.*

⁵ s. 948.03(2), F.S.

⁶ s. 948.06(2)(a), F.S.

⁷ s. 948.06(2)(c), F.S.

⁸ s. 948.06(2)(d), F.S.

⁹ s. 948.06(2)(e), F.S.

¹⁰ Section 948.06(1)(g), F.S., allows the chief judge of each judicial circuit to direct the Department to use a notification letter for technical violations in lieu of a violation report, affidavit, and warrant.

¹¹ Department of Corrections, Agency Analysis 2016 House Bill 1149 p. 2 (Jan. 20, 2016).

be sentenced as the result of a violation of probation. If the probationer is charged with a technical violation, these hearings often result in the court reinstating or modifying the probation with additional sanctions imposed. If the probationer is held in jail pending a violation hearing, he or she may lose employment and be unable to pay victim restitution, attend treatment, or comply with supervision requirements.

In an effort to improve the violation of probation process, the Department's Office of Community Corrections developed the Alternative Sanctions Program to reduce recidivism for supervised probationers by utilizing collaborative efforts between courts, probation, and law enforcement. The program, created through administrative order in each circuit, allows a technical violation to be addressed immediately with the probationer through an administrative process.¹² Circuit court judges in 12 counties within six judicial circuits have agreed to implement the Alternative Sanctions Program via administrative order, including Alachua, Brevard, Desoto, Flagler, Manatee, Palm Beach, Pinellas, Putnam, Sarasota, Seminole, St. Johns, and Volusia.¹³

Effect of the Bill

The bill creates an alternative sanctioning program ("program") for technical violations of probation. The bill defines technical violations as any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. The bill allows the chief judge of each judicial circuit, in consultation with the state attorney, public defender, and the Department, to establish an alternative sanctioning program and determine which technical violations will be eligible for alternative sanctioning.

If an eligible offender on probation is alleged to have committed a technical violation, the offender may either waive participation in the program or elect to participate. By participating in the program, the offender admits to the violation, agrees to the probation officer's recommended sanction, and waives the right to:

- Be represented by legal counsel;
- Require the state to prove his or her guilt before a neutral and detached hearing body;
- Subpoena witnesses and present to a judge evidence in his or her defense;
- Confront and cross-examine adverse witnesses; and
- Receive a written statement from a factfinder as to the evidence relied on and the reasons for the sanction imposed.

Before imposing the sanction, the probation officer must submit the recommended sanction and documentation of the offender's admission of violation and agreement with the sanction to the court. The court has the discretion to impose the recommended sanction or to direct the Department to submit a violation report, affidavit, and warrant like a normal case not in the program. Any participation by the offender in the program is solely voluntary and the offender may elect to discontinue participation in the program as long as it is before the issuance of the court order imposing the recommended sanction. When an offender quits the program, the probation officer may submit a violation report, affidavit and warrant to the court concerning the violation. Any prior admission by the offender may not be used as evidence in subsequent proceedings.

The chief judge, in order to establish the program, must issue an administrative order specifying eligibility, which technical violations will be eligible for program, which sanctions may be recommended by a probation officer, and the process for reporting violations of the program.

B. SECTION DIRECTORY:

Section 1. Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

¹² *Id.*

¹³ *Id.*

Section 2. Providing 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 Office of State Court Administration reports that the fiscal impact cannot be accurately determined due to the unavailability of data needed to quantifiably establish the bill's effects on judicial time and workload.¹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The Department reports that the bill may decrease expenditures by reducing law enforcement arrests, jail incarceration of offenders pending technical violation hearings, probation officer time spent at these violation hearings, and court personnel involved in the violation hearing process.¹⁵

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, or 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:

¹⁴ Office of State Court Administrator, Agency Analysis of 2016 House Bill 1149, p. 2 (Jan. 16, 2016).

¹⁵ Department of Corrections, Agency Analysis 2016 House Bill 1149 p. 4 (Jan. 20, 2016).

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

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A bill to be entitled
 An act relating to alternative sanctioning; amending
 s. 948.06, F.S.; authorizing the chief judge of each
 judicial circuit, in consultation with specified
 entities, to establish an alternative sanctioning
 program; defining the term "technical violation";
 requiring the chief judge to issue an administrative
 order when creating an alternative sanctioning
 program; specifying requirements for the order;
 authorizing an offender who allegedly committed a
 technical violation of supervision to waive
 participation in or elect to participate in the
 program, admit to the violation, agree to comply with
 the recommended sanction, and agree to waive certain
 rights; requiring the probation officer to submit the
 recommended sanction and certain documentation to the
 court if the offender admits to committing the
 violation; authorizing the court to impose the
 recommended sanction or direct the Department of
 Corrections to submit a violation report, affidavit,
 and warrant to the court; specifying that an
 offender's participation in an alternative sanctioning
 program is voluntary; authorizing a probation officer
 to submit a violation report, affidavit, and warrant
 to the court in certain circumstances; providing an
 effective date.

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

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

Section 1. Paragraph (h) of subsection (1) of section 948.06, Florida Statutes, is redesignated as paragraph (i), and a new paragraph (h) is added to that subsection, to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.—

(1)

(h)1. The chief judge of each judicial circuit, in consultation with the state attorney, the public defender, and the department, may establish an alternative sanctioning program in which the department, after receiving court approval, may enforce specified sanctions for certain technical violations of supervision. For purposes of this section, the term "technical violation" means any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense.

2. To establish an alternative sanctioning program, the chief judge must issue an administrative order specifying:

a. Eligibility criteria.

b. The technical violations that are eligible for the program.

c. The sanctions that may be recommended by a probation officer for each technical violation.

53 d. The process for reporting technical violations through
 54 the alternative sanctioning program, including approved forms.

55 3. If an offender is alleged to have committed a technical
 56 violation of supervision that is eligible for the program, the
 57 offender may:

58 a. Waive participation in the alternative sanctioning
 59 program, in which case the probation officer may submit a
 60 violation report, affidavit, and warrant to the court in
 61 accordance with this section; or

62 b. Elect to participate in the alternative sanctioning
 63 program after receiving written notice of an alleged technical
 64 violation and a disclosure of the evidence against the offender,
 65 admit to the technical violation, agree to comply with the
 66 probation officer's recommended sanction if subsequently ordered
 67 by the court, and agree to waive the right to:

68 (I) Be represented by legal counsel.

69 (II) Require the state to prove his or her guilt before a
 70 neutral and detached hearing body.

71 (III) Subpoena witnesses and present to a judge evidence
 72 in his or her defense.

73 (IV) Confront and cross-examine adverse witnesses.

74 (V) Receive a written statement from a factfinder as to
 75 the evidence relied on and the reasons for the sanction imposed.

76 4. If the offender admits to committing the technical
 77 violation and agrees with the probation officer's recommended
 78 sanction, the probation officer must, before imposing the

79 sanction, submit the recommended sanction to the court as well
 80 as documentation reflecting the offender's admission to the
 81 technical violation and agreement with the recommended sanction.

82 5. The court may impose the recommended sanction or may
 83 direct the department to submit a violation report, affidavit,
 84 and warrant to the court in accordance with this section.

85 6. An offender's participation in an alternative
 86 sanctioning program is voluntary. The offender may elect to
 87 waive or discontinue participation in an alternative sanctioning
 88 program at any time before the issuance of a court order
 89 imposing the recommended sanction.

90 7. If an offender waives or discontinues participation in
 91 an alternative sanctioning program, the probation officer may
 92 submit a violation report, affidavit, and warrant to the court
 93 in accordance with this section. The offender's prior admission
 94 to the technical violation may not be used as evidence in
 95 subsequent proceedings.

96 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 Spano offered the following:

4
5 **Amendment**

6 Remove line 42 and insert:

7 supervision. For purposes of this paragraph, the term "technical

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1333 Sexual Offenders
SPONSOR(S): Baxley
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1662

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

SUMMARY ANALYSIS

The bill amends a variety of statutes related to sexual predators and offenders to bring them further in line with the federal Adam Walsh Act.

Specifically, the bill removes language that currently prevents a parent or guardian convicted of specified offenses of kidnapping, false imprisonment, or luring or enticing a child against his or her minor child from being designated as a sexual predator or sexual offender. Under the bill, such a parent or guardian may be designated a sexual predator or offender if he or she commits one of the above-mentioned specified offenses and the offense had a sexual component.

The bill also:

- Amends various definitions and provides consistency among relevant statutes;
- Expands the types of information that can be registered or updated through FDLE's online system;
- Clarifies the appropriate entity to which a sexual predator or offender must report;
- Modifies reporting requirements for international travel;
- Requires offenders taking online courses to report such information and for institutions of higher education to be notified of such attendance;
- Clarifies obligations to obtain a driver license or identification card;
- Removes inoperable language that was inadvertently left in s. 943.0435, F.S.;
- Clarifies to which court an offender must petition for removal from registration requirements; and
- Clarifies that the "Romeo and Juliet" exception that allows removal from registration requirements applies only to consensual acts.

Additionally, the bill requires offenders designated as a sexual offender for convictions of lewd or lascivious battery upon an elderly person to report quarterly and for life and prohibit such offenders from being eligible for removal from registration requirements.

The bill will likely have a positive indeterminate prison bed impact to DOC, and an insignificant negative fiscal impact to DOC, DJJ, DHSMV, and local governments. See "Fiscal Analysis and Economic Impact Statement," *infra*.

The bill is effective on October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexual Predator and Sexual Offender Qualifying Offenses

Sexual Predator Qualifying Offenses

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

1. A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
 - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian;¹
 - Section 794.011, F.S. (sexual battery);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 847.0145, F.S. (selling or buying of minors); or
2. Any felony violation, or attempt thereof, of:
 - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
 - Section 394.4593(2), F.S. (sexual misconduct with a patient);
 - Sections 787.01 (kidnapping), 787.02 (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian;²
 - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;³
 - Section 794.05, F.S. (unlawful activity with certain minors);
 - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
 - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 810.145(8)(b), F.S. (relating to video voyeurism);
 - Section 825.1025, F.S. (lewd or lascivious battery upon or in the presence of an elderly person or disabled person);
 - Section 827.071, F.S. (sexual performance by a child);
 - Section 847.0135, F.S., excluding s. 847.0135(6), F.S. (computer pornography);
 - Section 847.0145, F.S. (selling or buying of minors);
 - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
- The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

¹ These convictions can only be used as a qualifying offense for designation as a sexual predator if there is a finding that the conviction has a sexual component. The Fourth District Court of Appeal has held that the sexual offender designation that resulted from a false imprisonment conviction that had no sexual motivation failed the "rationally related" test. The Court held the state has an interest in protecting the public from sexual offenders and the designation of a person as a sexual offender is rationally related to that goal. However, if it is clear that the qualifying crime is totally devoid of a sexual component, such rational basis is lost. *Raines v. State*, 805 So. 2d 999, 1003 (Fla. 4th DCA 2001); see also *Robinson v. State*, 804 So. 2d 451 (Fla. 4th DCA 2001).

² *Id.*

³ Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

Sexual Offender Qualifying Offenses

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

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
 - Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
 - Section 394.4593(2), F.S. (sexual misconduct with a patient);
 - Sections 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian;
 - Section 787.06(3)(b),(d),(f),(g), or former (h), F.S. (relating to human trafficking);
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.;
 - Section 794.05, F.S. (unlawful activity with certain minors);
 - Former s. 796.03, F.S. (procuring a person under the age of 18 for prostitution);
 - Former s. 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution);
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age);
 - Section 810.145(8), F.S. (relating to video voyeurism);
 - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person);
 - Section 827.071, F.S. (sexual performance by a child);
 - Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity);
 - Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.;
 - Section 847.0137, F.S. (transmission of pornography by electronic device or equipment);
 - Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment);
 - Section 847.0145, F.S. (selling or buying of minors);
 - Section 916.1075(2), F.S. (sexual misconduct with a forensic client); or
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
2. Has been released on or after October 1, 1997, from the sanction⁴ imposed for any conviction of an offense described above.

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term "sexual offender" that include the list of qualifying offenses enumerated above.

Specified Qualifying Offenses Involving a Minor Child and Parent or Guardian

Sexual Predator and Sexual Offender Qualifying Offenses

There are specified offenses included in the enumerated list of qualifying offenses that cannot be used as a basis for a designation as a sexual predator or offender if the defendant is the parent or guardian or the minor victim, including:

- Capital, life, or first degree felony violations of ss. 787.01 (kidnapping) or 787.02, F.S. (false imprisonment); or
- Felony violations of ss. 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child).⁵

⁴ A sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. s. 943.0435(1)(a), F.S.

As noted above, a conviction for one of the above-mentioned offenses will not result in a person being designated as a sexual predator or sexual offender if the conviction is found to lack a sexual component, regardless of whether that person is the victim's parent or guardian.⁶ Florida Department of Law Enforcement (FDLE) reports that they currently review all convictions of kidnapping, false imprisonment, and luring or enticing a child, where the victim is a minor and the defendant is not the parent or guardian, to ensure that there is a sexual intent or motivation to the conviction prior to using such conviction as a basis for a sexual predator or sexual offender designation.⁷

Loitering and Prowling by a Person Convicted of a Sexual Offense

Section 856.022, F.S., prohibits a person convicted of specified sexual offenses⁸ from being within 300 feet of a place where children are congregating. A person commits the offense of loitering or prowling⁹ by a person convicted of a sexual offense, which is a first degree misdemeanor,¹⁰ if he or she:

- Knowingly contacts, etc. a child under 18 years of age in any public park with the intent to engage in conduct of a sexual nature or to make a communication of any type with any content of a sexual nature;¹¹ or
- Knowingly is present in any child care facility or school containing any students or on real property comprising any child care facility or school containing any students when the child care facility or school is in operation and he or she:¹²
 - Fails to notify the child care facility owner or the school principal's office when he or she arrives and departs the child care facility or school; or
 - Fails to remain under direct supervision of a school official¹³ or designated chaperone when present in the vicinity of children.

This section does not apply to a person who has been removed from the requirement to register.¹⁴

Sexual offenses specified in this section, in part include, convictions of ss. 787.01, (kidnapping), 787.02, (false imprisonment), or 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian.

⁵ ss. 775.21(4) and 943.0435(1), F.S.

⁶ See *supra* note 1.

⁷ Email from Ron Draa, Legislative Affairs Director, Florida Department of Law Enforcement (FDLE), HB 1333, January 20, 2016.

⁸ s. 856.022(1), F.S.

⁹ Section 856.021, F.S., provides it is a second degree misdemeanor for a person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. The section further provides that circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern. A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

¹⁰ 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.

¹¹ Section 856.022(4)(a), F.S., further provides that this provision applies only to a person who has committed an offense enumerated in the statute whose offense was committed on or after May 26, 2010. "Contacting" for this statute includes approaching or communicating with a child. "Public park" includes buildings or playgrounds in a public park, or on real property comprising of any public park.

¹² ss. 856.022(4)(b)1., F.S. This provision provides a student includes children in prekindergarten through grade 12. A person cannot be convicted of the offense of this specified offense of loitering or prowling if the person had previously provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner.

¹³ Section 856.022(4)(b), F.S., defines the term "school official" to mean a principal, a school resource officer, a teacher or any other employee of the school, the superintendent of schools, a member of the school board, a child care facility owner, or a child care provider.

¹⁴ s. 856.022, F.S.

Effect of the Bill

The bill amends ss. 775.21, 856.022, 943.0435, 944.606, and 944.607, F.S., to remove language associated with the above-mentioned specified offenses that prevents a parent or guardian who committed such a specified qualifying offense against his or her minor child for a sexual purpose from being designated as a sexual predator or offender. Therefore, if a parent or guardian is convicted for kidnapping, false imprisonment, or luring or enticing a child against his or her minor child and such offense had a sexual component, this will result in the parent or guardian being designated as a sexual predator or sexual offender.

Additionally, the bill removes this language from any references to the applicable qualifying offenses found within the above-mentioned statutes to conform references to the new definition of the qualifying offenses.

The removal of this language expands the instances that can result in a person being designated a sexual predator or sexual offender and, thus, subject to registration requirements.

FDLE reports it they will be expanding its review process of these specified convictions to include cases where the defendant is the parent or guardian of the minor victim ensuring that each conviction used for a sexual predator or offender designation includes a sexual component.¹⁵

The bill also amends s. 856.022, F.S., relating to loitering or prowling by a person convicted of a sexual offense, to remove the above-mentioned language from the enumerated list of offenses.

Juvenile Sexual Offenders

Section 943.0435, F.S., provides, in part, that a juvenile, 14 years old or older, who is adjudicated delinquent for specified enumerated offenses, on or after July 1, 2007, is designated as a "sexual offender."¹⁶ A juvenile designated as a sexual offender under this provision is required to register in the same manner as an adult designated as a sexual offender. The offenses that qualify a juvenile as a sexual offender include:

- Section 794.011, F.S. (sexual battery), excluding s. 794.011(10), F.S.;
- Section 800.04(4)(a)2., F.S. (lewd or lascivious battery by specified sexual activity)¹⁷ where the:
 - Victim is under 12 years of age; or
 - Court finds sexual activity by the use of force or coercion;
- Section 800.04(5)(c)1., F.S. (specified act of lewd or lascivious molestation)¹⁸ where the:
 - Defendant is less than 18 years of age;
 - Victim less than 12 years of age; and
 - Court finds molestation involved unclothed genitals; or
- Section 800.04(5)(d), F.S. (specified act of lewd or lascivious molestation) where the:
 - Defendant is less than 18 years of age;
 - Victim is 12 years of age or older but less than 16 years; and
 - Court finds the use of force or coercion and unclothed genitals.

Effect of the Bill

¹⁵ *Id.*

¹⁶ ss. 943.0435(1)(a)1.d., F.S. Additionally, this section requires the court to make a written finding of the age of a juvenile at the time of the offense.

¹⁷ Section 800.04(4)(a)2., F.S., prohibits a person from committing a lewd or lascivious battery by encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity

¹⁸ Section 800.04(5)(a), F.S., defines a lewd and lascivious molestation to mean a person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator.

The bill clarifies that a juvenile offender has committed a qualifying offense requiring a designation as a sexual offender if he or she is adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, an offense in Florida which is similar to one of the above-mentioned statutes and which was redesignated from a former statute number.

The bill amends s. 943.0515, F.S., to conform the section to these changes made by the act.

Sexual Predator and Sexual Offender Registration - Generally

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.¹⁹ A sexual predator or sexual offender must comply with a number of statutory registration requirements.²⁰ Failure to comply with these requirements is generally a third degree felony.²¹

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.²² During initial registration, a sexual predator or sexual offender is required to provide certain information, including, in part, his or her name, address, e-mail address, home and cellular telephone number, and internet identifier, to the sheriff's department, which then provides the information to the FDLE for inclusion in the statewide database.²³ A sexual predator or sexual offender is also required to re-register at specified intervals and to immediately report any changes to his or her registration information.²⁴

Online System for Registration and Re-Registration

Sections 775.21 and 943.0435, F.S., require FDLE to establish an online system through which sexual predators and offenders may securely access and update all electronic mail addresses (e-mail) and Internet identifier information.

Effect of the Bill

The bill amends ss. 775.21 and 943.0435, F.S., to expand the information that can be registered or updated due to changes through FDLE's online system, including changes:

- To home telephone numbers and cellular telephone numbers, including added and deleted numbers;
- To employment information; or
- In status related to enrollment, volunteering, or employment at institutions of higher education.

Additionally, the bill provides that sexual predators or offenders may continue to register such changes in person. If a sexual predator or offender chooses to register information changes in person, he or she must ensure that the changes are registered with the appropriate entity.²⁵ The bill further provides that changes in information registered in person or through the online system must be done within 48 hours of the change.

The bill also amends ss. 775.21 and 943.0435, F.S., to provide that FDLE's online system must permit sexual predators or offenders to securely access, submit, and update all home telephone numbers and cellular telephone numbers, employment information, and institution of higher education information.

¹⁹ See generally, ss. 775.21, 943.0435, and 944.607, F.S.

²⁰ *Id.*

²¹ ss. 775.21(10) and 943.0435(14), 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.

²² See ss. 775.21 and 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively.

²³ See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

²⁴ *Id.*

²⁵ Applicable entities include the sheriff's office; in person at the Department of Corrections (DOC) if in the custody or control, or under the supervision of DOC; or in person at the Department of Juvenile Justice (DJJ) if in the custody or control, or under the supervision of DJJ.

Registration - Reporting Frequency

As noted above, sexual predators and offenders have to re-register at varying intervals dependent upon the type of designation and the qualifying offense that was the basis for the designation as a sexual predator or offender. Sexual predators and specified sexual offenders must report in person each year during the month of the sexual predator's or offender's birthday and during every third month thereafter to the sheriff's office in the county in which he or she resides or is otherwise located to re-register.²⁶ The specified sexual offenders who must register quarterly include those whose qualifying offense was one of the following:

- Section 787.01 or s. 787.02, F.S., where the victim is a minor and the offender is not the victim's parent or guardian;
- Section 794.011, F.S., excluding s. 794.011(10), F.S.;
- Section 800.04(4)(a)2., F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- Section 800.04(5)(b), F.S.;
- Section 800.04(5)(c)1., F.S., where the court finds molestation involving unclothed genitals or genital area;
- Section 800.04(5)(c)2., F.S., where the court finds molestation involving the use of force or coercion and unclothed genitals or genital area;
- Section 800.04(5)(d), F.S., where the court finds the use of force or coercion and unclothed genitals or genital area;
- Any attempt or conspiracy to commit such offense;
- A violation of a similar law of another jurisdiction; or
- A violation of a similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this paragraph.²⁷

Sexual offenders whose designation is the result of a non-enumerated qualifying offense must report each year during the month of the sexual offender's birthday and during the sixth month following the sexual offender's birth month.²⁸ Reporting must be done in person to the sheriff's office in the county in which he or she resides or is otherwise located.²⁹

Effect of the Bill

The bill amends ss. 943.0435 and 944.607, F.S., to provide that a sexual offender who is required to register as a result of a conviction for s. 825.1025(2)(a), F.S., must re-register quarterly, for life. This change will bring the statute in line with the federal Adam Walsh Act.

Registration – Electronic Mail Addresses and Internet Identifiers

Sexual predators and offenders are required to register all electronic mail (e-mail) address³⁰ or internet identifiers³¹ with FDLE before such addresses or identifiers can be used.³² Registration must be made either in person or through FDLE's online system.³³

Effect of the Bill

²⁶ ss. 775.21(8)(a), 943.0435(14)(b), 944.607(13)(b), and 985.4815(13)(a), F.S.

²⁷ ss. 943.0435(14)(b) and 944.607(13)(b), F.S.

²⁸ s. 943.0435(14)(a) and 944.607(13)(a), F.S.

²⁹ *Id.*

³⁰ Sections 775.21(1)(g) and 943.0435(1)(f), F.S., define "electronic mail address" as having the same meaning as provided in s. 668.602, F.S., which defines the term "electronic mail address" to mean a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

³¹ Section 775.21(2)(i), F.S., defines "internet identifier" to mean all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN). Voluntary disclosure by a sexual predator of his or her date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.

³² ss. 775.21(6)(a)1., (6)(e)2., and (6)(g)5. and 943.0435(2)(a), (2)(b), and (4)(e), F.S.

³³ ss. 775.21(6)(g)5. and 943.0435(4)(e), F.S.

The bill amends s. 775.21, F.S., to modify the term “Internet identifier” to mean that it:

“includes, but is not limited to, all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, or personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.”

This new language expands the definition of Internet identifier to include the corresponding website URLs or application software that is associated with the identifier, rather than limiting the information that must be registered to the names used for Internet communication. The bill amends the definition of “Internet identifier” found in ss. 943.0435, 944.606, 944.607, and 985.4815, F.S., to have the same meaning as in s. 775.21, F.S.

The bill adds the term “electronic mail address” to ss. 985.481 and 985.4815, F.S., and provides that the term has the same meaning as in s. 668.602, F.S.

For the above-mentioned information related to email addresses and Internet identifiers that are required to be registered prior to use, the bill amends ss. 775.21 and 943.0435, F.S., to provide that a sexual predator or offender may register such information through FDLE’s online system or in person at the sheriff’s office. Additionally, the bill amends these sections to provide that sexual predators or offenders who are in the custody or control, or under the supervision, of the Department of Corrections (DOC) or Department of Juvenile Justice (DJJ) must report all email addresses and Internet identifiers to the applicable agency prior to using such email addresses or Internet identifiers.

Registration – Location of Residence or Travel

Sexual predators and offenders are required to register their permanent,³⁴ temporary,³⁵ or transient³⁶ residences both within the state and outside the state in the above-mentioned manner.³⁷ A sexual predator or offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than Florida must report in person to the sheriff of the county of current residence within:

- 48 hours before the date he or she intends to leave Florida to establish residence in another state or jurisdiction; or
- 21 days before his or her planned departure date for stays outside the country lasting longer than five days.³⁸

³⁴ Section 775.21(1)(k), F.S., defines “permanent residence” to mean a place where the person abides, lodges, or resides for 5 or more consecutive days. Section 943.0435(1)(c), F.S., defines the term to mean the same as in s. 775.21, F.S.

