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# **Criminal Justice Subcommittee**

**Tuesday November 17, 2015  
9:00 AM – 11:00 AM  
Sumner Hall (404 HOB)**

**MEETING PACKET**

**Steve Crisafulli  
Speaker**

**Carlos Trujillo  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Tuesday, November 17, 2015 09:00 am  
**End Date and Time:** Tuesday, November 17, 2015 11:00 am  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

HB 11 Missing Persons with Special Needs by Porter  
HB 169 Use or Threatened Use of Defensive Force by Baxley  
HB 293 Public Records/Juvenile Criminal History Records by Pritchett  
HB 307 Experimental Treatments for Terminal Conditions by Gaetz, Edwards  
HB 329 Animals Confined in Unattended Motor Vehicles by Cortes, B.  
HB 365 Transmission of Pornography by Kerner  
HB 439 Mental Health Services in Criminal Justice System by McBurney

**Consideration of the following proposed committee substitute(s):**

PCS for HB 257 -- Terroristic Threats

**NOTICE FINALIZED on 11/10/2015 4:03PM by Denson.Karan**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 11 Missing Persons with Special Needs

**SPONSOR(S):** Porter and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 230

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Cox <i>HC</i>	White <i>W</i>
2) Education Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Elopement, which means leaving an area without supervision or caregiver permission, is prevalent among persons with certain special needs and may expose them to dangerous situations. Individuals with Alzheimer's disease or autism are two populations at higher risk to elope.

There are a number of personal devices on the market which aid in search and rescue of individuals who elope.

The bill creates the "Project Leo" pilot program in Baker, Columbia, Hamilton, and Suwanee Counties to provide personal devices to aid in search-and-rescue efforts for persons with special needs in cases of elopement.

The project will be developed and administered by the Center for Autism and Related Disabilities at the University of Florida (CARD UF). The bill directs CARD UF to select participants on a first-come, first-serve basis to receive a personal device to aid in search-and-rescue efforts. Participants will be selected based on criteria developed by CARD UF, which at a minimum must consider the individual's risk of elopement. The number of participants shall be determined based on available funding within the center's existing resources. The respective county sheriff's offices will distribute these devices to the project participants.

The bill requires CARD UF to submit preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The final report must include recommendations for modifications or continued implementation of the program.

The bill provides that the act is subject to available funding within the center's existing resources and expires on June 30, 2018. However, the bill also provides an appropriation of \$100,000 of nonrecurring general revenue for the 2016-2017 Fiscal Year to CARD UF to implement the act.

The bill is effective on July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Elopement of Individuals with Special Needs**

Elopement, which means leaving an area without supervision or caregiver permission, is prevalent among persons with certain special needs and may expose a person to dangerous situations.<sup>1</sup> Wandering and elopement are concerns in particular with children and adults with autism and seniors with Alzheimer's.<sup>2</sup>

##### *Elopement and Wandering of Individuals with Autism*

There are various reasons someone with autism may wander; more often than not, he or she will wander to something of interest (especially bodies of water) or away from something that is bothersome (such as uncomfortable noise or bright lights).<sup>3</sup> Children and adults with autism wander from all types of settings, such as educational, therapeutic, residential, camp programs, outdoor, public places, and home settings.<sup>4</sup>

Approximately half of children with autism have a tendency to wander or elope.<sup>5</sup> Families report that about half of the children who have a tendency to wander have gone missing long enough to cause serious concern. A substantial portion of those children who wander are at risk for bodily harm.<sup>6</sup> Of those children who went missing, 24% were in danger of drowning and 65% were in danger of a traffic injury.<sup>7</sup>

##### *Elopement and Wandering of Individuals with Alzheimer's Disease*

Wandering and elopement can also be dangerous for individuals with Alzheimer's disease and other forms of dementia, as the individual may become disoriented, even in familiar places and may not remember his or her name or address to assist rescuers. An individual with Alzheimer's disease who wanders or elopes is most often looking for someone or something familiar, escaping a source of stress or anxiety, or may be reliving the past.<sup>8</sup>

Statistics indicate that in the U.S., more than 34,000 individuals with Alzheimer's disease wander out of their homes or care facilities each year.<sup>9</sup> Six in ten people with some form of dementia will wander or elope;<sup>10</sup> additionally, it is estimated that 11-24% of institutionalized dementia patients wander.<sup>11</sup>

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<sup>1</sup> Russell Lang, et al., *Treatment of elopement in individuals with developmental disabilities: A systematic review*, RESEARCH IN DEVELOPMENTAL DISABILITIES 30 (2009) 670–681, [http://scholar.google.com/scholar\\_url?url=http://www.researchgate.net/profile/Christina\\_Fragale/publication/23716164\\_Treatment\\_of\\_elopement\\_in\\_individuals\\_with\\_developmental\\_disabilities\\_a\\_systematic\\_review/links/53e3f99e0cf21cc29fc75814.pdf&hl=en&sa=X&scisig=AAGBfm33xL1MHakTS87tq\\_NEGw\\_oFixP4w&noss=1&oi=scholar](http://scholar.google.com/scholar_url?url=http://www.researchgate.net/profile/Christina_Fragale/publication/23716164_Treatment_of_elopement_in_individuals_with_developmental_disabilities_a_systematic_review/links/53e3f99e0cf21cc29fc75814.pdf&hl=en&sa=X&scisig=AAGBfm33xL1MHakTS87tq_NEGw_oFixP4w&noss=1&oi=scholar) (last visited October 15, 2015).

<sup>2</sup> *Autism & Wandering*, AWAARE COLLABORATION, <http://awaare.nationalautismassociation.org/autism-wandering/> (last visited October 15, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Michelle Diamant, *Autism Wandering Poses "Critical Safety Issue," Survey Suggests*, DISABILITY SCOOP, (April 21, 2011), <http://www.disabilityscoop.com/2011/04/21/autism-wandering-survey/12953/> (last visited October 15, 2015).

<sup>6</sup> Connie Anderston, et al., *Occurrence and Family Impact of Elopement in Children With Autism Spectrum Disorders*, PEDIATRICS, (October 8, 2012), available at <http://pediatrics.aappublications.org/content/early/2012/10/02/peds.2012-0762.full.pdf+html> (last visited October 15, 2015).

<sup>7</sup> *Id.*

<sup>8</sup> *Alzheimer's: Understand and control wandering*, MAYO CLINIC, <http://www.mayoclinic.org/healthy-living/caregivers/in-depth/alzheimers/art-20046222> (last visited October 15, 2015).

<sup>9</sup> *Wandering and Elopement Resources*, NATIONAL COUNCIL OF CERTIFIED DEMENTIA PRACTITIONERS, <http://www.nccdp.org/wandering.htm> (last visited October 15, 2015).

<sup>10</sup> *Wandering and Getting Lost*, ALZHEIMER'S ASSOCIATION, <http://www.alz.org/care/alzheimers-dementia-wandering.asp> (last visited October 15, 2015).

<sup>11</sup> *Supra*, note 9.

### **Personal Devices for Individuals with Special Needs**

Anti-wandering and global-positioning system (GPS)<sup>12</sup> tracking devices can be worn as a bracelet, attached to an individual's shoe or belt loop, or sewn into clothing. If an individual goes missing, a caregiver can utilize products and services from the monitoring company for the device to pinpoint the wearer's location. There are a number of anti-wandering and GPS tracking devices on the market that are specially designed to aid in search-and-rescue efforts for individuals with special needs who are prone to wander. Two examples are the Protect and Locate (PAL) tracking system through Project Lifesaver and the Amber Alert GPS.

The PAL is a tracking device that is worn as a watch by the individual at risk of wandering and has a companion portable receiver that notifies the caregiver of a wandering event. Through the use of cell ID location and GPS technologies, it provides the location of a wearer accurate to nine feet.<sup>13</sup> If an individual wearing a PAL device wanders outside of a set perimeter, the caregiver's receiver will receive an alert and the caregiver will receive email and text alerts with the date and location of the wandering event.<sup>14</sup> Additionally, a caregiver can press the "find" button on his or her receiver to have the location of the individual and the address displayed on the portable receiver. If the individual wearing the PAL watch/transmitter is lost, he or she can push the panic button on the PAL watch to have the current address shown on the caregiver's portable receiver.<sup>15</sup> The PAL tracking system costs \$249.99 per unit and requires a monitoring/service plan of \$29.95 per month.<sup>16</sup>

The Amber Alert GPS is a small disk that can be put in an individual's purse or backpack or, with the purchase of an accessory, can be attached to the individual. The Amber Alert GPS syncs with an online tracking portal and mobile application for iPhone, Blackberry, and Droid cellular phones to provide the real-time location of the wearer.<sup>17</sup> It allows the caregiver to designate up to 20 "safe zones" and receive an alert each time a wearer leaves one of the designated safe zones.<sup>18</sup> It also has a two-way voice feature to allow the caregiver and wearer to talk to each other through the device and an SOS button that the wearer can push in the event of an emergency to notify the caregiver and up to ten additional individuals.<sup>19</sup> Amber Alert GPS costs \$179 per unit and requires a monitoring/service plan of \$10-42 per month.<sup>20</sup>

### **Center for Autism and Related Disabilities**

The Center for Autism and Related Disabilities (CARD) works with families, caregivers, and professionals to optimize the potential of people with autism and related disabilities.<sup>21</sup> CARD serves children and adults of all levels of intellectual functioning who have autism, autistic-like disabilities, pervasive developmental disorder, dual sensory impairments (deaf-blindness), or a vision or hearing loss with another disabling condition.<sup>22</sup>

There are seven non-residential CARD centers across the state. The Center for Autism and Related Disabilities at the University of Florida (CARD UF) serves fourteen counties in North Central Florida.<sup>23</sup>

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<sup>12</sup> GPS is a network of computers and earth-orbiting satellites that allows an earth-bound receiver to determine its precise location.

BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>13</sup> *PAL Info*, PROJECT LIFESAVER, <http://www.projectlifesaver.org/Pal-info/> (last visited October 15, 2015).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *10 Resources And Devices For Wandering Children With Autism*, FRIENDSHIP CIRCLE BLOG, (June 1, 2011; updated 2014) <http://www.friendshipcircle.org/blog/2011/06/01/10-resources-for-wandering-children-with-autism/> (last visited October 15, 2015).

<sup>17</sup> *Amber Alert GPS Smart Locator*, AMBER ALERT GPS, <https://www.amberalertgps.com/products> (last visited October 15, 2015).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Supra*, note 16.

<sup>21</sup> CENTER FOR AUTISM AND RELATED DISABILITIES UNIVERSITY OF FLORIDA, *About CARD FAQ*, <http://card.ufl.edu/about-card/faq/> (last visited October 15, 2015).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

The counties served by CARD UF are Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Levy, Marion, Putnam, Suwannee, and Union.<sup>24</sup>

#### Effect of the Bill

The bill creates the "Project Leo" pilot program in Baker, Columbia, Hamilton, and Suwannee Counties to provide personal devices to aid search-and-rescue efforts for persons with special needs in case of elopement. The bill does not define the term "special needs."

The project will be developed and administered by CARD UF. The bill directs CARD UF to select participants based on criteria it develops, which must include, at a minimum, the individual's risk of elopement. The participants will be selected on a first-come, first-served basis. The number of participants must be determined based on available funding within the center's existing resources.

Participation in the project is voluntary. Participants will be provided a personal device to aid in search-and-rescue efforts which is attachable to clothing or otherwise wearable. The respective county sheriff's offices will distribute these devices to the project participants. CARD UF will fund any cost associated with the monitoring of the devices.

The bill requires CARD UF to submit preliminary and final reports to the Governor, the Speaker of the House of Representatives, and the President of the Senate. Both reports must include:

- The criteria used to select the participants;
- The number of participants;
- The age of the participants;
- The nature of the participants' special needs;
- The number of participants who elope;
- The amount of time taken to rescue a participant following elopement; and
- The outcome of any rescue attempts.

Additionally, the final report must include recommendations for modifications or continued implementation of the program.

The bill provides that the "Project Leo" is subject to available funding within CARD UF's existing resources and expires on June 30, 2018. However, the bill also provides that \$100,000 from the General Revenue Fund for Fiscal Year 2016-2017 is appropriated to CARD UF to implement the act.

#### B. SECTION DIRECTORY:

Section 1. Creates s. 937.041, F.S., relating to missing persons with special needs pilot program.

Section 2. Provides an appropriation.

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

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

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<sup>24</sup> CENTER FOR AUTISM AND RELATED DISABILITIES UNIVERSITY OF FLORIDA, *About CARD*, <http://card.ufl.edu/about-card/> (last visited October 15, 2015).

2. Expenditures:

The bill is subject to available funding within the existing resources of the Center for Autism and Related Disabilities at the University of Florida (CARD UF).

The bill also provides an appropriation of \$100,000 of nonrecurring general revenue to CARD UF to implement the act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties and 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1. of the bill provides that "Project Leo" must operate to the extent of funding within CARD UF's existing resources, but Section 2. provides an appropriation of \$100,000 of nonrecurring general revenue to implement the act.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.



1                                   A bill to be entitled  
2           An act relating to missing persons with special needs;  
3           creating s. 937.041, F.S.; creating a pilot project in  
4           specified counties to provide personal devices to aid  
5           search-and-rescue efforts for persons with special  
6           needs; providing for administration of the project;  
7           requiring reports; providing for expiration; providing  
8           an appropriation; providing an effective date.

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

11  
12           Section 1. Section 937.041, Florida Statutes, is created  
13   to read:

14           937.041 Missing persons with special needs pilot project.-

15           (1) There is created a pilot project in Baker, Columbia,  
16           Hamilton, and Suwannee Counties to be known as "Project Leo" to  
17           provide personal devices to aid search-and-rescue efforts for  
18           persons with special needs in the case of elopement.

19           (2) Participants for the pilot project shall be selected  
20           based on criteria developed by the Center for Autism and Related  
21           Disabilities at the University of Florida. Criteria for  
22           participation shall include, at a minimum, the person's risk of  
23           elopement. The qualifying participants shall be selected on a  
24           first-come, first-served basis by the center to the extent of  
25           available funding within the center's existing resources. The  
26           project shall be voluntary and free to participants.

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

27        (3) Under the pilot project, personal devices to aid  
 28 search-and-rescue efforts that are attachable to clothing or  
 29 otherwise worn shall be provided by the center to the sheriff's  
 30 offices of the participating counties. The devices shall be  
 31 distributed to project participants by the county sheriff's  
 32 offices in conjunction with the center. The center shall fund  
 33 any costs associated with monitoring the devices.

34        (4) The center shall submit a preliminary report by  
 35 December 1, 2016, and a final report by December 15, 2017, to  
 36 the Governor, the President of the Senate, and the Speaker of  
 37 the House of Representatives describing the implementation and  
 38 operation of the pilot project. At a minimum, the report shall  
 39 include the criteria used to select participants, the number of  
 40 participants, the age of the participants, the nature of the  
 41 participants' special needs, the number of participants who  
 42 elope, the amount of time taken to rescue such participants  
 43 following elopement, and the outcome of any rescue attempts. The  
 44 final report shall also provide recommendations for modification  
 45 or continued implementation of the project.

46        (5) The project shall operate to the extent of available  
 47 funding within the center's existing resources.

48        (6) This section expires June 30, 2018.

49        Section 2. For the 2016-2017 fiscal year, the sum of  
 50 \$100,000 is appropriated from the General Revenue Fund to the  
 51 Center for Autism and Related Disabilities at the University of  
 52 Florida for the purpose of implementing this act.

HB 11

2016

53

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		

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

4  
5 **Amendment**

6 Remove line 15 and insert:

7 (1) There is created a pilot project in Alachua, Baker,  
 8 Columbia,





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 169 Use or Threatened Use of Defensive Force

**SPONSOR(S):** Baxley and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 344

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

### SUMMARY ANALYSIS

Florida law currently provides immunity from criminal prosecution and civil suits against a person who uses or threatens to use justified force to defend himself or herself, other people, or property. This is commonly referred to as the "Stand Your Ground" law. The Florida Supreme Court recently established the procedure for asserting a claim of immunity from criminal prosecution under Stand Your Ground, determining that the defendant bears the burden to prove by a preponderance of evidence his or her entitlement to Stand Your Ground immunity.

In contrast, the bill shifts the burden of proof from the defendant to the prosecution. Specifically, the bill provides that once a prima facie case of self-defense immunity from criminal prosecution has been raised, the burden of proof shall be on the prosecution to overcome the immunity.

The bill also permits a defendant to be reimbursed for specified expenses incurred in defending the criminal prosecution, not exceeding \$200,000, when a motion to dismiss based on Stand Your Ground immunity from criminal prosecution is granted by the trial court. A defendant seeking reimbursement must:

- Submit a written request for reimbursement to the Justice Administrative Commission within six months of the issuance of the order granting the motion to dismiss; and
- Include with the reimbursement request an order from the court granting the motion to dismiss and documentation of any court costs or private attorney fees and related expenses.

The Justice Administrative Commission must review each request and make a determination within 30 days of receipt. Approved reimbursement requests shall be paid to the defendant from the operating trust fund of the state attorney who prosecuted the defendant within 60 days after receipt of the approved reimbursement request.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a negative indeterminate impact on the Department of Corrections (i.e., an unquantifiable reduction in the need for prison beds).

This bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Stand Your Ground**

##### Florida

Section 776.032, F.S., provides immunity<sup>1</sup> from criminal prosecution and civil suits against a person who uses or threatens to use justified force to defend himself or herself, other people, or property, pursuant to ss. 776.012,<sup>2</sup> 776.013, or 776.031, F.S. This statute, commonly referred to as the “Stand Your Ground” law, was enacted in 2005.<sup>3</sup> Since its enactment, Florida courts have examined the available procedures for determining which cases are entitled to Stand Your Ground immunity.<sup>4</sup>

The Florida Supreme Court recently established the procedure for asserting a claim of immunity from criminal prosecution under Stand Your Ground.<sup>5</sup> A majority of the Court determined that the defendant bears the burden of proof, by a preponderance of the evidence,<sup>6</sup> to demonstrate that he or she is entitled to immunity at a pretrial evidentiary hearing.<sup>7</sup> Should the trial court rule against the defendant at the hearing, the case will proceed to trial, where the prosecutor bears the burden to prove beyond a reasonable doubt that the defendant is guilty of the crime with which he or she was charged.<sup>8</sup>

In reaching this conclusion, the Court reasoned that this procedure was appropriate because: Stand Your Ground immunity is not blanket immunity from prosecution, but rather, only intended for those who use justified force; no court in the country has required the prosecution to disprove beyond a reasonable doubt that the use of force by a defendant was justified; placing the burden of proof on the defendant is consistent with how other types of motions to dismiss are handled; and placing the burden on the state to prove beyond a reasonable doubt that a defendant is not entitled to immunity requires the state to establish the same degree of proof twice, which “would essentially result in two full-blown trials: one before the trial judge and then another before the jury.”<sup>9</sup>

##### Other States

A number of other states have Stand Your Ground or similar self-defense statutes in place,<sup>10</sup> and some of these states provide an individual with immunity from criminal prosecution when the individual lawfully uses force pursuant to an applicable self-defense statute.<sup>11</sup> These states vary somewhat in the procedural processes that are used to determine when a case is entitled to immunity under a self-

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<sup>1</sup> *Peterson v. State*, 983 So. 2d 27, 29 (Fla. 1st DCA 2008) (noting that this statute was clearly worded to create a true immunity rather than a mere affirmative defense).

<sup>2</sup> During the 2014 Legislative Session, CS/CS/HB 89 was passed and signed into law, creating a requirement that an individual invoking Stand Your Ground immunity must not have been engaged in criminal activity and was in a place where he or she had a right to be at the time he or she used or threatened to use deadly force. Chapter 2014-195, Laws of Fla.

<sup>3</sup> 2005 SB 436, Ch. 2005-27, Laws of Fla.

<sup>4</sup> See e.g., *Dennis v. State*, 51 So. 3d 456 (Fla. 2010); *Peterson*, 983 So. 2d at 27.

<sup>5</sup> *Bretherick v. State*, 170 So. 3d 766 (Fla. 2015).

<sup>6</sup> A “preponderance of the evidence” is a requirement that more than 50% of the evidence points to something. CORNELL UNIVERSITY LAW SCHOOL, *Preponderance of the Evidence*, [https://www.law.cornell.edu/wex/preponderance\\_of\\_the\\_evidence](https://www.law.cornell.edu/wex/preponderance_of_the_evidence) (last visited Nov. 10, 2015).

<sup>7</sup> *Bretherick*, 170 So. 3d at 768.

<sup>8</sup> *Peterson*, 983 So. 2d at 28.

<sup>9</sup> *Bretherick*, 170 So. 3d at 775-77.

<sup>10</sup> See e.g., ALA. CODE §13A-3-23 (Alabama); COLO. REV. STAT. §18-1-704.5 (Colorado); GA. CODE ANN. §16-3-24.2 (Georgia); KAN. STAT. ANN. §21-5231 (Kansas); KY. REV. STAT. ANN. §503.085 (Kentucky); LA. REV. STAT. ANN. §14:19 (Louisiana); MICH. COMP. LAWS ANN. §780.972 (Michigan); MONT. CODE ANN. §45-3-110 (Montana); N.H. REV. STAT. ANN. §627:7 (New Hampshire); N.C. GEN. STAT. §14-51.3 (North Carolina); S.C. CODE ANN. §16-11-440 and 450 (South Carolina).

<sup>11</sup> See e.g., ALA. CODE §13A-3-23 (Alabama); COLO. REV. STAT. §18-1-704.5 (Colorado); GA. CODE ANN. §16-3-24.2 (Georgia); KAN. STAT. ANN. §21-5231 (Kansas); KY. REV. STAT. ANN. §503.085 (Kentucky); S.C. CODE ANN. §16-11-440 and 450 (South Carolina).

defense statute. For example, Colorado,<sup>12</sup> Georgia,<sup>13</sup> and South Carolina<sup>14</sup> all require that a defendant asserting a right to immunity make a motion to the trial court and prove the necessary facts by a preponderance of the evidence at an evidentiary pretrial hearing. The courts in these three states all agreed that immunity is a more powerful right than any affirmative defense, and in order to be entitled to such a right, the defendant must bear the evidentiary burden at the pretrial hearing.<sup>15</sup>

Litigation in Kansas and Kentucky has resulted in procedures that differ from those used in Colorado, Georgia, and South Carolina. The Kentucky high court determined that the defendant is entitled to a pretrial evidentiary hearing when asserting a right to immunity;<sup>16</sup> however, the prosecution is only required to establish probable cause that the defendant was not entitled to immunity at such evidentiary hearing.<sup>17</sup> Should the prosecution meet the probable cause standard,<sup>18</sup> immunity is denied and the defendant is forced to stand trial.<sup>19</sup> Unlike Kentucky, Kansas declined to address a defendant's entitlement to a pretrial hearing,<sup>20</sup> but concluded that the prosecutor needed only to meet the probable cause standard already in use in Kentucky.<sup>21</sup> The Kansas Supreme Court relied partially on the language of the Kansas immunity statute<sup>22</sup> in coming to its decision, specifically noting that the language in the Kansas statute was distinct from the language used in Florida's immunity statute.<sup>23</sup>

## **Criminal Defenses in Florida**

### **Motions to Dismiss**

Most defenses may be raised prior to trial; however, some defenses must be raised prior to trial in order to be heard. The Florida Rules of Criminal Procedure provide the appropriate process for raising defenses prior to trial. Motions to dismiss usually must be made at or before arraignment.

Except for objections based on fundamental grounds, every ground for a motion to dismiss that is not presented by a motion to dismiss within the time hereinabove provided shall be considered waived. However, the court may at any time entertain a motion to dismiss on any of the following grounds:

- (1) The defendant is charged with an offense for which the defendant has been pardoned.
- (2) The defendant is charged with an offense for which the defendant previously has been placed in jeopardy.
- (3) The defendant is charged with an offense for which the defendant previously has been granted immunity.
- (4) There are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the defendant.<sup>24</sup>

Where a defendant files a motion to dismiss under Fla. R. Crim. P. 3.190(c)(4), and the State's sworn traverse<sup>25</sup> denies the material facts alleged in the motion to dismiss, an automatic denial of the motion

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<sup>12</sup> *State v. Guenther*, 740 P. 2d 972 (Colo. 1987).

<sup>13</sup> *Bunn v. State*, 667 S.E. 2d 605 (Ga. 2008).

<sup>14</sup> *State v. Duncan*, 709 S.E. 2d 662, 665 (S.C. 2011).

<sup>15</sup> See *Bunn*, 284 667 S.E. 2d at 608; *Duncan*, 709 S.E. 2d at 665; *Guenther*, 740 P. 2d at 980.

<sup>16</sup> *Rodgers v. Commonwealth*, 285 S.W. 3d 740, 755 (Ky. 2009)

<sup>17</sup> *Id.*

<sup>18</sup> Probable cause for an arrest exists when the nature of the circumstances would lead a reasonable person to believe that the suspect is, was, or will be involved in committing a crime. *Terry v. Ohio*, 392 U.S. 1 (1968). Note that probable cause is the constitutionally mandated minimum evidentiary standard to arrest someone for any criminal offense. *Id.*

<sup>19</sup> *Rodgers*, 285 S.W. 3d at 755.

<sup>20</sup> *State v. Ultreras*, 295 P. 3d 1020 (Kan. 2013).

<sup>21</sup> *Id.* at 1030-32.

<sup>22</sup> The Kansas immunity statute provides that a "prosecutor may commence a criminal prosecution upon a determination of probable cause." KAN. STAT. ANN. §21-3219(c).

<sup>23</sup> *Ultreras*, 295 P. 3d at 1030-31.

<sup>24</sup> FLA. R. CRIM. P. 3.190(c).

<sup>25</sup> A traverse is a pleading filed with the court by the prosecutor to deny the defendant's allegations. FLA. R. CRIM. P. 3.190(d).



to dismiss must follow.<sup>26</sup> This procedure exists because (c)(4) motions are meant to be granted only when there are no disputed material facts, and the motion addresses legal issues that are inappropriate for a jury to decide.<sup>27</sup>

The standard for the burden of proof at a motion to dismiss hearing varies depending on the motion that is filed. The defendant always carries the burden of proof for motions to dismiss based on double jeopardy or immunity grounds. Motions to dismiss an indictment for a violation of double jeopardy<sup>28</sup> require the defendant to prove by “convincing competent evidence” that double jeopardy has attached to the issue the defendant seeks to foreclose.<sup>29</sup> Similarly, when filing a motion to dismiss on immunity grounds,<sup>30</sup> the defendant has the burden of raising the immunity defense and “bringing forth sufficient facts to show her entitlement to it.”<sup>31</sup> The Florida Supreme Court refers to this burden as a requirement that the defendant make an “affirmative showing” that immunity applies.<sup>32</sup>

A motion to dismiss for a violation of the statute of limitations differs from double jeopardy and immunity motions because the State has the burden of proving that the prosecution isn’t barred by the statute of limitations.<sup>33</sup> Florida courts have not specifically defined the standard for the State’s burden.<sup>34</sup> However, the Florida Supreme Court has held that a statute of limitations is to be construed liberally in favor of the defendant.<sup>35</sup>

### Affirmative Defenses

Affirmative defenses are raised at trial and should not be resolved by a judgment of acquittal if there are any facts in dispute. Where facts are in dispute, the question of the affirmative defense should be submitted to the jury.<sup>36</sup> It is normally permissible for statutes to regulate the procedures for producing evidence and allocating the burden of persuasion for arguing affirmative defenses.<sup>37</sup> However, if a statute shifts the burden of persuasion to the defendant but does not create a true affirmative defense,<sup>38</sup> the statute is invalid as a violation of due process.<sup>39</sup>

A number of affirmative defenses simply require the defendant to establish a prima facie case for his or her defense at trial, and the burden then shifts to the prosecutor to rebut it.<sup>40</sup> For example, the

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<sup>26</sup> *State v. Miller*, 159 So. 3d 184 (Fla. 5th DCA 2015).

<sup>27</sup> *Bretherick*, 170 So. 3d at 776.

<sup>28</sup> These motions should be filed pursuant to Fla. R. Crim. P. 3.190(c)(2).

<sup>29</sup> *Davis v. State*, 645 So. 2d 66, 67 (Fla. 1994); *State v. Short*, 513 So. 2d 679 (Fla. 2d DCA 1987); *U.S. v. Hogue*, 812 F. 2d 1568, 1578 (11th Cir. 1987).

<sup>30</sup> These motions should be filed pursuant to Fla. R. Crim. P. 3.190(c)(3)\*.

<sup>31</sup> *State ex rel. Bateman v. O’Toole*, 203 So. 2d 527, 528 (Fla. 4th DCA 1967).

<sup>32</sup> *State ex rel. Marcus v. Pearson*, 68 So. 2d 400 (Fla. 1953).

<sup>33</sup> *State v. King*, 282 So. 2d 162 (Fla. 1973); *Walker v. State*, 543 So. 2d 353 (Fla. 5th DCA 1989); *State v. Shamy*, 759 So. 2d 728 (Fla. 4th DCA 2000).

<sup>34</sup> The Florida Supreme Court acknowledges the State’s burden in *King*, 282 So. 2d at 162, without defining the standard for the burden. The Second, Third, Fourth, and Fifth District Court likewise acknowledge the State’s burden. *Neal v. State*, 697 So. 2d 903 (Fla. 2d DCA 1997); *Bonel v. State*, 651 So. 2d 774, 776 (Fla. 3d DCA 1995); *Soto v. State*, 982 So. 2d 1290 (Fla. 4th DCA 2008); *Wright v. State*, 600 So. 2d 1248 (Fla. 5th DCA 1992).

<sup>35</sup> *Mead v. State*, 101 So. 2d 373 (Fla. 1958); *Mitchell v. State*, 25 So. 2d 73, 123 (Fla. 1946).

<sup>36</sup> *Turner v. State*, 29 So. 3d 361, 364 (Fla. 4th DCA 2010); *Dias v. State*, 812 So. 2d 487 (Fla. 4th DCA 2002) (citing to *Scholl v. State*, 115 So. 43, 44 (1927); *Reimel v. State*, 532 So. 2d 16, 18 (Fla. 5th DCA 1988); and *Payton v. State*, 200 So. 2d 255 (Fla. 3d DCA 1967)).

<sup>37</sup> *Herrera v. State*, 594 So. 2d 275 (Fla. 1992).

<sup>38</sup> “An ‘affirmative defense’ is any defense that assumes the complaint or charges to be correct but raises other facts that, if true, would establish a valid excuse or justification or a right to engage in the conduct in question. An affirmative defense does not concern itself with the elements of the offense at all; it concedes them. In effect, an affirmative defense says, ‘Yes, I did it, but I had a good reason.’” *Cohen*, 568 So. 2d at 51-52.

<sup>39</sup> *State v. Cohen*, 568 So. 2d 49 (Fla. 1990).

<sup>40</sup> The defense of alibi, which is not an affirmative defense, follows this same procedure. Once the defendant has presented enough evidence to create a reasonable doubt as to his guilt, the burden then shifts to the State to prove the defendant’s guilt beyond a

affirmative defenses of insanity,<sup>41</sup> involuntary intoxication,<sup>42</sup> and justifiable use of force<sup>43</sup> require the defendant to present evidence of these defenses sufficient to create reasonable doubt of guilt in the mind of the trier of fact.<sup>44</sup> The burden then shifts to the State to prove beyond a reasonable doubt that the affirmative defense does not apply.<sup>45</sup>

The affirmative defense for entrapment is unique because the requirements for raising the defense are provided by statute rather than court rule.<sup>46</sup> The defendant must prove *by a preponderance of the evidence* that an agent of the government induced the criminal act in question.<sup>47</sup> The defendant must then present some evidence that the defendant wasn't predisposed to the crime.<sup>48</sup> Once this evidence is presented, the burden shifts to the State to rebut this evidence beyond a reasonable doubt. The issue of entrapment must be submitted to the trier of fact, rather than decided by pretrial motion.<sup>49</sup>

### Prosecutorial Immunity

The umbrella of judicial immunity protects prosecutors from civil liability for official acts in the same manner that it protects judges in the exercise of judicial acts.<sup>50</sup> The United States Supreme Court held that civil redress is inappropriate against prosecutors because such suits could cause a chilling effect on the honest exercise of prosecutorial authority, thereby creating a greater public disservice.<sup>51</sup> Immunity provides protection for prosecutors even when accused of suppressing evidence, knowingly using perjured testimony, or otherwise acting with malice.<sup>52</sup> However, duties that are performed by a prosecutor, but are not related to a traditional prosecutor's role (e.g., investigating a possible crime to determine if there is probable cause for arrest), are not protected by prosecutorial immunity.<sup>53</sup>

While prosecutorial immunity provides absolute protection from civil liability, the United States Supreme Court has clearly limited the boundaries of prosecutorial immunity in federal cases. Such immunity does not reach so far as to provide immunity for violations of federal criminal laws or codes of professional conduct.<sup>54</sup> Florida cases addressing issues related to prosecutorial immunity have only acknowledged the existence of such immunity in matters of civil liability.<sup>55</sup>

### Effect of the Bill

The bill specifies in legislative intent that the State shall bear the burden of proof beyond a reasonable doubt in a criminal prosecution, and that the amendments to 776.032, F.S., shall apply retroactively to

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reasonable doubt. *Flowers v. State*, 12 So. 2d 772 (1943); *Dixon v. State*, 227 So. 2d 740 (Fla. 4th DCA 1969). Court rule requires the defendant to provide written notice of alibi defense ten or more days before trial, upon written demand by the prosecuting attorney. FLA. R. CRIM. P. 3.200.

<sup>41</sup> *Matevia v. State*, 564 So. 2d 585 (Fla. 2d DCA 1990) (quoting *Yohn v. State*, 476 So. 2d 123, 126 (Fla. 1985); see *Hall v. State*, 568 So. 2d 882, 884 (Fla. 1990).

<sup>42</sup> *Sluyter v. State*, 941 So. 2d 1178 (Fla. 2d DCA 2006) (citing to *Milburn v. State*, 742 So. 2d 362 (Fla. 2d DCA 1999).

<sup>43</sup> *Murray v. State*, 937 So. 2d 277, 279 (Fla. 4th DCA 2006); *Falwell v. State*, 88 So. 3d 970 (Fla. 5th DCA 2012); FLA. STD. CRIM. JURY INST. 3.6(g).

<sup>44</sup> A "trier of fact" is the judge or jury responsible for deciding factual issues in a trial. If there is no jury, the judge is the trier of fact. BURTON'S LEGAL THESAURUS, <http://legal-dictionary.thefreedictionary.com/trier+of+fact> (last visited Nov. 11, 2015).

<sup>45</sup> *Matevia*, 564 So. 2d at 585; *Sluyter*, 941 So. 2d at 1178; *Murray*, 937 So. 2d at 279; *Falwell*, 88 So. 3d at 970.

<sup>46</sup> s. 777.201, F.S.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Munoz v. State*, 629 So. 2d 90, 99 (Fla. 1993).

<sup>50</sup> *Office of the State Attorney v. Parrotino*, 628 So. 2d 1097 (Fla. 1993).

<sup>51</sup> *Imbler v. Pachtman*, 424 U.S. 409 (1976).

<sup>52</sup> *Imbler v. Pachtman*, 424 U.S. at 409; *Mueller v. The Florida Bar*, 390 So. 2d 449 (Fla. 4th DCA 1980); *Hansen v. State*, 503 So. 2d 1324 (Fla. 1st DCA 1987).

<sup>53</sup> *Swope v. Krischer*, 783 So. 2d 1164, 1168 (Fla. 4th DCA 2001).

<sup>54</sup> *O'Shea v. Littleton*, 414 U.S. 488, 503 (1974); *Imbler*, 424 U.S. 409 (1976).

<sup>55</sup> See *Amos v. State, Dept. of Legal Affairs*, 666 So. 2d 933 (Fla. 2d DCA 1995); *Hansen*, 503 So. 2d at 1324; *Parrotino*, 628 So. 2d at 1097.

proceedings pending at the time the bill becomes law. The bill specifies that once a prima facie<sup>56</sup> case of self-defense immunity from criminal prosecution has been raised, the burden of proof shall be on the prosecution to overcome the immunity. The bill will not change the burden of proof for Stand Your Ground immunity hearings in civil litigation.

The bill permits a defendant to be reimbursed for court costs, reasonable private attorney fees, and related expenses incurred in defending the criminal prosecution, not exceeding \$200,000, when a motion to dismiss based on immunity from criminal prosecution is granted by the trial court. A defendant seeking reimbursement must:

- Submit a written request for reimbursement to the Justice Administrative Commission within six months of the issuance of the order granting the motion to dismiss; and
- Include with the reimbursement request an order from the court granting the motion to dismiss and documentation of any court costs or private attorney fees and related expenses.

The Justice Administrative Commission must review each request and make a determination within 30 days of receipt. Reimbursement requests shall be approved if the costs are supported by valid documentation and the requested private attorney fees and related expenses are reasonable and supported by valid documentation.

Approved reimbursement requests shall be paid to the defendant from the operating trust fund of the state attorney who prosecuted the defendant within 60 days of receipt of the approved reimbursement request.

The bill provides direction to the Division of Law Revision and Information to replace the phrase "this act" wherever it occurs in the amendments to s. 776.032, F.S., made by this act, with the chapter law number of the act, if it becomes law.

The bill is effective upon becoming law.

## B. SECTION DIRECTORY:

Section 1. Amending s. 776.032, F.S., relating to immunity from criminal prosecution and civil action for justifiable use or threatened use of force.

Section 2. Providing directives to the Division of Law Revision and Information.

Section 3. Creating s. 939.061, F.S., relating to motion to dismiss; costs.

Section 4. Providing that the bill is effective upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

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<sup>56</sup> "Prima facie" is a Latin term meaning "at first sight" or "at first look." This refers to the standard of proof under which the party with the burden of proof need only present enough evidence to create a rebuttable presumption that the matter asserted is true. A prima facie standard of proof is relatively low. It is far less demanding than the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt standards that are also commonly used. PRACTICAL LAW, *Prima Facie*, <http://us.practicallaw.com/2-518-8779> (last visited Nov. 13, 2015).

2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a negative indeterminate impact on the Department of Corrections (i.e., an unquantifiable reduction in the need for prison beds).

If a defendant's case is dismissed pursuant to the bill, the prosecuting attorney's office could be required to reimburse the defendant for court costs, reasonable private attorney fees, and related expenses incurred in defending the criminal prosecution, not exceeding \$200,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The concept of prosecutorial immunity is derived from the common law.<sup>57</sup> The courts may interpret the reimbursement provision in the bill to be a civil penalty, and thereby a violation of prosecutorial immunity. The Florida Supreme Court has held that a legislative waiver of prosecutorial immunity is a violation of the doctrine of the Separation of Powers, set forth in article II, Section 3 of the Florida Constitution.<sup>58</sup>

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>57</sup> *Parrotino*, 628 So. 2d at 1099.

<sup>58</sup> *Id.* at 1098.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1                                   A bill to be entitled  
2           An act relating to use or threatened use of defensive  
3           force; amending s. 776.032, F.S.; providing  
4           legislative findings and intent; providing for  
5           retroactive application; specifying that once a prima  
6           facie claim of self-defense immunity has been raised,  
7           the burden of proof shall be on the party seeking to  
8           overcome the immunity from criminal prosecution;  
9           providing a directive to the Division of Law Revision  
10          and Information; creating s. 939.061, F.S.; entitling  
11          criminal defendants who successfully claim immunity  
12          under s. 776.032, F.S., to an award of specified  
13          costs, attorney fees, and related expenses; specifying  
14          a procedure for submitting reimbursement requests;  
15          requiring the Justice Administrative Commission to  
16          review and approve the reimbursement request if the  
17          requested costs, fees, and related expenses are  
18          reasonable and supported by valid documentation;  
19          requiring reimbursements to be paid from the operating  
20          trust fund of the state attorney who prosecuted the  
21          defendant; limiting the amount of the award; providing  
22          an effective date.

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

25  
26           Section 1.   Section 776.032, Florida Statutes, is amended

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

27 | to read:

28 |       776.032 Immunity from criminal prosecution and civil  
29 | action for justifiable use or threatened use of force.—

30 |       (1) The Legislature finds that imposing the burden of  
31 | proof on a person who uses or threatens to use defensive force  
32 | as permitted by general law at a pretrial evidentiary hearing  
33 | substantially curtails the benefit of the immunity from trial  
34 | provided by this section. The Legislature intends to make it  
35 | explicit that the state shall bear the burden of proof in  
36 | establishing beyond a reasonable doubt whether a defendant is  
37 | entitled to immunity at a pretrial evidentiary hearing in order  
38 | to disprove a prima facie claim of self-defense immunity. The  
39 | Legislature has never intended that a person who acts in defense  
40 | of self, others, or property be denied immunity and subjected to  
41 | trial when that person would be entitled to acquittal at trial.  
42 | The amendments to this section made by this act are intended to  
43 | correct misinterpretations of legislative intent made by the  
44 | courts and shall apply retroactively to proceedings pending at  
45 | the time this act becomes a law.