³⁵ Section 775.21(1)(l), F.S., defines “temporary residence” to mean a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person’s permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. Section 943.0435(1)(c), F.S., defines the term to mean the same as in s. 775.21, F.S.

³⁶ Section 775.21(1)(m), F.S., defines “transient residence” to mean a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person’s permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.

Section 943.0435(1)(c), F.S., defines the term to mean the same as in s. 775.21, F.S.

³⁷ ss. 775.21(6)(i) and 943.0435(7), F.S.

³⁸ *Id.*

The notification provided to the sheriff must include the address, municipality, county, state, and country of intended residence.³⁹ The sheriff must promptly provide FDLE the information received from the sexual predator or offender and FDLE must notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual predator's or offender's intended residence.⁴⁰

Effect of the Bill

The bill amends ss. 775.21 and 943.0435, F.S., to clarify that the sexual predator or offender must report to the sheriff of the county of current residence at least 21 days before the date of intended travel for international travel, rather than within 21 days of the planned departure date. Additionally, the bill requires a sexual predator or offender to provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel for international travel plans.

Additionally, the bill amends the definition sections found in ss. 944.606, 985.481, and 985.4815, F.S., to include definitions for the terms permanent, temporary, and transient residence. The bill provides these terms have the same meaning as provided in s. 775.21, F.S.

Registration – Institution of Higher Education

Sexual predators and offenders that are enrolled, employed, volunteering, or carrying on a vocation at an institution of higher education are required to provide the:

- Name, address, and county of each institution, including each campus attended; and
- Enrollment, volunteer, or employment status.⁴¹

Additionally, a change in such enrollment, volunteer, or employment status must be reported in person to the appropriate entity within 48 hours.⁴² The appropriate entity is required to promptly notify each institution of the sexual predator's or offender's presence and any change in enrollment, volunteer, or employment status.⁴³

The term "institution of higher education" is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean a "career center, community college, college, state university, or independent postsecondary institution."⁴⁴

The term "change in enrollment or employment status" is included in ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., and is defined to mean the "commencement or termination of enrollment or employment or a change in location of enrollment or employment."⁴⁵

Effect of the Bill

The bill amends s. 775.21, F.S., to rename the term "change in enrollment or employment status" to "change in status at an institution of higher education," and to amend the definition to mean:

the commencement or termination of enrollment, including, but not limited to, traditional classroom setting or online courses, or employment, whether for compensation or as a volunteer, at an institution of higher education or a change in location of enrollment or employment, whether for compensation or as a volunteer, at an institution of higher education.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ ss. 775.21(6)(b), 943.0435(2)(b)2., 944.607(4)(b), and 985.4815(4)(b), F.S.

⁴² Section 775.21(6)(b), F.S., provides that the sheriff or DOC are the appropriate reporting entities. Section 943.0435(2)(b)2., F.S., provides the sheriff is the appropriate reporting entity. Section 944.607(4)(b), provides DOC is the appropriate reporting agency. Section 985.4815(4)(b), F.S., provides that DJJ is the appropriate reporting agency.

⁴³ *Id.*

⁴⁴ ss. 775.21(1)(j), 943.0435(1)(d), 944.607(1)(d), and 985.4815(1)(c), F.S.

⁴⁵ ss. 775.21(1)(a), 943.0435(1)(e), 944.607(1)(e), and 985.4815(1)(a), F.S.

The bill amends the name of the term in ss. 943.0435, 944.607, and 985.4815, F.S., in the same manner and provides the term has the same meaning as provided in s. 775.21, F.S.

Therefore, sexual predators or sexual offenders who are enrolled in online classes at institutions that meet the above-mentioned definition will now be required to register such information and re-register changes to such status. Additionally, appropriate reporting entities will be required to notify institutions of sexual predators or offenders that are enrolled in online classes through their institution.

The bill retains the reporting agencies included in ss. 944.607 and 985.4815, F.S., but amends ss. 775.21 and 943.0435, F.S., to provide that the sheriff, DOC, or DJJ shall promptly notify each institution of higher education of a sexual predator's or offender's presence or change in status.

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, to specifically include information regarding changes in enrollment status to the types of information that a sexual predator or offender must register and re-register.

Registration – Professional Licenses and Employment Information

Sexual predators and offenders are required to provide information about employment and any professional licenses he or she may possess.⁴⁶ Currently, the law is silent as to the definition of a “professional license.”

Effect of the Bill

The bill amends s. 775.21, F.S., defining the term “professional license” to mean the “document of authorization or certification issued by an agency of this state for a regulatory purpose, or by any similar agency in another jurisdiction for a regulatory purpose, to a person to engage in an occupation or to carry out a trade or business.”

The bill amends ss. 943.0435, 944.606, 944.607, 985.481, and 985.4815, F.S., to include the term “professional license” and defines the term to have the same meaning as in s. 775.21, F.S.

Therefore, any sexual predator or offender, including a juvenile sexual predator, who has been or is issued a license that meets the above criteria will be required to provide information about such license at the time of registration.

The bill amends ss. 775.21, 943.0435, 944.607, and 985.4815, F.S., to specifically include employment information and changes in employment information to the types of information that a sexual predator or offender must register and re-register.

Registration – Driver License or Identification Card

Sexual predators and sexual offenders who are not incarcerated are required to register in person at a driver license office within 48 hours to obtain a driver license or identification card.⁴⁷ Additionally, a sexual predator or offender is required to report specified information to Department of Highway Safety and Motor Vehicles (DHSMV), maintain an accurate driver license or identification card, and report to a driver license office within 48 hours any time the sexual predator's or offender's:

- Driver license or identification card is subject to renewal;
- Residence has changed; or
- Name has changed by reason of marriage or other legal process.⁴⁸

⁴⁶ ss. 775.21(6)(a)1. and (8), 943.0435(2)(b) and (14)(c), 944.606(3)(a), 944.607(4)(a) and (14)(c), 985.481(3)(a)1., 985.4815(4)(a) and (13)(b)1., F.S.

⁴⁷ ss. 775.21(6)(f) and (g) and 943.0435(4)(a), F.S. Section 944.607, F.S., covers this requirement for sexual offenders who are not incarcerated, but are under the supervision of DOC.

⁴⁸ *Id.*

DHSMV must forward to FDLE and DOC all photographs and information provided by sexual predators or offenders.⁴⁹

A sexual predator who is unable to secure or update a driver license or identification card with DHSMV as provided as provided above must also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to DHSMV.

Effect of the Bill

The bill amends s. 775.21, F.S., to clarify that a sexual predator who has previously obtained a driver license or identification card as a requirement under s. 944.607, F.S., is not required to obtain a driver license or identification card again.

This bill also amends ss. 775.21 and 943.0435, F.S., to clarify that a sexual predator's or offender's requirement to report specified information to DHSMV does not negate the requirement to obtain a Florida driver license or identification card.

Penalties for Failure to Register

Section 775.21(10), F.S., and ss. 943.0435(14), 944.607(4), and 985.4815(13), F.S., in part, provide that a sexual predator or offender that fails to register, or who fails after registration to update or maintain specified information, commits a third degree felony.

Effect of the Bill

As noted above, the bill expands various current registration and re-registration requirements or adds new registration requirements above what is currently imposed on a sexual predator or sexual offender. If a sexual predator or offender fails to provide initially or update as necessary any of the above-mentioned types of information, he or she will be subject to the criminal penalties for failure to comply with registration requirements.

Removal of the Requirement to Register as a Sexual Offender

Generally, sexual offenders must maintain registration with FDLE for the duration of the offender's life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.⁵⁰ However, there are ways in which the registration requirement can be removed.

Section 943.0435(11), F.S.

Section 943.0435(11)(a), F.S., currently permits sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and who have not been arrested for any felony or misdemeanor offense since release to petition the court for the purpose of removing the requirement for registration as a sexual offender, provided that the offender's requirement to register was not based on an adult conviction for:

- A violation of ss. 787.01 or 787.02, F.S.;
- A violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
- A violation of s. 800.04(4)(a)2., F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- A violation of s. 800.04(5)(b), F.S.;
- A violation of s. 800.04(5)(c)2., F.S., where the court finds the offense involved the use of force or coercion and unclothed genitals or genital area;
- Any attempt or conspiracy to commit any such offense; or

⁴⁹ *Id.*

⁵⁰ ss. 775.21(6) and 943.0435(11), F.S.

- A violation of similar law of another jurisdiction.⁵¹

A sexual offender may petition the criminal division of the circuit court of the circuit where the conviction or adjudication occurred.

Effect of the Bill

The bill amends s. 943.0435, F.S., to include a violation of s. 825.1025(2)(a), F.S. (lewd or lascivious battery upon an elderly or disabled person) as an offense that, if committed as an adult, will prohibit a sexual offender from petitioning the court for removal from registration. This will result in such an offender being required register for the offender's lifetime. This change will bring the statute in line with the federal Adam Walsh Act.

The bill also amends s. 943.0435, F.S., to clarify that an eligible sexual offender may, for the purpose of removing the requirement for registration as a sexual offender, petition the criminal division of the circuit court of the circuit where the:

- Conviction or adjudication occurred, for a conviction in this state;
- Sexual offender resides, for a conviction of a violation of similar law of another jurisdiction; or
- Sexual offender last resided, for a sexual offender with a conviction of a violation of similar law of another jurisdiction who no longer resides in this state.

Section 943.04354, F.S.

Section 943.04354(1), F.S., provides that a person may be considered for removal from the requirement to register as a sexual predator or offender if the person:

1. Was convicted⁵² or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or of a similar offense in another jurisdiction, and the person does not have any other conviction or adjudication of delinquency for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or for a similar offense in another jurisdiction;
2. Is required to register as a sexual offender or predator solely on the basis of this violation; or
3. No longer meets the criteria for registration as a sexual offender or sexual predator under the laws of the jurisdiction in which the similar offense occurred; and
4. Is not more than 4 years older than the victim of this violation who was 13 years of age or older, but younger than 18 years of age at the time the person committed this violation.

Subsection (2) of the statute provides that if a person meets the above criteria the person may move the criminal division of the circuit court of the circuit where the conviction or adjudication for the qualifying offense occurred to remove the requirement that the person register as a sexual offender or sexual predator. The person must:

- Allege in the motion that he or she meets the criteria in subsection (1) and that removal of the registration requirement will not conflict with federal law; and
- Provide the court with written confirmation that he or she is not required to register in the jurisdiction in which the conviction or adjudication occurred if the offense occurred in a jurisdiction other than Florida.⁵³

⁵¹ The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief. s. 943.0435(11)(a), F.S.

⁵² This conviction is regardless of whether the person was adjudicated guilty for the offense.

⁵³ The state attorney and FDLE must be given notice of the motion at least 21 days before the date of sentencing, disposition of the violation, or hearing on the motion and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. If the court determines the person meets the criteria in subsection (1) and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement. If the

Effect of the Bill

The bill amends s. 943.04354(1), F.S., to remove s. 794.011, F.S. (sexual battery), from the list of eligible offenses that permits a sexual predator or offender to seek for removal from registration requirements under this provision.

The bill clarifies that a person seeking to have his or her registration requirements removed under this section, must file a motion in the criminal division of the circuit court where the:

- Conviction or adjudication for the qualifying offense occurred if registration is required for a conviction that occurred in this state;
- Sexual offender or sexual predator resides if registration is required for a violation of similar law of another jurisdiction; or
- Sexual offender or sexual predator last resided for a sexual offender or predator with a conviction of a violation of a similar law of another jurisdiction who no longer resides in this state.

Lastly, the bill clarifies that for a person to be eligible for removal under this provision, the sexual act must have been consensual, notwithstanding the age of the victim. This clarification ensures that this section is in compliance with the federal Adam Walsh Act.

Miscellaneous

The bill amends s. 943.0435(11), F.S., to remove inoperable language that addresses "registration periods." FDLE reports this language was associated with a proposed amendment that was not adopted by the Legislature and that a portion of the amendment was inadvertently left in the statute.⁵⁴

The bill amends ss. 92.55, 775.0862, 947.1405, 948.30, 948.31, 1012.315, and 1012.467, F.S., to conform the sections to changes made by the act.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 2. Amends s. 856.022, F.S., relating to loitering and prowling by certain offenders in close proximity to children; penalty.

Section 3. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 4. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 5. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 6. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 7. Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

motion is granted, the person must provide FDLE a certified copy of the order granting relief. If motion is denied, the person is not authorized under this section to file another motion for removal of the registration requirement. s. 943.04354(2), F.S.

⁵⁴ Florida Department of Law Enforcement, Agency Analysis 2016 HB 1333, p. 2 (January 14, 2016).

Section 8. Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.

Section 9. Amends s. 92.55, F.S., relating to judicial or 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 10. Amends s. 775.082, F.S., relating to sexual offenses against students by authority figures; reclassification.

Section 11. Amends s. 943.0515, F.S., relating to retention of criminal history records of minors.

Section 12. Amends s. 947.1405, F.S., relating to conditional release program.

Section 13. Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 14. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control.

Section 15. Amends s. 1012.315, F.S., relating to disqualification from employment.

Section 16. Amends s. 1012.467, F.S., relating to noninstructional contractors who are permitted access to school grounds when students are present; background screening requirements.

Section 17. Reenacts s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

Section 18. Reenacts s. 794.056, F.S., relating to Rape Crisis Program Trust Fund.

Section 19. Reenacts s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 20. Reenacts s. 985.04, F.S., relating to oaths; records; confidential information.

Section 21. Reenacts s. 322.141, F.S., relating to color or markings of certain licenses or identification cards.

Section 22. Reenacts s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 23. Reenacts s. 948.063, F.S., relating to violations of probation or community control by designated sexual offenders and sexual predators.

Section 24. Reenacts s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 25. Reenacts s. 397.4872, F.S., relating to exemption from disqualification; publication.

Section 26. Reenacts s. 435.07, F.S., relating to exemptions from disqualification.

Section 27. Reenacts s. 775.25, F.S., relating to prosecutions for acts or omissions.

Section 28. Reenacts s. 775.24, F.S., relating to duty of the court to uphold laws governing sexual predators and sexual offenders.

Section 29. Reenacts s. 944.608, F.S., relating to notification to Department of Law Enforcement of information on career offenders.

Section 30. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) has not yet determined a prison bed impact of the bill. However, according to a preliminary estimate by CJIC, the bill will have a positive indeterminate prison bed impact on DOC (i.e., an unquantifiable positive prison bed impact).

Additionally, the bill expands the various types of information that a sexual predator or offender is required to submit in his or her reporting requirements, increases the reporting frequency for specified sexual offenders, and prevents specified sexual offenders from being removed from registration requirements. These changes may result in an increased workload to the various DOC, DJJ, and DHSMV employees that are tasked with handling registration of sexual predators and offenders. To the extent that such a workload increase occurs, the bill will likely result in a negative fiscal impact to DOC, DJJ, and DHSMV.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

As noted above, the bill expands the reporting requirements of sexual predators or offenders who report in person to sheriff's offices or in specific instances, to the jail. To the extent the expanded reporting requirements results in an increased workload to sheriff or jail employees, the bill will likely result in a negative fiscal impact to local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled

An act relating to sexual offenders; amending s. 775.21, F.S.; revising definitions; revising the criteria for a felony offense for which an offender is designated as a sexual predator; expanding the criteria by removing a requirement that the defendant not be the victim's parent or guardian; revising the information that a sexual predator is required to provide to specified entities under certain circumstances; revising registration and verification requirements imposed upon a sexual predator; conforming provisions to changes made by the act; amending s. 856.022, F.S.; revising the criteria for loitering or prowling by certain offenders; expanding the criteria by removing a requirement that the offender not be the victim's parent or guardian; amending s. 943.0435, F.S.; revising definitions; revising the reporting and registering requirements imposed upon a sexual offender to conform provisions to changes made by the act; deleting provisions of applicability; amending s. 943.04354, F.S.; modifying the list of offenses for which a sexual offender or sexual predator must be considered by the department for removal from registration requirements; deleting from the list a conviction or adjudication of delinquency for sexual battery; specifying the

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

27 appropriate venue for a defendant to move the circuit
 28 court to remove the requirement to register as a
 29 sexual offender or sexual predator; amending s.
 30 944.606, F.S.; revising definitions; revising the
 31 information that the Department of Law Enforcement is
 32 required to provide about a sexual offender upon his
 33 or her release from incarceration; conforming
 34 provisions to changes made by the act; amending s.
 35 944.607, F.S.; revising definitions; conforming
 36 provisions to changes made by the act; amending s.
 37 985.481, F.S.; revising definitions; conforming
 38 provisions to changes made by the act; amending s.
 39 985.4815, F.S.; revising definitions; revising the
 40 reporting and registering requirements imposed upon a
 41 sexual offender to conform provisions to changes made
 42 by the act; amending ss. 92.55, 775.0862, 943.0515,
 43 947.1405, 948.30, 948.31, 1012.315, and 1012.467,
 44 F.S.; conforming cross-references; reenacting s.
 45 938.085, F.S., relating to additional costs to fund
 46 rape crisis centers, to incorporate the amendment made
 47 to s. 775.21, F.S., in a reference thereto; reenacting
 48 s. 794.056(1), F.S., relating to the Rape Crisis
 49 Program Trust Fund, to incorporate the amendments made
 50 to ss. 775.21 and 943.0435, F.S., in references
 51 thereto; reenacting s. 921.0022(3)(g), F.S., relating
 52 to level 7 of the offense severity ranking chart of

53 the Criminal Punishment Code, to incorporate the
 54 amendments made to ss. 775.21, 943.0435, 944.607, and
 55 985.4815, F.S., in references thereto; reenacting s.
 56 985.04(6)(b), F.S., relating to confidential
 57 information, to incorporate the amendments made to ss.
 58 775.21, 943.0435, 944.606, 944.607, 985.481, and
 59 985.4815, F.S., in references thereto; reenacting ss.
 60 322.141(3) and (4), 948.06(4), and 948.063, F.S.,
 61 relating to color or markings of certain licenses or
 62 identification cards, probation or community control,
 63 and violations of probation or community control by
 64 designated sexual offenders and sexual predators,
 65 respectively, to incorporate the amendments made to
 66 ss. 775.21, 943.0435, and 944.607, F.S., in references
 67 thereto; reenacting s. 944.607(10)(c), F.S., relating
 68 to notification to the Department of Law Enforcement
 69 of information on sexual offenders, to incorporate the
 70 amendment made to s. 943.0435, F.S., in a reference
 71 thereto; reenacting ss. 397.4872(2) and 435.07(4)(b),
 72 F.S., relating to exemptions from disqualification, to
 73 incorporate the amendment made to s. 943.04354, F.S.,
 74 in references thereto; reenacting s. 775.25, F.S.,
 75 relating to prosecutions for acts or omissions, to
 76 incorporate the amendments made to ss. 944.606 and
 77 944.607, F.S., in references thereto; reenacting ss.
 78 775.24(2) and 944.608(7), F.S., relating to duty of

79 the court to uphold laws governing sexual predators
 80 and sexual offenders and notification to the
 81 Department of Law Enforcement of information on career
 82 offenders, respectively, to incorporate the amendment
 83 made to s. 944.607, F.S., in references thereto;
 84 providing an effective date.

85

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

87

88 Section 1. Subsection (2), paragraph (a) of subsection
 89 (4), paragraphs (a), (e), (f), (g), and (i) of subsection (6),
 90 paragraph (a) of subsection (8), and paragraphs (a) and (b) of
 91 subsection (10) of section 775.21, Florida Statutes, are
 92 amended, and paragraphs (c) and (d) of subsection (4),
 93 paragraphs (a) and (b) of subsection (5), and paragraphs (c) and
 94 (e) of subsection (10) of that section are republished, to read:

95

775.21 The Florida Sexual Predators Act.—

96

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

97

(a) "Change in ~~enrollment or employment~~ status at an

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institution of higher education" means the commencement or

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termination of enrollment, including, but not limited to,

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traditional classroom setting or online courses, or employment,

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whether for compensation or as a volunteer, at an institution of

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higher education or a change in location of enrollment or

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employment, whether for compensation or as a volunteer, at an

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institution of higher education.

105 (b) "Chief of police" means the chief law enforcement
 106 officer of a municipality.

107 (c) "Child care facility" has the same meaning as provided
 108 in s. 402.302.

109 (d) "Community" means any county where the sexual predator
 110 lives or otherwise establishes or maintains a permanent,
 111 temporary, or transient ~~permanent~~ residence.

112 (e) "Conviction" means a determination of guilt which is
 113 the result of a trial or the entry of a plea of guilty or nolo
 114 contendere, regardless of whether adjudication is withheld. A
 115 conviction for a similar offense includes, but is not limited
 116 to, a conviction by a federal or military tribunal, including
 117 courts-martial conducted by the Armed Forces of the United
 118 States, and includes a conviction or entry of a plea of guilty
 119 or nolo contendere resulting in a sanction in any state of the
 120 United States or other jurisdiction. A sanction includes, but is
 121 not limited to, a fine, probation, community control, parole,
 122 conditional release, control release, or incarceration in a
 123 state prison, federal prison, private correctional facility, or
 124 local detention facility.

125 (f) "Department" means the Department of Law Enforcement.

126 (g) "Electronic mail address" has the same meaning as
 127 provided in s. 668.602.

128 (h) "Entering the county" includes being discharged from a
 129 correctional facility or jail or secure treatment facility
 130 within the county or being under supervision within the county

131 for the commission of a violation enumerated in subsection (4).

132 (i) "Institution of higher education" means a career
 133 center, a community college, a college, a state university, or
 134 an independent postsecondary institution.

135 (j)~~(i)~~ "Internet identifier" includes, but is not limited
 136 to, all website uniform resource locators (URLs) and application
 137 software, whether mobile or nonmobile, used for Internet
 138 communication, including anonymous communication, through ~~means~~
 139 ~~all~~ electronic mail, chat, instant messages ~~messenger~~, social
 140 networking, social gaming, or other similar programs and all
 141 corresponding usernames, logins, screen names, and screen
 142 identifiers associated with each URL or application software.

143 Internet identifier application software, or similar names used
 144 for Internet communication, but does not include a date of
 145 birth, Social Security number, ~~or~~ personal identification number
 146 (PIN), URL, or application software used for utility, banking,
 147 retail, or medical purposes. Voluntary disclosure by a sexual
 148 predator or sexual offender of his or her date of birth, Social
 149 Security number, or PIN as an Internet identifier waives the
 150 disclosure exemption in this paragraph for such personal
 151 information.

152 ~~(j) "Institution of higher education" means a career~~
 153 ~~center, community college, college, state university, or~~
 154 ~~independent postsecondary institution.~~

155 (k) "Permanent residence" means a place where the person
 156 abides, lodges, or resides for 5 or more consecutive days.

157 (l) "Professional license" means the document of
 158 authorization or certification issued by an agency of this state
 159 for a regulatory purpose, or by any similar agency in another
 160 jurisdiction for a regulatory purpose, to a person to engage in
 161 an occupation or to carry out a trade or business.

162 (m)~~(l)~~ "Temporary residence" means a place where the
 163 person abides, lodges, or resides, including, but not limited
 164 to, vacation, business, or personal travel destinations in or
 165 out of this state, for a period of 5 or more days in the
 166 aggregate during any calendar year and which is not the person's
 167 permanent address or, for a person whose permanent residence is
 168 not in this state, a place where the person is employed,
 169 practices a vocation, or is enrolled as a student for any period
 170 of time in this state.

171 (n)~~(m)~~ "Transient residence" means a county where a person
 172 lives, remains, or is located for a period of 5 or more days in
 173 the aggregate during a calendar year and which is not the
 174 person's permanent or temporary address. The term includes, but
 175 is not limited to, a place where the person sleeps or seeks
 176 shelter and a location that has no specific street address.

177 (o)~~(n)~~ "Vehicles owned" means any motor vehicle as defined
 178 in s. 320.01, which is registered, coregistered, leased, titled,
 179 or rented by a sexual predator or sexual offender; a rented
 180 vehicle that a sexual predator or sexual offender is authorized
 181 to drive; or a vehicle for which a sexual predator or sexual
 182 offender is insured as a driver. The term also includes any

183 motor vehicle as defined in s. 320.01, which is registered,
 184 coregistered, leased, titled, or rented by a person or persons
 185 residing at a sexual predator's or sexual offender's permanent
 186 residence for 5 or more consecutive days.

187 (4) SEXUAL PREDATOR CRITERIA.—

188 (a) For a current offense committed on or after October 1,
 189 1993, upon conviction, an offender shall be designated as a
 190 "sexual predator" under subsection (5), and subject to
 191 registration under subsection (6) and community and public
 192 notification under subsection (7) if:

193 1. The felony is:

194 a. A capital, life, or first degree felony violation, or
 195 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 196 is a minor ~~and the defendant is not the victim's parent or~~
 197 ~~guardian~~, or s. 794.011, s. 800.04, or s. 847.0145, or a
 198 violation of a similar law of another jurisdiction; or

199 b. Any felony violation, or any attempt thereof, of s.
 200 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 201 787.025(2)(c), where the victim is a minor ~~and the defendant is~~
 202 ~~not the victim's parent or guardian~~; s. 787.06(3)(b), (d), (f),
 203 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.
 204 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.
 205 800.04; s. 810.145(8)(b); s. 825.1025; s. 827.071; s. 847.0135,
 206 excluding s. 847.0135(6); s. 847.0145; s. 916.1075(2); or s.
 207 985.701(1); or a violation of a similar law of another
 208 jurisdiction, and the offender has previously been convicted of

209 or found to have committed, or has pled nolo contendere or
 210 guilty to, regardless of adjudication, any violation of s.
 211 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 212 787.025(2)(c), where the victim is a minor ~~and the defendant is~~
 213 ~~not the victim's parent or guardian~~; s. 787.06(3)(b), (d), (f),
 214 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.
 215 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.
 216 800.04; s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 217 excluding s. 847.0135(6); s. 847.0145; s. 916.1075(2); or s.
 218 985.701(1); or a violation of a similar law of another
 219 jurisdiction;

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

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

226 (c) If an offender has been registered as a sexual
 227 predator by the Department of Corrections, the department, or
 228 any other law enforcement agency and if:

229 1. The court did not, for whatever reason, make a written
 230 finding at the time of sentencing that the offender was a sexual
 231 predator; or

232 2. The offender was administratively registered as a
 233 sexual predator because the Department of Corrections, the
 234 department, or any other law enforcement agency obtained

235 information that indicated that the offender met the criteria
 236 for designation as a sexual predator based on a violation of a
 237 similar law in another jurisdiction,

238
 239 the department shall remove that offender from the department's
 240 list of sexual predators and, for an offender described under
 241 subparagraph 1., shall notify the state attorney who prosecuted
 242 the offense that met the criteria for administrative designation
 243 as a sexual predator, and, for an offender described under this
 244 paragraph, shall notify the state attorney of the county where
 245 the offender establishes or maintains a permanent, temporary, or
 246 transient residence. The state attorney shall bring the matter
 247 to the court's attention in order to establish that the offender
 248 meets the criteria for designation as a sexual predator. If the
 249 court makes a written finding that the offender is a sexual
 250 predator, the offender must be designated as a sexual predator,
 251 must register or be registered as a sexual predator with the
 252 department as provided in subsection (6), and is subject to the
 253 community and public notification as provided in subsection (7).
 254 If the court does not make a written finding that the offender
 255 is a sexual predator, the offender may not be designated as a
 256 sexual predator with respect to that offense and is not required
 257 to register or be registered as a sexual predator with the
 258 department.

259 (d) An offender who has been determined to be a sexually
 260 violent predator pursuant to a civil commitment proceeding under

261 chapter 394 shall be designated as a "sexual predator" under
 262 subsection (5) and subject to registration under subsection (6)
 263 and community and public notification under subsection (7).

264 (5) SEXUAL PREDATOR DESIGNATION.—An offender is designated
 265 as a sexual predator as follows:

266 (a)1. An offender who meets the sexual predator criteria
 267 described in paragraph (4)(d) is a sexual predator, and the
 268 court shall make a written finding at the time such offender is
 269 determined to be a sexually violent predator under chapter 394
 270 that such person meets the criteria for designation as a sexual
 271 predator for purposes of this section. The clerk shall transmit
 272 a copy of the order containing the written finding to the
 273 department within 48 hours after the entry of the order;

274 2. An offender who meets the sexual predator criteria
 275 described in paragraph (4)(a) who is before the court for
 276 sentencing for a current offense committed on or after October
 277 1, 1993, is a sexual predator, and the sentencing court must
 278 make a written finding at the time of sentencing that the
 279 offender is a sexual predator, and the clerk of the court shall
 280 transmit a copy of the order containing the written finding to
 281 the department within 48 hours after the entry of the order; or

282 3. If the Department of Corrections, the department, or
 283 any other law enforcement agency obtains information which
 284 indicates that an offender who establishes or maintains a
 285 permanent, temporary, or transient residence in this state meets
 286 the sexual predator criteria described in paragraph (4)(a) or

287 paragraph (4)(d) because the offender was civilly committed or
 288 committed a similar violation in another jurisdiction on or
 289 after October 1, 1993, the Department of Corrections, the
 290 department, or the law enforcement agency shall notify the state
 291 attorney of the county where the offender establishes or
 292 maintains a permanent, temporary, or transient residence of the
 293 offender's presence in the community. The state attorney shall
 294 file a petition with the criminal division of the circuit court
 295 for the purpose of holding a hearing to determine if the
 296 offender's criminal record or record of civil commitment from
 297 another jurisdiction meets the sexual predator criteria. If the
 298 court finds that the offender meets the sexual predator criteria
 299 because the offender has violated a similar law or similar laws
 300 in another jurisdiction, the court shall make a written finding
 301 that the offender is a sexual predator.

302
 303 When the court makes a written finding that an offender is a
 304 sexual predator, the court shall inform the sexual predator of
 305 the registration and community and public notification
 306 requirements described in this section. Within 48 hours after
 307 the court designating an offender as a sexual predator, the
 308 clerk of the circuit court shall transmit a copy of the court's
 309 written sexual predator finding to the department. If the
 310 offender is sentenced to a term of imprisonment or supervision,
 311 a copy of the court's written sexual predator finding must be
 312 submitted to the Department of Corrections.

313 (b) If a sexual predator is not sentenced to a term of
314 imprisonment, the clerk of the court shall ensure that the
315 sexual predator's fingerprints are taken and forwarded to the
316 department within 48 hours after the court renders its written
317 sexual predator finding. The fingerprints shall be clearly
318 marked, "Sexual Predator Registration." The clerk of the court
319 that convicts and sentences the sexual predator for the offense
320 or offenses described in subsection (4) shall forward to the
321 department and to the Department of Corrections a certified copy
322 of any order entered by the court imposing any special condition
323 or restriction on the sexual predator that restricts or
324 prohibits access to the victim, if the victim is a minor, or to
325 other minors.

326 (6) REGISTRATION.—

327 (a) A sexual predator shall register with the department
328 through the sheriff's office by providing the following
329 information to the department:

330 1. Name; social security number; age; race; sex; date of
331 birth; height; weight; tattoos or other identifying marks; hair
332 and eye color; photograph; address of legal residence and
333 address of any current temporary residence, within the state or
334 out of state, including a rural route address and a post office
335 box; if no permanent or temporary address, any transient
336 residence within the state; address, location or description,
337 and dates of any current or known future temporary residence
338 within the state or out of state; all electronic mail addresses

339 and all Internet identifiers required to be provided pursuant to
 340 subparagraph (g)5.; all home telephone numbers and cellular
 341 telephone numbers required to be provided pursuant to
 342 subparagraph (g)5.; ~~date and place of any~~ employment information
 343 required to be provided pursuant to subparagraph (g)5.; the
 344 make, model, color, vehicle identification number (VIN), and
 345 license tag number of all vehicles owned; date and place of each
 346 conviction; fingerprints; palm prints; and a brief description
 347 of the crime or crimes committed by the offender. A post office
 348 box may not be provided in lieu of a physical residential
 349 address. The sexual predator shall produce his or her passport,
 350 if he or she has a passport, and, if he or she is an alien,
 351 shall produce or provide information about documents
 352 establishing his or her immigration status. The sexual predator
 353 shall also provide information about any professional licenses
 354 he or she has.

355 a. If the sexual predator's place of residence is a motor
 356 vehicle, trailer, mobile home, or manufactured home, as defined
 357 in chapter 320, the sexual predator shall also provide to the
 358 department written notice of the vehicle identification number;
 359 the license tag number; the registration number; and a
 360 description, including color scheme, of the motor vehicle,
 361 trailer, mobile home, or manufactured home. If a sexual
 362 predator's place of residence is a vessel, live-aboard vessel,
 363 or houseboat, as defined in chapter 327, the sexual predator
 364 shall also provide to the department written notice of the hull

365 identification number; the manufacturer's serial number; the
 366 name of the vessel, live-aboard vessel, or houseboat; the
 367 registration number; and a description, including color scheme,
 368 of the vessel, live-aboard vessel, or houseboat.

369 b. If the sexual predator is enrolled or employed,
 370 whether for compensation or as a volunteer ~~volunteering, or~~
 371 ~~carrying on a vocation~~ at an institution of higher education in
 372 this state, the sexual predator shall also provide to the
 373 department pursuant to subparagraph (g)5. the name, address, and
 374 county of each institution, including each campus attended, and
 375 the sexual predator's enrollment, volunteer, or employment
 376 status. ~~Each change in enrollment, volunteer, or employment~~
 377 ~~status must be reported in person at the sheriff's office, or~~
 378 ~~the Department of Corrections if the sexual predator is in the~~
 379 ~~custody or control of or under the supervision of the Department~~
 380 ~~of Corrections, within 48 hours after any change in status.~~ The
 381 sheriff, ~~or~~ the Department of Corrections, or the Department of
 382 Juvenile Justice shall promptly notify each institution of
 383 higher education of the sexual predator's presence and any
 384 change in the sexual predator's enrollment, volunteer, or
 385 employment status.

386 c. A sexual predator shall report in person to the
 387 sheriff's office within 48 hours after any change in vehicles
 388 owned to report those vehicle information changes.

389 2. Any other information determined necessary by the
 390 department, including criminal and corrections records;

391 nonprivileged personnel and treatment records; and evidentiary
 392 genetic markers when available.

393 (e)1. If the sexual predator is not in the custody or
 394 control of, or under the supervision of, the Department of
 395 Corrections or is not in the custody of a private correctional
 396 facility, the sexual predator shall register in person:

397 a. At the sheriff's office in the county where he or she
 398 establishes or maintains a residence within 48 hours after
 399 establishing or maintaining a residence in this state; and

400 b. At the sheriff's office in the county where he or she
 401 was designated a sexual predator by the court within 48 hours
 402 after such finding is made.

403 2. Any change in the sexual predator's permanent, ~~or~~
 404 temporary, or transient residence; name; vehicles owned;
 405 electronic mail addresses; ~~or~~ Internet identifiers; home
 406 telephone numbers and cellular telephone numbers; and employment
 407 information and any change in status at an institution of higher
 408 education, required to be provided pursuant to subparagraph
 409 (g)5., after the sexual predator registers in person at the
 410 sheriff's office as provided in subparagraph 1. must be
 411 accomplished in the manner provided in paragraphs (g), (i), and
 412 (j). When a sexual predator registers with the sheriff's office,
 413 the sheriff shall take a photograph, a set of fingerprints, and
 414 palm prints of the predator and forward the photographs, palm
 415 prints, and fingerprints to the department, along with the
 416 information that the predator is required to provide pursuant to

417 | this section.

418 | (f) Within 48 hours after the registration required under
 419 | paragraph (a) or paragraph (e), a sexual predator who is not
 420 | incarcerated and who resides in the community, including a
 421 | sexual predator under the supervision of the Department of
 422 | Corrections, shall register in person at a driver license office
 423 | of the Department of Highway Safety and Motor Vehicles and shall
 424 | present proof of registration unless a driver license or an
 425 | identification card that complies with the requirements of s.
 426 | 322.141(3) was previously secured or updated under s. 944.607.

427 | At the driver license office the sexual predator shall:

428 | 1. If otherwise qualified, secure a Florida driver
 429 | license, renew a Florida driver license, or secure an
 430 | identification card. The sexual predator shall identify himself
 431 | or herself as a sexual predator who is required to comply with
 432 | this section, provide his or her place of permanent, temporary,
 433 | or transient residence, including a rural route address and a
 434 | post office box, and submit to the taking of a photograph for
 435 | use in issuing a driver license, a renewed license, or an
 436 | identification card, and for use by the department in
 437 | maintaining current records of sexual predators. A post office
 438 | box may not be provided in lieu of a physical residential
 439 | address. If the sexual predator's place of residence is a motor
 440 | vehicle, trailer, mobile home, or manufactured home, as defined
 441 | in chapter 320, the sexual predator shall also provide to the
 442 | Department of Highway Safety and Motor Vehicles the vehicle

443 identification number; the license tag number; the registration
 444 number; and a description, including color scheme, of the motor
 445 vehicle, trailer, mobile home, or manufactured home. If a sexual
 446 predator's place of residence is a vessel, live-aboard vessel,
 447 or houseboat, as defined in chapter 327, the sexual predator
 448 shall also provide to the Department of Highway Safety and Motor
 449 Vehicles the hull identification number; the manufacturer's
 450 serial number; the name of the vessel, live-aboard vessel, or
 451 houseboat; the registration number; and a description, including
 452 color scheme, of the vessel, live-aboard vessel, or houseboat.

453 2. Pay the costs assessed by the Department of Highway
 454 Safety and Motor Vehicles for issuing or renewing a driver
 455 license or an identification card as required by this section.
 456 The driver license or identification card issued to the sexual
 457 predator must comply with s. 322.141(3).

458 3. Provide, upon request, any additional information
 459 necessary to confirm the identity of the sexual predator,
 460 including a set of fingerprints.

461 (g)1. Each time a sexual predator's driver license or
 462 identification card is subject to renewal, and, without regard
 463 to the status of the predator's driver license or identification
 464 card, within 48 hours after any change of the predator's
 465 residence or change in the predator's name by reason of marriage
 466 or other legal process, the predator shall report in person to a
 467 driver license office and is subject to the requirements
 468 specified in paragraph (f). The Department of Highway Safety and

469 Motor Vehicles shall forward to the department and to the
 470 Department of Corrections all photographs and information
 471 provided by sexual predators. Notwithstanding the restrictions
 472 set forth in s. 322.142, the Department of Highway Safety and
 473 Motor Vehicles may release a reproduction of a color-photograph
 474 or digital-image license to the Department of Law Enforcement
 475 for purposes of public notification of sexual predators as
 476 provided in this section. A sexual predator who is unable to
 477 secure or update a driver license or an identification card with
 478 the Department of Highway Safety and Motor Vehicles as provided
 479 in paragraph (f) and this paragraph shall also report any change
 480 of the predator's residence or change in the predator's name by
 481 reason of marriage or other legal process within 48 hours after
 482 the change to the sheriff's office in the county where the
 483 predator resides or is located and provide confirmation that he
 484 or she reported such information to the Department of Highway
 485 Safety and Motor Vehicles. The reporting requirements under this
 486 subparagraph do not negate the requirement for a sexual predator
 487 to obtain a Florida driver license or identification card as
 488 required by this section.

489 2.a. A sexual predator who vacates a permanent, temporary,
 490 or transient residence and fails to establish or maintain
 491 another permanent, temporary, or transient residence shall,
 492 within 48 hours after vacating the permanent, temporary, or
 493 transient residence, report in person to the sheriff's office of
 494 the county in which he or she is located. The sexual predator

495 shall specify the date upon which he or she intends to or did
496 vacate such residence. The sexual predator shall provide or
497 update all of the registration information required under
498 paragraph (a). The sexual predator shall provide an address for
499 the residence or other place that he or she is or will be
500 located during the time in which he or she fails to establish or
501 maintain a permanent or temporary residence.

502 b. A sexual predator shall report in person at the
503 sheriff's office in the county in which he or she is located
504 within 48 hours after establishing a transient residence and
505 thereafter must report in person every 30 days to the sheriff's
506 office in the county in which he or she is located while
507 maintaining a transient residence. The sexual predator must
508 provide the addresses and locations where he or she maintains a
509 transient residence. Each sheriff's office shall establish
510 procedures for reporting transient residence information and
511 provide notice to transient registrants to report transient
512 residence information as required in this sub-subparagraph.
513 Reporting to the sheriff's office as required by this sub-
514 subparagraph does not exempt registrants from any reregistration
515 requirement. The sheriff may coordinate and enter into
516 agreements with police departments and other governmental
517 entities to facilitate additional reporting sites for transient
518 residence registration required in this sub-subparagraph. The
519 sheriff's office shall, within 2 business days, electronically
520 submit and update all information provided by the sexual

521 predator to the department.

522 3. A sexual predator who remains at a permanent,
 523 temporary, or transient residence after reporting his or her
 524 intent to vacate such residence shall, within 48 hours after the
 525 date upon which the predator indicated he or she would or did
 526 vacate such residence, report in person to the sheriff's office
 527 to which he or she reported pursuant to subparagraph 2. for the
 528 purpose of reporting his or her address at such residence. When
 529 the sheriff receives the report, the sheriff shall promptly
 530 convey the information to the department. An offender who makes
 531 a report as required under subparagraph 2. but fails to make a
 532 report as required under this subparagraph commits a felony of
 533 the second degree, punishable as provided in s. 775.082, s.
 534 775.083, or s. 775.084.

535 4. The failure of a sexual predator who maintains a
 536 transient residence to report in person to the sheriff's office
 537 every 30 days as required by sub-subparagraph 2.b. is punishable
 538 as provided in subsection (10).

539 5.a. A sexual predator shall register all electronic mail
 540 addresses and Internet identifiers with the department through
 541 the department's online system or in person at the sheriff's
 542 office before using such electronic mail addresses and Internet
 543 identifiers. If the sexual predator is in the custody or
 544 control, or under the supervision, of the Department of
 545 Corrections, he or she must report all electronic mail addresses
 546 and Internet identifiers to the Department of Corrections before

547 using such electronic mail addresses or Internet identifiers. If
 548 the sexual predator is in the custody or control, or under the
 549 supervision, of the Department of Juvenile Justice, he or she
 550 must report all electronic mail addresses and Internet
 551 identifiers to the Department of Juvenile Justice before using
 552 such electronic mail addresses or Internet identifiers.

553 b. A sexual predator shall register all changes to home
 554 telephone numbers and cellular telephone numbers, including
 555 added and deleted numbers, all changes to employment
 556 information, and all changes in status related to enrollment,
 557 volunteering, or employment at institutions of higher education,
 558 through the department's online system; in person at the
 559 sheriff's office; in person at the Department of Corrections if
 560 the sexual predator is in the custody or control, or under the
 561 supervision, of the Department of Corrections; or in person at
 562 the Department of Juvenile Justice if the sexual predator is in
 563 the custody or control, or under the supervision, of the
 564 Department of Juvenile Justice. All changes required to be
 565 reported in this sub-subparagraph shall be reported within 48
 566 hours after the change.

567 c. The department shall establish an online system through
 568 which sexual predators may securely access, submit, and update
 569 all electronic mail address and Internet identifier information,
 570 home telephone numbers and cellular telephone numbers,
 571 employment information, and institution of higher education
 572 information.

573 (i) A sexual predator who intends to establish a
 574 permanent, temporary, or transient residence in another state or
 575 jurisdiction other than the State of Florida shall report in
 576 person to the sheriff of the county of current residence within
 577 48 hours before the date he or she intends to leave this state
 578 to establish residence in another state or jurisdiction or at
 579 least ~~within~~ 21 days before the date he or she intends to travel
 580 ~~before his or her planned departure date~~ if the intended
 581 residence of 5 days or more is outside of the United States. Any
 582 travel that is not known by the sexual predator 21 days before
 583 the departure date must be reported to the sheriff's office as
 584 soon as possible before departure. The sexual predator shall
 585 provide to the sheriff the address, municipality, county, state,
 586 and country of intended residence. For international travel, the
 587 sexual predator shall also provide travel information,
 588 including, but not limited to, expected departure and return
 589 dates, flight number, airport of departure, cruise port of
 590 departure, or any other means of intended travel. The sheriff
 591 shall promptly provide to the department the information
 592 received from the sexual predator. The department shall notify
 593 the statewide law enforcement agency, or a comparable agency, in
 594 the intended state, jurisdiction, or country of residence of the
 595 sexual predator's intended residence. The failure of a sexual
 596 predator to provide his or her intended place of residence is
 597 punishable as provided in subsection (10).

598 (8) VERIFICATION.—The department and the Department of

599 Corrections shall implement a system for verifying the addresses
 600 of sexual predators. The system must be consistent with ~~the~~
 601 ~~provisions of~~ the federal Adam Walsh Child Protection and Safety
 602 Act of 2006 and any other federal standards applicable to such
 603 verification or required to be met as a condition for the
 604 receipt of federal funds by the state. The Department of
 605 Corrections shall verify the addresses of sexual predators who
 606 are not incarcerated but who reside in the community under the
 607 supervision of the Department of Corrections and shall report to
 608 the department any failure by a sexual predator to comply with
 609 registration requirements. County and local law enforcement
 610 agencies, in conjunction with the department, shall verify the
 611 addresses of sexual predators who are not under the care,
 612 custody, control, or supervision of the Department of
 613 Corrections, and may verify the addresses of sexual predators
 614 who are under the care, custody, control, or supervision of the
 615 Department of Corrections. Local law enforcement agencies shall
 616 report to the department any failure by a sexual predator to
 617 comply with registration requirements.

618 (a) A sexual predator shall report in person each year
 619 during the month of the sexual predator's birthday and during
 620 every third month thereafter to the sheriff's office in the
 621 county in which he or she resides or is otherwise located to
 622 reregister. The sheriff's office may determine the appropriate
 623 times and days for reporting by the sexual predator, which must
 624 be consistent with the reporting requirements of this paragraph.

625 Reregistration must include any changes to the following
626 information:

627 1. Name; social security number; age; race; sex; date of
628 birth; height; weight; tattoos or other identifying marks; hair
629 and eye color; address of any permanent residence and address of
630 any current temporary residence, within the state or out of
631 state, including a rural route address and a post office box; if
632 no permanent or temporary address, any transient residence
633 within the state; address, location or description, and dates of
634 any current or known future temporary residence within the state
635 or out of state; all electronic mail addresses or Internet
636 identifiers required to be provided pursuant to subparagraph
637 (6)(g)5.; all home telephone numbers and cellular telephone
638 numbers required to be provided pursuant to subparagraph
639 (6)(g)5.; date and place of any employment required to be
640 provided pursuant to subparagraph (6)(g)5.; the make, model,
641 color, vehicle identification number (VIN), and license tag
642 number of all vehicles owned; fingerprints; palm prints; and
643 photograph. A post office box may not be provided in lieu of a
644 physical residential address. The sexual predator shall also
645 produce his or her passport, if he or she has a passport, and,
646 if he or she is an alien, shall produce or provide information
647 about documents establishing his or her immigration status. The
648 sexual predator shall also provide information about any
649 professional licenses he or she has.

650 2. If the sexual predator is enrolled or~~7~~ employed,

651 whether for compensation or as a volunteer ~~volunteering, or~~
 652 ~~carrying on a vocation~~ at an institution of higher education in
 653 this state, the sexual predator shall also provide to the
 654 department the name, address, and county of each institution,
 655 including each campus attended, and the sexual predator's
 656 enrollment, volunteer, or employment status.

657 3. If the sexual predator's place of residence is a motor
 658 vehicle, trailer, mobile home, or manufactured home, as defined
 659 in chapter 320, the sexual predator shall also provide the
 660 vehicle identification number; the license tag number; the
 661 registration number; and a description, including color scheme,
 662 of the motor vehicle, trailer, mobile home, or manufactured
 663 home. If the sexual predator's place of residence is a vessel,
 664 live-aboard vessel, or houseboat, as defined in chapter 327, the
 665 sexual predator shall also provide the hull identification
 666 number; the manufacturer's serial number; the name of the
 667 vessel, live-aboard vessel, or houseboat; the registration
 668 number; and a description, including color scheme, of the
 669 vessel, live-aboard vessel, or houseboat.

670 (10) PENALTIES.—

671 (a) Except as otherwise specifically provided, a sexual
 672 predator who fails to register; who fails, after registration,
 673 to maintain, acquire, or renew a driver license or an
 674 identification card; who fails to provide required location
 675 information, electronic mail address information before use,
 676 Internet identifier information before use, all home telephone

677 numbers and cellular telephone numbers, employment information,
 678 change in status at an institution of higher education, or
 679 change-of-name information; who fails to make a required report
 680 in connection with vacating a permanent residence; who fails to
 681 reregister as required; who fails to respond to any address
 682 verification correspondence from the department within 3 weeks
 683 of the date of the correspondence; who knowingly provides false
 684 registration information by act or omission; or who otherwise
 685 fails, by act or omission, to comply with the requirements of
 686 this section commits a felony of the third degree, punishable as
 687 provided in s. 775.082, s. 775.083, or s. 775.084.

688 (b) A sexual predator who has been convicted of or found
 689 to have committed, or has pled nolo contendere or guilty to,
 690 regardless of adjudication, any violation, or attempted
 691 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 692 the victim is a minor ~~and the defendant is not the victim's~~
 693 ~~parent or guardian;~~ s. 794.011, excluding s. 794.011(10); s.
 694 794.05; former s. 796.03; former s. 796.035; s. 800.04; s.
 695 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s.
 696 985.701(1); or a violation of a similar law of another
 697 jurisdiction when the victim of the offense was a minor, and who
 698 works, whether for compensation or as a volunteer, at any
 699 business, school, child care facility, park, playground, or
 700 other place where children regularly congregate, commits a
 701 felony of the third degree, punishable as provided in s.
 702 775.082, s. 775.083, or s. 775.084.