46 |       (2)~~(1)~~ A person who uses or threatens to use force as  
47 | permitted in s. 776.012, s. 776.013, or s. 776.031 is justified  
48 | in such conduct and is immune from criminal prosecution and  
49 | civil action for the use or threatened use of such force by the  
50 | person, personal representative, or heirs of the person against  
51 | whom the force was used or threatened, unless the person against  
52 | whom force was used or threatened is a law enforcement officer,

53 as defined in s. 943.10(14), who was acting in the performance  
 54 of his or her official duties and the officer identified himself  
 55 or herself in accordance with any applicable law or the person  
 56 using or threatening to use force knew or reasonably should have  
 57 known that the person was a law enforcement officer. As used in  
 58 this subsection, the term "criminal prosecution" includes  
 59 arresting, detaining in custody, and charging or prosecuting the  
 60 defendant.

61 ~~(3)(2)~~ A law enforcement agency may use standard  
 62 procedures for investigating the use or threatened use of force  
 63 as described in subsection ~~(2)(1)~~, but the agency may not arrest  
 64 the person for using or threatening to use force unless it  
 65 determines that there is probable cause that the force that was  
 66 used or threatened was unlawful.

67 ~~(4)(3)~~ The court shall award reasonable attorney  
 68 ~~attorney's~~ fees, court costs, compensation for loss of income,  
 69 and all expenses incurred by the defendant in defense of any  
 70 civil action brought by a plaintiff if the court finds that the  
 71 defendant is immune from prosecution as provided in subsection  
 72 ~~(2)(1)~~.

73 (5) Once a prima facie claim of self-defense immunity from  
 74 criminal prosecution has been raised, the burden of proof shall  
 75 be on the party seeking to overcome the immunity from criminal  
 76 prosecution provided in subsection (2).

77 Section 2. The Division of Law Revision and Information is  
 78 directed to replace the phrase "this act" wherever it occurs in



79 the amendments to s. 776.032, Florida Statutes, made by this  
 80 act, with the chapter law number of this act, if it becomes a  
 81 law.

82 Section 3. Section 939.061, Florida Statutes, is created  
 83 to read:

84 939.061 Motion to dismiss; costs.-

85 (1) If a defendant files a motion to dismiss claiming  
 86 immunity from criminal prosecution under s. 776.032 and the  
 87 court grants the motion, the defendant shall be reimbursed for  
 88 court costs, reasonable private attorney fees, and related  
 89 expenses incurred in defending the criminal prosecution, up to  
 90 the limit specified in subsection (4).

91 (2) To receive reimbursement under this section, a  
 92 defendant must submit a written request for reimbursement to the  
 93 Justice Administrative Commission within 6 months after the  
 94 issuance of the order granting the motion to dismiss. The  
 95 defendant must include with the reimbursement request an order  
 96 from the court granting the motion to dismiss and documentation  
 97 of any court costs or private attorney fees and related expenses  
 98 paid or owed.

99 (3) The Justice Administrative Commission shall review  
 100 each request and make a determination within 30 days after  
 101 receiving the request. If the requested court costs are  
 102 supported by valid documentation and the requested private  
 103 attorney fees and related expenses are reasonable and supported  
 104 by valid documentation, the commission shall approve the

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105 reimbursement request. Approved reimbursement requests shall be  
106 paid to the defendant from the operating trust fund of the state  
107 attorney who prosecuted the defendant within 60 days after  
108 receipt of the approved reimbursement request.

109 (4) A reimbursement request under this section may not  
110 exceed \$200,000.

111 Section 4. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee  
 3 Representative Baxley offered the following:  
 4

**Amendment (with title amendment)**

Remove lines 85-87 and insert:

7 (1) If a defendant files, and the court grants, a motion  
 8 to dismiss claiming immunity from criminal prosecution under s.  
 9 776.032, and the court determines that the state willfully or  
 10 substantially violated the rules of discovery or that the  
 11 state's filing of an information violates the court's sense of  
 12 fundamental fairness, the defendant shall be reimbursed for

14 -----  
 15 **T I T L E A M E N D M E N T**

16 Remove line 13 and insert:



Amendment No. 1

17 | costs, attorney fees, and related expenses if a court makes  
18 | specified determinations; specifying





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 293 Public Records/Juvenile Criminal History Records

**SPONSOR(S):** Pritchett

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 700

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

### SUMMARY ANALYSIS

Section 985.04(1), F.S., specifies that all records obtained under ch. 985, F.S., as a result of a juvenile being involved in the juvenile justice system, are confidential. However, s. 985.04(2), F.S., creates exceptions if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

Section 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.

A recent ruling by Florida's First District Court of Appeal highlighted the inconsistency that exists between s. 985.04(1), F.S., (making most juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's record to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- Making the records of juveniles who have been found to have committed three or more misdemeanors confidential and exempt (currently they are not);
- Ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed not to be confidential and exempt under s. 943.053, F.S.;
- Requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- Specifying how FDLE must release juvenile criminal history records.

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

FDLE reports that the bill may have a minimal fiscal impact on the department, which can be absorbed by existing resources. See the fiscal section of this bill analysis.

The bill is effective upon becoming a law.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Records**

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Art. I, s. 24 of the State Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:<sup>3</sup>

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a public records exemption on October 2nd of the 5th year after its creation or substantial amendment, unless reenacted by the Legislature.<sup>4</sup> The Act also requires specified questions to be considered during the review process.

##### **Confidential Information of Juveniles**

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system, are confidential. However, several exceptions to the confidentiality of these records are provided. For example, s. 985.04(2), F.S., provides in part that the name, photograph, address, and crime or arrest report of certain juveniles is not confidential and exempt from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system under ss. 985.557, 985.56, F.S., or 985.556, F.S.;
- Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

##### **Criminal Justice Information Program**

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information<sup>5</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(c).

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> s. 119.15(6)(b), F.S.

<sup>4</sup> s. 119.15(3), F.S.

repository. Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in CJIP.<sup>6</sup> This information can then be transmitted between criminal justice agencies.<sup>7</sup>

Currently, s. 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to FDLE the fingerprints, palm prints, and facial images of:

- Each adult person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile who is charged with or found to have committed an offense which, if committed by an adult, would be a felony; or
- A minor who is charged with or found to have committed an enumerated offense, unless the minor is issued a civil citation pursuant to s. 985.12, F.S.

### **Dissemination of Criminal History Information under Chapter 943, F.S.**

Criminal history information<sup>8</sup> compiled by CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.<sup>9</sup> With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 per name submitted.<sup>10</sup>

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.<sup>11</sup> The statute is silent as to the release of a juvenile's information, which has been made confidential pursuant to s. 985.04, F.S.

### **G.G. v. FDLE**

In *G.G. v. FDLE*,<sup>12</sup> a juvenile with no prior criminal history record was arrested for petit theft – a first degree misdemeanor. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from FDLE, and discovered that it included information relating to the petit theft arrest.<sup>13</sup> G.G. filed suit, claiming that the petit theft information should be confidential and exempt pursuant to s. 985.04(1), F.S.<sup>14</sup> The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.<sup>15</sup>

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<sup>5</sup> Section 943.045(12), F.S., provides that the term "criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

<sup>6</sup> s. 943.052, F.S.

<sup>7</sup> s. 985.051, F.S.

<sup>8</sup> Section 943.045(5), F.S., defines the term "criminal history information" as information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

<sup>9</sup> s. 943.053(3)(a), F.S.

<sup>10</sup> s. 943.053(3)(b), F.S. The guardian ad litem program; vendors of the Department of Children and Families, DJJ, and the Department of Elderly Affairs; the Department of Agriculture and Consumer Services; and other qualified entities are charged a lesser amount.

<sup>11</sup> s. 943.053(3)(a), F.S.

<sup>12</sup> 97 So. 3d 268 (Fla. 1st DCA 2012).

<sup>13</sup> *Id.* at 269.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*



On appeal, the First District Court of Appeal reversed the trial court's decision and held that FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.<sup>16</sup>

#### **FDLE – Release of Juvenile Information since G.G.**

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential. However, s. 985.04(2), F.S., creates exceptions to the confidentiality requirements for records if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

In an effort to comply with the ruling in *G.G. v. FDLE*, FDLE is ensuring that only the above-described records are released. However, because of programming limitations<sup>17</sup> and incomplete reporting of juvenile disposition information,<sup>18</sup> FDLE reports that it is unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors.<sup>19</sup> As such, FDLE currently only releases juvenile records to private entities and non-criminal justice agencies if the juvenile is:

- Taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Treated as adults.<sup>20</sup>

#### **Effect of the Bill**

The ruling in *G.G. v. FDLE* highlighted the inconsistency that exists between s. 985.04(1), F.S., (making the majority of juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- Ensuring that the specified juvenile records deemed not to be confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed not to be confidential and exempt under s. 985.04, F.S.; and
- Requiring FDLE to release juvenile criminal history records in a manner that takes into account the confidential and exempt status of the record.

#### **Section 985.04, F.S.**

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential),<sup>21</sup> and provides that the public record exemption applies retroactively.

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<sup>16</sup> *Id.* at 273.

<sup>17</sup> FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. Florida Department of Law Enforcement, Agency Bill Analysis for HB 7103 (2015), which is identical to this bill (on file with the Criminal Justice Subcommittee)(hereinafter cited as "FDLE Analysis").

<sup>18</sup> Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5 percent, while the adult rate is 72.2 percent.) FDLE Analysis.

<sup>19</sup> FDLE Analysis, p. 3.

<sup>20</sup> *Id.*

<sup>21</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See 85-62 Fla. Op. Att'y Gen. (August 1, 1985).

The bill also amends s. 985.04(2), F.S., to specify that the following juvenile records are not confidential and exempt:

- Records where a juvenile has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been charged with a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records where a juvenile has been transferred to adult court pursuant to part X of ch. 985, F.S.

Notably, the bill removes language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records will now be confidential and exempt.

#### Section 943.053, F.S.

The bill amends s. 943.053, F.S., so that the list of juvenile records deemed not to be confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed not to be confidential and exempt under s. 943.053, F.S. Because the language regarding three or more misdemeanors is not included on the list, FDLE will no longer be tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies.

The bill further amends s. 943.053, F.S., to establish a separate process for the dissemination of *juvenile* criminal history information. Under this process, juvenile criminal history information, including the information that is confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S.,<sup>22</sup> for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information that is not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

The bill provides that juvenile records deemed confidential and exempt under the provisions of s. 943.053, F.S., which are released by the sheriff, DOC, or DJJ to private entities under contract with each entity retain their confidential status upon release to these private entities.

The bill repeals all new public records exemptions provided for in the bill on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>23</sup>

Lastly, the bill makes conforming changes to ss. 496.4101 and 943.056, F.S., to reflect changes made in the act.

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<sup>22</sup> These sections require persons who are seeking employment with specified agencies (e.g., DCF, Department of Health, or DJJ) to acknowledge their criminal history record, even if such record has been sealed or expunged.

<sup>23</sup> FLA. CONST. art. I, s. 24(c).

**B. SECTION DIRECTORY:**

Section 1. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 2. Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.

Section 3. Amends s. 496.4101, F.S., relating to licensure of professional solicitors and certain employees thereof.

Section 4. Amends s. 943.056, F.S., relating to criminal history records; access, review, and challenge.

Section 5. Provides a public necessity statement.

Section 6. Provides an effective date of upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

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

2. Expenditures:

FDLE reports that the Computerized Criminal History System requires an update to comply with the ruling or to implement the bill, which will require 891 hours of programming at \$85 dollars per hour for a total of \$75,877.<sup>24</sup> Additionally, the bill may require staff training related to the expansion of the public records exemption, which will likely result in an insignificant fiscal impact to FDLE. FDLE indicates that these costs, however, will be absorbed, as they are part of the day-to-day responsibilities of the agency.<sup>25</sup>

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

1. Revenues:

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

2. Expenditures:

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

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

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<sup>24</sup> FDLE Analysis, p. 6.

<sup>25</sup> Email from Ronald Draa, Legislative Affairs Director, FDLE, HB 293 (November 10, 2015).

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

###### Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it requires a two-thirds vote for final passage.

###### Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it includes a public necessity statement.

###### Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

The bill provides that all criminal history information relating to juveniles must be provided upon tender of fees and in the manner prescribed by rules of the FDLE.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1                                   A bill to be entitled  
 2           An act relating to public records; amending s. 985.04,  
 3           F.S.; specifying that certain confidential information  
 4           obtained under chapter 985, F.S., relating to juvenile  
 5           justice, is exempt from public records requirements;  
 6           providing applicability; revising applicability of  
 7           public records requirements with respect to the arrest  
 8           records of certain juvenile offenders; providing for  
 9           future review and repeal of such applicability  
 10          provisions; amending s. 943.053, F.S.; providing an  
 11          exemption from public records requirements for  
 12          juvenile information compiled by the Criminal Justice  
 13          Information Program from intrastate sources; providing  
 14          exceptions; providing for future review and repeal of  
 15          the exemption; providing for release by the Department  
 16          of Law Enforcement of the criminal history information  
 17          of a juvenile which has been deemed confidential and  
 18          exempt under certain circumstances; amending ss.  
 19          496.4101 and 943.056, F.S.; conforming provisions to  
 20          changes made by the act; providing a statement of  
 21          public necessity; providing an effective date.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

24  
 25           Section 1. Subsections (1) and (2) of section 985.04,  
 26   Florida Statutes, are amended to read:

27 985.04 Oaths; records; confidential information.—  
 28 (1) (a) Except as provided in subsections (2), (3), (6),  
 29 and (7) and s. 943.053, all information obtained under this  
 30 chapter in the discharge of official duty by any judge, any  
 31 employee of the court, any authorized agent of the department,  
 32 the Florida Commission on Offender Review, the Department of  
 33 Corrections, the juvenile justice circuit boards, any law  
 34 enforcement agent, or any licensed professional or licensed  
 35 community agency representative participating in the assessment  
 36 or treatment of a juvenile is confidential and exempt from s.  
 37 119.07(1) and s. 24(a), Art. I of the State Constitution. This  
 38 exemption applies to information obtained before, on, or after  
 39 the effective date of this exemption.  
 40 (b) Such confidential and exempt information ~~and~~ may be  
 41 disclosed only to the authorized personnel of the court, the  
 42 department and its designees, the Department of Corrections, the  
 43 Florida Commission on Offender Review, law enforcement agents,  
 44 school superintendents and their designees, any licensed  
 45 professional or licensed community agency representative  
 46 participating in the assessment or treatment of a juvenile, and  
 47 others entitled under this chapter to receive that information,  
 48 or upon order of the court.  
 49 (c) Within each county, the sheriff, the chiefs of police,  
 50 the district school superintendent, and the department shall  
 51 enter into an interagency agreement for the purpose of sharing  
 52 information about juvenile offenders among all parties. The

53 agreement must specify the conditions under which summary  
 54 criminal history information is to be made available to  
 55 appropriate school personnel, and the conditions under which  
 56 school records are to be made available to appropriate  
 57 department personnel. Such agreement shall require notification  
 58 to any classroom teacher of assignment to the teacher's  
 59 classroom of a juvenile who has been placed in a probation or  
 60 commitment program for a felony offense. The agencies entering  
 61 into such agreement must comply with s. 943.0525, and must  
 62 maintain the confidentiality of information that is otherwise  
 63 exempt from s. 119.07(1), as provided by law.

64 (2) (a) Notwithstanding any other provisions of this  
 65 chapter, the name, photograph, address, and crime or arrest  
 66 report of a child:

67 1. (a) Taken into custody ~~if the child has been taken into~~  
 68 ~~custody~~ by a law enforcement officer for a violation of law  
 69 which, if committed by an adult, would be a felony;

70 2. Charged with a violation of law which, if committed by  
 71 an adult, would be a felony;

72 3. Found to have committed an offense which, if committed  
 73 by an adult, would be a felony; or

74 4. Transferred to adult court pursuant to part X of this  
 75 chapter,

76 ~~(b) Found by a court to have committed three or more~~  
 77 ~~violations of law which, if committed by an adult, would be~~  
 78 ~~misdemeanors;~~

79 ~~(c) Transferred to the adult system under s. 985.557,~~  
 80 ~~indicted under s. 985.56, or waived under s. 985.556;~~

81 ~~(d) Taken into custody by a law enforcement officer for a~~  
 82 ~~violation of law subject to s. 985.557(2)(b) or (d); or~~

83 ~~(e) Transferred to the adult system but sentenced to the~~  
 84 ~~juvenile system under s. 985.565~~

85  
 86 are ~~shall~~ not ~~be~~ considered confidential and exempt from s.  
 87 119.07(1) solely because of the child's age.

88 (b) This subsection is subject to the Open Government  
 89 Sunset Review Act in accordance with s. 119.15 and shall stand  
 90 repealed on October 2, 2021, unless reviewed and saved from  
 91 repeal through reenactment by the Legislature.

92 Section 2. Subsections (3), (8), (9), and (10) of section  
 93 943.053, Florida Statutes, are amended to read:

94 943.053 Dissemination of criminal justice information;  
 95 fees.—

96 (3)(a) Criminal history information, ~~including information~~  
 97 relating to an adult ~~minors~~, compiled by the Criminal Justice  
 98 Information Program from intrastate sources shall be available  
 99 on a priority basis to criminal justice agencies for criminal  
 100 justice purposes free of charge. After providing the program  
 101 with all known personal identifying information, persons in the  
 102 private sector and noncriminal justice agencies may be provided  
 103 criminal history information upon tender of fees as established  
 104 in this subsection and in the manner prescribed by rule of the



105 Department of Law Enforcement. ~~Any access to criminal history~~  
 106 ~~information by the private sector or noncriminal justice~~  
 107 ~~agencies as provided in this subsection shall be assessed~~  
 108 ~~without regard to the quantity or category of criminal history~~  
 109 ~~record information requested.~~

110 (b)1. Criminal history information relating to a juvenile  
 111 compiled by the Criminal Justice Information Program from  
 112 intrastate sources shall be released as provided in this  
 113 section. Such information is confidential and exempt from s.  
 114 119.07(1) and s. 24(a), Art. I of the State Constitution, unless  
 115 such juvenile has been:

116 a. Taken into custody by a law enforcement officer for a  
 117 violation of law which, if committed by an adult, would be a  
 118 felony;

119 b. Charged with a violation of law which, if committed by  
 120 an adult, would be a felony;

121 c. Found to have committed an offense which, if committed  
 122 by an adult, would be a felony; or

123 d. Transferred to adult court pursuant to part X of  
 124 chapter 985,

125  
 126 and provided the criminal history record has not been expunged  
 127 or sealed under any law applicable to such record.

128 2. This paragraph is subject to the Open Government Sunset  
 129 Review Act in accordance with s. 119.15 and shall stand repealed  
 130 on October 2, 2021, unless reviewed and saved from repeal

131 through reenactment by the Legislature.

132 (c)1. Criminal history information relating to juveniles,  
 133 including criminal history information consisting in whole or in  
 134 part of information that is confidential and exempt under  
 135 paragraph (b), shall be available to:

136 a. A criminal justice agency for criminal justice purposes  
 137 on a priority basis and free of charge;

138 b. The person to whom the record relates, or his or her  
 139 attorney;

140 c. The parent, guardian, or legal custodian of the person  
 141 to whom the record relates, provided such person has not reached  
 142 the age of majority, been emancipated by a court, or been  
 143 legally married; or

144 d. An agency or entity specified in s. 943.0585(4) or s.  
 145 943.059(4), for the purposes specified therein, and to any  
 146 person within such agency or entity who has direct  
 147 responsibility for employment, access authorization, or  
 148 licensure decisions.

149 2. After providing the program with all known personal  
 150 identifying information, the criminal history information  
 151 relating to a juvenile which is not confidential and exempt  
 152 under this subsection may be released to the private sector and  
 153 noncriminal justice agencies not specified in s. 943.0585(4) or  
 154 s. 943.059(4) in the same manner as provided in paragraph (a).  
 155 Criminal history information relating to a juvenile which is not  
 156 confidential and exempt under this subsection is the entire

157 | criminal history information relating to a juvenile who  
 158 | satisfies any of the criteria listed in sub-subparagraphs  
 159 | (b)1.a. through (b)1.d., except for any portion of such  
 160 | juvenile's criminal history record which has been expunged or  
 161 | sealed under any law applicable to such record.