703 (c) Any person who misuses public records information
 704 relating to a sexual predator, as defined in this section, or a
 705 sexual offender, as defined in s. 943.0435 or s. 944.607, to
 706 secure a payment from such a predator or offender; who knowingly
 707 distributes or publishes false information relating to such a
 708 predator or offender which the person misrepresents as being
 709 public records information; or who materially alters public
 710 records information with the intent to misrepresent the
 711 information, including documents, summaries of public records
 712 information provided by law enforcement agencies, or public
 713 records information displayed by law enforcement agencies on
 714 websites or provided through other means of communication,
 715 commits a misdemeanor of the first degree, punishable as
 716 provided in s. 775.082 or s. 775.083.

717 (e) An arrest on charges of failure to register, the
 718 service of an information or a complaint for a violation of this
 719 section, or an arraignment on charges for a violation of this
 720 section constitutes actual notice of the duty to register when
 721 the predator has been provided and advised of his or her
 722 statutory obligation to register under subsection (6). A sexual
 723 predator's failure to immediately register as required by this
 724 section following such arrest, service, or arraignment
 725 constitutes grounds for a subsequent charge of failure to
 726 register. A sexual predator charged with the crime of failure to
 727 register who asserts, or intends to assert, a lack of notice of
 728 the duty to register as a defense to a charge of failure to

729 register shall immediately register as required by this section.
 730 A sexual predator who is charged with a subsequent failure to
 731 register may not assert the defense of a lack of notice of the
 732 duty to register.

733 Section 2. Subsection (1) of section 856.022, Florida
 734 Statutes, is amended, and subsections (2), (3), and (4) of that
 735 section are republished, to read:

736 856.022 Loitering or prowling by certain offenders in
 737 close proximity to children; penalty.—

738 (1) Except as provided in subsection (2), this section
 739 applies to a person convicted of committing, or attempting,
 740 soliciting, or conspiring to commit, any of the criminal
 741 offenses proscribed in the following statutes in this state or
 742 similar offenses in another jurisdiction against a victim who
 743 was under 18 years of age at the time of the offense: s. 787.01,
 744 s. 787.02, or s. 787.025(2)(c), where the victim is a minor ~~and~~
 745 ~~the offender was not the victim's parent or guardian; s.~~
 746 787.06(3)(g); s. 794.011, excluding s. 794.011(10); s. 794.05;
 747 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.
 748 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 749 847.0137; s. 847.0138; s. 847.0145; s. 985.701(1); or any
 750 similar offense committed in this state which has been
 751 redesignated from a former statute number to one of those listed
 752 in this subsection, if the person has not received a pardon for
 753 any felony or similar law of another jurisdiction necessary for
 754 the operation of this subsection and a conviction of a felony or

755 similar law of another jurisdiction necessary for the operation
 756 of this subsection has not been set aside in any postconviction
 757 proceeding.

758 (2) This section does not apply to a person who has been
 759 removed from the requirement to register as a sexual offender or
 760 sexual predator pursuant to s. 943.04354.

761 (3) A person described in subsection (1) commits loitering
 762 and prowling by a person convicted of a sexual offense against a
 763 minor if, in committing loitering and prowling, he or she was
 764 within 300 feet of a place where children were congregating.

765 (4) It is unlawful for a person described in subsection
 766 (1) to:

767 (a) Knowingly approach, contact, or communicate with a
 768 child under 18 years of age in any public park building or on
 769 real property comprising any public park or playground with the
 770 intent to engage in conduct of a sexual nature or to make a
 771 communication of any type with any content of a sexual nature.
 772 This paragraph applies only to a person described in subsection
 773 (1) whose offense was committed on or after May 26, 2010.

774 (b)1. Knowingly be present in any child care facility or
 775 school containing any students in prekindergarten through grade
 776 12 or on real property comprising any child care facility or
 777 school containing any students in prekindergarten through grade
 778 12 when the child care facility or school is in operation unless
 779 the person had previously provided written notification of his
 780 or her intent to be present to the school board, superintendent,

781 principal, or child care facility owner;

782 2. Fail to notify the child care facility owner or the
 783 school principal's office when he or she arrives and departs the
 784 child care facility or school; or

785 3. Fail to remain under direct supervision of a school
 786 official or designated chaperone when present in the vicinity of
 787 children. As used in this paragraph, the term "school official"
 788 means a principal, a school resource officer, a teacher or any
 789 other employee of the school, the superintendent of schools, a
 790 member of the school board, a child care facility owner, or a
 791 child care provider.

792 (c) A person is not in violation of paragraph (b) if:

793 1. The child care facility or school is a voting location
 794 and the person is present for the purpose of voting during the
 795 hours designated for voting; or

796 2. The person is only dropping off or picking up his or
 797 her own children or grandchildren at the child care facility or
 798 school.

799 Section 3. Subsection (1) of section 943.0435, Florida
 800 Statutes, is reordered and amended, and subsection (2),
 801 paragraphs (a) and (e) of subsection (4), subsection (7),
 802 subsection (11), and paragraphs (b) and (c) of subsection (14)
 803 of that section are amended, to read:

804 943.0435 Sexual offenders required to register with the
 805 department; penalty.—

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

807 (a)(e) "Change in ~~enrollment or employment~~ status at an
 808 institution of higher education" has the same meaning as
 809 provided in s. 775.21 ~~means the commencement or termination of~~
 810 ~~enrollment or employment or a change in location of enrollment~~
 811 ~~or employment.~~

812 (b) "Convicted" means that there has been a determination
 813 of guilt as a result of a trial or the entry of a plea of guilty
 814 or nolo contendere, regardless of whether adjudication is
 815 withheld, and includes an adjudication of delinquency of a
 816 juvenile as specified in this section. Conviction of a similar
 817 offense includes, but is not limited to, a conviction by a
 818 federal or military tribunal, including courts-martial conducted
 819 by the Armed Forces of the United States, and includes a
 820 conviction or entry of a plea of guilty or nolo contendere
 821 resulting in a sanction in any state of the United States or
 822 other jurisdiction. A sanction includes, but is not limited to,
 823 a fine, probation, community control, parole, conditional
 824 release, control release, or incarceration in a state prison,
 825 federal prison, private correctional facility, or local
 826 detention facility.

827 (c)(f) "Electronic mail address" has the same meaning as
 828 provided in s. 668.602.

829 (d) "Institution of higher education" has the same meaning
 830 as provided in s. 775.21 ~~means a career center, community~~
 831 ~~college, college, state university, or independent postsecondary~~
 832 ~~institution.~~

833 ~~(e)(g)~~ "Internet identifier" has the same meaning as
 834 provided in s. 775.21.

835 ~~(f)(e)~~ "Permanent residence," "temporary residence," and
 836 "transient residence" have the same meaning as provided ~~ascribed~~
 837 in s. 775.21.

838 (g) "Professional license" has the same meaning as
 839 provided in s. 775.21.

840 ~~(h)(a)~~1. "Sexual offender" means a person who meets the
 841 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 842 subparagraph c., or sub-subparagraph d., as follows:

843 a. (I) Has been convicted of committing, or attempting,
 844 soliciting, or conspiring to commit, any of the criminal
 845 offenses proscribed in the following statutes in this state or
 846 similar offenses in another jurisdiction: s. 393.135(2); s.
 847 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 848 the victim is a minor ~~and the defendant is not the victim's~~
 849 ~~parent or guardian~~; s. 787.06(3)(b), (d), (f), or (g); former s.
 850 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05;
 851 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);
 852 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
 853 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
 854 916.1075(2); or s. 985.701(1); or any similar offense committed
 855 in this state which has been redesignated from a former statute
 856 number to one of those listed in this sub-sub-subparagraph; and

857 (II) Has been released on or after October 1, 1997, from
 858 the sanction imposed for any conviction of an offense described

859 | in sub-sub-subparagraph (I). For purposes of sub-sub-
 860 | subparagraph (I), a sanction imposed in this state or in any
 861 | other jurisdiction includes, but is not limited to, a fine,
 862 | probation, community control, parole, conditional release,
 863 | control release, or incarceration in a state prison, federal
 864 | prison, private correctional facility, or local detention
 865 | facility;

866 | b. Establishes or maintains a residence in this state and
 867 | who has not been designated as a sexual predator by a court of
 868 | this state but who has been designated as a sexual predator, as
 869 | a sexually violent predator, or by another sexual offender
 870 | designation in another state or jurisdiction and was, as a
 871 | result of such designation, subjected to registration or
 872 | community or public notification, or both, or would be if the
 873 | person were a resident of that state or jurisdiction, without
 874 | regard to whether the person otherwise meets the criteria for
 875 | registration as a sexual offender;

876 | c. Establishes or maintains a residence in this state who
 877 | is in the custody or control of, or under the supervision of,
 878 | any other state or jurisdiction as a result of a conviction for
 879 | committing, or attempting, soliciting, or conspiring to commit,
 880 | any of the criminal offenses proscribed in the following
 881 | statutes or similar offense in another jurisdiction: s.
 882 | 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 883 | 787.025(2)(c), where the victim is a minor ~~and the defendant is~~
 884 | ~~not the victim's parent or guardian~~; s. 787.06(3)(b), (d), (f),

885 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.
 886 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.
 887 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.
 888 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
 889 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar
 890 offense committed in this state which has been redesignated from
 891 a former statute number to one of those listed in this sub-
 892 subparagraph; or

893 d. On or after July 1, 2007, has been adjudicated
 894 delinquent for committing, or attempting, soliciting, or
 895 conspiring to commit, any of the criminal offenses proscribed in
 896 the following statutes in this state or similar offenses in
 897 another jurisdiction when the juvenile was 14 years of age or
 898 older at the time of the offense:

899 (I) Section 794.011, excluding s. 794.011(10);

900 (II) Section 800.04(4)(a)2. where the victim is under 12
 901 years of age or where the court finds sexual activity by the use
 902 of force or coercion;

903 (III) Section 800.04(5)(c)1. where the court finds
 904 molestation involving unclothed genitals; ~~or~~

905 (IV) Section 800.04(5)(d) where the court finds the use of
 906 force or coercion and unclothed genitals; or

907 (V) Any similar offense committed in this state which has
 908 been redesignated from a former statute number to one of those
 909 listed in this sub-subparagraph.

910 2. For all qualifying offenses listed in sub-subparagraph

911 | 1.d. ~~(1)(a)1.d.~~, the court shall make a written finding of the
 912 | age of the offender at the time of the offense.

913 |

914 | For each violation of a qualifying offense listed in this
 915 | subsection, except for a violation of s. 794.011, the court
 916 | shall make a written finding of the age of the victim at the
 917 | time of the offense. For a violation of s. 800.04(4), the court
 918 | shall also make a written finding indicating whether the offense
 919 | involved sexual activity and indicating whether the offense
 920 | involved force or coercion. For a violation of s. 800.04(5), the
 921 | court shall also make a written finding that the offense did or
 922 | did not involve unclothed genitals or genital area and that the
 923 | offense did or did not involve the use of force or coercion.

924 | (i)~~(h)~~ "Vehicles owned" has the same meaning as provided
 925 | in s. 775.21.

926 | (2) A sexual offender shall:

927 | (a) Report in person at the sheriff's office:

928 | 1. In the county in which the offender establishes or
 929 | maintains a permanent, temporary, or transient residence within
 930 | 48 hours after:

931 | a. Establishing permanent, temporary, or transient
 932 | residence in this state; or

933 | b. Being released from the custody, control, or
 934 | supervision of the Department of Corrections or from the custody
 935 | of a private correctional facility; or

936 | 2. In the county where he or she was convicted within 48

937 hours after being convicted for a qualifying offense for
 938 registration under this section if the offender is not in the
 939 custody or control of, or under the supervision of, the
 940 Department of Corrections, or is not in the custody of a private
 941 correctional facility.

942
 943 Any change in the information required to be provided pursuant
 944 to paragraph (b), including, but not limited to, any change in
 945 the sexual offender's permanent, temporary, or transient
 946 residence; name; electronic mail addresses; Internet
 947 identifiers; home telephone numbers and cellular telephone
 948 numbers; and employment information and any change in status at
 949 an institution of higher education, required to be provided
 950 pursuant to paragraph (4)(e), after the sexual offender reports
 951 in person at the sheriff's office, must be accomplished in the
 952 manner provided in subsections (4), (7), and (8).

953 (b) Provide his or her name; date of birth; social
 954 security number; race; sex; height; weight; hair and eye color;
 955 tattoos or other identifying marks; fingerprints; palm prints;
 956 photograph; ~~occupation and place of employment~~ information
 957 required to be provided pursuant to paragraph (4)(e); address of
 958 permanent or legal residence or address of any current temporary
 959 residence, within the state or out of state, including a rural
 960 route address and a post office box; if no permanent or
 961 temporary address, any transient residence within the state,
 962 address, location or description, and dates of any current or

963 known future temporary residence within the state or out of
964 state; the make, model, color, vehicle identification number
965 (VIN), and license tag number of all vehicles owned; all home
966 telephone numbers and cellular telephone numbers required to be
967 provided pursuant to paragraph (4)(e); all electronic mail
968 addresses and all Internet identifiers required to be provided
969 pursuant to paragraph (4)(e); date and place of each conviction;
970 and a brief description of the crime or crimes committed by the
971 offender. A post office box may not be provided in lieu of a
972 physical residential address. The sexual offender shall also
973 produce his or her passport, if he or she has a passport, and,
974 if he or she is an alien, shall produce or provide information
975 about documents establishing his or her immigration status. The
976 sexual offender shall also provide information about any
977 professional licenses he or she has.

978 1. If the sexual offender's place of residence is a motor
979 vehicle, trailer, mobile home, or manufactured home, as defined
980 in chapter 320, the sexual offender shall also provide to the
981 department through the sheriff's office written notice of the
982 vehicle identification number; the license tag number; the
983 registration number; and a description, including color scheme,
984 of the motor vehicle, trailer, mobile home, or manufactured
985 home. If the sexual offender's place of residence is a vessel,
986 live-aboard vessel, or houseboat, as defined in chapter 327, the
987 sexual offender shall also provide to the department written
988 notice of the hull identification number; the manufacturer's

989 serial number; the name of the vessel, live-aboard vessel, or
 990 houseboat; the registration number; and a description, including
 991 color scheme, of the vessel, live-aboard vessel, or houseboat.

992 2. If the sexual offender is enrolled or, employed,
 993 whether for compensation or as a volunteer ~~volunteering, or~~
 994 ~~carrying on a vocation~~ at an institution of higher education in
 995 this state, the sexual offender shall also provide to the
 996 department pursuant to paragraph (4)(e) ~~through the sheriff's~~
 997 ~~office~~ the name, address, and county of each institution,
 998 including each campus attended, and the sexual offender's
 999 enrollment, volunteer, or employment status. ~~Each change in~~
 1000 ~~enrollment, volunteer, or employment status must be reported in~~
 1001 ~~person at the sheriff's office, within 48 hours after any change~~
 1002 ~~in status.~~ The sheriff, the Department of Corrections, or the
 1003 Department of Juvenile Justice shall promptly notify each
 1004 institution of higher education of the sexual offender's
 1005 presence and any change in the sexual offender's enrollment,
 1006 volunteer, or employment status.

1007 3. A sexual offender shall report in person to the
 1008 sheriff's office within 48 hours after any change in vehicles
 1009 owned to report those vehicle information changes.

1010 (c) Provide any other information determined necessary by
 1011 the department, including criminal and corrections records;
 1012 nonprivileged personnel and treatment records; and evidentiary
 1013 genetic markers, when available.

1014

1015 | When a sexual offender reports at the sheriff's office, the
 1016 | sheriff shall take a photograph, a set of fingerprints, and palm
 1017 | prints of the offender and forward the photographs, palm prints,
 1018 | and fingerprints to the department, along with the information
 1019 | provided by the sexual offender. The sheriff shall promptly
 1020 | provide to the department the information received from the
 1021 | sexual offender.

1022 | (4) (a) Each time a sexual offender's driver license or
 1023 | identification card is subject to renewal, and, without regard
 1024 | to the status of the offender's driver license or identification
 1025 | card, within 48 hours after any change in the offender's
 1026 | permanent, temporary, or transient residence or change in the
 1027 | offender's name by reason of marriage or other legal process,
 1028 | the offender shall report in person to a driver license office,
 1029 | and is subject to the requirements specified in subsection (3).
 1030 | The Department of Highway Safety and Motor Vehicles shall
 1031 | forward to the department all photographs and information
 1032 | provided by sexual offenders. Notwithstanding the restrictions
 1033 | set forth in s. 322.142, the Department of Highway Safety and
 1034 | Motor Vehicles may release a reproduction of a color-photograph
 1035 | or digital-image license to the Department of Law Enforcement
 1036 | for purposes of public notification of sexual offenders as
 1037 | provided in this section and ss. 943.043 and 944.606. A sexual
 1038 | offender who is unable to secure or update a driver license or
 1039 | an identification card with the Department of Highway Safety and
 1040 | Motor Vehicles as provided in subsection (3) and this subsection

1041 shall also report any change in the sexual offender's permanent,
 1042 temporary, or transient residence or change in the offender's
 1043 name by reason of marriage or other legal process within 48
 1044 hours after the change to the sheriff's office in the county
 1045 where the offender resides or is located and provide
 1046 confirmation that he or she reported such information to the
 1047 Department of Highway Safety and Motor Vehicles. The reporting
 1048 requirements under this paragraph do not negate the requirement
 1049 for a sexual offender to obtain a Florida driver license or an
 1050 identification card as required in this section.

1051 (e)1. A sexual offender shall register all electronic mail
 1052 addresses and Internet identifiers with the department through
 1053 the department's online system or in person at the sheriff's
 1054 office before using such electronic mail addresses and Internet
 1055 identifiers. If the sexual offender is in the custody or
 1056 control, or under the supervision, of the Department of
 1057 Corrections, he or she must report all electronic mail addresses
 1058 and Internet identifiers to the Department of Corrections before
 1059 using such electronic mail addresses or Internet identifiers. If
 1060 the sexual offender is in the custody or control, or under the
 1061 supervision, of the Department of Juvenile Justice, he or she
 1062 must report all electronic mail addresses and Internet
 1063 identifiers to the Department of Juvenile Justice before using
 1064 such electronic mail addresses or Internet identifiers.

1065 2. A sexual offender shall register all changes to home
 1066 telephone numbers and cellular telephone numbers, including

1067 added and deleted numbers, all changes to employment
 1068 information, and all changes in status related to enrollment,
 1069 volunteering, or employment at institutions of higher education,
 1070 through the department's online system; in person at the
 1071 sheriff's office; in person at the Department of Corrections if
 1072 the sexual offender is in the custody or control, or under the
 1073 supervision, of the Department of Corrections; or in person at
 1074 the Department of Juvenile Justice if the sexual offender is in
 1075 the custody or control, or under the supervision, of the
 1076 Department of Juvenile Justice. All changes required to be
 1077 reported under this subparagraph must be reported within 48
 1078 hours after the change.

1079 3. The department shall establish an online system through
 1080 which sexual offenders may securely access, submit, and update
 1081 all changes in status to electronic mail address and Internet
 1082 identifier information, home telephone numbers and cellular
 1083 telephone numbers, employment information, and institution of
 1084 higher education information.

1085 (7) A sexual offender who intends to establish a
 1086 permanent, temporary, or transient residence in another state or
 1087 jurisdiction other than the State of Florida shall report in
 1088 person to the sheriff of the county of current residence within
 1089 48 hours before the date he or she intends to leave this state
 1090 to establish residence in another state or jurisdiction or at
 1091 least ~~within~~ 21 days before the date he or she intends to travel
 1092 ~~before his or her planned departure date~~ if the intended

1093 residence of 5 days or more is outside of the United States. Any
 1094 travel that is not known by the sexual offender 21 days before
 1095 the departure date must be reported in person to the sheriff's
 1096 office as soon as possible before departure. The sexual offender
 1097 shall provide to the sheriff ~~The notification must include~~ the
 1098 address, municipality, county, state, and country of intended
 1099 residence. For international travel, the sexual offender shall
 1100 also provide travel information, including, but not limited to,
 1101 expected departure and return dates, flight number, airport of
 1102 departure, cruise port of departure, or any other means of
 1103 intended travel. The sheriff shall promptly provide to the
 1104 department the information received from the sexual offender.
 1105 The department shall notify the statewide law enforcement
 1106 agency, or a comparable agency, in the intended state,
 1107 jurisdiction, or country of residence of the sexual offender's
 1108 intended residence. The failure of a sexual offender to provide
 1109 his or her intended place of residence is punishable as provided
 1110 in subsection (9).

1111 (11) Except as provided in s. 943.04354, a sexual offender
 1112 shall maintain registration with the department for the duration
 1113 of his or her life unless the sexual offender has received a
 1114 full pardon or has had a conviction set aside in a
 1115 postconviction proceeding for any offense that meets the
 1116 criteria for classifying the person as a sexual offender for
 1117 purposes of registration. However, a sexual offender shall be
 1118 considered for removal of the requirement to register as a

1119 sexual offender only if the person:

1120 (a)1. ~~Who~~ Has been lawfully released from confinement,
 1121 supervision, or sanction, whichever is later, for at least 25
 1122 years and has not been arrested for any felony or misdemeanor
 1123 offense since release, provided that the sexual offender's
 1124 requirement to register was not based upon an adult conviction:

1125 a. For a violation of s. 787.01 or s. 787.02;

1126 b. For a violation of s. 794.011, excluding s.
 1127 794.011(10);

1128 c. For a violation of s. 800.04(4)(a)2. where the court
 1129 finds the offense involved a victim under 12 years of age or
 1130 sexual activity by the use of force or coercion;

1131 d. For a violation of s. 800.04(5)(b);

1132 e. For a violation of s. 800.04(5)(c)2. where the court
 1133 finds the offense involved the use of force or coercion and
 1134 unclothed genitals or genital area;

1135 f. For a violation of s. 825.1025(2)(a);

1136 g.f. For any attempt or conspiracy to commit any such
 1137 offense;

1138 h.g. For a violation of similar law of another
 1139 jurisdiction; or

1140 i.h. For a violation of a similar offense committed in
 1141 this state which has been redesignated from a former statute
 1142 number to one of those listed in this subparagraph.7

1143 2. If the sexual offender meets the criteria in
 1144 subparagraph 1., the sexual offender may, for the purpose of

1145 removing the requirement for registration as a sexual offender,
 1146 petition the criminal division of the circuit court of the
 1147 circuit;

1148 a. Where the conviction or adjudication occurred, for a
 1149 conviction in this state;

1150 b. Where the sexual offender resides, for a conviction of
 1151 a violation of similar law of another jurisdiction; or

1152 c. Where the sexual offender last resided, for a sexual
 1153 offender with a conviction of a violation of similar law of
 1154 another jurisdiction who no longer resides in this state ~~for the~~
 1155 ~~purpose of removing the requirement for registration as a sexual~~
 1156 ~~offender.~~

1157 ~~3.2.~~ The court may grant or deny relief if the offender
 1158 demonstrates to the court that he or she has not been arrested
 1159 for any crime since release; the requested relief complies with
 1160 ~~the provisions of~~ the federal Adam Walsh Child Protection and
 1161 Safety Act of 2006 and any other federal standards applicable to
 1162 the removal of registration requirements for a sexual offender
 1163 or required to be met as a condition for the receipt of federal
 1164 funds by the state; and the court is otherwise satisfied that
 1165 the offender is not a current or potential threat to public
 1166 safety. The state attorney in the circuit in which the petition
 1167 is filed must be given notice of the petition at least 3 weeks
 1168 before the hearing on the matter. The state attorney may present
 1169 evidence in opposition to the requested relief or may otherwise
 1170 demonstrate the reasons why the petition should be denied. If

1171 the court denies the petition, the court may set a future date
 1172 at which the sexual offender may again petition the court for
 1173 relief, subject to the standards for relief provided in this
 1174 subsection.

1175 4.3. The department shall remove an offender from
 1176 classification as a sexual offender for purposes of registration
 1177 if the offender provides to the department a certified copy of
 1178 the court's written findings or order that indicates that the
 1179 offender is no longer required to comply with the requirements
 1180 for registration as a sexual offender.

1181 ~~4. For purposes of this paragraph:~~

1182 ~~a. The registration period of a sexual offender sentenced~~
 1183 ~~to a term of incarceration or committed to a residential program~~
 1184 ~~begins upon the offender's release from incarceration or~~
 1185 ~~commitment for the most recent conviction that required the~~
 1186 ~~offender to register.~~

1187 ~~b. A sexual offender's registration period is tolled~~
 1188 ~~during any period in which the offender is incarcerated, civilly~~
 1189 ~~committed, detained pursuant to chapter 985, or committed to a~~
 1190 ~~residential program.~~

1191 ~~c. Except as provided in sub-subparagraph e., if the~~
 1192 ~~sexual offender is only sentenced to a term of supervision for~~
 1193 ~~the most recent conviction that required the offender to~~
 1194 ~~register as a sexual offender or is only subject to a period of~~
 1195 ~~supervision for that conviction, the registration period begins~~
 1196 ~~when the term or period of supervision for that conviction~~

1197 ~~begins.~~

1198 ~~d. Except as provided in sub-subparagraph e., if the~~
 1199 ~~sexual offender is sentenced to a term of supervision that~~
 1200 ~~follows a term of incarceration for the most recent conviction~~
 1201 ~~that required the offender to register as a sexual offender or~~
 1202 ~~is subject to a period of supervision that follows commitment to~~
 1203 ~~a residential program for that conviction, the registration~~
 1204 ~~period begins when the term or period of supervision for that~~
 1205 ~~conviction begins.~~

1206 ~~e. If a sexual offender is sentenced to a term of more~~
 1207 ~~than 25 years' supervision for the most recent conviction that~~
 1208 ~~required the offender to register as a sexual offender, the~~
 1209 ~~sexual offender may not petition for removal of the requirement~~
 1210 ~~for registration as a sexual offender until the term of~~
 1211 ~~supervision for that conviction is completed.~~

1212 (b) As defined in sub-subparagraph (1)(h)1.b. ~~(1)(a)1.b.~~
 1213 must maintain registration with the department for the duration
 1214 of his or her life until the person provides the department with
 1215 an order issued by the court that designated the person as a
 1216 sexual predator, as a sexually violent predator, or by another
 1217 sexual offender designation in the state or jurisdiction in
 1218 which the order was issued which states that such designation
 1219 has been removed or demonstrates to the department that such
 1220 designation, if not imposed by a court, has been removed by
 1221 operation of law or court order in the state or jurisdiction in
 1222 which the designation was made, and provided such person no

1223 longer meets the criteria for registration as a sexual offender
 1224 under the laws of this state.

1225 (14)

1226 (b) However, a sexual offender who is required to register
 1227 as a result of a conviction for:

1228 1. Section 787.01 or s. 787.02 where the victim is a minor
 1229 ~~and the offender is not the victim's parent or guardian;~~

1230 2. Section 794.011, excluding s. 794.011(10);

1231 3. Section 800.04(4)(a)2. where the court finds the
 1232 offense involved a victim under 12 years of age or sexual
 1233 activity by the use of force or coercion;

1234 4. Section 800.04(5)(b);

1235 5. Section 800.04(5)(c)1. where the court finds
 1236 molestation involving unclothed genitals or genital area;

1237 6. Section 800.04(5)(c)2. where the court finds
 1238 molestation involving the use of force or coercion and unclothed
 1239 genitals or genital area;

1240 7. Section 800.04(5)(d) where the court finds the use of
 1241 force or coercion and unclothed genitals or genital area;

1242 8. Section 825.1025(2)(a);

1243 ~~9.8.~~ Any attempt or conspiracy to commit such offense;

1244 ~~10.9.~~ A violation of a similar law of another
 1245 jurisdiction; or

1246 ~~11.10.~~ A violation of a similar offense committed in this
 1247 state which has been redesignated from a former statute number
 1248 to one of those listed in this paragraph,

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must reregister each year during the month of the sexual offender's birthday and every third month thereafter.

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses or Internet identifiers required to be provided pursuant to paragraph (4)(e); all home telephone numbers and cellular telephone numbers required to be provided pursuant to paragraph (4)(e); ~~date and place of any employment information required to be provided pursuant to paragraph (4)(e);~~ the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his

1275 or her passport, if he or she has a passport, and, if he or she
 1276 is an alien, shall produce or provide information about
 1277 documents establishing his or her immigration status. The sexual
 1278 offender shall also provide information about any professional
 1279 licenses he or she has.

1280 2. If the sexual offender is enrolled or, ~~volunteering,~~
 1281 employed, whether for compensation or as a volunteer, ~~or~~
 1282 ~~carrying on a vocation~~ at an institution of higher education in
 1283 this state, the sexual offender shall also provide to the
 1284 department the name, address, and county of each institution,
 1285 including each campus attended, and the sexual offender's
 1286 enrollment, volunteer, or employment status.

1287 3. If the sexual offender's place of residence is a motor
 1288 vehicle, trailer, mobile home, or manufactured home, as defined
 1289 in chapter 320, the sexual offender shall also provide the
 1290 vehicle identification number; the license tag number; the
 1291 registration number; and a description, including color scheme,
 1292 of the motor vehicle, trailer, mobile home, or manufactured
 1293 home. If the sexual offender's place of residence is a vessel,
 1294 live-aboard vessel, or houseboat, as defined in chapter 327, the
 1295 sexual offender shall also provide the hull identification
 1296 number; the manufacturer's serial number; the name of the
 1297 vessel, live-aboard vessel, or houseboat; the registration
 1298 number; and a description, including color scheme, of the
 1299 vessel, live-aboard vessel or houseboat.

1300 4. Any sexual offender who fails to report in person as

1301 required at the sheriff's office, who fails to respond to any
 1302 address verification correspondence from the department within 3
 1303 weeks of the date of the correspondence, who fails to report all
 1304 electronic mail addresses and all Internet identifiers before
 1305 ~~prior to~~ use, or who knowingly provides false registration
 1306 information by act or omission commits a felony of the third
 1307 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1308 775.084.

1309 Section 4. Subsections (1) and (2) of section 943.04354,
 1310 Florida Statutes, are amended to read:

1311 943.04354 Removal of the requirement to register as a
 1312 sexual offender or sexual predator in special circumstances.—

1313 (1) For purposes of this section, a person shall be
 1314 considered for removal of the requirement to register as a
 1315 sexual offender or sexual predator only if the person:

1316 (a) Was convicted, regardless of adjudication, or
 1317 adjudicated delinquent of a violation of ~~s. 794.011~~, s. 800.04,
 1318 s. 827.071, or s. 847.0135(5) or of a similar offense in another
 1319 jurisdiction and if the person does not have any other
 1320 conviction, regardless of adjudication, or adjudication of
 1321 delinquency for a violation of s. 794.011, s. 800.04, s.
 1322 827.071, or s. 847.0135(5) or for a similar offense in another
 1323 jurisdiction;

1324 (b)1. Was convicted, regardless of adjudication, or
 1325 adjudicated delinquent of an offense listed in paragraph (a) and
 1326 is required to register as a sexual offender or sexual predator

1327 solely on the basis of this conviction or adjudication; or

1328 2. Was convicted, regardless of adjudication, or
 1329 adjudicated delinquent of an offense in another jurisdiction
 1330 which is similar to an offense listed in paragraph (a) and no
 1331 longer meets the criteria for registration as a sexual offender
 1332 or sexual predator under the laws of the jurisdiction in which
 1333 the similar offense occurred; and

1334 (c) Is not more than 4 years older than the victim of this
 1335 violation who was 13 years of age or older but younger than 18
 1336 years of age at the time the person committed this violation.

1337 (2) (a) If a person meets the criteria in subsection (1),
 1338 the person may, for the purpose of removing the requirement that
 1339 he or she register as a sexual offender or sexual predator, move
 1340 the criminal division of the circuit court of the circuit:

1341 1. the person may move the criminal division of the
 1342 circuit court of the circuit Where the conviction or
 1343 adjudication for the qualifying offense occurred for a
 1344 conviction in this state;

1345 2. Where the sexual offender or sexual predator resides
 1346 for a conviction for a violation of similar law of another
 1347 jurisdiction; or

1348 3. Where the sexual offender or sexual predator last
 1349 resided for a sexual offender or sexual predator with a
 1350 conviction of a violation of a similar law of another
 1351 jurisdiction who no longer resides in this state ~~to remove the~~
 1352 ~~requirement that the person register as a sexual offender or~~

1353 ~~sexual predator.~~
 1354 **(b)** The person must allege in the motion that he or she
 1355 meets the criteria in subsection (1) and that removal of the
 1356 registration requirement will not conflict with federal law that
 1357 requires that the sexual act be consensual, notwithstanding the
 1358 age of the victim. A person convicted or adjudicated delinquent
 1359 of an offense in another jurisdiction which is similar to an
 1360 offense listed in paragraph (1)(a) must provide the court
 1361 written confirmation that he or she is not required to register
 1362 in the jurisdiction in which the conviction or adjudication
 1363 occurred. The state attorney and the department must be given
 1364 notice of the motion at least 21 days before the date of
 1365 sentencing, disposition of the violation, or hearing on the
 1366 motion and may present evidence in opposition to the requested
 1367 relief or may otherwise demonstrate why the motion should be
 1368 denied. At sentencing, disposition of the violation, or hearing
 1369 on the motion, the court shall rule on the motion, and, if the
 1370 court determines the person meets the criteria in subsection (1)
 1371 and the removal of the registration requirement will not
 1372 conflict with federal law that requires that the sexual act be
 1373 consensual, notwithstanding the age of the victim, it may grant
 1374 the motion and order the removal of the registration
 1375 requirement. The court shall instruct the person to provide the
 1376 department a certified copy of the order granting relief. If the
 1377 court denies the motion, the person is not authorized under this
 1378 section to file another motion for removal of the registration

1379 requirement.

1380 Section 5. Subsection (1) of section 944.606, Florida
 1381 Statutes, is reordered and amended, and paragraph (a) of
 1382 subsection (3) of that section is amended, to read:

1383 944.606 Sexual offenders; notification upon release.—

1384 (1) As used in this section, the term:

1385 (a) "Convicted" means there has been a determination of
 1386 guilt as a result of a trial or the entry of a plea of guilty or
 1387 nolo contendere, regardless of whether adjudication is withheld.
 1388 A conviction for a similar offense includes, but is not limited
 1389 to, a conviction by a federal or military tribunal, including
 1390 courts-martial conducted by the Armed Forces of the United
 1391 States, and includes a conviction or entry of a plea of guilty
 1392 or nolo contendere resulting in a sanction in any state of the
 1393 United States or other jurisdiction. A sanction includes, but is
 1394 not limited to, a fine; probation; community control; parole;
 1395 conditional release; control release; or incarceration in a
 1396 state prison, federal prison, private correctional facility, or
 1397 local detention facility.

1398 ~~(b)(e)~~ "Electronic mail address" has the same meaning as
 1399 provided in s. 668.602.

1400 ~~(c)(d)~~ "Internet identifier" has the same meaning as
 1401 provided in s. 775.21.

1402 (d) "Permanent residence," "temporary residence," and
 1403 "transient residence" have the same meaning as provided in s.
 1404 775.21.

1405 (e) "Professional license" has the same meaning as
 1406 provided in s. 775.21.

1407 (f)~~(b)~~ "Sexual offender" means a person who has been
 1408 convicted of committing, or attempting, soliciting, or
 1409 conspiring to commit, any of the criminal offenses proscribed in
 1410 the following statutes in this state or similar offenses in
 1411 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 1412 s. 787.02, or s. 787.025(2)(c), where the victim is a minor ~~and~~
 1413 ~~the defendant is not the victim's parent or guardian; s.~~
 1414 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 1415 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 1416 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.
 1417 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 1418 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.
 1419 985.701(1); or any similar offense committed in this state which
 1420 has been redesignated from a former statute number to one of
 1421 those listed in this subsection, when the department has
 1422 received verified information regarding such conviction; an
 1423 offender's computerized criminal history record is not, in and
 1424 of itself, verified information.

1425 (3)(a) The department shall provide information regarding
 1426 any sexual offender who is being released after serving a period
 1427 of incarceration for any offense, as follows:

1428 1. The department shall provide: the sexual offender's
 1429 name, any change in the offender's name by reason of marriage or
 1430 other legal process, and any alias, if known; the correctional

1431 facility from which the sexual offender is released; the sexual
 1432 offender's social security number, race, sex, date of birth,
 1433 height, weight, and hair and eye color; tattoos or other
 1434 identifying marks; address of any planned permanent residence or
 1435 temporary residence, within the state or out of state, including
 1436 a rural route address and a post office box; if no permanent or
 1437 temporary address, any transient residence within the state;
 1438 address, location or description, and dates of any known future
 1439 temporary residence within the state or out of state; date and
 1440 county of sentence and each crime for which the offender was
 1441 sentenced; a copy of the offender's fingerprints, palm prints,
 1442 and a digitized photograph taken within 60 days before release;
 1443 the date of release of the sexual offender; all electronic mail
 1444 addresses and all Internet identifiers required to be provided
 1445 pursuant to s. 943.0435(4)(e); employment information, if known,
 1446 provided pursuant to s. 943.0435(4)(e); all home telephone
 1447 numbers and cellular telephone numbers required to be provided
 1448 pursuant to s. 943.0435(4)(e); information about any
 1449 professional licenses the offender has, if known; and passport
 1450 information, if he or she has a passport, and, if he or she is
 1451 an alien, information about documents establishing his or her
 1452 immigration status. The department shall notify the Department
 1453 of Law Enforcement if the sexual offender escapes, absconds, or
 1454 dies. If the sexual offender is in the custody of a private
 1455 correctional facility, the facility shall take the digitized
 1456 photograph of the sexual offender within 60 days before the

1457 sexual offender's release and provide this photograph to the
 1458 Department of Corrections and also place it in the sexual
 1459 offender's file. If the sexual offender is in the custody of a
 1460 local jail, the custodian of the local jail shall register the
 1461 offender within 3 business days after intake of the offender for
 1462 any reason and upon release, and shall notify the Department of
 1463 Law Enforcement of the sexual offender's release and provide to
 1464 the Department of Law Enforcement the information specified in
 1465 this paragraph and any information specified in subparagraph 2.
 1466 that the Department of Law Enforcement requests.

1467 2. The department may provide any other information deemed
 1468 necessary, including criminal and corrections records,
 1469 nonprivileged personnel and treatment records, when available.

1470 Section 6. Subsection (1) of section 944.607, Florida
 1471 Statutes, is reordered and amended, and subsections (4) and (13)
 1472 of that section are amended, to read:

1473 944.607 Notification to Department of Law Enforcement of
 1474 information on sexual offenders.-

1475 (1) As used in this section, the term:

1476 ~~(a)(e)~~ "Change in enrollment or employment status at an
 1477 institution of higher education" has the same meaning as
 1478 provided in s. 775.21 ~~means the commencement or termination of~~
 1479 ~~enrollment or employment or a change in location of enrollment~~
 1480 ~~or employment.~~

1481 ~~(b)(e)~~ "Conviction" means a determination of guilt which
 1482 is the result of a trial or the entry of a plea of guilty or

1483 nolo contendere, regardless of whether adjudication is withheld.
 1484 Conviction of a similar offense includes, but is not limited to,
 1485 a conviction by a federal or military tribunal, including
 1486 courts-martial conducted by the Armed Forces of the United
 1487 States, and includes a conviction or entry of a plea of guilty
 1488 or nolo contendere resulting in a sanction in any state of the
 1489 United States or other jurisdiction. A sanction includes, but is
 1490 not limited to, a fine; probation; community control; parole;
 1491 conditional release; control release; or incarceration in a
 1492 state prison, federal prison, private correctional facility, or
 1493 local detention facility.

1494 (c)~~(f)~~ "Electronic mail address" has the same meaning as
 1495 provided in s. 668.602.

1496 (d) "Institution of higher education" has the same meaning
 1497 as provided in s. 775.21 ~~means a career center, community~~
 1498 ~~college, college, state university, or independent postsecondary~~
 1499 ~~institution.~~

1500 (e)~~(g)~~ "Internet identifier" has the same meaning as
 1501 provided in s. 775.21.

1502 (f)~~(a)~~ "Sexual offender" means a person who is in the
 1503 custody or control of, or under the supervision of, the
 1504 department or is in the custody of a private correctional
 1505 facility:

1506 1. On or after October 1, 1997, as a result of a
 1507 conviction for committing, or attempting, soliciting, or
 1508 conspiring to commit, any of the criminal offenses proscribed in

1509 the following statutes in this state or similar offenses in
 1510 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 1511 s. 787.02, or s. 787.025(2)(c), where the victim is a minor ~~and~~
 1512 ~~the defendant is not the victim's parent or guardian; s.~~
 1513 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.
 1514 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 1515 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.
 1516 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 1517 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.
 1518 985.701(1); or any similar offense committed in this state which
 1519 has been redesignated from a former statute number to one of
 1520 those listed in this paragraph; or

1521 2. Who establishes or maintains a residence in this state
 1522 and who has not been designated as a sexual predator by a court
 1523 of this state but who has been designated as a sexual predator,
 1524 as a sexually violent predator, or by another sexual offender
 1525 designation in another state or jurisdiction and was, as a
 1526 result of such designation, subjected to registration or
 1527 community or public notification, or both, or would be if the
 1528 person were a resident of that state or jurisdiction, without
 1529 regard as to whether the person otherwise meets the criteria for
 1530 registration as a sexual offender.

1531 (g) ~~(b)~~ "Vehicles owned" has the same meaning as provided
 1532 in s. 775.21.

1533 (4) A sexual offender, as described in this section, who
 1534 is under the supervision of the Department of Corrections but is

1535 not incarcerated shall register with the Department of
 1536 Corrections within 3 business days after sentencing for a
 1537 registrable offense and otherwise provide information as
 1538 required by this subsection.

1539 (a) The sexual offender shall provide his or her name;
 1540 date of birth; social security number; race; sex; height;
 1541 weight; hair and eye color; tattoos or other identifying marks;
 1542 all electronic mail addresses and Internet identifiers required
 1543 to be provided pursuant to s. 943.0435(4)(e); employment
 1544 information required to be provided pursuant to s.
 1545 943.0435(4)(e); all home telephone numbers and cellular
 1546 telephone numbers required to be provided pursuant to s.
 1547 943.0435(4)(e); the make, model, color, vehicle identification
 1548 number (VIN), and license tag number of all vehicles owned;
 1549 permanent or legal residence and address of temporary residence
 1550 within the state or out of state while the sexual offender is
 1551 under supervision in this state, including any rural route
 1552 address or post office box; if no permanent or temporary
 1553 address, any transient residence within the state; and address,
 1554 location or description, and dates of any current or known
 1555 future temporary residence within the state or out of state. The
 1556 sexual offender shall also produce his or her passport, if he or
 1557 she has a passport, and, if he or she is an alien, shall produce
 1558 or provide information about documents establishing his or her
 1559 immigration status. The sexual offender shall also provide
 1560 information about any professional licenses he or she has. The

1561 Department of Corrections shall verify the address of each
 1562 sexual offender in the manner described in ss. 775.21 and
 1563 943.0435. The department shall report to the Department of Law
 1564 Enforcement any failure by a sexual predator or sexual offender
 1565 to comply with registration requirements.

1566 (b) If the sexual offender is enrolled or, employed,
 1567 whether for compensation or as a volunteer ~~volunteering, or~~
 1568 ~~carrying on a vocation~~ at an institution of higher education in
 1569 this state, the sexual offender shall provide the name, address,
 1570 and county of each institution, including each campus attended,
 1571 and the sexual offender's enrollment, volunteer, or employment
 1572 status required to be provided pursuant to s. 943.0435(4)(e).
 1573 Each change in ~~enrollment, volunteer, or employment~~ status at an
 1574 institution of higher education must be reported to the
 1575 department within 48 hours after the change in status at an
 1576 institution of higher education as provided pursuant to s.
 1577 943.0435(4)(e). The Department of Corrections shall promptly
 1578 notify each institution of the sexual offender's presence and
 1579 any change in the sexual offender's enrollment, volunteer, or
 1580 employment status.

1581 (c) A sexual offender shall report in person to the
 1582 sheriff's office within 48 hours after any change in vehicles
 1583 owned to report those vehicle information changes.

1584 (13)(a) A sexual offender must report in person each year
 1585 during the month of the sexual offender's birthday and during
 1586 the sixth month following the sexual offender's birth month to

1587 the sheriff's office in the county in which he or she resides or
 1588 is otherwise located to reregister.

1589 (b) However, a sexual offender who is required to register
 1590 as a result of a conviction for:

1591 1. Section 787.01 or s. 787.02 where the victim is a minor
 1592 ~~and the offender is not the victim's parent or guardian;~~

1593 2. Section 794.011, excluding s. 794.011(10);

1594 3. Section 800.04(4)(a)2. where the victim is under 12
 1595 years of age or where the court finds sexual activity by the use
 1596 of force or coercion;

1597 4. Section 800.04(5)(b);

1598 5. Section 800.04(5)(c)1. where the court finds
 1599 molestation involving unclothed genitals or genital area;

1600 6. Section 800.04(5)(c)2. where the court finds
 1601 molestation involving use of force or coercion and unclothed
 1602 genitals or genital area;

1603 7. Section 800.04(5)(d) where the court finds the use of
 1604 force or coercion and unclothed genitals or genital area;

1605 8. Section 825.1025(2)(a);

1606 ~~9.8.~~ Any attempt or conspiracy to commit such offense;

1607 ~~10.9.~~ A violation of a similar law of another
 1608 jurisdiction; or

1609 11.10. A violation of a similar offense committed in this
 1610 state which has been redesignated from a former statute number
 1611 to one of those listed in this paragraph,

1612

1613 must reregister each year during the month of the sexual
 1614 offender's birthday and every third month thereafter.

1615 (c) The sheriff's office may determine the appropriate
 1616 times and days for reporting by the sexual offender, which must
 1617 be consistent with the reporting requirements of this
 1618 subsection. Reregistration must include any changes to the
 1619 following information:

1620 1. Name; social security number; age; race; sex; date of
 1621 birth; height; weight; tattoos or other identifying marks; hair
 1622 and eye color; address of any permanent residence and address of
 1623 any current temporary residence, within the state or out of
 1624 state, including a rural route address and a post office box; if
 1625 no permanent or temporary address, any transient residence;
 1626 address, location or description, and dates of any current or
 1627 known future temporary residence within the state or out of
 1628 state; all electronic mail addresses and Internet identifiers
 1629 required to be provided pursuant to s. 943.0435(4)(e); all home
 1630 telephone numbers and cellular telephone numbers required to be
 1631 provided pursuant to s. 943.0435(4)(e); ~~date and place of any~~
 1632 employment information required to be provided pursuant to s.
 1633 943.0435(4)(e); the make, model, color, vehicle identification
 1634 number (VIN), and license tag number of all vehicles owned;
 1635 fingerprints; palm prints; and photograph. A post office box may
 1636 not be provided in lieu of a physical residential address. The
 1637 sexual offender shall also produce his or her passport, if he or
 1638 she has a passport, and, if he or she is an alien, shall produce

1639 or provide information about documents establishing his or her
 1640 immigration status. The sexual offender shall also provide
 1641 information about any professional licenses he or she has.

1642 2. If the sexual offender is enrolled or, employed,
 1643 whether for compensation or as a volunteer ~~volunteering, or~~
 1644 ~~carrying on a vocation~~ at an institution of higher education in
 1645 this state, the sexual offender shall also provide to the
 1646 department the name, address, and county of each institution,
 1647 including each campus attended, and the sexual offender's
 1648 enrollment, volunteer, or employment status.

1649 3. If the sexual offender's place of residence is a motor
 1650 vehicle, trailer, mobile home, or manufactured home, as defined
 1651 in chapter 320, the sexual offender shall also provide the
 1652 vehicle identification number; the license tag number; the
 1653 registration number; and a description, including color scheme,
 1654 of the motor vehicle, trailer, mobile home, or manufactured
 1655 home. If the sexual offender's place of residence is a vessel,
 1656 live-aboard vessel, or houseboat, as defined in chapter 327, the
 1657 sexual offender shall also provide the hull identification
 1658 number; the manufacturer's serial number; the name of the
 1659 vessel, live-aboard vessel, or houseboat; the registration
 1660 number; and a description, including color scheme, of the
 1661 vessel, live-aboard vessel or houseboat.

1662 4. Any sexual offender who fails to report in person as
 1663 required at the sheriff's office, who fails to respond to any
 1664 address verification correspondence from the department within 3

1665 weeks of the date of the correspondence, who fails to report all
 1666 electronic mail addresses or Internet identifiers before ~~prior~~
 1667 ~~to~~ use, or who knowingly provides false registration information
 1668 by act or omission commits a felony of the third degree,
 1669 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

1670 (d) The sheriff's office shall, within 2 working days,
 1671 electronically submit and update all information provided by the
 1672 sexual offender to the Department of Law Enforcement in a manner
 1673 prescribed by that department.

1674 Section 7. Subsection (1) and paragraph (a) of subsection
 1675 (3) of section 985.481, Florida Statutes, are amended to read:

1676 985.481 Sexual offenders adjudicated delinquent;
 1677 notification upon release.-

1678 (1) As used in this section:

1679 (a) "Convicted" has the same meaning as provided in s.
 1680 943.0435.

1681 (b) "Electronic mail address" has the same meaning as
 1682 provided in s. 668.602.

1683 (c) ~~(b)~~ "Internet identifier" has the same meaning as
 1684 provided in s. 775.21.

1685 (d) "Permanent residence," "temporary residence," and
 1686 "transient residence" have the same meaning as provided in s.
 1687 775.21.

1688 (e) "Professional license" has the same meaning as
 1689 provided in s. 775.21.

1690 (f) ~~(e)~~ "Sexual offender" means a person who has been

1691 adjudicated delinquent as provided in s. 943.0435(1)(h)1.d. ~~s.~~
 1692 ~~943.0435(1)(a)1.d.~~

1693 (g)(d) "Vehicles owned" has the same meaning as provided
 1694 in s. 775.21.