162 | 3. All criminal history information relating to juveniles,  
 163 | other than that provided to criminal justice agencies for  
 164 | criminal justice purposes, shall be provided upon tender of fees  
 165 | as established in this subsection and in the manner prescribed  
 166 | by rule of the Department of Law Enforcement.

167 | (d) The fee for access to criminal history information by  
 168 | the private sector or a noncriminal justice agency shall be  
 169 | assessed without regard to the size or category of criminal  
 170 | history record information requested.

171 | (e)-~~(b)~~ The fee per record for criminal history information  
 172 | provided pursuant to this subsection and s. 943.0542 is \$24 per  
 173 | name submitted, except that the fee for the guardian ad litem  
 174 | program and vendors of the Department of Children and Families,  
 175 | the Department of Juvenile Justice, and the Department of  
 176 | Elderly Affairs shall be \$8 for each name submitted; the fee for  
 177 | a state criminal history provided for application processing as  
 178 | required by law to be performed by the Department of Agriculture  
 179 | and Consumer Services shall be \$15 for each name submitted; and  
 180 | the fee for requests under s. 943.0542, which implements the  
 181 | National Child Protection Act, shall be \$18 for each volunteer  
 182 | name submitted. The state offices of the Public Defender shall

183 not be assessed a fee for Florida criminal history information  
 184 or wanted person information.

185 (8) Notwithstanding ~~the provisions of~~ s. 943.0525, and any  
 186 user agreements adopted pursuant thereto, and notwithstanding  
 187 the confidentiality of sealed records as provided for in s.  
 188 943.059 and juvenile records as provided for in paragraph  
 189 (3)(b), the sheriff of any county that has contracted with a  
 190 private entity to operate a county detention facility pursuant  
 191 to ~~the provisions of~~ s. 951.062 shall provide that private  
 192 entity, in a timely manner, copies of the Florida criminal  
 193 history records for its inmates. The sheriff may assess a charge  
 194 for the Florida criminal history records pursuant to ~~the~~  
 195 ~~provisions of~~ chapter 119. Sealed records and confidential  
 196 juvenile records received by the private entity under this  
 197 section remain confidential and exempt from ~~the provisions of~~ s.  
 198 119.07(1).

199 (9) Notwithstanding ~~the provisions of~~ s. 943.0525, and any  
 200 user agreements adopted pursuant thereto, and notwithstanding  
 201 the confidentiality of sealed records as provided for in s.  
 202 943.059 and juvenile records as provided for in paragraph  
 203 (3)(b), the Department of Corrections shall provide, in a timely  
 204 manner, copies of the Florida criminal history records for  
 205 inmates housed in a private state correctional facility to the  
 206 private entity under contract to operate the facility pursuant  
 207 to ~~the provisions of~~ s. 944.105. The department may assess a  
 208 charge for the Florida criminal history records pursuant to ~~the~~

209 ~~provisions of~~ chapter 119. Sealed records and confidential  
 210 juvenile records received by the private entity under this  
 211 section remain confidential and exempt from ~~the provisions of~~ s.  
 212 119.07(1).

213 (10) Notwithstanding ~~the provisions of~~ s. 943.0525 and any  
 214 user agreements adopted pursuant thereto, and notwithstanding  
 215 the confidentiality of sealed records as provided for in s.  
 216 943.059 or of juvenile records as provided for in paragraph  
 217 (3)(b), the Department of Juvenile Justice or any other state or  
 218 local criminal justice agency may provide copies of the Florida  
 219 criminal history records for juvenile offenders currently or  
 220 formerly detained or housed in a contracted juvenile assessment  
 221 center or detention facility or serviced in a contracted  
 222 treatment program and for employees or other individuals who  
 223 will have access to these facilities, only to the entity under  
 224 direct contract with the Department of Juvenile Justice to  
 225 operate these facilities or programs pursuant to ~~the provisions~~  
 226 ~~of~~ s. 985.688. The criminal justice agency providing such data  
 227 may assess a charge for the Florida criminal history records  
 228 pursuant to ~~the provisions of~~ chapter 119. Sealed records and  
 229 confidential juvenile records received by the private entity  
 230 under this section remain confidential and exempt from ~~the~~  
 231 ~~provisions of~~ s. 119.07(1). Information provided under this  
 232 section shall be used only for the criminal justice purpose for  
 233 which it was requested and may not be further disseminated.

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

235 496.4101, Florida Statutes, is amended to read:

236 496.4101 Licensure of professional solicitors and certain  
 237 employees thereof.—

238 (3)

239 (b) Fees for state and federal fingerprint processing and  
 240 fingerprint retention fees shall be borne by the applicant. The  
 241 state cost for fingerprint processing is that authorized in s.  
 242 943.053(3)(e) ~~943.053(3)(b)~~ for records provided to persons or  
 243 entities other than those specified as exceptions therein.

244 Section 4. Subsection (1) of section 943.056, Florida  
 245 Statutes, is amended to read:

246 943.056 Criminal history records; access, review, and  
 247 challenge.—

248 (1) For purposes of verification of the accuracy and  
 249 completeness of a criminal history record, the Department of Law  
 250 Enforcement shall provide, in the manner prescribed by rule,  
 251 such record for review upon verification, by fingerprints, of  
 252 the identity of the requesting person. If a minor, or the parent  
 253 or legal guardian of a minor, requests a copy of the minor's  
 254 criminal history record, the Department of Law Enforcement shall  
 255 provide such copy, including any portions of the record which  
 256 may be confidential under s. 943.053(3)(b), for review upon  
 257 verification, by fingerprints, of the identity of the minor. The  
 258 providing of such record shall not require the payment of any  
 259 fees, except those provided for by federal regulations.

260 Section 5. The Legislature finds that it is a public

261 necessity that the criminal history information of juveniles,  
262 who have not been adjudicated delinquent of a felony or who have  
263 been found only to have committed misdemeanor offenses and  
264 certain criminal history information relating to a juvenile  
265 compiled by the Criminal Justice Information Program be made  
266 confidential and exempt from s. 119.07(1), Florida Statutes, and  
267 s. 24(a), Article I of the State Constitution under ss. 985.04  
268 and 943.053, Florida Statutes. Many individuals who have either  
269 completed their sanctions and received treatment or who were  
270 never charged in the juvenile justice system have found it  
271 difficult to obtain employment. The presence of an arrest or a  
272 misdemeanor record in these individuals' juvenile past and  
273 certain criminal history information relating to a juvenile  
274 compiled by the Criminal Justice Information Program creates an  
275 unnecessary barrier to becoming productive members of society,  
276 thus frustrating the rehabilitative purpose of the juvenile  
277 system. The Legislature therefore finds that it is in the best  
278 interest of the public that individuals with juvenile  
279 misdemeanor records are given the opportunity to become  
280 contributing members of society. Therefore, prohibiting the  
281 unfettered release of juvenile misdemeanor records and certain  
282 criminal history information relating to a juvenile compiled by  
283 the Criminal Justice Information Program is of greater  
284 importance than any public benefit that may be derived from the  
285 full disclosure and release of such arrest records and  
286 information.

287

Section 6. This act shall take effect upon becoming a law.





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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	_____	

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee

3 Representative Bracy offered the following:

**Amendment (with title amendment)**

6 Between lines 259 and 260, insert:

7 Section 5. For the purpose of incorporating the amendment  
8 made by this act to section 943.053, Florida Statutes, in a  
9 reference thereto, subsection (4) of section 110.1127, Florida  
10 Statutes, is reenacted to read:

11 110.1127 Employee background screening and  
12 investigations.—

13 (4) Background screening and investigations shall be  
14 conducted at the expense of the employing agency. If  
15 fingerprinting is required, the fingerprints shall be taken by  
16 the employing agency, a law enforcement agency, or a vendor as  
17 authorized pursuant to s. 435.04, submitted to the Department of



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18 Law Enforcement for state processing, and forwarded by the  
19 Department of Law Enforcement to the Federal Bureau of  
20 Investigation for national processing. The agency or vendor  
21 shall remit the processing fees required by s. 943.053 to the  
22 Department of Law Enforcement.

23 Section 6. For the purpose of incorporating the amendment  
24 made by this act to section 943.053, Florida Statutes, in a  
25 reference thereto, paragraph (a) of subsection (3) of section  
26 373.6055, Florida Statutes, is reenacted to read:

27 373.6055 Criminal history checks for certain water  
28 management district employees and others.—

29 (3)(a) The fingerprint-based criminal history check shall  
30 be performed on any person described in subsection (1) pursuant  
31 to the applicable water management district's security plan for  
32 buildings, facilities, and structures. With respect to employees  
33 or others with regular access, such checks shall be performed at  
34 least once every 5 years or at other more frequent intervals as  
35 provided by the water management district's security plan for  
36 buildings, facilities, and structures. Each individual subject  
37 to the criminal history check shall file a complete set of  
38 fingerprints which are taken in a manner required by the  
39 Department of Law Enforcement and the water management district  
40 security plan. Fingerprints shall be submitted to the Department  
41 of Law Enforcement for state processing and to the Federal  
42 Bureau of Investigation for federal processing. The results of  
43 each fingerprint-based check shall be reported to the requesting



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44 water management district. The costs of the checks, consistent  
45 with s. 943.053(3), shall be paid by the water management  
46 district or other employing entity or by the individual checked.

47 Section 7. For the purpose of incorporating the amendment  
48 made by this act to section 943.053, Florida Statutes, in a  
49 reference thereto, subsection (6) of section 408.809, Florida  
50 Statutes, is reenacted to read:

51 408.809 Background screening; prohibited offenses.-

52 (6) The costs associated with obtaining the required  
53 screening must be borne by the licensee or the person subject to  
54 screening. Licensees may reimburse persons for these costs. The  
55 Department of Law Enforcement shall charge the agency for  
56 screening pursuant to s. 943.053(3). The agency shall establish  
57 a schedule of fees to cover the costs of screening.

58 Section 8. For the purpose of incorporating the amendment  
59 made by this act to section 943.053, Florida Statutes, in a  
60 reference thereto, subsection (1) of section 943.046, Florida  
61 Statutes, is reenacted to read:

62 943.046 Notification of criminal offender information.-

63 (1) Any state or local law enforcement agency may release  
64 to the public any criminal history information and other  
65 information regarding a criminal offender, including, but not  
66 limited to, public notification by the agency of the  
67 information, unless the information is confidential and exempt  
68 from s. 119.07(1) and s. 24(a), Art. I of the State  
69 Constitution. However, this section does not contravene any



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70 provision of s. 943.053 which relates to the method by which an  
71 agency or individual may obtain a copy of an offender's criminal  
72 history record.

73 Section 9. For the purpose of incorporating the amendment  
74 made by this act to section 943.053, Florida Statutes, in a  
75 reference thereto, paragraph (h) of subsection (2) of section  
76 943.05, Florida Statutes, is reenacted to read:

77 943.05 Criminal Justice Information Program; duties; crime  
78 reports.—

79 (2) The program shall:

80 (h) For each agency or qualified entity that officially  
81 requests retention of fingerprints or for which retention is  
82 otherwise required by law, search all arrest fingerprint  
83 submissions received under s. 943.051 against the fingerprints  
84 retained in the statewide automated biometric identification  
85 system under paragraph (g).

86 1. Any arrest record that is identified with the retained  
87 fingerprints of a person subject to background screening as  
88 provided in paragraph (g) shall be reported to the appropriate  
89 agency or qualified entity.

90 2. To participate in this search process, agencies or  
91 qualified entities must notify each person fingerprinted that  
92 his or her fingerprints will be retained, pay an annual fee to  
93 the department unless otherwise provided by law, and inform the  
94 department of any change in the affiliation, employment, or  
95 contractual status of each person whose fingerprints are



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96 retained under paragraph (g) if such change removes or  
97 eliminates the agency or qualified entity's basis or need for  
98 receiving reports of any arrest of that person, so that the  
99 agency or qualified entity is not obligated to pay the upcoming  
100 annual fee for the retention and searching of that person's  
101 fingerprints to the department. The department shall adopt a  
102 rule setting the amount of the annual fee to be imposed upon  
103 each participating agency or qualified entity for performing  
104 these searches and establishing the procedures for the retention  
105 of fingerprints and the dissemination of search results. The fee  
106 may be borne by the agency, qualified entity, or person subject  
107 to fingerprint retention or as otherwise provided by law.  
108 Consistent with the recognition of criminal justice agencies  
109 expressed in s. 943.053(3), these services shall be provided to  
110 criminal justice agencies for criminal justice purposes free of  
111 charge. Qualified entities that elect to participate in the  
112 fingerprint retention and search process are required to timely  
113 remit the fee to the department by a payment mechanism approved  
114 by the department. If requested by the qualified entity, and  
115 with the approval of the department, such fees may be timely  
116 remitted to the department by a qualified entity upon receipt of  
117 an invoice for such fees from the department. Failure of a  
118 qualified entity to pay the amount due on a timely basis or as  
119 invoiced by the department may result in the refusal by the  
120 department to permit the qualified entity to continue to



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121 participate in the fingerprint retention and search process  
122 until all fees due and owing are paid.

123 3. Agencies that participate in the fingerprint retention  
124 and search process may adopt rules pursuant to ss. 120.536(1)  
125 and 120.54 to require employers to keep the agency informed of  
126 any change in the affiliation, employment, or contractual status  
127 of each person whose fingerprints are retained under paragraph  
128 (g) if such change removes or eliminates the agency's basis or  
129 need for receiving reports of any arrest of that person, so that  
130 the agency is not obligated to pay the upcoming annual fee for  
131 the retention and searching of that person's fingerprints to the  
132 department.

133 Section 10. For the purpose of incorporating the amendment  
134 made by this act to section 943.053, Florida Statutes, in a  
135 reference thereto, paragraph (c) of subsection (2) of section  
136 943.0542, Florida Statutes, is reenacted to read:

137 943.0542 Access to criminal history information provided  
138 by the department to qualified entities.—

139 (2)

140 (c) Each such request must be accompanied by payment of a  
141 fee for a statewide criminal history check by the department  
142 established by s. 943.053, plus the amount currently prescribed  
143 by the Federal Bureau of Investigation for the national criminal  
144 history check in compliance with the National Child Protection  
145 Act of 1993, as amended. Payments must be made in the manner  
146 prescribed by the department by rule.



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147 Section 11. For the purpose of incorporating the amendment  
148 made by this act to section 943.053, Florida Statutes, in a  
149 reference thereto, subsection (5) of section 943.0543, Florida  
150 Statutes, is reenacted to read:

151 943.0543 National Crime Prevention and Privacy Compact;  
152 ratification and implementation.—

153 (5) This compact and this section do not affect or abridge  
154 the obligations and responsibilities of the department under  
155 other provisions of this chapter, including s. 943.053, and do  
156 not alter or amend the manner, direct or otherwise, in which the  
157 public is afforded access to criminal history records under  
158 state law.

159 Section 12. For the purpose of incorporating the  
160 amendments made by this act to sections 943.053 and 985.04,  
161 Florida Statutes, in references thereto, subsection (2) of  
162 section 985.045, Florida Statutes, is reenacted to read:

163 985.045 Court records.—

164 (2) The clerk shall keep all official records required by  
165 this section separate from other records of the circuit court,  
166 except those records pertaining to motor vehicle violations,  
167 which shall be forwarded to the Department of Highway Safety and  
168 Motor Vehicles. Except as provided in ss. 943.053 and  
169 985.04(6)(b) and (7), official records required by this chapter  
170 are not open to inspection by the public, but may be inspected  
171 only upon order of the court by persons deemed by the court to  
172 have a proper interest therein, except that a child and the



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173 parents, guardians, or legal custodians of the child and their  
174 attorneys, law enforcement agencies, the Department of Juvenile  
175 Justice and its designees, the Florida Commission on Offender  
176 Review, the Department of Corrections, and the Justice  
177 Administrative Commission shall always have the right to inspect  
178 and copy any official record pertaining to the child. Public  
179 defender offices shall have access to official records of  
180 juveniles on whose behalf they are expected to appear in  
181 detention or other hearings before an appointment of  
182 representation. The court may permit authorized representatives  
183 of recognized organizations compiling statistics for proper  
184 purposes to inspect, and make abstracts from, official records  
185 under whatever conditions upon the use and disposition of such  
186 records the court may deem proper and may punish by contempt  
187 proceedings any violation of those conditions.

188 Section 13. For the purpose of incorporating the  
189 amendments made by this act to sections 943.053 and 985.04,  
190 Florida Statutes, in references thereto, paragraph (b) of  
191 subsection (1) of section 985.11, Florida Statutes, is reenacted  
192 to read:

193 985.11 Fingerprinting and photographing.—

194 (1)

195 (b) Unless the child is issued a civil citation or is  
196 participating in a similar diversion program pursuant to s.  
197 985.12, a child who is charged with or found to have committed  
198 one of the following offenses shall be fingerprinted, and the





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199 fingerprints shall be submitted to the Department of Law  
200 Enforcement as provided in s. 943.051(3)(b):

- 201 1. Assault, as defined in s. 784.011.
- 202 2. Battery, as defined in s. 784.03.
- 203 3. Carrying a concealed weapon, as defined in s.  
204 790.01(1).
- 205 4. Unlawful use of destructive devices or bombs, as  
206 defined in s. 790.1615(1).
- 207 5. Neglect of a child, as defined in s. 827.03(1)(e).
- 208 6. Assault on a law enforcement officer, a firefighter, or  
209 other specified officers, as defined in s. 784.07(2)(a).
- 210 7. Open carrying of a weapon, as defined in s. 790.053.
- 211 8. Exposure of sexual organs, as defined in s. 800.03.
- 212 9. Unlawful possession of a firearm, as defined in s.  
213 790.22(5).
- 214 10. Petit theft, as defined in s. 812.014.
- 215 11. Cruelty to animals, as defined in s. 828.12(1).
- 216 12. Arson, resulting in bodily harm to a firefighter, as  
217 defined in s. 806.031(1).
- 218 13. Unlawful possession or discharge of a weapon or  
219 firearm at a school-sponsored event or on school property as  
220 defined in s. 790.115.

221

222 A law enforcement agency may fingerprint and photograph a child  
223 taken into custody upon probable cause that such child has  
224 committed any other violation of law, as the agency deems



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225 appropriate. Such fingerprint records and photographs shall be  
 226 retained by the law enforcement agency in a separate file, and  
 227 these records and all copies thereof must be marked "Juvenile  
 228 Confidential." These records are not available for public  
 229 disclosure and inspection under s. 119.07(1) except as provided  
 230 in ss. 943.053 and 985.04(2), but shall be available to other  
 231 law enforcement agencies, criminal justice agencies, state  
 232 attorneys, the courts, the child, the parents or legal  
 233 custodians of the child, their attorneys, and any other person  
 234 authorized by the court to have access to such records. In  
 235 addition, such records may be submitted to the Department of Law  
 236 Enforcement for inclusion in the state criminal history records  
 237 and used by criminal justice agencies for criminal justice  
 238 purposes. These records may, in the discretion of the court, be  
 239 open to inspection by anyone upon a showing of cause. The  
 240 fingerprint and photograph records shall be produced in the  
 241 court whenever directed by the court. Any photograph taken  
 242 pursuant to this section may be shown by a law enforcement  
 243 officer to any victim or witness of a crime for the purpose of  
 244 identifying the person who committed such crime.