1695 (3)(a) The department shall provide information regarding
 1696 any sexual offender who is being released after serving a period
 1697 of residential commitment under the department for any offense,
 1698 as follows:

1699 1. The department shall provide the sexual offender's
 1700 name, any change in the offender's name by reason of marriage or
 1701 other legal process, and any alias, if known; the correctional
 1702 facility from which the sexual offender is released; the sexual
 1703 offender's social security number, race, sex, date of birth,
 1704 height, weight, and hair and eye color; tattoos or other
 1705 identifying marks; the make, model, color, vehicle
 1706 identification number (VIN), and license tag number of all
 1707 vehicles owned; address of any planned permanent residence or
 1708 temporary residence, within the state or out of state, including
 1709 a rural route address and a post office box; if no permanent or
 1710 temporary address, any transient residence within the state;
 1711 address, location or description, and dates of any known future
 1712 temporary residence within the state or out of state; date and
 1713 county of disposition and each crime for which there was a
 1714 disposition; a copy of the offender's fingerprints, palm prints,
 1715 and a digitized photograph taken within 60 days before release;
 1716 the date of release of the sexual offender; all home telephone

1717 numbers and cellular telephone numbers required to be provided
 1718 pursuant to s. 943.0435(4)(e); all electronic mail addresses and
 1719 Internet identifiers required to be provided pursuant to s.
 1720 943.0435(4)(e); information about any professional licenses the
 1721 offender has, if known; and passport information, if he or she
 1722 has a passport, and, if he or she is an alien, information about
 1723 documents establishing his or her immigration status. The
 1724 department shall notify the Department of Law Enforcement if the
 1725 sexual offender escapes, absconds, or dies. If the sexual
 1726 offender is in the custody of a private correctional facility,
 1727 the facility shall take the digitized photograph of the sexual
 1728 offender within 60 days before the sexual offender's release and
 1729 also place it in the sexual offender's file. If the sexual
 1730 offender is in the custody of a local jail, the custodian of the
 1731 local jail shall register the offender within 3 business days
 1732 after intake of the offender for any reason and upon release,
 1733 and shall notify the Department of Law Enforcement of the sexual
 1734 offender's release and provide to the Department of Law
 1735 Enforcement the information specified in this subparagraph and
 1736 any information specified in subparagraph 2. which the
 1737 Department of Law Enforcement requests.

1738 2. The department may provide any other information
 1739 considered necessary, including criminal and delinquency
 1740 records, when available.

1741 Section 8. Subsections (1), (4), and (13) of section
 1742 985.4815, Florida Statutes, are amended, and paragraph (c) of

1743 subsection (10) is republished, to read:

1744 985.4815 Notification to Department of Law Enforcement of
1745 information on juvenile sexual offenders.—

1746 (1) As used in this section, the term:

1747 (a) "Change in enrollment or employment status at an
1748 institution of higher education" has the same meaning as
1749 provided in s. 775.21 ~~means the commencement or termination of~~
1750 ~~enrollment or employment or a change in location of enrollment~~
1751 ~~or employment.~~

1752 (b) "Conviction" has the same meaning as provided in s.
1753 943.0435.

1754 (c) "Electronic mail address" has the same meaning as
1755 provided in s. 668.602.

1756 (d)~~(e)~~ "Institution of higher education" has the same
1757 meaning as provided in s. 775.21 ~~means a career center,~~
1758 ~~community college, college, state university, or independent~~
1759 ~~postsecondary institution.~~

1760 (e)~~(d)~~ "Internet identifier" has the same meaning as
1761 provided in s. 775.21.

1762 (f) "Permanent residence," "temporary residence," and
1763 "transient residence" have the same meaning as provided in s.
1764 775.21.

1765 (g) "Professional license" has the same meaning as
1766 provided in s. 775.21.

1767 (h)~~(e)~~ "Sexual offender" means a person who is in the care
1768 or custody or under the jurisdiction or supervision of the

1769 department or is in the custody of a private correctional
 1770 facility and who:

1771 1. Has been adjudicated delinquent as provided in s.
 1772 943.0435(1)(h)1.d. ~~s. 943.0435(1)(a)1.d.~~; or

1773 2. Establishes or maintains a residence in this state and
 1774 has not been designated as a sexual predator by a court of this
 1775 state but has been designated as a sexual predator, as a
 1776 sexually violent predator, or by another sexual offender
 1777 designation in another state or jurisdiction and was, as a
 1778 result of such designation, subjected to registration or
 1779 community or public notification, or both, or would be if the
 1780 person were a resident of that state or jurisdiction, without
 1781 regard to whether the person otherwise meets the criteria for
 1782 registration as a sexual offender.

1783 (i) ~~(f)~~ "Vehicles owned" has the same meaning as provided
 1784 in s. 775.21.

1785 (4) A sexual offender, as described in this section, who
 1786 is under the supervision of the department but who is not
 1787 committed shall register with the department within 3 business
 1788 days after adjudication and disposition for a registrable
 1789 offense and otherwise provide information as required by this
 1790 subsection.

1791 (a) The sexual offender shall provide his or her name;
 1792 date of birth; social security number; race; sex; height;
 1793 weight; hair and eye color; tattoos or other identifying marks;
 1794 the make, model, color, vehicle identification number (VIN), and

1795 license tag number of all vehicles owned; permanent or legal
 1796 residence and address of temporary residence within the state or
 1797 out of state while the sexual offender is in the care or custody
 1798 or under the jurisdiction or supervision of the department in
 1799 this state, including any rural route address or post office
 1800 box; if no permanent or temporary address, any transient
 1801 residence; address, location or description, and dates of any
 1802 current or known future temporary residence within the state or
 1803 out of state; all home telephone numbers and cellular telephone
 1804 numbers required to be provided pursuant to s. 943.0435(4)(e);
 1805 all electronic mail addresses and Internet identifiers required
 1806 to be provided pursuant to s. 943.0435(4)(e); and the name and
 1807 address of each school attended. The sexual offender shall also
 1808 produce his or her passport, if he or she has a passport, and,
 1809 if he or she is an alien, shall produce or provide information
 1810 about documents establishing his or her immigration status. The
 1811 offender shall also provide information about any professional
 1812 licenses he or she has. The department shall verify the address
 1813 of each sexual offender and shall report to the Department of
 1814 Law Enforcement any failure by a sexual offender to comply with
 1815 registration requirements.

1816 (b) If the sexual offender is enrolled or employed,
 1817 whether for compensation or as a volunteer ~~volunteering, or~~
 1818 ~~carrying on a vocation~~ at an institution of higher education in
 1819 this state, the sexual offender shall provide the name, address,
 1820 and county of each institution, including each campus attended,

1821 and the sexual offender's enrollment, volunteer, or employment
 1822 status. Each change in ~~enrollment, volunteer, or employment~~
 1823 status at an institution of higher education must be reported to
 1824 the department within 48 hours after the change in status at an
 1825 institution of higher education. The department shall promptly
 1826 notify each institution of the sexual offender's presence and
 1827 any change in the sexual offender's enrollment, volunteer, or
 1828 employment status.

1829 (c) A sexual offender shall report in person to the
 1830 sheriff's office within 48 hours after any change in vehicles
 1831 owned to report those vehicle information changes.

1832 (10)

1833 (c) An arrest on charges of failure to register when the
 1834 offender has been provided and advised of his or her statutory
 1835 obligations to register under s. 943.0435(2), the service of an
 1836 information or a complaint for a violation of this section, or
 1837 an arraignment on charges for a violation of this section
 1838 constitutes actual notice of the duty to register. A sexual
 1839 offender's failure to immediately register as required by this
 1840 section following such arrest, service, or arraignment
 1841 constitutes grounds for a subsequent charge of failure to
 1842 register. A sexual offender charged with the crime of failure to
 1843 register who asserts, or intends to assert, a lack of notice of
 1844 the duty to register as a defense to a charge of failure to
 1845 register shall immediately register as required by this section.
 1846 A sexual offender who is charged with a subsequent failure to

1847 register may not assert the defense of a lack of notice of the
 1848 duty to register.

1849 (13) (a) A sexual offender must report in person each year
 1850 during the month of the sexual offender's birthday and during
 1851 every third month thereafter to the sheriff's office in the
 1852 county in which he or she resides or is otherwise located to
 1853 reregister.

1854 (b) The sheriff's office may determine the appropriate
 1855 times and days for reporting by the sexual offender, which must
 1856 be consistent with the reporting requirements of this
 1857 subsection. Reregistration must include any changes to the
 1858 following information:

1859 1. Name; social security number; age; race; sex; date of
 1860 birth; height; weight; hair and eye color; tattoos or other
 1861 identifying marks; fingerprints; palm prints; address of any
 1862 permanent residence and address of any current temporary
 1863 residence, within the state or out of state, including a rural
 1864 route address and a post office box; if no permanent or
 1865 temporary address, any transient residence; address, location or
 1866 description, and dates of any current or known future temporary
 1867 residence within the state or out of state; passport
 1868 information, if he or she has a passport, and, if he or she is
 1869 an alien, information about documents establishing his or her
 1870 immigration status; all home telephone numbers and cellular
 1871 telephone numbers required to be provided pursuant to s.
 1872 943.0435(4)(e); all electronic mail addresses and Internet

1873 identifiers required to be provided pursuant to s.
 1874 943.0435(4) (e); name and address of each school attended; ~~date~~
 1875 and place of any employment information required to be provided
 1876 pursuant to s. 943.0435(4) (e); the make, model, color, vehicle
 1877 identification number (VIN), and license tag number of all
 1878 vehicles owned; and photograph. A post office box may not be
 1879 provided in lieu of a physical residential address. The offender
 1880 shall also provide information about any professional licenses
 1881 he or she has.

1882 2. If the sexual offender is enrolled or, employed,
 1883 whether for compensation or as a volunteer ~~volunteering, or~~
 1884 ~~carrying on a vocation~~ at an institution of higher education in
 1885 this state, the sexual offender shall also provide to the
 1886 department the name, address, and county of each institution,
 1887 including each campus attended, and the sexual offender's
 1888 enrollment, volunteer, or employment status.

1889 3. If the sexual offender's place of residence is a motor
 1890 vehicle, trailer, mobile home, or manufactured home, as defined
 1891 in chapter 320, the sexual offender shall also provide the
 1892 vehicle identification number; the license tag number; the
 1893 registration number; and a description, including color scheme,
 1894 of the motor vehicle, trailer, mobile home, or manufactured
 1895 home. If the sexual offender's place of residence is a vessel,
 1896 live-aboard vessel, or houseboat, as defined in chapter 327, the
 1897 sexual offender shall also provide the hull identification
 1898 number; the manufacturer's serial number; the name of the

1899 vessel, live-aboard vessel, or houseboat; the registration
 1900 number; and a description, including color scheme, of the
 1901 vessel, live-aboard vessel, or houseboat.

1902 4. Any sexual offender who fails to report in person as
 1903 required at the sheriff's office, who fails to respond to any
 1904 address verification correspondence from the department within 3
 1905 weeks after the date of the correspondence, or who knowingly
 1906 provides false registration information by act or omission
 1907 commits a felony of the third degree, punishable as provided in
 1908 ss. 775.082, 775.083, and 775.084.

1909 (c) The sheriff's office shall, within 2 working days,
 1910 electronically submit and update all information provided by the
 1911 sexual offender to the Department of Law Enforcement in a manner
 1912 prescribed by that department.

1913 Section 9. Paragraph (b) of subsection (1) of section
 1914 92.55, Florida Statutes, is amended to read:

1915 92.55 Judicial or other proceedings involving victim or
 1916 witness under the age of 16, a person who has an intellectual
 1917 disability, or a sexual offense victim or witness; special
 1918 protections; use of registered service or therapy animals.-

1919 (1) For purposes of this section, the term:

1920 (b) "Sexual offense" means any offense specified in s.
 1921 775.21(4)(a)1. or s. 943.0435(1)(h)1.a.(I) ~~s.~~
 1922 ~~943.0435(1)(a)1.a.(I)~~.

1923 Section 10. Subsection (2) of section 775.0862, Florida
 1924 Statutes, is amended to read:

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1925 775.0862 Sexual offenses against students by authority
 1926 figures; reclassification.-

1927 (2) The felony degree of a violation of an offense listed
 1928 in s. 943.0435(1)(h)1.a. ~~s. 943.0435(1)(a)1.a.~~, unless the
 1929 offense is a violation of s. 794.011(4)(e)7. or s.
 1930 810.145(8)(a)2., shall be reclassified as provided in this
 1931 section if the offense is committed by an authority figure of a
 1932 school against a student of the school.

1933 Section 11. Subsection (3) of section 943.0515, Florida
 1934 Statutes, is amended to read:

1935 943.0515 Retention of criminal history records of minors.-

1936 (3) Notwithstanding any other provision of this section,
 1937 the Criminal Justice Information Program shall retain the
 1938 criminal history record of a minor adjudicated delinquent for a
 1939 violation committed on or after July 1, 2007, as provided in s.
 1940 943.0435(1)(h)1.d. ~~s. 943.0435(1)(a)1.d.~~ Such records may not be
 1941 destroyed and must be merged with the person's adult criminal
 1942 history record and retained as a part of the person's adult
 1943 record.

1944 Section 12. Subsection (12) of section 947.1405, Florida
 1945 Statutes, is amended to read:

1946 947.1405 Conditional release program.-

1947 (12) In addition to all other conditions imposed, for a
 1948 releasee who is subject to conditional release for a crime that
 1949 was committed on or after May 26, 2010, and who has been
 1950 convicted at any time of committing, or attempting, soliciting,

1951 or conspiring to commit, any of the criminal offenses listed in
 1952 s. 943.0435(1)(h)1.a.(I) ~~s. 943.0435(1)(a)1.a.(I)~~, or a similar
 1953 offense in another jurisdiction against a victim who was under
 1954 18 years of age at the time of the offense, if the releasee has
 1955 not received a pardon for any felony or similar law of another
 1956 jurisdiction necessary for the operation of this subsection, if
 1957 a conviction of a felony or similar law of another jurisdiction
 1958 necessary for the operation of this subsection has not been set
 1959 aside in any postconviction proceeding, or if the releasee has
 1960 not been removed from the requirement to register as a sexual
 1961 offender or sexual predator pursuant to s. 943.04354, the
 1962 commission must impose the following conditions:

1963 (a) A prohibition on visiting schools, child care
 1964 facilities, parks, and playgrounds without prior approval from
 1965 the releasee's supervising officer. The commission may also
 1966 designate additional prohibited locations to protect a victim.
 1967 The prohibition ordered under this paragraph does not prohibit
 1968 the releasee from visiting a school, child care facility, park,
 1969 or playground for the sole purpose of attending a religious
 1970 service as defined in s. 775.0861 or picking up or dropping off
 1971 the releasee's child or grandchild at a child care facility or
 1972 school.

1973 (b) A prohibition on distributing candy or other items to
 1974 children on Halloween; wearing a Santa Claus costume, or other
 1975 costume to appeal to children, on or preceding Christmas;
 1976 wearing an Easter Bunny costume, or other costume to appeal to

1977 children, on or preceding Easter; entertaining at children's
 1978 parties; or wearing a clown costume without prior approval from
 1979 the commission.

1980 Section 13. Subsection (4) of section 948.30, Florida
 1981 Statutes, is amended to read:

1982 948.30 Additional terms and conditions of probation or
 1983 community control for certain sex offenses.—Conditions imposed
 1984 pursuant to this section do not require oral pronouncement at
 1985 the time of sentencing and shall be considered standard
 1986 conditions of probation or community control for offenders
 1987 specified in this section.

1988 (4) In addition to all other conditions imposed, for a
 1989 probationer or community controllee who is subject to
 1990 supervision for a crime that was committed on or after May 26,
 1991 2010, and who has been convicted at any time of committing, or
 1992 attempting, soliciting, or conspiring to commit, any of the
 1993 criminal offenses listed in s. 943.0435(1)(h)1.a.(I) ~~s.~~
 1994 ~~943.0435(1)(a)1.a.(I)~~, or a similar offense in another
 1995 jurisdiction, against a victim who was under the age of 18 at
 1996 the time of the offense; if the offender has not received a
 1997 pardon for any felony or similar law of another jurisdiction
 1998 necessary for the operation of this subsection, if a conviction
 1999 of a felony or similar law of another jurisdiction necessary for
 2000 the operation of this subsection has not been set aside in any
 2001 postconviction proceeding, or if the offender has not been
 2002 removed from the requirement to register as a sexual offender or

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2003 sexual predator pursuant to s. 943.04354, the court must impose
 2004 the following conditions:

2005 (a) A prohibition on visiting schools, child care
 2006 facilities, parks, and playgrounds, without prior approval from
 2007 the offender's supervising officer. The court may also designate
 2008 additional locations to protect a victim. The prohibition
 2009 ordered under this paragraph does not prohibit the offender from
 2010 visiting a school, child care facility, park, or playground for
 2011 the sole purpose of attending a religious service as defined in
 2012 s. 775.0861 or picking up or dropping off the offender's
 2013 children or grandchildren at a child care facility or school.

2014 (b) A prohibition on distributing candy or other items to
 2015 children on Halloween; wearing a Santa Claus costume, or other
 2016 costume to appeal to children, on or preceding Christmas;
 2017 wearing an Easter Bunny costume, or other costume to appeal to
 2018 children, on or preceding Easter; entertaining at children's
 2019 parties; or wearing a clown costume; without prior approval from
 2020 the court.

2021 Section 14. Section 948.31, Florida Statutes, is amended
 2022 to read:

2023 948.31 Evaluation and treatment of sexual predators and
 2024 offenders on probation or community control.—The court may
 2025 require any probationer or community controllee who is required
 2026 to register as a sexual predator under s. 775.21 or sexual
 2027 offender under s. 943.0435, s. 944.606, or s. 944.607 to undergo
 2028 an evaluation, at the probationer or community controllee's

2029 expense, by a qualified practitioner to determine whether such
 2030 probationer or community controllee needs sexual offender
 2031 treatment. If the qualified practitioner determines that sexual
 2032 offender treatment is needed and recommends treatment, the
 2033 probationer or community controllee must successfully complete
 2034 and pay for the treatment. Such treatment must be obtained from
 2035 a qualified practitioner as defined in s. 948.001. Treatment may
 2036 not be administered by a qualified practitioner who has been
 2037 convicted or adjudicated delinquent of committing, or
 2038 attempting, soliciting, or conspiring to commit, any offense
 2039 that is listed in s. 943.0435(1)(h)1.a.(I) ~~s.~~
 2040 ~~943.0435(1)(a)1.a.(I)~~.

2041 Section 15. Subsection (4) of section 1012.315, Florida
 2042 Statutes, is amended to read:

2043 1012.315 Disqualification from employment.—A person is
 2044 ineligible for educator certification, and instructional
 2045 personnel and school administrators, as defined in s. 1012.01,
 2046 are ineligible for employment in any position that requires
 2047 direct contact with students in a district school system,
 2048 charter school, or private school that accepts scholarship
 2049 students under s. 1002.39 or s. 1002.395, if the person,
 2050 instructional personnel, or school administrator has been
 2051 convicted of:

2052 (4) Any delinquent act committed in this state or any
 2053 delinquent or criminal act committed in another state or under
 2054 federal law which, if committed in this state, qualifies an

2055 individual for inclusion on the Registered Juvenile Sex Offender
 2056 List under s. 943.0435(1)(h)1.d. ~~s. 943.0435(1)(a)1.d.~~

2057 Section 16. Paragraph (g) of subsection (2) of section
 2058 1012.467, Florida Statutes, is amended to read:

2059 1012.467 Noninstructional contractors who are permitted
 2060 access to school grounds when students are present; background
 2061 screening requirements.—

2062 (2)

2063 (g) A noninstructional contractor for whom a criminal
 2064 history check is required under this section may not have been
 2065 convicted of any of the following offenses designated in the
 2066 Florida Statutes, any similar offense in another jurisdiction,
 2067 or any similar offense committed in this state which has been
 2068 redesignated from a former provision of the Florida Statutes to
 2069 one of the following offenses:

2070 1. Any offense listed in s. 943.0435(1)(h)1. ~~s.~~
 2071 ~~943.0435(1)(a)1.~~, relating to the registration of an individual
 2072 as a sexual offender.

2073 2. Section 393.135, relating to sexual misconduct with
 2074 certain developmentally disabled clients and the reporting of
 2075 such sexual misconduct.

2076 3. Section 394.4593, relating to sexual misconduct with
 2077 certain mental health patients and the reporting of such sexual
 2078 misconduct.

2079 4. Section 775.30, relating to terrorism.

2080 5. Section 782.04, relating to murder.

2081 6. Section 787.01, relating to kidnapping.

2082 7. Any offense under chapter 800, relating to lewdness and
2083 indecent exposure.

2084 8. Section 826.04, relating to incest.

2085 9. Section 827.03, relating to child abuse, aggravated
2086 child abuse, or neglect of a child.

2087 Section 17. For the purpose of incorporating the amendment
2088 made by this act to section 775.21, Florida Statutes, in a
2089 reference thereto, section 938.085, Florida Statutes, is
2090 reenacted to read:

2091 938.085 Additional cost to fund rape crisis centers.—In
2092 addition to any sanction imposed when a person pleads guilty or
2093 nolo contendere to, or is found guilty of, regardless of
2094 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and
2095 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;
2096 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.
2097 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.
2098 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.
2099 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.
2100 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.
2101 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.
2102 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.
2103 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and
2104 (14)(c); or s. 985.701(1), the court shall impose a surcharge of
2105 \$151. Payment of the surcharge shall be a condition of
2106 probation, community control, or any other court-ordered

2107 supervision. The sum of \$150 of the surcharge shall be deposited
 2108 into the Rape Crisis Program Trust Fund established within the
 2109 Department of Health by chapter 2003-140, Laws of Florida. The
 2110 clerk of the court shall retain \$1 of each surcharge that the
 2111 clerk of the court collects as a service charge of the clerk's
 2112 office.

2113 Section 18. For the purpose of incorporating the
 2114 amendments made by this act to sections 775.21 and 943.0435,
 2115 Florida Statutes, in references thereto, subsection (1) of
 2116 section 794.056, Florida Statutes, is reenacted to read:

2117 794.056 Rape Crisis Program Trust Fund.—

2118 (1) The Rape Crisis Program Trust Fund is created within
 2119 the Department of Health for the purpose of providing funds for
 2120 rape crisis centers in this state. Trust fund moneys shall be
 2121 used exclusively for the purpose of providing services for
 2122 victims of sexual assault. Funds credited to the trust fund
 2123 consist of those funds collected as an additional court
 2124 assessment in each case in which a defendant pleads guilty or
 2125 nolo contendere to, or is found guilty of, regardless of
 2126 adjudication, an offense provided in s. 775.21(6) and (10)(a),
 2127 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.
 2128 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.
 2129 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.
 2130 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;
 2131 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.
 2132 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.

2133 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.
 2134 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.
 2135 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),
 2136 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust
 2137 fund also shall include revenues provided by law, moneys
 2138 appropriated by the Legislature, and grants from public or
 2139 private entities.

2140 Section 19. For the purpose of incorporating the
 2141 amendments made by this act to sections 775.21, 943.0435,
 2142 944.607, and 985.4815, Florida Statutes, in references thereto,
 2143 paragraph (g) of subsection (3) of section 921.0022, Florida
 2144 Statutes, is reenacted to read:

2145 921.0022 Criminal Punishment Code; offense severity
 2146 ranking chart.—

2147 (3) OFFENSE SEVERITY RANKING CHART
 2148 (g) LEVEL 7

2149

| Florida Statute | Felony Degree | Description |
|-----------------|---------------|---|
| 316.027(2)(c) | 1st | Accident involving death, failure to stop; leaving scene. |
| 316.193(3)(c)2. | 3rd | DUI resulting in serious bodily |

2150

2151

| | | | |
|------|-------------------------------|-----|--|
| 2152 | 316.1935(3)(b) | 1st | <p style="text-align: center;">injury.</p> <p>Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.</p> |
| 2153 | 327.35(3)(c)2. | 3rd | <p>Vessel BUI resulting in serious bodily injury.</p> |
| 2154 | 402.319(2) | 2nd | <p>Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.</p> |
| 2155 | <p>409.920 (2)(b)1.a.</p> | 3rd | <p>Medicaid provider fraud; \$10,000 or less.</p> |

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2156

409.920
(2) (b) 1.b.

2nd Medicaid provider
fraud; more than
\$10,000, but less than
\$50,000.

2157

456.065(2)

3rd Practicing a health care
profession without a
license.

2158

456.065(2)

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

2159

458.327(1)

3rd Practicing medicine
without a license.

2160

459.013(1)

3rd Practicing osteopathic
medicine without a license.

2161

460.411(1)

3rd Practicing chiropractic
medicine without a license.

2162

461.012(1)

3rd Practicing podiatric
medicine without a

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license.

2163

462.17

3rd

Practicing naturopathy without a
license.

2164

463.015(1)

3rd

Practicing optometry
without a license.

2165

464.016(1)

3rd

Practicing nursing without
a license.

2166

465.015(2)

3rd

Practicing pharmacy
without a license.

2167

466.026(1)

3rd

Practicing dentistry or
dental hygiene without a
license.

2168

467.201

3rd

Practicing midwifery without
a license.

2169

468.366

3rd

Delivering respiratory care
services without a license.

2170

483.828(1)

3rd

Practicing as clinical
laboratory personnel

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without a license.