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**T I T L E   A M E N D M E N T**

Remove line 20 and insert:

changes made by the act; reenacting s. 110.1127(4), F.S.,  
 relating to employee background screening and investigations, to



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251 incorporate the amendment made by the act to s. 943.053, F.S.,  
252 in a reference thereto; reenacting s. 373.6055(3)(a), F.S.,  
253 relating to criminal history checks for certain water  
254 managaement district employees and others, to incorporate the  
255 amendment made by the act to s. 943.053, F.S., in a reference  
256 thereto; reenacting s. 408.809(6), F.S., relating to background  
257 screening, to incorporate the amendment made by the act to s.  
258 943.053, F.S., in a reference thereto; reenacting s. 943.046(1),  
259 F.S., relating to notification of criminal offender information,  
260 to incorporate the amendment made by the act to s. 943.053,  
261 F.S., in a reference thereto; reenacting s. 943.05(2)(h), F.S.,  
262 relating to Criminal Justice Information Program, to incorporate  
263 the amendment made by the act to s. 943.053, F.S., in a  
264 reference thereto; reenacting s. 943.0542(2)(c), F.S., relating  
265 to access to criminal history information provided by the  
266 department to qualified entities, to incorporate the amendment  
267 made by the act to s. 943.053, F.S., in a reference thereto;  
268 reenacting s. 943.0543(5), F.S., relating to National Crime  
269 Prevention and Privacy Compact, to incorporate the amendment  
270 made by the act to s. 943.053, F.S., in a reference thereto;  
271 reenacting s. 985.045(2), F.S., relating to court records, to  
272 incorporate the amendments made by the act to ss. 943.053 and  
273 985.04, F.S., in references thereto; reenacting s. 985.11(1)(b),  
274 F.S., relating to fingerprinting and photographing, to  
275 incorporate the amendments made by the act to ss. 943.053 and  
276 985.04, F.S., in references thereto; providing a statement of



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 307 Experimental Treatments for Terminal Conditions

**SPONSOR(S):** Gaetz; Edwards and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 460

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

### SUMMARY ANALYSIS

Under the Florida Comprehensive Drug Abuse Prevention and Control Act, cannabis is a Schedule I controlled substance and, as such, criminal penalties ranging from first degree misdemeanors to second degree felonies apply to the unlawful possession, use, sale, purchase, manufacture, delivery, transport, or trafficking of cannabis. Currently, the only statutorily-allowed use of cannabis in this state is set forth in the Compassionate Medical Cannabis Act of 2014 (CCMA), which authorizes dispensing organizations (DOs) approved by the Department of Health to manufacture, possess, sell, and dispense low-THC cannabis for medical use by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms.

In 2015, the Legislature adopted the Right to Try Act (RTTA). The RTTA authorizes an eligible patient with a "terminal condition," meaning that the patient will die within one year if the condition runs its normal course, to receive an "investigational drug, biological product, or device," meaning a drug, product, or device that has successfully completed phase 1 of a clinical trial, but that has not been approved for general use by the United States Food and Drug Administration.

The bill amends the definition of "investigational drug, biological product, or device" set forth in the RTTA to include cannabis that is manufactured and sold by a DO licensed under the CCMA. The bill further specifies that, notwithstanding the state's laws criminalizing the non-medical use of cannabis, eligible patients under the RTTA or their legal representatives may purchase and possess cannabis for the patient's medical use and DOs may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of cannabis.

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

The bill takes effect July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Florida's Cannabis Laws

###### *Non-Medical Use of Cannabis*

Florida's drug control laws are set forth in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act).<sup>1</sup> The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V.<sup>2</sup> Cannabis is currently a Schedule I controlled substance,<sup>3</sup> which means it has a high potential for abuse, it has no currently accepted medical use in treatment in the United States, and its use under medical supervision does not meet accepted safety standards.<sup>4</sup> Cannabis is defined as:

All parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include "low-THC cannabis," as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986.<sup>5</sup>

The Drug Control Act contains a variety of provisions criminalizing behavior related to cannabis:

- Section 893.13, F.S., makes it a crime to sell, manufacture, deliver, purchase, or possess cannabis. The penalties for these offenses range from first degree misdemeanors to second degree felonies.<sup>6</sup>
- Section 893.135(1)(a), F.S., makes it a first degree felony<sup>7</sup> to traffic in cannabis, i.e., to possess, sell, purchase, manufacture, deliver, or import more than 25 pounds of cannabis or 300 or more cannabis plants. Depending on the amount of cannabis or cannabis plants trafficked, mandatory minimum sentences of three to 15 years and fines of \$25,000 to \$200,000 apply to a conviction.<sup>8</sup>
- Section 893.147, F.S., makes it a crime to possess, use, deliver, manufacture, transport, or sell drug paraphernalia.<sup>9</sup> The penalties for these offenses range from first degree misdemeanors to second degree felonies.<sup>10</sup>

###### *Florida's Medical Necessity Defense*

Florida courts have held that persons charged with offenses based on the possession, use, or manufacture of marijuana may use the medical necessity defense, which requires a defendant to prove that:

- He or she did not intentionally bring about the circumstance which precipitated the unlawful act;

---

<sup>1</sup> s. 893.01, F.S.

<sup>2</sup> s. 893.03, F.S.

<sup>3</sup> s. 893.03(1)(c)7., F.S.

<sup>4</sup> s. 893.03(1), F.S.

<sup>5</sup> s. 893.02(3), F.S.

<sup>6</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine; a third degree felony is punishable by up to five years imprisonment and a \$5,000 fine; and 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.

<sup>7</sup> 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.

<sup>8</sup> s. 893.13(1)(a), F.S.

<sup>9</sup> Drug paraphernalia is defined in s. 893.145, F.S., as:

All equipment, products, and materials of any kind which are used, intended for use, or designed for use in the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.

<sup>10</sup> s. 893.147, F.S.

- He or she could not accomplish the same objective using a less offensive alternative; and
- The evil sought to be avoided was more heinous than the unlawful act.<sup>11</sup>

In *Jenks v. State*,<sup>12</sup> the defendants, a married couple, suffered from uncontrollable nausea due to AIDS treatment and had testimony from their physician that they could find no effective alternative treatment. The defendants tried cannabis, and after finding that it successfully treated their symptoms, decided to grow two cannabis plants.<sup>13</sup> They were subsequently charged with manufacturing and possession of drug paraphernalia. Under these facts, the First District Court of Appeal found that “section 893.03 does not preclude the defense of medical necessity” and that the Jenks met the criteria for the medical necessity defense.<sup>14</sup> The court ordered the Jenks to be acquitted.<sup>15</sup>

Seven years after the *Jenks* decision, the First District Court of Appeal again recognized the medical necessity defense in *Sowell v. State*.<sup>16</sup> More recently, the State Attorney’s Office in the Twelfth Judicial Circuit cited the medical necessity defense as the rationale for not prosecuting a person arrested for cultivating a small amount of cannabis in his home for his wife’s medical use.<sup>17</sup>

#### *Compassionate Medical Cannabis Act of 2014*

The Compassionate Medical Cannabis Act of 2014<sup>18</sup> (CMCA) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)<sup>19</sup> for the medical use<sup>20</sup> by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms.

The CMCA provides that a Florida licensed allopathic or osteopathic physician who has completed certain training<sup>21</sup> and has examined and is treating such a patient may order low-THC cannabis for that patient to treat the disease, disorder, or condition or to alleviate its symptoms, if no other satisfactory alternative treatment options exist for the patient. To meet the requirements of the CMCA, each of the following conditions must be satisfied:

- The patient must be a permanent resident of Florida.

<sup>11</sup> *Jenks v. State*, 582 So.2d 676, 679 (Fla. 1st DCA 1991), *rev. denied*, 589 So.2d 292 (Fla.1991).

<sup>12</sup> 582 So.2d 676 (Fla. 1st DCA 1991).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 739 So.2d 333 (Fla. 1st DCA 1998).

<sup>17</sup> *Interdepartmental Memorandum*, State Attorney’s Office for the Twelfth Judicial Circuit of Florida, SAO Case # 13CF007016AM, April 2, 2013 (on file with Judiciary Committee staff).

<sup>18</sup> See ch. 2014-157, L.O.F., and s. 381.986, F.S.

<sup>19</sup> The act defined “low-THC cannabis,” as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. See s. 381.986(1)(b), F.S. Eleven states allow limited access to marijuana products (low-THC and/or high CBD-cannabidiol): Alabama, Florida, Iowa, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Utah, and Wisconsin. Twenty-three states, the District of Columbia, and Guam have laws that permit the use of marijuana for medicinal purposes. See *infra* note 28. See <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (Tables 1 and 2), (last visited on March 27, 2015).

<sup>20</sup> Section 381.986(1)(c), F.S., defines “medical use” as “administration of the ordered amount of low-THC cannabis. The term does not include the possession, use, or administration by smoking. The term also does not include the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient’s legal representative on behalf of the qualified patient.” Section 381.986(1)(e), F.S., defines “smoking” as “burning or igniting a substance and inhaling the smoke. Smoking does not include the use of a vaporizer.”

<sup>21</sup> Section 381.986(4), F.S., requires such physicians to successfully complete an 8-hour course and examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which encompasses the clinical indications for the appropriate use of low-THC cannabis, appropriate delivery mechanisms, contraindications for such use, and the state and federal laws governing its ordering, dispensing, and processing

- The physician must determine that the risks of ordering low-THC cannabis are reasonable in light of the potential benefit for that patient.<sup>22</sup>
- The physician must register as the orderer of low-THC cannabis for the patient on the compassionate use registry (registry) maintained by the Department of Health (DOH) and must update the registry to reflect the contents of the order.
- The physician must maintain a patient treatment plan and must submit the plan quarterly to the University of Florida College Of Pharmacy.
- The physician must obtain the voluntary informed consent of the patient or the patient's legal guardian to treatment with low-THC cannabis.<sup>23</sup>

Under the CMCA, DOH was required to approve five dispensing organizations (DOs) by January 1, 2015, with one DO in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida.<sup>24</sup> To be approved as a DO, an applicant must establish that it:

- Possesses a certificate of registration issued by the Department of Agriculture and Consumer Services for the cultivation of more than 400,000 plants;
- Is operated by a nurseryman;
- Has been operating as a registered nursery in this state for at least 30 continuous years;
- Has the technical and technological ability to cultivate and produce low-THC cannabis;
- Employs a medical director, who must be a physician and have successfully completed a course and examination that encompasses appropriate safety procedures and knowledge of low-THC cannabis; and
- Other specified requirements.<sup>25</sup>

Implementation by DOH of the DO approval process was delayed due to litigation that challenged proposed rules addressing the initial application requirements for DOs, revocation of DO approval, and inspection and cultivation authorization procedures for DOs. Such litigation was resolved on May 27, 2015, with an order entered by the Division of Administrative Hearings holding that the challenged rules do not constitute an invalid exercise of delegated legislative authority.<sup>26</sup> Thereafter, the rules took effect on June 17, 2015.<sup>27</sup>

The application process to become a DO closed on July 8, 2015, with 28 applications received by the DOH. As of November 13, 2015, the DOH is continuing to conduct its review process to select the five approved DOs as directed by statute.<sup>28</sup>

The CMCA provides that it is a first degree misdemeanor for:

- A physician to order low-THC cannabis for a patient without a reasonable belief that the patient is suffering from a required condition; or
- Any person to fraudulently represent that he or she has a required condition to a physician for the purpose of being ordered low-THC cannabis.<sup>29</sup>

The CMCA specifies that notwithstanding ss. 893.13, 893.135, or 893.147, F.S., or any other law that:

- Qualified patients<sup>30</sup> and their legal representatives may purchase and possess low-THC cannabis up to the amount ordered for the patient's medical use.

<sup>22</sup> If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record. s. 381.986(2)(b), F.S.

<sup>23</sup> s. 381.986(2), F.S.

<sup>24</sup> s. 381.986(5)(b), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Baywood v. Nurseries Co., Inc. v. Department of Health*, Case No. 15-1694RP (Fla. DOAH May 27, 2015).

<sup>27</sup> Rule Chapter 64-4, F.A.C.

<sup>28</sup> Telephone call with staff of the Department of Health (November 13, 2015).

<sup>29</sup> s. 381.986(3), F.S.



- Approved dispensing organizations (DOs) and their owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of reasonable quantities, as established by department rule, of low-THC cannabis. Such DOs and their owners, managers, and employees are not subject to licensure or regulation under ch. 465, F.S., relating to pharmacies.<sup>31</sup>

#### *Interaction of State Medical Marijuana Laws with Federal Law*

The Federal Controlled Substances Act<sup>32</sup> lists cannabis as a Schedule 1 drug with no accepted medical uses.<sup>33</sup> Like the Florida's Drug Control Act, the Federal Controlled Substances Act imposes penalties on those who possess, sell, distribute, etc. cannabis.<sup>34</sup> A first misdemeanor offense for possession of cannabis in any amount can result in a \$1,000 fine and up to year in prison, climbing for subsequent offenses to as much as \$5,000 and three years.<sup>35</sup> Selling and cultivating cannabis are subject to even greater penalties.<sup>36</sup>

Although state medical cannabis laws protect patients from prosecution for the legitimate use of cannabis under the guidelines established in that state, such laws do not protect individuals from prosecution under federal law should the federal government choose to enforce those laws. In recent years, however, the federal government appears to have softened its stance on cannabis.

In August of 2013, the United States Justice Department (USDOJ) issued a publication entitled "Smart on Crime: Reforming the Criminal Justice System for the 21st Century."<sup>37</sup> This document details the federal government's changing stance on low-level drug crimes announcing a "change in Department of Justice charging policies so that certain people who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose draconian mandatory minimum sentences. Under the revised policy, these people would instead receive sentences better suited to their individual conduct rather than excessive prison terms more appropriate for violent criminals or drug kingpins."<sup>38</sup>

On August 29, 2013, United States Deputy Attorney General James Cole issued a memorandum to federal attorneys that appeared to relax the federal government's cannabis-related offense enforcement policies.<sup>39</sup> The memo stated that the USDOJ was committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational ways, and outlined eight areas of enforcement priorities.<sup>40</sup> These enforcement priorities focused on offenses that would result in cannabis being distributed to minors, cannabis sale revenues going to criminal gangs or other similar organizations, and cannabis being grown on public lands.<sup>41</sup> The memo indicated that outside of the listed enforcement priorities, the federal government would not enforce federal cannabis-related laws in states that have legalized the drug and that have a robust regulatory scheme in place.<sup>42</sup>

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<sup>30</sup> Section 381.986(1)(d), F.S., provides that a "qualified patient" is a Florida resident who has been added by a physician licensed under ch. 458, F.S. or ch. 459, F.S., to the compassionate use registry to receive low-THC cannabis from a dispensing organization.

<sup>31</sup> s. 381.986(7), F.S.

<sup>32</sup> 21 U.S.C. ss. 801-971.

<sup>33</sup> 21 U.S.C. s. 812.

<sup>34</sup> 21 U.S.C. ss. 841-65.

<sup>35</sup> 21 U.S.C. s. 844.

<sup>36</sup> 21 U.S.C. ss. 841-65.

<sup>37</sup> USDOJ, *Smart on Crime: Reforming the Criminal Justice System for the 21st Century*, <http://www.justice.gov/ag/smart-on-crime.pdf>. (last visited on Nov. 15, 2015).

<sup>38</sup> *Id.*

<sup>39</sup> See USDOJ memo on "Guidance Regarding Marijuana Enforcement," August 29, 2014, <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> (last visited on Nov. 15, 2015).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

## **Right to Try Act**

During the 2015 Regular Session, the Legislature enacted the “Right to Try Act” (RTTA), which authorizes a manufacturer to provide an eligible patient with an investigational drug, biological product, or device that has successfully completed phase 1 of a clinical trial, but that has not been approved for general use by the United States Food and Drug Administration (FDA), and that remains under investigation in a clinical trial approved by the FDA.<sup>43</sup> The RTTA allows manufacturers to contract with and dispense investigational drugs directly to patients without licensure or regulation under chapter 465, F.S., by the Board of Pharmacy.<sup>44</sup>

To be eligible to access such drugs, products, or devices, a patient must have a “terminal condition” which is defined as “a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible even with the administration of available treatment options currently approved by the United States Food and Drug Administration, and, without the administration of life-sustaining procedures, will result in death within 1 year after diagnosis if the condition runs its normal course.”<sup>45</sup> The eligible patient’s treating physician must attest to the terminal condition, such condition must be confirmed by a second evaluation by a board-certified physician in an appropriate specialty, and the patient must have considered all other approved treatments.<sup>46</sup>

The RTTA also requires the patient, a parent of a minor patient, a court-appointed guardian for the patient, or a health care surrogate designated by the patient to provide written informed consent prior to accessing an investigational drug, biological product, or device. The written informed consent must include:

- An explanation of the currently approved products and treatments for the patient’s terminal condition.
- An attestation that the patient agrees with his or her physician in believing that all currently approved products and treatments are unlikely to prolong the patient’s life.
- Identification of the specific name of the investigational drug, biological product, or device.
- A realistic description of the most likely outcome, detailing the possibility of unanticipated or worse symptoms.
- A statement that death could be hastened by use of the investigational drug, biologic product, or device.
- A statement that the patient’s health plan or third-party administrator and physician are not obligated to pay for treatment consequent to the use of the investigational drug, biological product, or device, unless required to do so by law.
- A statement that the patient’s eligibility for hospice care may be withdrawn if the patient begins treatment, and that hospice care may be reinstated if treatment ends and the patient meets hospice eligibility requirements.
- A statement that the patient understands he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that liability extends to the patient’s estate, unless negotiated otherwise.<sup>47</sup>

The RTTA specifies that there is no obligation on the part of any manufacturer to provide a requested investigational drug, biologic product, or device, but that a manufacturer may do so with or without compensation.<sup>48</sup> The eligible patient may be required to pay the costs of, or associated with, the

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<sup>43</sup> s. 499.0295(1)-(3), F.S.

<sup>44</sup> s. 499.0295(3) and (7), F.S.

<sup>45</sup> s. 499.0295(2)(c), F.S.

<sup>46</sup> s. 499.0295(2)(a), F.S.

<sup>47</sup> s. 499.0295(2)(d), F.S.

<sup>48</sup> s. 499.0295(3), F.S.

manufacture of the investigational drug, biological product, or device.<sup>49</sup> The RTTA allows, but does not require, a health plan, third-party administrator, or governmental agency to cover the cost of an investigational drug, biological product, or device.<sup>50</sup> The RTTA exempts a patient's heirs from any outstanding debt associated with the patient's use of the investigational drug, biological product, or device.<sup>51</sup>

The RTTA prohibits the Board of Medicine or Board of Osteopathic Medicine from revoking, suspending, or denying renewal of a physician's license based solely on the physician's recommendation to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device. It also prohibits action against a physician's Medicare certification for the same reason.<sup>52</sup>

The RTTA provides liability protection for a manufacturer, person, or entity involved in the use of an investigational drug, biological product, or device in good faith compliance with the provisions of the bill and exercising reasonable care.<sup>53</sup>

### **Effect of Bill**

The bill amends the definition of "investigational drug, biological product, or device" set forth in the RTTA to include cannabis that is manufactured and sold by a DO licensed under the CCMA. The bill further specifies that, notwithstanding the state's laws criminalizing the non-medical use of cannabis:

- Eligible patients under the RTTA or their legal representatives may purchase and possess cannabis for the patient's medical use.
- DOs and their owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of cannabis and are not subject to licensing and regulation by the Board of Pharmacy under ch. 465, F.S.

The bill also specifies that the RTTA does not impair the license of an approved DO under the CCMA.

The bill specifies that the terms "manufacture,"<sup>54</sup> "possession,"<sup>55</sup> "deliver,"<sup>56</sup> "distribute,"<sup>57</sup> and "dispense"<sup>58</sup> are defined as provided in s. 893.02, F.S.

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<sup>49</sup> *Id.*

<sup>50</sup> s. 499.0295(4) and (9), F.S.

<sup>51</sup> s. 499.0295(6), F.S.

<sup>52</sup> s. 499.0295(7), F.S.

<sup>53</sup> s. 499.0295(8), F.S.

<sup>54</sup> Section 893.02(15)(a), F.S., provides that "manufacture" means "the production, preparation, propagation, compounding, cultivating, growing, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by: 1. A practitioner or pharmacist as an incident to his or her administering or delivering of a controlled substance in the course of his or her professional practice. 2. A practitioner, or by his or her authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis, and not for sale."

<sup>55</sup> Section 893.02(19), F.S., provides that "possession" includes "temporary possession for the purpose of verification or testing, irrespective of dominion or control."

<sup>56</sup> Section 893.02(6), F.S., provides that "deliver" or "delivery" means "the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship."

<sup>57</sup> Section 893.02(8), F.S., provides that "distribute" means "to deliver, other than by administering or dispensing, a controlled substance."

<sup>58</sup> Section 893.02(7), F.S., provides that "dispense" means "the transfer of possession of one or more doses of a medicinal drug by a pharmacist or other licensed practitioner to the ultimate consumer thereof or to one who represents that it is his or her intention not to consume or use the same but to transfer the same to the ultimate consumer or user for consumption by the ultimate consumer or user."

**B. SECTION DIRECTORY:**

Section 1. Amends s. 499.0295, F.S., relating to experimental treatments for terminal conditions.