2171

483.901(9)

3rd

Practicing medical physics
without a license.

2172

484.013(1)(c)

3rd

Preparing or dispensing
optical devices without a
prescription.

2173

484.053

3rd

Dispensing hearing aids
without a license.

2174

494.0018(2)

1st

Conviction of any
violation of chapter 494
in which the total money
and property unlawfully
obtained exceeded \$50,000
and there were five or
more victims.

2175

560.123(8)(b)1.

3rd

Failure to report
currency or payment
instruments exceeding
\$300 but less than
\$20,000 by a money
services business.

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|------|-----------------|-----|--|
| 2176 | 560.125(5)(a) | 3rd | Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000. |
| 2177 | 655.50(10)(b)1. | 3rd | Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution. |
| 2178 | 775.21(10)(a) | 3rd | Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations. |
| 2179 | 775.21(10)(b) | 3rd | Sexual predator working where children regularly congregate. |
| 2180 | 775.21(10)(g) | 3rd | Failure to report or providing false information about a |

sexual predator; harbor
or conceal a sexual
predator.

2181

782.051(3)

2nd

Attempted felony murder of
a person by a person other
than the perpetrator or the
perpetrator of an attempted
felony.

2182

782.07(1)

2nd

Killing of a human being by the
act, procurement, or culpable
negligence of another
(manslaughter).

2183

782.071

2nd

Killing of a human being or
unborn child by the operation
of a motor vehicle in a
reckless manner (vehicular
homicide).

2184

782.072

2nd

Killing of a human being by
the operation of a vessel in
a reckless manner (vessel
homicide).

2185

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| 2186 | 784.045(1)(a)1. | 2nd | Aggravated battery; intentionally causing great bodily harm or disfigurement. |
| 2187 | 784.045(1)(a)2. | 2nd | Aggravated battery; using deadly weapon. |
| 2188 | 784.045(1)(b) | 2nd | Aggravated battery; perpetrator aware victim pregnant. |
| 2189 | 784.048(4) | 3rd | Aggravated stalking; violation of injunction or court order. |
| 2190 | 784.048(7) | 3rd | Aggravated stalking; violation of court order. |
| 2191 | 784.07(2)(d) | 1st | Aggravated battery on law enforcement officer. |
| | 784.074(1)(a) | 1st | Aggravated battery on sexually violent predators facility staff. |

| | | | |
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| 2192 | 784.08 (2) (a) | 1st | Aggravated battery on a person 65 years of age or older. |
| 2193 | 784.081 (1) | 1st | Aggravated battery on specified official or employee. |
| 2194 | 784.082 (1) | 1st | Aggravated battery by detained person on visitor or other detainee. |
| 2195 | 784.083 (1) | 1st | Aggravated battery on code inspector. |
| 2196 | 787.06 (3) (a) 2. | 1st | Human trafficking using coercion for labor and services of an adult. |
| 2197 | 787.06 (3) (e) 2. | 1st | Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state. |

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| 2198 | 790.07(4) | 1st | Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2). |
| 2199 | 790.16(1) | 1st | Discharge of a machine gun under specified circumstances. |
| 2200 | 790.165(2) | 2nd | Manufacture, sell, possess, or deliver hoax bomb. |
| 2201 | 790.165(3) | 2nd | Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony. |
| 2202 | 790.166(3) | 2nd | Possessing, selling, using, or attempting to use a hoax weapon of mass destruction. |
| 2203 | 790.166(4) | 2nd | Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or |

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| | | | attempting to commit a felony. |
| 2204 | 790.23 | 1st, PBL | Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04. |
| 2205 | 794.08 (4) | 3rd | Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age. |
| 2206 | 796.05 (1) | 1st | Live on earnings of a prostitute; 2nd offense. |
| 2207 | 796.05 (1) | 1st | Live on earnings of a prostitute; 3rd and subsequent offense. |
| 2208 | 800.04 (5) (c) 1. | 2nd | Lewd or lascivious molestation; victim younger than 12 years of age; offender younger |

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| 2209 | 800.04 (5) (c) 2. | 2nd | than 18 years of age. Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older. |
| 2210 | 800.04 (5) (e) | 1st | Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense. |
| 2211 | 806.01 (2) | 2nd | Maliciously damage structure by fire or explosive. |
| 2212 | 810.02 (3) (a) | 2nd | Burglary of occupied dwelling; unarmed; no assault or battery. |
| 2213 | 810.02 (3) (b) | 2nd | Burglary of unoccupied dwelling; unarmed; no |

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| | | | assault or battery. |
| 2214 | 810.02 (3) (d) | 2nd | Burglary of occupied conveyance; unarmed; no assault or battery. |
| 2215 | 810.02 (3) (e) | 2nd | Burglary of authorized emergency vehicle. |
| 2216 | 812.014 (2) (a) 1. | 1st | Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft. |
| 2217 | 812.014 (2) (b) 2. | 2nd | Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree. |
| 2218 | 812.014 (2) (b) 3. | 2nd | Property stolen, emergency medical |

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| 2219 | 812.014(2)(b)4. | 2nd | Property stolen, law enforcement equipment from authorized emergency vehicle. |
| 2220 | 812.0145(2)(a) | 1st | Theft from person 65 years of age or older; \$50,000 or more. |
| 2221 | 812.019(2) | 1st | Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property. |
| 2222 | 812.131(2)(a) | 2nd | Robbery by sudden snatching. |
| 2223 | 812.133(2)(b) | 1st | Carjacking; no firearm, deadly weapon, or other weapon. |
| 2224 | | | |

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| 2225 | 817.034(4)(a)1. | 1st | Communications fraud, value greater than \$50,000. |
| 2226 | 817.234(8)(a) | 2nd | Solicitation of motor vehicle accident victims with intent to defraud. |
| 2227 | 817.234(9) | 2nd | Organizing, planning, or participating in an intentional motor vehicle collision. |
| 2228 | 817.234(11)(c) | 1st | Insurance fraud; property value \$100,000 or more. |
| 2229 | 817.2341 (2)(b) & (3)(b) | 1st | Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity. |

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| 2230 | 817.535(2)(a) | 3rd | Filing false lien or other unauthorized document. |
| 2231 | 825.102(3)(b) | 2nd | Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement. |
| 2232 | 825.103(3)(b) | 2nd | Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000. |
| 2233 | 827.03(2)(b) | 2nd | Neglect of a child causing great bodily harm, disability, or disfigurement. |
| 2234 | 827.04(3) | 3rd | Impregnation of a child under 16 years of age by person 21 years of age or older. |
| 2234 | 837.05(2) | 3rd | Giving false information about alleged capital felony |

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| | | | to a law enforcement officer. |
| 2235 | 838.015 | 2nd | Bribery. |
| 2236 | 838.016 | 2nd | Unlawful compensation or reward for official behavior. |
| 2237 | 838.021(3)(a) | 2nd | Unlawful harm to a public servant. |
| 2238 | 838.22 | 2nd | Bid tampering. |
| 2239 | 843.0855(2) | 3rd | Impersonation of a public officer or employee. |
| 2240 | 843.0855(3) | 3rd | Unlawful simulation of legal process. |
| 2241 | 843.0855(4) | 3rd | Intimidation of a public officer or employee. |
| 2242 | 847.0135(3) | 3rd | Solicitation of a child, via a computer service, to commit an unlawful sex act. |
| 2243 | | | |

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| 2244 | 847.0135(4) | 2nd | Traveling to meet a minor to commit an unlawful sex act. |
| 2245 | 872.06 | 2nd | Abuse of a dead human body. |
| 2246 | 874.05(2)(b) | 1st | Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense. |
| 2247 | 874.10 | 1st, PBL | Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity. |
| | 893.13(1)(c)1. | 1st | Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care |

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| 2248 | 893.13(1)(e)1. | 1st | <p>facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p> <p>Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.</p> |
| 2249 | 893.13(4)(a) | 1st | <p>Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).</p> |
| 2250 | 893.135(1)(a)1. | 1st | <p>Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.</p> |

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| 2251 | 893.135 (1) (b) 1.a. | 1st | Trafficking in cocaine, more than 28 grams, less than 200 grams. |
| 2252 | 893.135 (1) (c) 1.a. | 1st | Trafficking in illegal drugs, more than 4 grams, less than 14 grams. |
| 2253 | 893.135 (1) (c) 2.a. | 1st | Trafficking in hydrocodone, 14 grams or more, less than 28 grams. |
| 2254 | 893.135 (1) (c) 2.b. | 1st | Trafficking in hydrocodone, 28 grams or more, less than 50 grams. |
| 2255 | 893.135 (1) (c) 3.a. | 1st | Trafficking in oxycodone, 7 grams or more, less than 14 grams. |
| 2256 | 893.135 (1) (c) 3.b. | 1st | Trafficking in oxycodone, 14 grams or more, less than 25 grams. |
| 2257 | 893.135(1) (d) 1. | 1st | Trafficking in |

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| 2258 | 893.135(1)(e)1. | 1st | phencyclidine, more than 28 grams, less than 200 grams. |
| 2259 | 893.135(1)(f)1. | 1st | Trafficking in methaqualone, more than 200 grams, less than 5 kilograms. |
| 2260 | 893.135 (1)(g)1.a. | 1st | Trafficking in amphetamine, more than 14 grams, less than 28 grams. |
| 2261 | 893.135 (1)(h)1.a. | 1st | Trafficking in flunitrazepam, 4 grams or more, less than 14 grams. |
| 2262 | 893.135 (1)(j)1.a. | 1st | Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms. |
| | | | Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms. |

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2263

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

2264

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

2265

896.101(5) (a) 3rd Money laundering,
financial transactions
exceeding \$300 but less
than \$20,000.

2266

896.104(4) (a) 1. 3rd Structuring transactions
to evade reporting or
registration
requirements, financial
transactions exceeding
\$300 but less than
\$20,000.

2267

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

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reporting requirements.

2268

943.0435(8)

2nd

Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.

2269

943.0435(9) (a)

3rd

Sexual offender; failure to comply with reporting requirements.

2270

943.0435(13)

3rd

Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

2271

943.0435(14)

3rd

Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

2272

944.607(9)

3rd

Sexual offender; failure to

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comply with reporting requirements.

2273

944.607(10)(a)

3rd Sexual offender; failure to submit to the taking of a digitized photograph.

2274

944.607(12)

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

2275

944.607(13)

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

2276

985.4815(10)

3rd Sexual offender; failure to submit to the taking of a digitized photograph.

2277

985.4815(12)

3rd Failure to report or

providing false
information about a
sexual offender; harbor
or conceal a sexual
offender.

2278

985.4815(13)

3rd

Sexual offender; failure to
report and reregister;
failure to respond to
address verification;
providing false registration
information.

2279

2280

Section 20. For the purpose of incorporating the
amendments made by this act to sections 775.21, 943.0435,
944.606, 944.607, 985.481, and 985.4815, Florida Statutes, in
references thereto, paragraph (b) of subsection (6) of section
985.04, Florida Statutes, is reenacted to read:

2285

985.04 Oaths; records; confidential information.—

2286

(6)

2287

(b) Sexual offender and predator registration information
as required in ss. 775.21, 943.0435, 944.606, 944.607, 985.481,
and 985.4815 is a public record pursuant to s. 119.07(1) and as
otherwise provided by law.

2291

Section 21. For the purpose of incorporating the
amendments made by this act to sections 775.21, 943.0435, and

2292

2293 944.607, Florida Statutes, in references thereto, subsections
 2294 (3) and (4) of section 322.141, Florida Statutes, are reenacted
 2295 to read:

2296 322.141 Color or markings of certain licenses or
 2297 identification cards.—

2298 (3) All licenses for the operation of motor vehicles or
 2299 identification cards originally issued or reissued by the
 2300 department to persons who are designated as sexual predators
 2301 under s. 775.21 or subject to registration as sexual offenders
 2302 under s. 943.0435 or s. 944.607, or who have a similar
 2303 designation or are subject to a similar registration under the
 2304 laws of another jurisdiction, shall have on the front of the
 2305 license or identification card the following:

2306 (a) For a person designated as a sexual predator under s.
 2307 775.21 or who has a similar designation under the laws of
 2308 another jurisdiction, the marking "SEXUAL PREDATOR."

2309 (b) For a person subject to registration as a sexual
 2310 offender under s. 943.0435 or s. 944.607, or subject to a
 2311 similar registration under the laws of another jurisdiction, the
 2312 marking "943.0435, F.S."

2313 (4) Unless previously secured or updated, each sexual
 2314 offender and sexual predator shall report to the department
 2315 during the month of his or her reregistration as required under
 2316 s. 775.21(8), s. 943.0435(14), or s. 944.607(13) in order to
 2317 obtain an updated or renewed driver license or identification
 2318 card as required by subsection (3).

2319 Section 22. For the purpose of incorporating the
 2320 amendments made by this act to sections 775.21, 943.0435, and
 2321 944.607, Florida Statutes, in references thereto, subsection (4)
 2322 of section 948.06, Florida Statutes, is reenacted to read:

2323 948.06 Violation of probation or community control;
 2324 revocation; modification; continuance; failure to pay
 2325 restitution or cost of supervision.—

2326 (4) Notwithstanding any other provision of this section, a
 2327 felony probationer or an offender in community control who is
 2328 arrested for violating his or her probation or community control
 2329 in a material respect may be taken before the court in the
 2330 county or circuit in which the probationer or offender was
 2331 arrested. That court shall advise him or her of the charge of a
 2332 violation and, if such charge is admitted, shall cause him or
 2333 her to be brought before the court that granted the probation or
 2334 community control. If the violation is not admitted by the
 2335 probationer or offender, the court may commit him or her or
 2336 release him or her with or without bail to await further
 2337 hearing. However, if the probationer or offender is under
 2338 supervision for any criminal offense proscribed in chapter 794,
 2339 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a
 2340 registered sexual predator or a registered sexual offender, or
 2341 is under supervision for a criminal offense for which he or she
 2342 would meet the registration criteria in s. 775.21, s. 943.0435,
 2343 or s. 944.607 but for the effective date of those sections, the
 2344 court must make a finding that the probationer or offender is

2345 | not a danger to the public prior to release with or without
 2346 | bail. In determining the danger posed by the offender's or
 2347 | probationer's release, the court may consider the nature and
 2348 | circumstances of the violation and any new offenses charged; the
 2349 | offender's or probationer's past and present conduct, including
 2350 | convictions of crimes; any record of arrests without conviction
 2351 | for crimes involving violence or sexual crimes; any other
 2352 | evidence of allegations of unlawful sexual conduct or the use of
 2353 | violence by the offender or probationer; the offender's or
 2354 | probationer's family ties, length of residence in the community,
 2355 | employment history, and mental condition; his or her history and
 2356 | conduct during the probation or community control supervision
 2357 | from which the violation arises and any other previous
 2358 | supervisions, including disciplinary records of previous
 2359 | incarcerations; the likelihood that the offender or probationer
 2360 | will engage again in a criminal course of conduct; the weight of
 2361 | the evidence against the offender or probationer; and any other
 2362 | facts the court considers relevant. The court, as soon as is
 2363 | practicable, shall give the probationer or offender an
 2364 | opportunity to be fully heard on his or her behalf in person or
 2365 | by counsel. After the hearing, the court shall make findings of
 2366 | fact and forward the findings to the court that granted the
 2367 | probation or community control and to the probationer or
 2368 | offender or his or her attorney. The findings of fact by the
 2369 | hearing court are binding on the court that granted the
 2370 | probation or community control. Upon the probationer or offender

2371 being brought before it, the court that granted the probation or
 2372 community control may revoke, modify, or continue the probation
 2373 or community control or may place the probationer into community
 2374 control as provided in this section. However, the probationer or
 2375 offender shall not be released and shall not be admitted to
 2376 bail, but shall be brought before the court that granted the
 2377 probation or community control if any violation of felony
 2378 probation or community control other than a failure to pay costs
 2379 or fines or make restitution payments is alleged to have been
 2380 committed by:

2381 (a) A violent felony offender of special concern, as
 2382 defined in this section;

2383 (b) A person who is on felony probation or community
 2384 control for any offense committed on or after the effective date
 2385 of this act and who is arrested for a qualifying offense as
 2386 defined in this section; or

2387 (c) A person who is on felony probation or community
 2388 control and has previously been found by a court to be a
 2389 habitual violent felony offender as defined in s. 775.084(1)(b),
 2390 a three-time violent felony offender as defined in s.
 2391 775.084(1)(c), or a sexual predator under s. 775.21, and who is
 2392 arrested for committing a qualifying offense as defined in this
 2393 section on or after the effective date of this act.

2394 Section 23. For the purpose of incorporating the
 2395 amendments made by this act to sections 775.21, 943.0435, and
 2396 944.607, Florida Statutes, in references thereto, section

2397 | 948.063, Florida Statutes, is reenacted to read:

2398 | 948.063 Violations of probation or community control by
2399 | designated sexual offenders and sexual predators.—

2400 | (1) If probation or community control for any felony
2401 | offense is revoked by the court pursuant to s. 948.06(2)(e) and
2402 | the offender is designated as a sexual offender pursuant to s.
2403 | 943.0435 or s. 944.607 or as a sexual predator pursuant to s.
2404 | 775.21 for unlawful sexual activity involving a victim 15 years
2405 | of age or younger and the offender is 18 years of age or older,
2406 | and if the court imposes a subsequent term of supervision
2407 | following the revocation of probation or community control, the
2408 | court must order electronic monitoring as a condition of the
2409 | subsequent term of probation or community control.

2410 | (2) If the probationer or offender is required to register
2411 | as a sexual predator under s. 775.21 or as a sexual offender
2412 | under s. 943.0435 or s. 944.607 for unlawful sexual activity
2413 | involving a victim 15 years of age or younger and the
2414 | probationer or offender is 18 years of age or older and has
2415 | violated the conditions of his or her probation or community
2416 | control, but the court does not revoke the probation or
2417 | community control, the court shall nevertheless modify the
2418 | probation or community control to include electronic monitoring
2419 | for any probationer or offender not then subject to electronic
2420 | monitoring.

2421 | Section 24. For the purpose of incorporating the amendment
2422 | made by this act to section 943.0435, Florida Statutes, in a

2423 reference thereto, paragraph (c) of subsection (10) of section
 2424 944.607, Florida Statutes, is reenacted to read:

2425 944.607 Notification to Department of Law Enforcement of
 2426 information on sexual offenders.—

2427 (10)

2428 (c) An arrest on charges of failure to register when the
 2429 offender has been provided and advised of his or her statutory
 2430 obligations to register under s. 943.0435(2), the service of an
 2431 information or a complaint for a violation of this section, or
 2432 an arraignment on charges for a violation of this section
 2433 constitutes actual notice of the duty to register. A sexual
 2434 offender's failure to immediately register as required by this
 2435 section following such arrest, service, or arraignment
 2436 constitutes grounds for a subsequent charge of failure to
 2437 register. A sexual offender charged with the crime of failure to
 2438 register who asserts, or intends to assert, a lack of notice of
 2439 the duty to register as a defense to a charge of failure to
 2440 register shall immediately register as required by this section.
 2441 A sexual offender who is charged with a subsequent failure to
 2442 register may not assert the defense of a lack of notice of the
 2443 duty to register.

2444 Section 25. For the purpose of incorporating the amendment
 2445 made by this act to section 943.04354, Florida Statutes, in a
 2446 reference thereto, subsection (2) of section 397.4872, Florida
 2447 Statutes, is reenacted to read:

2448 397.4872 Exemption from disqualification; publication.—

2449 (2) The department may exempt a person from ss. 397.487(6)
 2450 and 397.4871(5) if it has been at least 3 years since the person
 2451 has completed or been lawfully released from confinement,
 2452 supervision, or sanction for the disqualifying offense. An
 2453 exemption from the disqualifying offenses may not be given under
 2454 any circumstances for any person who is a:

- 2455 (a) Sexual predator pursuant to s. 775.21;
- 2456 (b) Career offender pursuant to s. 775.261; or
- 2457 (c) Sexual offender pursuant to s. 943.0435, unless the
 2458 requirement to register as a sexual offender has been removed
 2459 pursuant to s. 943.04354.

2460 Section 26. For the purpose of incorporating the amendment
 2461 made by this act to section 943.04354, Florida Statutes, in a
 2462 reference thereto, paragraph (b) of subsection (4) of section
 2463 435.07, Florida Statutes, is reenacted to read:

2464 435.07 Exemptions from disqualification.—Unless otherwise
 2465 provided by law, the provisions of this section apply to
 2466 exemptions from disqualification for disqualifying offenses
 2467 revealed pursuant to background screenings required under this
 2468 chapter, regardless of whether those disqualifying offenses are
 2469 listed in this chapter or other laws.

2470 (4)

2471 (b) Disqualification from employment under this chapter
 2472 may not be removed from, nor may an exemption be granted to, any
 2473 person who is a:

- 2474 1. Sexual predator as designated pursuant to s. 775.21;

- 2475 2. Career offender pursuant to s. 775.261; or
 2476 3. Sexual offender pursuant to s. 943.0435, unless the
 2477 requirement to register as a sexual offender has been removed
 2478 pursuant to s. 943.04354.

2479 Section 27. For the purpose of incorporating the
 2480 amendments made by this act to sections 944.606 and 944.607,
 2481 Florida Statutes, in references thereto, section 775.25, Florida
 2482 Statutes, is reenacted to read:

2483 775.25 Prosecutions for acts or omissions.—A sexual
 2484 predator or sexual offender who commits any act or omission in
 2485 violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s.
 2486 944.607, or former s. 947.177 may be prosecuted for the act or
 2487 omission in the county in which the act or omission was
 2488 committed, in the county of the last registered address of the
 2489 sexual predator or sexual offender, in the county in which the
 2490 conviction occurred for the offense or offenses that meet the
 2491 criteria for designating a person as a sexual predator or sexual
 2492 offender, in the county where the sexual predator or sexual
 2493 offender was released from incarceration, or in the county of
 2494 the intended address of the sexual predator or sexual offender
 2495 as reported by the predator or offender prior to his or her
 2496 release from incarceration. In addition, a sexual predator may
 2497 be prosecuted for any such act or omission in the county in
 2498 which he or she was designated a sexual predator.

2499 Section 28. For the purpose of incorporating the amendment
 2500 made by this act to section 944.607, Florida Statutes, in a

2501 reference thereto, subsection (2) of section 775.24, Florida
 2502 Statutes, is reenacted to read:

2503 775.24 Duty of the court to uphold laws governing sexual
 2504 predators and sexual offenders.—

2505 (2) If a person meets the criteria in this chapter for
 2506 designation as a sexual predator or meets the criteria in s.
 2507 943.0435, s. 944.606, s. 944.607, or any other law for
 2508 classification as a sexual offender, the court may not enter an
 2509 order, for the purpose of approving a plea agreement or for any
 2510 other reason, which:

2511 (a) Exempts a person who meets the criteria for
 2512 designation as a sexual predator or classification as a sexual
 2513 offender from such designation or classification, or exempts
 2514 such person from the requirements for registration or community
 2515 and public notification imposed upon sexual predators and sexual
 2516 offenders;

2517 (b) Restricts the compiling, reporting, or release of
 2518 public records information that relates to sexual predators or
 2519 sexual offenders; or

2520 (c) Prevents any person or entity from performing its
 2521 duties or operating within its statutorily conferred authority
 2522 as such duty or authority relates to sexual predators or sexual
 2523 offenders.

2524 Section 29. For the purpose of incorporating the amendment
 2525 made by this act to section 944.607, Florida Statutes, in a
 2526 reference thereto, subsection (7) of section 944.608, Florida

2527 Statutes, is reenacted to read:

2528 944.608 Notification to Department of Law Enforcement of
2529 information on career offenders.—

2530 (7) A career offender who is under the supervision of the
2531 department but who is not incarcerated shall, in addition to the
2532 registration requirements provided in subsection (3), register
2533 in the manner provided in s. 775.261(4)(c), unless the career
2534 offender is a sexual predator, in which case he or she shall
2535 register as required under s. 775.21, or is a sexual offender,
2536 in which case he or she shall register as required in s.
2537 944.607. A career offender who fails to comply with the
2538 requirements of s. 775.261(4) is subject to the penalties
2539 provided in s. 775.261(8).

2540 Section 30. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1395 Purchase of Personal Firearms by Qualified Law Enforcement Officers
SPONSOR(S): Avila
TIED BILLS: HB 1397 **IDEN./SIM. BILLS:** SJR 1134

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|--------|----------|--|
| 1) Criminal Justice Subcommittee | | White TW | White TW |
| 2) Transportation & Economic Development Appropriations Subcommittee | | | |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Since 1990, article 1, section 8(b) of the Florida Constitution, has required a purchaser of a handgun to wait three days, excluding weekends and holidays, before delivery of the handgun, unless the purchaser holds a concealed weapon permit (CWP). Additionally, since 1998, counties in this state have been authorized pursuant to article 8, section (5)(b) of the Florida Constitution, to adopt waiting periods of three to five days for the purchase of a firearm by an individual other than a CWP holder.