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 government revenues.

2. Expenditures:

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

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

1. Revenues:

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

2. Expenditures:

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

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

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

**B. RULE-MAKING AUTHORITY:**

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

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill refers to the licensure of DOs under the CMCA; however, the CMCA refers to the "approval," rather than "licensure," of DOs by the DOH.

The bill authorizes eligible patients to purchase "cannabis" from a DO licensed under the CMCA. Such DOs, however, are only authorized to manufacture, possess, sell, and dispense "low-THC cannabis." If the intent of the bill is to only authorize "low-thc cannabis" for "eligible patients" under the RTTA, the bill should be amended to use the term "low-thc cannabis." If the intent is to permit DOs to manufacture, possess, sell, and dispense any type of cannabis, it may be desirable for the bill to also amend provisions in the CMCA to ensure that DOs have the technical and technological ability to produce all forms of cannabis and that DOH is authorized to regulate such production and distribution by DOs.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to experimental treatments for terminal conditions; amending s. 499.0295, F.S.; revising the definition of the term "investigational drug, biological product, or device"; providing for eligible patients to purchase and possess cannabis for medical use; authorizing certain licensed dispensing organizations to manufacture, possess, sell, deliver, distribute, dispense, and dispose of cannabis; exempting such organizations from specified laws; providing applicability; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 499.0295, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

499.0295 Experimental treatments for terminal conditions.—

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

(b) "Investigational drug, biological product, or device"

means:

1. A drug, biological product, or device that has successfully completed phase 1 of a clinical trial but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug

27 Administration; or

28 2. Cannabis that is manufactured and sold by a dispensing  
 29 organization licensed under s. 381.986.

30 (10) (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147,  
 31 or any other provision of law, but subject to the requirements  
 32 of this section, an eligible patient and the eligible patient's  
 33 legal representative may purchase and possess cannabis for the  
 34 patient's medical use.

35 (b) Notwithstanding s. 381.986, s. 893.13, s. 893.135, s.  
 36 893.147, or any other provision of law, but subject to the  
 37 requirements of this section, an approved dispensing  
 38 organization licensed under s. 381.986 and its owners, managers,  
 39 and employees may manufacture, possess, sell, deliver,  
 40 distribute, dispense, and lawfully dispose of cannabis.

41 (c) An approved dispensing organization licensed under s.  
 42 381.986 and its owners, managers, and employees are not subject  
 43 to licensure or regulation under chapter 465 for manufacturing,  
 44 possessing, selling, delivering, distributing, dispensing, or  
 45 lawfully disposing of cannabis.

46 (d) As used in this subsection, the terms "manufacture,"  
 47 "possession," "deliver," "distribute," and "dispense" have the  
 48 same meanings as provided in s. 893.02.

49 (e) This section does not impair the license of an  
 50 approved dispensing organization under s. 381.986.

51 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	_____	

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

**Amendment (with directory and title amendments)**

6 Remove lines 29-50 and insert:  
7 organization approved under s. 381.986.

8 (c) "Medical use" does not include the possession, use, or  
9 administration by smoking. The term also does not include the  
10 transfer of cannabis to a person other than the eligible patient  
11 or the eligible patient's legal representative on behalf of the  
12 eligible patient.

13 (d) "Smoking" means burning or igniting a substance and  
14 inhaling the smoke. Smoking does not include the use of a  
15 vaporizer.

16 (10) (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147,  
17 or any other provision of law, but subject to the requirements





Amendment No. 1

18 of this section, an eligible patient and the eligible patient's  
19 legal representative may purchase and possess cannabis for the  
20 patient's medical use.

21 (b) Notwithstanding s. 381.986, s. 893.13, s. 893.135, s.  
22 893.147, or any other provision of law, but subject to the  
23 requirements of this section, a dispensing organization approved  
24 under s. 381.986 and its owners, managers, and employees may  
25 manufacture, possess, sell, deliver, distribute, dispense, and  
26 lawfully dispose of cannabis.

27 (c) A dispensing organization approved under s. 381.986  
28 and its owners, managers, and employees are not subject to  
29 licensure or regulation under chapter 465 for manufacturing,  
30 possessing, selling, delivering, distributing, dispensing, or  
31 lawfully disposing of cannabis.

32 (d) As used in this subsection, the terms "manufacture,"  
33 "possession," "deliver," "distribute," and "dispense" have the  
34 same meanings as provided in s. 893.02.

35 (e) This section does not impair the approval of a  
36 dispensing organization under s. 381.986.

37 -----  
38  
39 **D I R E C T O R Y   A M E N D M E N T**

40 Remove line 16 and insert:

41 499.0295, Florida Statutes, is amended, paragraphs (c) and (d)  
42 of that subsection are redesignated as paragraphs (e) and (f),



Amendment No. 1

43 respectively, new paragraphs (c) and (d) are added to that  
44 subsection, and subsection (10) is

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47

**T I T L E   A M E N D M E N T**

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Remove lines 5-7 and insert:

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drug, biological product, or device"; providing definitions for

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the terms "medical use" and "smoking"; providing for eligible

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patients to purchase and possess cannabis for medical use;

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authorizing certain approved dispensing





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 329 Animals Confined in Unattended Motor Vehicles

**SPONSOR(S):** Cortes, B.

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 200

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

### SUMMARY ANALYSIS

Over the past several years, there have been a number of reported tragedies involving children and animals left to die in unattended vehicles. Studies have shown that the temperature in an unattended vehicle can rise sharply, even when the weather is relatively cool. In fact, temperatures have been measured at deadly levels within five minutes of closing the doors of a vehicle.

A "good samaritan" that forcibly enters a motor vehicle to rescue an endangered animal is immune from civil liability arising out of the treatment or care that is rendered. However, under current law, the good samaritan can be both criminally and civilly liable for the damage caused to the vehicle, and criminally liable for the act of forcibly entering the vehicle.

The bill makes it a first degree misdemeanor for any person to intentionally, knowingly, or recklessly confine an animal in an unattended motor vehicle under specified conditions that endanger the health or well-being of the animal. An authorized individual who carries out the provisions of the bill, such as removing an endangered animal from a vehicle, may not be held criminally or civilly liable for damages arising from such act.

The bill provides definitions of key terms and an exemption for the transportation of specified agricultural animals in motor vehicles designed to transport such animals for agricultural purposes.

The bill may have an economic impact on local governments because the bill creates a new first degree misdemeanor, and thereby may increase the need for jail beds.

The bill is effective July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Over the past several years, there have been a number of reported tragedies involving children and animals left to die in unattended vehicles. Data shows that the temperature in an unattended vehicle can rise sharply, even when the weather is relatively cool.<sup>1</sup> In a study conducted when the outdoor temperature was ninety degrees Fahrenheit or more, 75 percent of the internal temperature rise occurred in an unattended vehicle within *five minutes* of closing the vehicle doors, and the temperature rise was maximized (between 124-153 degrees Fahrenheit) within fifteen minutes.<sup>2</sup> In a study conducted when the outside air temperature was seventy-two degrees Fahrenheit, the internal vehicle temperature reached 117 degrees Fahrenheit within sixty minutes, with 80 percent of that temperature rise occurring within the first thirty minutes of shutting the vehicle doors.<sup>3</sup>

There are nineteen states throughout the nation that prohibit leaving an animal unattended and confined in a vehicle under circumstances that pose a risk to the animal's welfare.<sup>4</sup> Florida law generally prohibits behavior that is cruel to animals;<sup>5</sup> however, there is no prohibition against leaving an animal unattended and confined in a motor vehicle, even under dangerous conditions.

##### Good Samaritan Act

The "Good Samaritan Act" (GSA), codified in s. 768.13, F.S., provides immunity from civil liability for damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to declared state emergencies or at the scene of an emergency situation, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>6</sup>
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within the scope of his or her training.<sup>7</sup>
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>8</sup>

While the GSA provides immunity from civil liability for damages arising out of any care or treatment rendered, it does not specifically address immunity from liability for property damage related to the rendering of emergency care or treatment, such as the forcible entry of a motor vehicle to rescue an endangered animal.

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<sup>1</sup> Jan Null, *Heatstroke Deaths of Children in Vehicles*, DEPARTMENT OF METEOROLOGY & CLIMATE SCIENCE, SAN JOSE STATE UNIVERSITY, <http://noheatstroke.org/> (last visited November 6, 2015); Catherine McLaren et al., *Heat Stress from Enclosed Vehicles: Moderate Ambient Temperatures Cause Significant Temperature Rise in Enclosed Vehicles*, 116 PEDIATRICS 109, 109 (2005).

<sup>2</sup> McLaren, *supra* note 1, at 109.

<sup>3</sup> McLaren, *supra* note 1, at 111.

<sup>4</sup> ARIZ. REV. STAT. ANN. §13-2910(A)(7); CAL. PENAL CODE §597.7; DEL. CODE ANN. tit. 11, §1325; ILL. COMP. STAT. 70/7.1; ME. REV. STAT. §4019; MD. CODE ANN. TRANSP. §21-1004.1; MINN. STAT. ANN. §346.57; NEV. REV. STAT. §574.195; N.H. REV. STAT. ANN. §644:8-aa; N.J. STAT. ANN. §4:22-26; N.Y. AGRIC. & MKTS. LAW §353-d; N.C. GEN. STAT. §14-363.3; N.D. CENT. CODE §36-21.2-12; R.I. GEN. LAWS §4-1-3.2; S.D. CODIFIED LAWS §40-1-36; TENN. CODE ANN. §29-34-209; VT. STAT. ANN. tit. 13, §386; WASH. REV. CODE §16.52.340; and W. VA. CODE §61-8-19.

<sup>5</sup> s. 828.12, F.S.

<sup>6</sup> s. 768.13(2)(a), F.S.

<sup>7</sup> s. 768.13(2)(d), F.S.

<sup>8</sup> s. 768.13(3), F.S.

### Criminal Penalties

Criminal mischief is to willfully and maliciously injure or damage by any means any real or personal property belonging to another, including, but not limited to, acts of vandalism. Criminal mischief varies in severity depending on the value of the damage caused.<sup>9</sup> Criminal mischief is punishable as follows:

- Second degree misdemeanor<sup>10</sup> if the damage is \$200 or less;
- First degree misdemeanor<sup>11</sup> if the damage is more than \$200 but less than \$1,000; or
- Third degree felony<sup>12</sup> if the damage is \$1,000 or greater.<sup>13</sup>

The term "malicious" is used in various sections of statute,<sup>14</sup> but is never defined. The term is defined in the dictionary as "having or showing a desire to cause harm to another person."<sup>15</sup> Absent a statute providing criminal immunity for breaking into a vehicle to retrieve a distressed animal, an individual who breaks into a vehicle in these circumstances could be prosecuted for criminal mischief.

Tampering with or interfering with a motor vehicle or trailer is to willfully, maliciously, intentionally, or otherwise interfere with any motor vehicle or trailer of another, without authority, which results in the cargo or contents becoming unloaded or damaged, or which results in the mechanical functions of such motor vehicle or trailer becoming inoperative or impaired.<sup>16</sup> A first offense of tampering with or interfering with a motor vehicle or trailer is punishable as a second degree misdemeanor, and a second or subsequent conviction for the offense is punishable as a first degree misdemeanor.<sup>17</sup>

Florida law does not currently provide any immunity from criminal charges associated with forcibly entering a vehicle to remove a distressed animal that is locked inside the vehicle.

### **Effect of the Bill**

The bill makes it a first degree misdemeanor for any person to intentionally, knowingly, or recklessly confine an animal in an unattended motor vehicle under conditions that endanger the health or well-being of the animal due to:

- Heat;
- Cold;
- Lack of adequate ventilation;
- Lack of food or water; or
- Other circumstances that could reasonably be expected to cause suffering, disability or death of the animal.

An authorized individual may use whatever means are reasonably necessary to remove the animal, after making a reasonable effort to locate the responsible party, and if the animal appears to be in immediate danger. An authorized individual must leave written notice on or in the vehicle and must take the animal to an animal shelter, place of safekeeping, or to a veterinary hospital.

An authorized individual may not be held criminally or civilly liable for actions taken while carrying out the provisions of the bill.

The bill provides an exemption for the transportation of horses, cattle, pigs, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals for agricultural purposes.

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<sup>9</sup> s. 806.13(1)(a), F.S.

<sup>10</sup> A second degree misdemeanor is punishable by up to sixty days in jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

<sup>11</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>12</sup> A third degree felony is punishable by up to five years in prison and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

<sup>13</sup> s. 806.13(1)(b), F.S.

<sup>14</sup> See, e.g., ss. 57.085, 104.271, 106.265, 255.25, 365.172, 427.727, 628.6013, 934.21, and 1012.85, F.S.

<sup>15</sup> MERRIAM-WEBSTER, *Malicious*, <http://www.merriam-webster.com/dictionary/malicious> (last visited Nov. 5, 2015).

<sup>16</sup> s. 860.17, F.S.

<sup>17</sup> *Id.*

The bill provides the following definitions:

- "Authorized individual" means a law enforcement officer, an animal control officer, a firefighter, a first responder, or any individual who has contacted the local law enforcement agency, fire department, or 911 operator and has been instructed by such entity to use reasonable force to remove an animal from a motor vehicle pursuant to this section.
- "Motor vehicle" has the same meaning as in s. 316.003, F.S.

**B. SECTION DIRECTORY:**

Section 1. Citing the act as the "Protecting Animal Welfare and Safety Act" or "P.A.W.S. Act."

Section 2. Creating s. 828.075, F.S., relating to animals in unattended motor vehicles.

Section 3. Providing that the bill is effective 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 creates a new first degree misdemeanor, and thereby may increase the need for jail beds.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate economic impact on vehicle owners and insurance companies. The extent of damage caused by a good samaritan will depend on many factors, such as the age and make of the damaged vehicle.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The definition of "authorized individual" includes mention of law enforcement officers, firefighters, and other professionals, without providing any definition of such terms. Including statutory cross-references for such professionals will prevent the possibility of ambiguity.

The bill provides that this section does not preclude the prosecution of animal cruelty under s. 828.12, F.S. This provision is unnecessary because prosecution under the provisions of this bill and s. 828.12, F.S., would be constitutionally permissible regardless of the provision in the bill declaring it so.

The bill attempts to create an exemption for the transportation of specified agricultural animals in motor vehicles designed to transport such animals for agricultural purposes. However, a close read of the bill reveals that only transportation of such animals is not prohibited by the bill. Clarifying language is needed to clearly indicate an exemption from the provisions of the bill.

The bill is effective on July 1, 2016. However, bills establishing a new criminal offense are traditionally effective on October 1 of the year in which the bill is signed into law.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A



A bill to be entitled

An act relating to animals confined in unattended motor vehicles; providing a short title; creating s. 828.075, F.S.; defining terms; prohibiting a person from confining an animal in an unattended motor vehicle under certain circumstances; providing a criminal penalty; providing that authorized individuals may use reasonable force to remove animals under certain circumstances; providing an exemption from liability for authorized individuals; providing an exception for the transportation of agricultural animals; providing that the act does not preclude prosecution under any other law; providing an effective date.

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

Section 1. This act may be cited as the "Protecting Animal Welfare and Safety Act" or "P.A.W.S. Act".

Section 2. Section 828.075, Florida Statutes, is created to read:

828.075 Animals in unattended motor vehicles.-

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

(a) "Authorized individual" means a law enforcement officer, an animal control officer, a firefighter, or a first responder or any individual who has contacted the local law

27 enforcement agency, fire department, or 911 operator and has  
 28 been instructed by such entity to use reasonable force to remove  
 29 an animal from a motor vehicle pursuant to this section.

30 (b) "Motor vehicle" has the same meaning as provided in s.  
 31 316.003.

32 (2) A person who intentionally, knowingly, or recklessly  
 33 confines an animal in an unattended motor vehicle under  
 34 conditions that endanger the health or well-being of the animal  
 35 due to heat, cold, lack of adequate ventilation, lack of food or  
 36 water, or other circumstances that could reasonably be expected  
 37 to cause suffering, disability, or death of the animal commits a  
 38 misdemeanor of the first degree, punishable as provided in s.  
 39 775.082 or s. 775.083.

40 (3) After a reasonable effort to locate the person  
 41 responsible for the animal, an authorized individual may use  
 42 whatever means are reasonably necessary, including, but not  
 43 limited to, breaking into the motor vehicle, to remove the  
 44 animal if the animal appears to be in immediate danger from  
 45 heat, cold, lack of adequate ventilation, lack of food or water,  
 46 or other circumstances that could reasonably be expected to  
 47 cause suffering, disability, or death of the animal.

48 (4) An authorized individual who removes an animal from a  
 49 motor vehicle pursuant to this section:

50 (a) Must leave a written notice in a secure and  
 51 conspicuous location on or within the motor vehicle bearing his  
 52 or her name and office, and the address of the location where

53 | the animal can be claimed;

54 | (b) Shall take the animal to an animal shelter or other  
 55 | place of safekeeping or, if deemed necessary, to a veterinary  
 56 | hospital for treatment; and

57 | (c) May not be held criminally or civilly liable for  
 58 | actions taken while carrying out the provisions of this section.

59 | (5) This section does not prohibit the transportation of  
 60 | horses, cattle, pigs, sheep, poultry, or other agricultural  
 61 | animals in motor vehicles designed to transport such animals for  
 62 | agricultural purposes.

63 | (6) This section does not preclude prosecution for a  
 64 | criminal act under any other law, including, but not limited to,  
 65 | prosecution under s. 828.12.

66 | 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	_____	

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee  
3 Representative Cortes, B. offered the following:

**Amendment**

Remove lines 22-47 and insert:

828.075 Animals confined in unattended motor vehicles.-

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

9 (a) "Authorized individual" means a first responder as  
10 defined in s. 125.01045, an animal control officer as defined in  
11 828.27, or any individual who has contacted the local law  
12 enforcement agency, fire department, or 911 operator and has  
13 been instructed by such entity to use reasonable force to remove  
14 an animal from a motor vehicle pursuant to this section.

15 (b) "Motor vehicle" has the same meaning as provided in s.  
16 316.003.



Amendment No. 1

17       (2) A person who intentionally, knowingly, or recklessly  
18 confines an animal in an unattended motor vehicle under  
19 conditions that endanger the health or well-being of the animal  
20 due to heat, cold, lack of adequate ventilation, lack of food or  
21 water, or other circumstances that could reasonably be expected  
22 to cause suffering, physical injury, or death of the animal  
23 commits a misdemeanor of the first degree, punishable as  
24 provided in s. 775.082 or s. 775.083.

25       (3) After a reasonable effort to locate the person  
26 responsible for the animal, an authorized individual may use  
27 whatever means are reasonably necessary, including, but not  
28 limited to, breaking into the motor vehicle, to remove the  
29 animal if the animal appears to be in immediate danger from  
30 heat, cold, lack of adequate ventilation, lack of food or water,  
31 or other circumstances that could reasonably be expected to  
32 cause suffering, physical injury, or death of the animal.



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee  
3 Representative Cortes, B. offered the following:

**Amendment (with title amendment)**

Remove lines 59-66 and insert:

7 (5) This section does not apply to the transportation of  
8 horses, cattle, pigs, sheep, poultry, or other agricultural  
9 animals in motor vehicles designed to transport such animals for  
10 agricultural purposes.

11 Section 3. This act shall take effect October 1, 2016.

13 -----

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

15 Remove line 11 and insert:

16 an exception for the transportation of specified



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 365 Transmission of Pornography  
**SPONSOR(S):** Kerner  
**TIED BILLS:** IDEN./SIM. BILLS: SB 656

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

### SUMMARY ANALYSIS

Sections 847.0135(2) and 847.0137, F.S., create third degree felony offenses relating to computer pornography and transmission of child pornography. In recent case law, the Fourth District Court of Appeals held that such offenses cannot be separately charged based upon each image of child pornography because the statutory language establishing the offenses uses the modifier "any," rather than "a" or "an" before the term "image" and other proscribed items. As such, only one offense may be charged even though a violation may involve hundreds of images or other proscribed items.

The bill amends ss. 847.011(3) and (8), 847.0135(2), and 847.0137, F.S., to change terminology from "any" to "a" or "an" and to specifically state in the definition of "transmit" set forth in s. 847.0137(1)(b), F.S., that: "Each act of sending and causing to be delivered such image, information, or data is a separate offense." Cumulatively, the bill's amendments result in the ability to charge: computer pornography offenses separately based upon each proscribed notice, statement, or advertisement and each minor affected; and transmission of child pornography offenses separately based upon each proscribed image, data, or information.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a positive indeterminate prison bed impact on the Department of Corrections (i.e., the bill will increase the number of prison beds needed by an indeterminate number).

This bill is effective October 1, 2016.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Chapter 847, F.S., entitled "Obscenity," contains a variety of provisions that proscribe offenses related to pornography and minors. Relevant to this bill are the third degree felony offenses created to prohibit computer pornography and the transmission of child pornography pursuant to ss. 847.0135(2) and 847.0137(2) and (3), F.S., respectively.

For purposes of the chapter, the term:

- "Child pornography" is defined to mean "**any** image depicting a minor engaged in sexual conduct."<sup>1</sup>
- "Minor" is defined to mean "any person under the age of 18 years."<sup>2</sup>

##### *Computer Pornography*

Section 847.0135, F.S., entitled the "Computer Pornography and Child Exploitation Prevention Act," provides in relevant part that a person who:

- (a) Knowingly compiles, enters into, or transmits by use of computer;
- (b) Makes, prints, publishes, or reproduces by other computerized means;
- (c) Knowingly causes or allows to be entered into or transmitted by use of computer; or
- (d) Buys, sells, receives, exchanges, or disseminates,

**any** notice, statement, or advertisement of any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree....<sup>3, 4</sup>

##### *Transmission of Child Pornography*

Section 847.0137, F.S., provides that any person in:

- This state who knew or reasonably should have known that he or she was transmitting child pornography to another person in this state or in another jurisdiction commits a felony of the third degree.<sup>5</sup>
- Any jurisdiction other than this state who knew or reasonably should have known that he or she was transmitting child pornography to any person in this state commits a felony of the third degree.<sup>6</sup>

For purposes of these offenses, the term "transmit" is defined as "the act of sending and causing to be delivered **any** image, information, or data from one or more persons or places to one or more other persons or places over or through any medium, including the Internet, by use of any electronic equipment or device."<sup>7, 8</sup>

<sup>1</sup> s. 847.001(3), F.S. (emphasis added).

<sup>2</sup> s. 847.001(3) and (8), F.S.

<sup>3</sup> s. 847.0135(2), F.S. (emphasis added).

<sup>4</sup> 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.

<sup>5</sup> s. 847.0137(2), F.S.

<sup>6</sup> s. 847.0137(3), F.S.

<sup>7</sup> s. 847.0137(1)(b), F.S. (emphasis added).

*Charging of Computer Pornography and Transmission of Child Pornography – Number of Counts*  
Recently, the Fourth District Court of Appeals in *State v. Losada*, considered the number of counts that may be charged for the offenses of computer pornography under s. 847.0135(2), F.S., and transmission of child pornography under s. 847.0137(2), F.S., where more than one image of child pornography is at issue.<sup>9</sup>

In this case, the defendant sent an undercover police officer a single image containing child pornography through an online chat. On a subsequent day, the officer requested and received from the defendant access to files stored on the defendant's computer which contained 32 images of child pornography. Defendant was charged with and convicted of 33 counts of computer pornography in violation of s. 847.0135(2), F.S., and 33 counts of transmission of child pornography in violation of s. 847.0137(2), F.S. The defendant appealed his convictions, arguing, in relevant part, that he could not be prosecuted for 33 counts of each offense because the Legislature did not intend for these offenses to be charged on an image-by-image basis.<sup>10</sup>

The court agreed with the defendant and affirmed the trial court's dismissal of 31 counts of computer pornography and 31 counts of transmission of child pornography. According to the Court, such dismissal was warranted based on the Florida Supreme Court's "a/any" test which holds that use of the word "a" before an item described in a statute evidences the intent of the Legislature to make each item subject to a separate prosecution; whereas, use of the word "any" before the item, is ambiguous and may evidence legislative intent that only one prosecution is intended for multiple items.<sup>11</sup>

With respect to the statutes at issue in the case, the computer pornography offense applies to "**any** notice, statement, or advertisement" of specified information relating to a minor's name and the transmission of child pornography offense applies to the transmission, meaning, "the act of sending and causing to be delivered **any** image, information, or data . . .," of child pornography, meaning "**any** image depicting a minor engaged in sexual conduct." Due to the use of "any" in these provisions, the Court concluded that the Legislature did not intend to make each individual image subject to separate prosecution.<sup>12</sup>

### **Effect of the Bill**

The bill amends ss. 847.001, F.S., to change the definition of the term:

- "Child pornography" from "**any** image depicting a minor ..." to "**an** image depicting a minor ...."
- "Minor" from "**any** person under the age of 18..." to "**a** person under the age of 18...."

Likewise, the bill also amends ss. 847.0135(2) and 847.137, F.S., to change the term "any" to "an" where used in the provisions creating the offenses of computer pornography and transmission of child pornography and to add the following to the definition of "transmit" in s. 847.137(1)(b), F.S.: "Each act of sending and causing to be delivered such image, information, or data is a separate offense."

Cumulatively, the bill's amendments result in the ability to charge: computer pornography offenses separately based upon each notice, statement, or advertisement and each minor affected; and transmission of child pornography offenses separately based upon each image, data, or information.

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<sup>8</sup> The section further specifies that it may not be construed to prohibit prosecution of the transmission of child pornography under any other law, including a law providing for greater penalties; that a person is subject to prosecution in Florida if he or she lives outside of Florida if he or she violates the prohibition against transmitting child pornography to any person in this state; and that the section does not apply to subscription-based transmissions such as list servers. s. 847.0137, F.S.

<sup>9</sup> *State v. Losada*, No. 4D14-2098, 2015 WL 5603461 (Fla. 4<sup>th</sup> DCA Sept. 24, 2015).

<sup>10</sup> *Id.* at 1-2.

<sup>11</sup> *Id.* at 2-4.

<sup>12</sup> *Id.*

Finally, the bill reenacts ss. 775.0847(2) and 856.022(1), F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 847.001, F.S., relating to definitions.

Section 2. Amends s. 847.0135(2), F.S., relating to computer pornography; prohibited computer usage; traveling to meet minor; penalties.

Section 3. Amends s. 847.0137, F.S., relating to transmission of pornography by electronic device or equipment prohibited; penalties.

Section 4. Reenacts s. 775.0847(2), F.S., relating to possession or promotion of certain images of child pornography; reclassification.

Section 5. Reenacts s. 856.022(1), F.S., relating to loitering or prowling by certain offenders in close proximity to children; penalty.

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a positive indeterminate prison bed impact on the Department of Corrections (i.e., the bill will increase the number of prison beds needed by an indeterminate number).

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

1. Revenues:

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

2. Expenditures:

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

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take 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:

Although numerous First Amendment challenges have been made to government regulation of pornography, the United States Supreme Court has definitively ruled that the First Amendment does not attach to the dissemination of child pornography. "[T]he use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child. That judgment, we think, easily passes muster under the First Amendment."<sup>13</sup>

#### B. RULE-MAKING AUTHORITY:

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

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill's short title is "an act relating to transmission of pornography." Section 2. of the bill, however, amends s. 847.0135(2), F.S., which establishes the offense of computer pornography and which offense does not necessarily require transmission for a violation. It may be desirable to amend the bill's title to read "an act relating to pornography."

Sections 92.561(1), 847.012(3)(b), and 960.197(1)(b), F.S., contain cross-references to definitions set forth in s. 847.001, F.S., which are amended by the bill and, as such, should be reenacted by the bill.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

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<sup>13</sup> New York v. Ferber, 458 U.S. 747, 756-57 (1982). In Ferber, the Court upheld as a compelling state interest protection of the physical and psychological well-being of children.

1                                   A bill to be entitled  
 2           An act relating to transmission of pornography;  
 3           amending ss. 847.001 and 847.0135, F.S.; revising  
 4           terminology; amending s. 847.0137, F.S.; revising  
 5           terminology; providing that each act of sending or  
 6           delivering child pornography is a separate offense;  
 7           reenacting ss. 775.0847(2) and 856.022(1), F.S.,  
 8           relating to reclassification of certain offenses and  
 9           loitering or prowling by certain offenders,  
 10          respectively, to incorporate the amendment made by the  
 11          act to s. 847.0137, F.S., in references thereto;  
 12          providing an effective date.

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

15  
 16           Section 1. Subsections (3) and (8) of section 847.001,  
 17   Florida Statutes, are amended to read:

18           847.001 Definitions.—As used in this chapter, the term:

19           (3) "Child pornography" means an ~~any~~ image depicting a  
 20   minor engaged in sexual conduct.

21           (8) "Minor" means a ~~any~~ person under the age of 18 years.

22           Section 2. Subsection (2) of section 847.0135, Florida  
 23   Statutes, is amended to read:

24           847.0135 Computer pornography; prohibited computer usage;  
 25   traveling to meet minor; penalties.—

26           (2) COMPUTER PORNOGRAPHY.—A person who:

27 (a) Knowingly compiles, enters into, or transmits by use  
 28 of computer;

29 (b) Makes, prints, publishes, or reproduces by other  
 30 computerized means;

31 (c) Knowingly causes or allows to be entered into or  
 32 transmitted by use of computer; or

33 (d) Buys, sells, receives, exchanges, or disseminates,  
 34  
 35 a ~~any~~ notice, statement, or advertisement of a ~~any~~ minor's name,  
 36 telephone number, place of residence, physical characteristics,  
 37 or other descriptive or identifying information for purposes of  
 38 facilitating, encouraging, offering, or soliciting sexual  
 39 conduct of or with a ~~any~~ minor, or the visual depiction of such  
 40 conduct, commits a felony of the third degree, punishable as  
 41 provided in s. 775.082, s. 775.083, or s. 775.084. The fact that  
 42 an undercover operative or law enforcement officer was involved  
 43 in the detection and investigation of an offense under this  
 44 section shall not constitute a defense to a prosecution under  
 45 this section.

46 Section 3. Section 847.0137, Florida Statutes, is amended  
 47 to read:

48 847.0137 Transmission of pornography by electronic device  
 49 or equipment prohibited; penalties.—

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

51 (a) "Minor" or "child" means a ~~any~~ person less than 18  
 52 years of age.

53 (b) "Transmit" means the act of sending and causing to be  
 54 delivered an ~~any~~ image, information, or data from one or more  
 55 persons or places to one or more other persons or places over or  
 56 through any medium, including the Internet, by use of any  
 57 electronic equipment or device. Each act of sending and causing  
 58 to be delivered such image, information, or data is a separate  
 59 offense.

60 (2) Notwithstanding ss. 847.012 and 847.0133, a ~~any~~ person  
 61 in this state who knew or reasonably should have known that he  
 62 or she was transmitting child pornography, as defined in s.  
 63 847.001, to another person in this state or in another  
 64 jurisdiction commits a felony of the third degree, punishable as  
 65 provided in s. 775.082, s. 775.083, or s. 775.084.

66 (3) Notwithstanding ss. 847.012 and 847.0133, a ~~any~~ person  
 67 in any jurisdiction other than this state who knew or reasonably  
 68 should have known that he or she was transmitting child  
 69 pornography, as defined in s. 847.001, to a ~~any~~ person in this  
 70 state commits a felony of the third degree, punishable as  
 71 provided in s. 775.082, s. 775.083, or s. 775.084.

72 (4) This section may ~~shall~~ not be construed to prohibit  
 73 prosecution of a person in this state or another jurisdiction  
 74 for a violation of any law of this state, including a law  
 75 providing for greater penalties than prescribed in this section,  
 76 for the transmission of child pornography, as defined in s.  
 77 847.001, to a ~~any~~ person in this state.

78 (5) A person is subject to prosecution in this state

79 pursuant to chapter 910 for an ~~any~~ act or conduct proscribed by  
 80 this section, including a person in a jurisdiction other than  
 81 this state, if the act or conduct violates subsection (3).

82 (6) ~~The provisions of~~ This section does ~~de~~ not apply to  
 83 subscription-based transmissions such as list servers.

84 Section 4. For the purpose of incorporating the amendment  
 85 made by this act to section 847.0137, Florida Statutes, in a  
 86 reference thereto, subsection (2) of section 775.0847, Florida  
 87 Statutes, is reenacted to read:

88 775.0847 Possession or promotion of certain images of  
 89 child pornography; reclassification.—

90 (2) A violation of s. 827.071, s. 847.0135, s. 847.0137,  
 91 or s. 847.0138 shall be reclassified to the next higher degree  
 92 as provided in subsection (3) if:

93 (a) The offender possesses 10 or more images of any form  
 94 of child pornography regardless of content; and

95 (b) The content of at least one image contains one or more  
 96 of the following:

- 97 1. A child who is younger than the age of 5.
- 98 2. Sadomasochistic abuse involving a child.
- 99 3. Sexual battery involving a child.
- 100 4. Sexual bestiality involving a child.
- 101 5. Any movie involving a child, regardless of length and  
 102 regardless of whether the movie contains sound.

103 Section 5. For the purpose of incorporating the amendment  
 104 made by this act to section 847.0137, Florida Statutes, in a



105 reference thereto, subsection (1) of section 856.022, Florida  
 106 Statutes, is reenacted to read:

107 856.022 Loitering or prowling by certain offenders in  
 108 close proximity to children; penalty.—

109 (1) Except as provided in subsection (2), this section  
 110 applies to a person convicted of committing, or attempting,  
 111 soliciting, or conspiring to commit, any of the criminal  
 112 offenses proscribed in the following statutes in this state or  
 113 similar offenses in another jurisdiction against a victim who  
 114 was under 18 years of age at the time of the offense: s. 787.01,  
 115 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and  
 116 the offender was not the victim's parent or guardian; s.  
 117 787.06(3)(g); s. 794.011, excluding s. 794.011(10); s. 794.05;  
 118 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.  
 119 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
 120 847.0137; s. 847.0138; s. 847.0145; s. 985.701(1); or any  
 121 similar offense committed in this state which has been  
 122 redesignated from a former statute number to one of those listed  
 123 in this subsection, if the person has not received a pardon for  
 124 any felony or similar law of another jurisdiction necessary for  
 125 the operation of this subsection and a conviction of a felony or  
 126 similar law of another jurisdiction necessary for the operation  
 127 of this subsection has not been set aside in any postconviction  
 128 proceeding.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee

3 Representative Kerner offered the following:

**Amendment (with title amendment)**

6 Remove lines 50-128 and insert:

7 (1) For purposes of this section, the term-

8 ~~(a) "Minor" means any person less than 18 years of age.~~

9 ~~(b) "Transmit" means the act of sending and causing to be~~  
10 ~~delivered, or the act of providing access for receiving and~~  
11 ~~causing to be delivered, an any image, information, or data from~~  
12 ~~one or more persons or places to one or more other persons or~~  
13 ~~places over or through any medium, including the Internet or an~~  
14 ~~interconnected network, by use of any electronic equipment or~~  
15 ~~device.~~

16 (2) Notwithstanding ss. 847.012 and 847.0133, a any person  
17 in this state who knew or reasonably should have known that he



Amendment No. 1

18 or she was transmitting child pornography, ~~as defined in s.~~  
19 ~~847.001,~~ to another person in this state or in another  
20 jurisdiction commits a felony of the third degree, punishable as  
21 provided in s. 775.082, s. 775.083, or s. 775.084.

22 (3) Notwithstanding ss. 847.012 and 847.0133, a ~~any~~ person  
23 in any jurisdiction other than this state who knew or reasonably  
24 should have known that he or she was transmitting child  
25 pornography, as defined in s. 847.001, to a ~~any~~ person in this  
26 state commits a felony of the third degree, punishable as  
27 provided in s. 775.082, s. 775.083, or s. 775.084.

28 (4) This section shall not be construed to prohibit  
29 prosecution of a person in this state or another jurisdiction  
30 for a violation of any law of this state, including a law  
31 providing for greater penalties than prescribed in this section,  
32 for the transmission of child pornography, ~~as defined in s.~~  
33 ~~847.001,~~ to a ~~any~~ person in this state.

34 (5) A person is subject to prosecution in this state  
35 pursuant to chapter 910 for an ~~any~~ act or conduct proscribed by  
36 this section, including a person in a jurisdiction other than  
37 this state, if the act or conduct violates subsection (3).

38 (6) ~~The provisions of~~ This section does ~~de~~ not apply to  
39 subscription-based transmissions such as list servers.

40 Section 4. For the purpose of incorporating the amendment  
41 made by this act to section 847.001, Florida Statutes, in a  
42 reference thereto, subsection (1) of section 92.561, Florida  
43 Statutes, is reenacted to read:



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44 92.561 Prohibition on reproduction of child pornography.-

45 (1) In a criminal proceeding, any property or material  
46 that portrays sexual performance by a child as defined in s.  
47 827.071, or constitutes child pornography as defined in s.  
48 847.001, must remain secured or locked in the care, custody, and  
49 control of a law enforcement agency, the state attorney, or the  
50 court.

51 Section 5. For the purpose of incorporating the amendment  
52 made by this act to section 847.001, Florida Statutes, in a  
53 reference thereto, subsection (1) of section 960.197, Florida  
54 Statutes, is reenacted to read:

55 960.197 Assistance to victims of online sexual  
56 exploitation and child pornography.-

57 (1) Notwithstanding the criteria set forth in s. 960.13  
58 for crime victim compensation awards, the department may award  
59 compensation for counseling and other mental health services to  
60 treat psychological injury or trauma to:

61 (a) A child younger than 18 years of age who suffers  
62 psychiatric or psychological injury as a direct result of online  
63 sexual exploitation under any provision of s. 827.071, s.  
64 847.0135, s. 847.0137, or s. 847.0138, and who does not  
65 otherwise sustain a personal injury or death; or

66 (b) Any person who, while younger than age 18, was  
67 depicted in any image or movie, regardless of length, of child  
68 pornography as defined in s. 847.001, who has been identified by  
69 a law enforcement agency or the National Center for Missing and



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70 Exploited Children as an identified victim of child pornography,  
71 who suffers psychiatric or psychological injury as a direct  
72 result of the crime, and who does not otherwise sustain a  
73 personal injury or death.

74 Section 6. For the purpose of incorporating the amendment  
75 made by this act to sections 847.0135 and 847.0137, Florida  
76 Statutes, in references thereto, subsection (2) of section  
77 775.0847, Florida Statutes, is reenacted to read:

78 775.0847 Possession or promotion of certain images of  
79 child pornography; reclassification.—

80 (2) A violation of s. 827.071, s. 847.0135, s. 847.0137,  
81 or s. 847.0138 shall be reclassified to the next higher degree  
82 as provided in subsection (3) if:

83 (a) The offender possesses 10 or more images of any form  
84 of child pornography regardless of content; and

85 (b) The content of at least one image contains one or more  
86 of the following:

- 87 1. A child who is younger than the age of 5.
- 88 2. Sadomasochistic abuse involving a child.
- 89 3. Sexual battery involving a child.
- 90 4. Sexual bestiality involving a child.
- 91 5. Any movie involving a child, regardless of length and  
92 regardless of whether the movie contains sound.

93 Section 7. For the purpose of incorporating the amendment  
94 made by this act to section 847.0137, Florida Statutes, in a



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95 reference thereto, subsection (1) of section 794.056, Florida  
96 Statutes, is reenacted to read:

97 794.056 Rape Crisis Program Trust Fund.—

98 (1) The Rape Crisis Program Trust Fund is created within  
99 the Department of Health for the purpose of providing funds for  
100 rape crisis centers in this state. Trust fund moneys shall be  
101 used exclusively for the purpose of providing services for  
102 victims of sexual assault. Funds credited to the trust fund  
103 consist of those funds collected as an additional court  
104 assessment in each case in which a defendant pleads guilty or  
105 nolo contendere to, or is found guilty of, regardless of  
106 adjudication, an offense provided in s. 775.21(6) and (10)(a),  
107 (b), and (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s.  
108 784.045; s. 784.048; s. 784.07; s. 784.08; s. 784.081; s.  
109 784.082; s. 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); s.  
110 787.025; s. 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08;  
111 former s. 796.03; former s. 796.035; s. 796.04; s. 796.05; s.  
112 796.06; s. 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s.  
113 810.14; s. 810.145; s. 812.135; s. 817.025; s. 825.102; s.  
114 825.1025; s. 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s.  
115 847.0137; s. 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a),  
116 (13), and (14)(c); or s. 985.701(1). Funds credited to the trust  
117 fund also shall include revenues provided by law, moneys  
118 appropriated by the Legislature, and grants from public or  
119 private entities.