According to an Attorney General Opinion, which construed the constitutional statewide three-day wait period, the exception for a holder of a CWP applies exclusively to individuals who hold such permit and does not apply to individuals who are exempt from the requirements of CWP licensure. Thus, even though active and retired law enforcement officers in this state may carry concealed firearms without a CWP pursuant to state and federal law, such officers must obtain a CWP if they wish to avoid the three-day waiting period to purchase a handgun.

HJR 1395 proposes a constitutional amendment to article 1, section 8(b) and article 8, section (5)(b) of the Florida Constitution, to authorize qualified law enforcement officers and qualified retired law enforcement officers to be exempted, like holders of a CWP, from the waiting periods for a handgun or firearm purchase. Under the amendment, the requirements to constitute a "qualified" officer must be prescribed by general law.

A joint resolution to amend the constitution must be passed by a three-fifths vote of the membership of each house of the Legislature. The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 8, 2016.

The joint resolution requires a nonrecurring expense for the publication of the proposed constitutional amendment in newspapers of general circulation in each county. The Department of State estimates a minimum of \$69,888.58 payable from the General Revenue Fund in FY 2016-17 for this purpose. This joint resolution does not appear to have a fiscal impact on local governments.

If adopted at the 2016 general election, the effective date of this resolution is January 3, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Waiting Periods for Handgun and Firearm Purchases

Statewide Waiting Period

In 1990, the electors approved an amendment to the Florida Constitution, which requires a purchaser of a handgun to wait three days, excluding weekends and holidays, before delivery of the handgun, unless the purchaser holds a concealed weapon permit (CWP). Specifically, article 1, section 8(b) through (d) of the Florida Constitution, states:

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.

(c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

(d) This restriction shall not apply to a trade in of another handgun.

The Legislature implemented this constitutional provision by adopting s. 790.0655, F.S. This section of law defines "handgun" and "purchase" in the same manner as the Florida Constitution, and also states that the term "retailer" means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13).^{1,2} The section further provides that:

- There is a mandatory three-day waiting period, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun.³
- The section does not apply to the purchase of a handgun by a holder of a CWP as defined in s. 790.06, F.S.,⁴ or to a trade-in of another handgun.⁵
- Records of handgun sales must be available for inspection by any law enforcement agency during normal business hours.⁶
- It is a third degree felony⁷ for any retailer or employee or agent of a retailer to deliver a handgun before expiration of the 3-day waiting period and for a purchaser to obtain delivery of a handgun by fraud, false pretense, or false representation.⁸

In 1991, an Attorney General Opinion stated that the exclusion from the three-day waiting day period for holders of a CWP did not apply to law enforcement officers even though such officers are statutorily-exempt from CWP licensure requirements. According to the AGO, s. 790.0655, F.S., reiterates the

¹ s. 790.0655(1)(a), F.S.

² Section 212.03(13), F.S., specifies the identical definition of "retailer" specified in s. 790.0655(1)(a), F.S.

³ s. 790.0655(1)(a), F.S.

⁴ Section 790.06(1), F.S., authorizes the Department of Agriculture and Consumer Services to issue permits to carry concealed weapons or concealed firearms in this state to persons 21 years of age or older who meet specified criteria. Such permit holders may carry a concealed handgun, electronic weapon or device, tear gas gun, knife, or billie, subject to other restrictions provided by law. *Id.*

⁵ s. 790.0655(2), F.S.

⁶ s. 790.0655(1)(b), F.S.

⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁸ s. 790.0655(3), F.S.

constitutionally-prescribed exemptions for CWP holders and trade-ins, and, as such, “[w]here the Legislature creates specific exceptions to language in a statute, no other exceptions may be inferred.”⁹

Local-Option Waiting Periods

In 1998, the electors approved an amendment to the Florida Constitution, which authorizes each county to require a criminal history records check and a 3- to 5-day waiting period, excluding weekends and holidays, for the sale of a firearm, unless the purchaser holds a CWP. Specifically, article VIII, section (5)(b) of the Florida Constitution, states:

Each county shall have the authority to require a criminal history records check and a 3 to 5-day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this subsection, the term “sale” means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access. Holders of a concealed weapons permit as prescribed by general law shall not be subject to the provisions of this subsection when purchasing a firearm.

Summary of Waiting Periods in Florida

While there is uniformly a three-day waiting period throughout the state for the purchase of a handgun from a “retailer,” there may be additional waiting periods from three to five days on a county-by-county basis, which apply to the sale of a firearm on any property in the county to which the public has the right of access. For example, Miami-Dade Ordinance 21-20.18, specifies that a purchaser of a firearm¹⁰ must wait five days after the purchase of a firearm on county property to which the public has the right of access¹¹ for delivery of the firearm and must have complied with specified criminal history check requirements.

The state and local-option waiting periods do not apply to holders of a CWP.

Law Enforcement Officers - Authority to Carry without a CWP

As discussed below, active and retired law enforcement officers are authorized to carry a firearm under specified circumstances without a CWP pursuant to a variety of provisions in state and federal law.

State Law – Actively Certified Law Enforcement Officers

With respect to individuals holding an **active** certification from the Criminal Justice Standards and Training Commission:

- As a law enforcement or correctional officer,¹² s. 790.052, F.S., provides that such individual has the right to carry, on or about his or her person, a concealed firearm, during off-duty hours, at the discretion of his or her superior officers, and may perform those law enforcement functions that he or she normally performs during duty hours, utilizing his or her weapon in a manner which is reasonably expected of on-duty officers in similar situations.
- As a law enforcement officer, correctional officer, or correctional probation officer,¹³ s. 790.06(5)(b), F.S., provides that such individual is exempt from the section’s CWP requirements

⁹ 91-65 Fla. Op. Att’y Gen. 1(1991).

¹⁰ The term “firearm” is defined to mean, “any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; and firearm muffler or firearm silencer; any destructive device; or any machine gun. Such term does not include an antique firearm.” Miami-Dade Ordinance 21-20.18(a)(3).

¹¹ The term “property to which the public has the right of access” is defined to mean, “any real or personal property to which the public has a right of access, including property owned by either public or private individuals, firms and entities and expressly includes, but is not limited to, flea markets, gun shows and firearms exhibitions.” Miami-Dade Ordinance 21-20.18(a)(4).

¹² Such officers include the following types as defined in s. 943.10(1), (2), (6), (7), (8), or (9), F.S.: (a) a law enforcement or correctional officer; and (b) a part-time or auxiliary law enforcement or correctional officer. s. 790.052(1), F.S.

¹³ Such officers include the following types as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S.: (a) a law enforcement or correctional officer; (b) correctional probation officer; and (c) a part-time or auxiliary law enforcement or correctional officer.

for carrying a concealed weapon or concealed firearm. It further specifies that if such individual wishes to receive a CWP that he or she is exempt from the background investigation and related fees, but must pay the CWP fees regularly required to be paid by nonexempt applicants, which are currently \$70 for an initial permit.

Finally, s. 790.051, F.S., provides that a law enforcement officer is exempt from the licensing and penal provisions of ch. 790, F.S., when acting at any time within the scope or course of his or her official duties or in the line of or performance of duty.

Federal Law – Qualified Officers

Under the federal Law Enforcement Officers Safety Act of 2004 and state implementing law, a qualified law enforcement officer and a qualified retired law enforcement officer may carry a concealed firearm if he or she possesses a firearms proficiency verification card issued to persons who achieve a passing score on the firing range test.^{14, 15}

The term “qualified law enforcement officer” is defined as an individual who:

- Is authorized to investigate persons for violations of law and has powers of arrest;
- Is authorized by his or her employing agency to carry a firearm;
- Is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers; and
- Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm.¹⁶

The term “qualified retired law enforcement officer” is defined as an individual who:

- Separated from service in good standing as a law enforcement officer and before such separation:
 - Was authorized to investigate persons for violations of law and had powers of arrest; and
 - Served as a law enforcement officer for an aggregate of 10 years or more or separated earlier due to a service-connected disability;
- During the most recent 12-month period, has met, the standards for qualification in firearms training for active law enforcement officers;¹⁷ and
- Has not been found by a qualified medical professional employed by his or her former employing public agency to be unqualified for reasons relating to mental health^{18, 19}

Effect of Bill

The joint resolution amends article 1, section 8(b) and article 8, section (5)(b) of the Florida Constitution, to authorize qualified law enforcement officers and qualified retired law enforcement officers to be exempted, like holders of a CWP, from statewide and county waiting periods for a handgun or firearm purchase. Under the amendment, the requirements to constitute a “qualified” officer must be prescribed by general law.

The joint resolution also amends these constitutional provisions to delete an obsolete date and make technical changes to eliminate unnecessary terminology and improve grammar.

¹⁴ 42 U.S.C. §§926B and C (2016); s. 943.132(1), F.S.

¹⁵ The term “firearm” is defined as, “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.” 18 U.S.C. §921C(3) (2016).

¹⁶ 42 U.S.C. §926B(c) (2016).

¹⁷ These standards are set forth in Rule 11B-27.014, F.A.C.

¹⁸ 42 U.S.C. §926C(c) (2016).

¹⁹ In addition to the above-referenced requirements, a qualified law enforcement officer and a qualified retired law enforcement officer may not be under the influence of alcohol or another intoxicating or hallucinatory drug or substance and may not be prohibited by federal law from receiving a firearm. 42 U.S.C. §§926B(c)(5) and (6) and C(c)(6) and (7) (2016).

The joint resolution does not provide an effective date.²⁰ Therefore, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate,²¹ which is January 3, 2017.

B. SECTION DIRECTORY:

N/A

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:

Article XI, section 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Department of State provided the following fiscal analysis for HJR 1395 as originally filed:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. The cost to advertise constitutional amendments for the 2014 general election was \$135.97 per word. Using 2014 rates, the cost to advertise this amendment for the 2016 general election could be \$69,888.58 at a minimum.²²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

²⁰ While an amendment can specify its effective date, it is common practice in constitutional amendments to simply allow the default effective date to apply.

²¹ art. XI, s. 5, Fla. Const.

²² Department of State analysis dated January 13, 2016, on file with the Criminal Justice Subcommittee.

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This section does not apply to proposed constitutional amendments.

2. Other:

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.²³ Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.²⁴ If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.²⁵

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

²³ art. XI, s. 1, Fla. Const.

²⁴ art. XI, s. 5(a), Fla. Const.

²⁵ art. XI, s. 5(e), Fla. Const.

House Joint Resolution

A joint resolution proposing amendments to Section 8 of Article I and Section 5 of Article VIII of the State Constitution to remove restrictions on the purchase of personal firearms by qualified law enforcement officers.

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

That the following amendments to Section 8 of Article I and Section 5 of Article VIII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE I

DECLARATION OF RIGHTS

SECTION 8. Right to bear arms.-

(a) The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other

27 valuable consideration to the retailer, and "handgun" means a
 28 firearm capable of being carried and used by one hand, such as a
 29 pistol or revolver. A person who is a holder ~~holders~~ of a
 30 concealed weapon permit or who is a qualified law enforcement
 31 officer or qualified retired law enforcement officer as
 32 prescribed by general ~~in Florida~~ law is ~~shall~~ not ~~be~~ subject to
 33 this restriction ~~the provisions of this paragraph~~.

34 (c) ~~The legislature shall enact~~ Legislation implementing
 35 subsection (b) must ~~of this section, effective no later than~~
 36 ~~December 31, 1991, which shall~~ provide that a person who
 37 violates ~~anyone violating the provisions of~~ subsection (b)
 38 commits ~~shall be guilty of~~ a felony.

39 (d) This restriction does ~~shall~~ not apply to a trade in of
 40 another handgun.

41 ARTICLE VIII

42 LOCAL GOVERNMENT

43 SECTION 5. Local option.-

44 (a) Local option on the legality or prohibition of the
 45 sale of intoxicating liquors, wines or beers shall be preserved
 46 to each county. The status of a county with respect thereto
 47 shall be changed only by vote of the electors in a special
 48 election called upon the petition of twenty-five per cent of the
 49 electors of the county, and not sooner than two years after an
 50 earlier election on the same question. Where legal, the sale of
 51 intoxicating liquors, wines and beers shall be regulated by law.

52 (b) Each county may ~~shall~~ have the authority to require a

53 criminal history records check and a 3 to 5-day waiting period,
 54 excluding weekends and legal holidays, in connection with the
 55 sale of any firearm occurring within such county. For purposes
 56 of this subsection, the term "sale" means the transfer of money
 57 or other valuable consideration for any firearm when any part of
 58 the transaction is conducted on property to which the public has
 59 the right of access. A person who is a holder ~~holders~~ of a
 60 concealed weapon ~~weapons~~ permit or who is a qualified law
 61 enforcement officer or qualified retired law enforcement officer
 62 as prescribed by general law is ~~shall~~ not ~~be~~ subject to ~~the~~
 63 ~~provisions of this restriction on the purchase of subsection~~
 64 ~~when purchasing~~ a firearm.

65 BE IT FURTHER RESOLVED that the following statement be
 66 placed on the ballot:

67 CONSTITUTIONAL AMENDMENT

68 ARTICLE I, SECTION 8

69 ARTICLE VIII, SECTION 5

70 PURCHASE OF PERSONAL FIREARMS BY QUALIFIED LAW ENFORCEMENT
 71 OFFICERS.—The Florida Constitution provides for waiting periods
 72 in connection with certain sales of firearms. The waiting
 73 periods do not apply to holders of a concealed weapon permit,
 74 but the waiting periods do apply to law enforcement officers.
 75 The amendment exempts qualified law enforcement officers and
 76 qualified retired law enforcement officers from the waiting
 77 periods.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1397 Exception to Waiting Period for Purchasing and Delivering Handguns
SPONSOR(S): Avila
TIED BILLS: HJR 1395 **IDEN./SIM. BILLS:** SB 1132

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

SUMMARY ANALYSIS

HJR 1395, which is linked to this bill, proposes a constitutional amendment to article 1, section 8(b) and article 8, section (5)(b) of the Florida Constitution, to authorize qualified law enforcement officers and qualified retired law enforcement officers to be exempted, like holders of a concealed weapon permit, from the constitutionally-required three-day waiting period for a handgun purchase and from the constitutionally-authorized county three- to five-day waiting periods for a firearm purchase. Under the amendment, the requirements to constitute a "qualified" officer must be prescribed by general law.

This bill implements HJR 1395 by amending s. 790.0655(2), F.S., to specify that a qualified law enforcement officer or a qualified retired law enforcement officer means an officer who has a firearms proficiency verification card authorized by s. 943.132, F.S.

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

The bill provides that it takes effect on the date that the constitutional amendment by HJR 1395 takes effect. If the constitutional amendment is approved by the voters, this bill's effective date would be January 3, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Waiting Periods for Handgun and Firearm Purchases

Statewide Waiting Period

In 1990, the electors approved an amendment to the Florida Constitution, which requires a purchaser of a handgun to wait three days, excluding weekends and holidays, before delivery of the handgun, unless the purchaser holds a concealed weapon permit (CWP). Specifically, article 1, section 8(b) through (d) of the Florida Constitution, states:

(b) There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.

(c) The legislature shall enact legislation implementing subsection (b) of this section, effective no later than December 31, 1991, which shall provide that anyone violating the provisions of subsection (b) shall be guilty of a felony.

(d) This restriction shall not apply to a trade in of another handgun.

The Legislature implemented this constitutional provision by adopting s. 790.0655, F.S. This section of law defines "handgun" and "purchase" in the same manner as the Florida Constitution, and also states that the term "retailer" means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13).^{1,2} The section further provides that:

- There is a mandatory three-day waiting period, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun.³
- The section does not apply to the purchase of a handgun by a holder of a CWP as defined in s. 790.06, F.S.,⁴ or to a trade-in of another handgun.⁵
- Records of handgun sales must be available for inspection by any law enforcement agency during normal business hours.⁶
- It is a third degree felony⁷ for any retailer or employee or agent of a retailer to deliver a handgun before expiration of the 3-day waiting period and for a purchaser to obtain delivery of a handgun by fraud, false pretense, or false representation.⁸

In 1991, an Attorney General Opinion stated that the exclusion from the three-day waiting day period for holders of a CWP did not apply to law enforcement officers even though such officers are statutorily-

¹ s. 790.0655(1)(a), F.S.

² Section 212.03(13), F.S., specifies the identical definition of "retailer" specified in s. 790.0655(1)(a), F.S.

³ s. 790.0655(1)(a), F.S.

⁴ Section 790.06(1), F.S., authorizes the Department of Agriculture and Consumer Services to issue permits to carry concealed weapons or concealed firearms in this state to persons 21 years of age or older who meet specified criteria. Such permit holders may carry a concealed handgun, electronic weapon or device, tear gas gun, knife, or billie, subject to other restrictions provided by law. *Id.*

⁵ s. 790.0655(2), F.S.

⁶ s. 790.0655(1)(b), F.S.

⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

⁸ s. 790.0655(3), F.S.

exempt from CWP licensure requirements. According to the AGO, s. 790.0655, F.S., reiterates the constitutionally-prescribed exemptions for CWP holders and trade-ins, and, as such, “[w]here the Legislature creates specific exceptions to language in a statute, no other exceptions may be inferred.”⁹

Local-Option Waiting Periods

In 1998, the electors approved an amendment to the Florida Constitution, which authorizes each county to require a criminal history records check and a 3- to 5-day waiting period, excluding weekends and holidays, for the sale of a firearm, unless the purchaser holds a CWP. Specifically, article VIII, section (5)(b) of the Florida Constitution, states:

Each county shall have the authority to require a criminal history records check and a 3 to 5-day waiting period, excluding weekends and legal holidays, in connection with the sale of any firearm occurring within such county. For purposes of this subsection, the term “sale” means the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access. Holders of a concealed weapons permit as prescribed by general law shall not be subject to the provisions of this subsection when purchasing a firearm.

Summary of Waiting Periods in Florida

While there is uniformly a three-day waiting period throughout the state for the purchase of a handgun from a “retailer,” there may be additional waiting periods from three to five days on a county-by-county basis, which apply to the sale of a firearm on any property in the county to which the public has the right of access. For example, Miami-Dade Ordinance 21-20.18, specifies that a purchaser of a firearm¹⁰ must wait five days after the purchase of a firearm on county property to which the public has the right of access¹¹ for delivery of the firearm and must have complied with specified criminal history check requirements.

The state and local-option waiting periods do not apply to holders of a CWP.

Law Enforcement Officers - Authority to Carry without a CWP

As discussed below, active and retired law enforcement officers are authorized to carry a firearm under specified circumstances without a CWP pursuant to a variety of provisions in state and federal law.

State Law – Actively Certified Law Enforcement Officers

With respect to individuals holding an **active** certification from the Criminal Justice Standards and Training Commission:

- As a law enforcement or correctional officer,¹² s. 790.052, F.S., provides that such individual has the right to carry, on or about his or her person, a concealed firearm, during off-duty hours, at the discretion of his or her superior officers, and may perform those law enforcement functions that he or she normally performs during duty hours, utilizing his or her weapon in a manner which is reasonably expected of on-duty officers in similar situations.

⁹ 91-65 Fla. Op. Att’y Gen. 1(1991).

¹⁰ The term “firearm” is defined to mean, “any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; and firearm muffler or firearm silencer; any destructive device; or any machine gun. Such term does not include an antique firearm.” Miami-Dade Ordinance 21-20.18(a)(3).

¹¹ The term “property to which the public has the right of access” is defined to mean, “any real or personal property to which the public has a right of access, including property owned by either public or private individuals, firms and entities and expressly includes, but is not limited to, flea markets, gun shows and firearms exhibitions.” Miami-Dade Ordinance 21-20.18(a)(4).

¹² Such officers include the following types as defined in s. 943.10(1), (2), (6), (7), (8), or (9), F.S.: (a) a law enforcement or correctional officer; and (b) a part-time or auxiliary law enforcement or correctional officer. s. 790.052(1), F.S.

- As a law enforcement officer, correctional officer, or correctional probation officer,¹³ s. 790.06(5)(b), F.S., provides that such individual is exempt from the section's CWP requirements for carrying a concealed weapon or concealed firearm. It further specifies that if such individual wishes to receive a CWP that he or she is exempt from the background investigation and related fees, but must pay the CWP fees regularly required to be paid by nonexempt applicants, which are currently \$70 for an initial permit.

Finally, s. 790.051, F.S., provides that a law enforcement officer is exempt from the licensing and penal provisions of ch. 790, F.S., when acting at any time within the scope or course of his or her official duties or in the line of or performance of duty.

Federal Law – Qualified Officers

Under the federal Law Enforcement Officers Safety Act of 2004 and state implementing law, a qualified law enforcement officer and a qualified retired law enforcement officer may carry a concealed firearm if he or she possesses a firearms proficiency verification card issued to persons who achieve a passing score on the firing range test.^{14, 15}

The term “qualified law enforcement officer” is defined as an individual who:

- Is authorized to investigate persons for violations of law and has powers of arrest;
- Is authorized by his or her employing agency to carry a firearm;
- Is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers; and
- Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm.¹⁶

The term “qualified retired law enforcement officer” is defined as an individual who:

- Separated from service in good standing as a law enforcement officer and before such separation:
 - Was authorized to investigate persons for violations of law and had powers of arrest; and
 - Served as a law enforcement officer for an aggregate of 10 years or more or separated earlier due to a service-connected disability;
- During the most recent 12-month period, has met, the standards for qualification in firearms training for active law enforcement officers;¹⁷ and
- Has not been found by a qualified medical professional employed by his or her former employing public agency to be unqualified for reasons relating to mental health^{18, 19}

Effect of Bill

The bill implements HJR 1395, which amends article 1, section 8(b) and article 8, section (5)(b) of the Florida Constitution, to authorize qualified law enforcement officers and qualified retired law enforcement officers to be exempted, like holders of a CWP, from statewide and county waiting periods for a handgun or firearm purchase. To implement this authority, this bill amends s. 790.0655(2), F.S., to specify that the three-day statewide waiting period does not apply when a handgun is being purchased

¹³ Such officers include the following types as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S.: (a) a law enforcement or correctional officer; (b) correctional probation officer; and (c) a part-time or auxiliary law enforcement or correctional officer.

¹⁴ 42 U.S.C. §§926B and C (2016); s. 943.132(1), F.S.

¹⁵ The term “firearm” is defined as, “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.” 18 U.S.C. §921C(3) (2016).

¹⁶ 42 U.S.C. §926B(c) (2016).

¹⁷ These standards are set forth in Rule 11B-27.014, F.A.C.

¹⁸ 42 U.S.C. §926C(c) (2016).

¹⁹ In addition to the above-referenced requirements, a qualified law enforcement officer and a qualified retired law enforcement officer may not be under the influence of alcohol or another intoxicating or hallucinatory drug or substance and may not be prohibited by federal law from receiving a firearm. 42 U.S.C. §§926B(c)(5) and (6) and C(c)(6) and (7) (2016).

by a qualified law enforcement officer or qualified retired law enforcement officer who has a firearms proficiency verification card authorized by s. 943.132, F.S.

The bill provides that it takes effect on the date that the constitutional amendment by HJR 1395 takes effect. If the constitutional amendment is approved by the voters, the bill's effective date would be January 3, 2017.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.0655, F.S., relating to the purchase and delivery of handguns; mandatory waiting period; exceptions; penalties.

Section 2. Providing a contingent effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

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 addresses the qualifications necessary for an active or retired law enforcement officer to be exempt from the three-day statewide waiting period, but does not state that such qualifications also apply for an exemption from a three- to five-day local waiting period.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to an exception to the waiting period for purchasing and delivering handguns; amending s. 790.0655, F.S.; exempting the purchase of a handgun by a qualified law enforcement officer or a qualified retired law enforcement officer from the 3-day waiting period; providing a contingent effective date.

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

Section 1. Section 790.0655, Florida Statutes, is amended to read:

790.0655 Purchase and delivery of handguns; mandatory waiting period; exceptions; penalties.—

(1)(a) There shall be a mandatory 3-day waiting period, which shall be 3 days, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. "Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. "Retailer" means and includes every person engaged in the business of making sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13).

(b) Records of handgun sales must be available for inspection by any law enforcement agency, as defined in s.

27 | 934.02, during normal business hours.

28 | (2) The 3-day waiting period does ~~shall~~ not apply in the
29 | following circumstances:

30 | (a) When a handgun is being purchased by a holder of a
31 | concealed weapon ~~weapons~~ permit as defined in s. 790.06 or by a
32 | qualified law enforcement officer or qualified retired law
33 | enforcement officer who has a firearms proficiency verification
34 | card authorized by s. 943.132.

35 | (b) To a trade-in of another handgun.

36 | (3) It is a felony of the third degree, punishable as
37 | provided in s. 775.082, s. 775.083, or s. 775.084:

38 | (a) For any retailer, or any employee or agent of a
39 | retailer, to deliver a handgun before the expiration of the 3-
40 | day waiting period, subject to the exceptions provided in
41 | subsection (2).

42 | (b) For a purchaser to obtain delivery of a handgun by
43 | fraud, false pretense, or false representation.

44 | Section 2. This act shall take effect on the effective
45 | date of the amendment to the State Constitution proposed in HJR
46 | 1395 or a similar joint resolution, if approved by a vote of the
47 | electors in the general election held in November 2016 or at an
48 | earlier special election specifically authorized by law for such
49 | purpose.