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120 Section 8. For the purpose of incorporating the amendment  
121 made by this act to section 847.0137, Florida Statutes, in a  
122 reference thereto, subsection (1) of section 856.022, Florida  
123 Statutes, is reenacted to read:

124 856.022 Loitering or prowling by certain offenders in  
125 close proximity to children; penalty.-

126 (1) Except as provided in subsection (2), this section  
127 applies to a person convicted of committing, or attempting,  
128 soliciting, or conspiring to commit, any of the criminal  
129 offenses proscribed in the following statutes in this state or  
130 similar offenses in another jurisdiction against a victim who  
131 was under 18 years of age at the time of the offense: s. 787.01,  
132 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and  
133 the offender was not the victim's parent or guardian; s.  
134 787.06(3)(g); s. 794.011, excluding s. 794.011(10); s. 794.05;  
135 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.  
136 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
137 847.0137; s. 847.0138; s. 847.0145; s. 985.701(1); or any  
138 similar offense committed in this state which has been  
139 redesignated from a former statute number to one of those listed  
140 in this subsection, if the person has not received a pardon for  
141 any felony or similar law of another jurisdiction necessary for  
142 the operation of this subsection and a conviction of a felony or  
143 similar law of another jurisdiction necessary for the operation  
144 of this subsection has not been set aside in any postconviction  
145 proceeding.



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146 Section 9. For the purpose of incorporating the amendment  
147 made by this act to section 847.0137, Florida Statutes, in  
148 references thereto, subsection (8) of section 905.34, Florida  
149 Statutes, is reenacted to read:

150 905.34 Powers and duties; law applicable.—The jurisdiction  
151 of a statewide grand jury impaneled under this chapter shall  
152 extend throughout the state. The subject matter jurisdiction of  
153 the statewide grand jury shall be limited to the offenses of:

154 (8) Any violation of s. 847.0135, s. 847.0137, or s.  
155 847.0138 relating to computer pornography and child exploitation  
156 prevention, or any offense related to a violation of s.  
157 847.0135, s. 847.0137, or s. 847.0138 or any violation of  
158 chapter 827 where the crime is facilitated by or connected to  
159 the use of the Internet or any device capable of electronic data  
160 storage or transmission;

161  
162 or any attempt, solicitation, or conspiracy to commit any  
163 violation of the crimes specifically enumerated above, when any  
164 such offense is occurring, or has occurred, in two or more  
165 judicial circuits as part of a related transaction or when any  
166 such offense is connected with an organized criminal conspiracy  
167 affecting two or more judicial circuits. The statewide grand  
168 jury may return indictments and presentments irrespective of the  
169 county or judicial circuit where the offense is committed or  
170 triable. If an indictment is returned, it shall be certified and  
171 transferred for trial to the county where the offense was





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172 committed. The powers and duties of, and law applicable to,  
173 county grand juries shall apply to a statewide grand jury except  
174 when such powers, duties, and law are inconsistent with the  
175 provisions of ss. 905.31-905.40.

176 Section 10. For the purpose of incorporating the amendment  
177 made by this act to section 847.0137, Florida Statutes, in a  
178 reference thereto, section 938.085, Florida Statutes, is  
179 reenacted to read:

180 938.085 Additional cost to fund rape crisis centers.—In  
181 addition to any sanction imposed when a person pleads guilty or  
182 nolo contendere to, or is found guilty of, regardless of  
183 adjudication, a violation of s. 775.21(6) and (10)(a), (b), and  
184 (g); s. 784.011; s. 784.021; s. 784.03; s. 784.041; s. 784.045;  
185 s. 784.048; s. 784.07; s. 784.08; s. 784.081; s. 784.082; s.  
186 784.083; s. 784.085; s. 787.01(3); s. 787.02(3); 787.025; s.  
187 787.06; s. 787.07; s. 794.011; s. 794.05; s. 794.08; former s.  
188 796.03; former s. 796.035; s. 796.04; s. 796.05; s. 796.06; s.  
189 796.07(2)(a)-(d) and (i); s. 800.03; s. 800.04; s. 810.14; s.  
190 810.145; s. 812.135; s. 817.025; s. 825.102; s. 825.1025; s.  
191 827.071; s. 836.10; s. 847.0133; s. 847.0135(2); s. 847.0137; s.  
192 847.0145; s. 943.0435(4)(c), (7), (8), (9)(a), (13), and  
193 (14)(c); or s. 985.701(1), the court shall impose a surcharge of  
194 \$151. Payment of the surcharge shall be a condition of  
195 probation, community control, or any other court-ordered  
196 supervision. The sum of \$150 of the surcharge shall be deposited  
197 into the Rape Crisis Program Trust Fund established within the



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198 Department of Health by chapter 2003-140, Laws of Florida. The  
199 clerk of the court shall retain \$1 of each surcharge that the  
200 clerk of the court collects as a service charge of the clerk's  
201 office.

202 Section 11. For the purpose of incorporating the amendment  
203 made by this act to section 847.0137, Florida Statutes, in  
204 references thereto, paragraph (a) of subsection (1) of section  
205 943.0435, Florida Statutes, is reenacted to read:

206 943.0435 Sexual offenders required to register with the  
207 department; penalty.-

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

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

212 a.(I) Has been convicted of committing, or attempting,  
213 soliciting, or conspiring to commit, any of the criminal  
214 offenses proscribed in the following statutes in this state or  
215 similar offenses in another jurisdiction: s. 393.135(2); s.  
216 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
217 the victim is a minor and the defendant is not the victim's  
218 parent or guardian; s. 787.06(3)(b), (d), (f), or (g); former s.  
219 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05;  
220 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);  
221 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.  
222 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.  
223 916.1075(2); or s. 985.701(1); or any similar offense committed



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224 | in this state which has been redesignated from a former statute  
225 | number to one of those listed in this sub-sub-subparagraph; and

226 |       (II) Has been released on or after October 1, 1997, from  
227 | the sanction imposed for any conviction of an offense described  
228 | in sub-sub-subparagraph (I). For purposes of sub-sub-  
229 | subparagraph (I), a sanction imposed in this state or in any  
230 | other jurisdiction includes, but is not limited to, a fine,  
231 | probation, community control, parole, conditional release,  
232 | control release, or incarceration in a state prison, federal  
233 | prison, private correctional facility, or local detention  
234 | facility;

235 |       b. Establishes or maintains a residence in this state and  
236 | who has not been designated as a sexual predator by a court of  
237 | this state but who has been designated as a sexual predator, as  
238 | a sexually violent predator, or by another sexual offender  
239 | designation in another state or jurisdiction and was, as a  
240 | result of such designation, subjected to registration or  
241 | community or public notification, or both, or would be if the  
242 | person were a resident of that state or jurisdiction, without  
243 | regard to whether the person otherwise meets the criteria for  
244 | registration as a sexual offender;

245 |       c. Establishes or maintains a residence in this state who  
246 | is in the custody or control of, or under the supervision of,  
247 | any other state or jurisdiction as a result of a conviction for  
248 | committing, or attempting, soliciting, or conspiring to commit,  
249 | any of the criminal offenses proscribed in the following



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250 statutes or similar offense in another jurisdiction: s.  
251 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.  
252 787.025(2)(c), where the victim is a minor and the defendant is  
253 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),  
254 or (g); former s. 787.06(3)(h); s. 794.011, excluding s.  
255 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.  
256 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.  
257 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.  
258 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar  
259 offense committed in this state which has been redesignated from  
260 a former statute number to one of those listed in this sub-  
261 subparagraph; or

262 d. On or after July 1, 2007, has been adjudicated  
263 delinquent for committing, or attempting, soliciting, or  
264 conspiring to commit, any of the criminal offenses proscribed in  
265 the following statutes in this state or similar offenses in  
266 another jurisdiction when the juvenile was 14 years of age or  
267 older at the time of the offense:

268 (I) Section 794.011, excluding s. 794.011(10);

269 (II) Section 800.04(4)(a)2. where the victim is under 12  
270 years of age or where the court finds sexual activity by the use  
271 of force or coercion;

272 (III) Section 800.04(5)(c)1. where the court finds  
273 molestation involving unclothed genitals; or

274 (IV) Section 800.04(5)(d) where the court finds the use of  
275 force or coercion and unclothed genitals.



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276 2. For all qualifying offenses listed in sub-subparagraph  
277 (1)(a)1.d., the court shall make a written finding of the age of  
278 the offender at the time of the offense.

279  
280 For each violation of a qualifying offense listed in this  
281 subsection, except for a violation of s. 794.011, the court  
282 shall make a written finding of the age of the victim at the  
283 time of the offense. For a violation of s. 800.04(4), the court  
284 shall also make a written finding indicating whether the offense  
285 involved sexual activity and indicating whether the offense  
286 involved force or coercion. For a violation of s. 800.04(5), the  
287 court shall also make a written finding that the offense did or  
288 did not involve unclothed genitals or genital area and that the  
289 offense did or did not involve the use of force or coercion.

290 Section 12. For the purpose of incorporating the amendment  
291 made by this act to section 847.0137, Florida Statutes, in a  
292 reference thereto, paragraph (b) of subsection (1) of section  
293 944.606, Florida Statutes, is reenacted to read:

294 944.606 Sexual offenders; notification upon release.-

295 (1) As used in this section:

296 (b) "Sexual offender" means a person who has been  
297 convicted of committing, or attempting, soliciting, or  
298 conspiring to commit, any of the criminal offenses proscribed in  
299 the following statutes in this state or similar offenses in  
300 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,  
301 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and



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302 the defendant is not the victim's parent or guardian; s.  
303 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.  
304 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
305 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
306 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
307 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.  
308 985.701(1); or any similar offense committed in this state which  
309 has been redesignated from a former statute number to one of  
310 those listed in this subsection, when the department has  
311 received verified information regarding such conviction; an  
312 offender's computerized criminal history record is not, in and  
313 of itself, verified information.

314 Section 13. For the purpose of incorporating the amendment  
315 made by this act to section 847.0137, Florida Statutes, in a  
316 reference thereto, paragraph (a) of subsection (1) of section  
317 944.607, Florida Statutes, is reenacted to read:

318 944.607 Notification to Department of Law Enforcement of  
319 information on sexual offenders.-

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

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

324 1. On or after October 1, 1997, as a result of a  
325 conviction for committing, or attempting, soliciting, or  
326 conspiring to commit, any of the criminal offenses proscribed in  
327 the following statutes in this state or similar offenses in



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328 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,  
329 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and  
330 the defendant is not the victim's parent or guardian; s.  
331 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s.  
332 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;  
333 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.  
334 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.  
335 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.  
336 985.701(1); or any similar offense committed in this state which  
337 has been redesignated from a former statute number to one of  
338 those listed in this paragraph; or

339 2. Who establishes or maintains a residence in this state  
340 and who has not been designated as a sexual predator by a court  
341 of this state but who has been designated as a sexual predator,  
342 as a sexually violent predator, or by another sexual offender  
343 designation in another state or jurisdiction and was, as a  
344 result of such designation, subjected to registration or  
345 community or public notification, or both, or would be if the  
346 person were a resident of that state or jurisdiction, without  
347 regard as to whether the person otherwise meets the criteria for  
348 registration as a sexual offender.

349 Section 14. For the purpose of incorporating the amendment  
350 made by this act to section 847.0137, Florida Statutes, in a  
351 reference thereto, paragraph (c) of subsection (8) of section  
352 948.06, Florida Statutes, is reenacted to read:



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353 948.06 Violation of probation or community control;  
354 revocation; modification; continuance; failure to pay  
355 restitution or cost of supervision.-

356 (8)

357 (c) For purposes of this section, the term "qualifying  
358 offense" means any of the following:

359 1. Kidnapping or attempted kidnapping under s. 787.01,  
360 false imprisonment of a child under the age of 13 under s.  
361 787.02(3), or luring or enticing a child under s. 787.025(2)(b)  
362 or (c).

363 2. Murder or attempted murder under s. 782.04, attempted  
364 felony murder under s. 782.051, or manslaughter under s. 782.07.

365 3. Aggravated battery or attempted aggravated battery  
366 under s. 784.045.

367 4. Sexual battery or attempted sexual battery under s.  
368 794.011(2), (3), (4), or (8)(b) or (c).

369 5. Lewd or lascivious battery or attempted lewd or  
370 lascivious battery under s. 800.04(4), lewd or lascivious  
371 molestation under s. 800.04(5)(b) or (c)2., lewd or lascivious  
372 conduct under s. 800.04(6)(b), lewd or lascivious exhibition  
373 under s. 800.04(7)(b), or lewd or lascivious exhibition on  
374 computer under s. 847.0135(5)(b).

375 6. Robbery or attempted robbery under s. 812.13,  
376 carjacking or attempted carjacking under s. 812.133, or home  
377 invasion robbery or attempted home invasion robbery under s.  
378 812.135.





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379 7. Lewd or lascivious offense upon or in the presence of  
380 an elderly or disabled person or attempted lewd or lascivious  
381 offense upon or in the presence of an elderly or disabled person  
382 under s. 825.1025.

383 8. Sexual performance by a child or attempted sexual  
384 performance by a child under s. 827.071.

385 9. Computer pornography under s. 847.0135(2) or (3),  
386 transmission of child pornography under s. 847.0137, or selling  
387 or buying of minors under s. 847.0145.

388 10. Poisoning food or water under s. 859.01.

389 11. Abuse of a dead human body under s. 872.06.

390 12. Any burglary offense or attempted burglary offense  
391 that is either a first degree felony or second degree felony  
392 under s. 810.02(2) or (3).

393 13. Arson or attempted arson under s. 806.01(1).

394 14. Aggravated assault under s. 784.021.

395 15. Aggravated stalking under s. 784.048(3), (4), (5), or  
396 (7).

397 16. Aircraft piracy under s. 860.16.

398 17. Unlawful throwing, placing, or discharging of a  
399 destructive device or bomb under s. 790.161(2), (3), or (4).

400 18. Treason under s. 876.32.

401 19. Any offense committed in another jurisdiction which  
402 would be an offense listed in this paragraph if that offense had  
403 been committed in this state.



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404 Section 15. For the purpose of incorporating the amendment  
405 made by this act to section 847.0137, Florida Statutes, in a  
406 reference thereto, paragraph (e) of subsection (3) of section  
407 960.03, Florida Statutes, is reenacted to read:

408 960.03 Definitions; ss. 960.01-960.28.—As used in ss.  
409 960.01-960.28, unless the context otherwise requires, the term:

410 (3) "Crime" means:

411 (e) A violation of s. 827.071, s. 847.0135, s. 847.0137,  
412 or s. 847.0138, related to online sexual exploitation and child  
413 pornography.

414 Section 16. For the purpose of incorporating the amendment  
415 made by this act to section 847.0137, Florida Statutes, in a  
416 reference thereto, paragraph (a) of subsection (1) of section  
417 960.197, Florida Statutes, is reenacted to read:

418 960.197 Assistance to victims of online sexual  
419 exploitation and child pornography.—

420 (1) Notwithstanding the criteria set forth in s. 960.13  
421 for crime victim compensation awards, the department may award  
422 compensation for counseling and other mental health services to  
423 treat psychological injury or trauma to:

424 (a) A child younger than 18 years of age who suffers  
425 psychiatric or psychological injury as a direct result of online  
426 sexual exploitation under any provision of s. 827.071, s.  
427 847.0135, s. 847.0137, or s. 847.0138, and who does not  
428 otherwise sustain a personal injury or death; or



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429 Section 17. For the purpose of incorporating the amendment  
 430 made by this act to section 847.0137, Florida Statutes, in  
 431 references thereto, paragraph (e) of subsection (3) of section  
 432 921.0022, Florida Statutes, is reenacted to read:

433 921.0022 Criminal Punishment Code; offense severity  
 434 ranking chart.-

435 (3) OFFENSE SEVERITY RANKING CHART

436 (e) LEVEL 5

437

Florida	Felony	
Statute	Degree	Description

438

316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
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439

316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
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440

322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
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441

327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
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442	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
443	379.3671 (2)(c)3.	3rd	Willful molestation, possession, or removal of a commercial harvester's trap contents or trap gear by another harvester.
444	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
445	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
446	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
447	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.



## Amendment No. 1

448 624.401(4)(b)2. 2nd Transacting insurance without a  
certificate or authority;  
premium collected \$20,000 or  
more but less than \$100,000.

449 626.902(1)(c) 2nd Representing an unauthorized  
insurer; repeat offender.

450 790.01(2) 3rd Carrying a concealed firearm.

451 790.162 2nd Threat to throw or discharge  
destructive device.

452 790.163(1) 2nd False report of deadly  
explosive or weapon of mass  
destruction.

453 790.221(1) 2nd Possession of short-barreled  
shotgun or machine gun.

454 790.23 2nd Felons in possession of  
firearms, ammunition, or  
electronic weapons or devices.

455 796.05(1) 2nd Live on earnings of a



Amendment No. 1

prostitute; 1st offense.

456

800.04(6)(c) 3rd Lewd or lascivious conduct;  
offender less than 18 years of  
age.

457

800.04(7)(b) 2nd Lewd or lascivious exhibition;  
offender 18 years of age or  
older.

458

806.111(1) 3rd Possess, manufacture, or  
dispense fire bomb with intent  
to damage any structure or  
property.

459

812.0145(2)(b) 2nd Theft from person 65 years of  
age or older; \$10,000 or more  
but less than \$50,000.

460

812.015(8) 3rd Retail theft; property stolen  
is valued at \$300 or more and  
one or more specified acts.

461

812.019(1) 2nd Stolen property; dealing in or  
trafficking in.

462



Amendment No. 1

463	812.131(2)(b)	3rd	Robbery by sudden snatching.
464	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
465	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
466	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
467	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification



Amendment No. 1

information of 10 or more  
persons.

468

817.625(2)(b) 2nd Second or subsequent fraudulent  
use of scanning device or  
reencoder.

469

825.1025(4) 3rd Lewd or lascivious exhibition  
in the presence of an elderly  
person or disabled adult.

470

827.071(4) 2nd Possess with intent to promote  
any photographic material,  
motion picture, etc., which  
includes sexual conduct by a  
child.

471

827.071(5) 3rd Possess, control, or  
intentionally view any  
photographic material, motion  
picture, etc., which includes  
sexual conduct by a child.

472

839.13(2)(b) 2nd Falsifying records of an  
individual in the care and  
custody of a state agency





Amendment No. 1

involving great bodily harm or death.

473

843.01 3rd Resist officer with violence to person; resist arrest with violence.

474

847.0135(5)(b) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

475

847.0137 3rd Transmission of pornography by (2) & (3) electronic device or equipment.

476

847.0138 3rd Transmission of material (2) & (3) harmful to minors to a minor by electronic device or equipment.

477

874.05(1)(b) 2nd Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

478

874.05(2)(a) 2nd Encouraging or recruiting person under 13 years of age to join a criminal gang.



Amendment No. 1

479

893.13(1)(a)1.           2nd    Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

480

893.13(1)(c)2.           2nd    Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

481

893.13(1)(d)1.           1st    Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.





Amendment No. 1

893.1351(1) 3rd Ownership, lease, or rental for  
trafficking in or manufacturing  
of controlled substance.

486

487

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489

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

490

Remove lines 2-11 and insert:

491

An act relating to pornography; amending s. 847.001, F.S.;

492

revising the definitions of the terms "child pornography" and

493

"minor"; amending s. 847.0135, F.S.; revising terminology to

494

provide for separate offenses of computer pornography under

495

certain circumstances; amending s. 847.0137, F.S.; deleting a

496

definition; revising the definition of the term "transmit";

497

revising terminology to provide for separate offenses of

498

transmission of child pornography under certain circumstances;

499

reenacting ss. 92.561(1) and 960.197(1), F.S., relating to the

500

prohibition on reproduction of child pornography and assistance

501

to victims of online sexual exploitation and child pornography,

502

to incorporate the amendment made by the act to s. 847.011,

503

F.S., in references thereto; reenacting s. 775.0847(2), F.S.,

504

relating to reclassification of certain offenses, to incorporate

505

the amendments made by the act to ss. 847.0135 and 847.0137,

506

F.S., in references thereto; reenacting ss. 794.056(1),

507

856.022(1), 905.34(8), 938.085, 943.0435(1)(a), 944.606(1)(b),

508

944.607(1)(a), 948.06(8)(c), 960.03(3)(e), 906.197(1)(a), and

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Amendment No. 1

509 921.0022(3)(e), F.S., relating to the Rape Crisis Program Trust  
510 Fund, certain loitering and prowling, grand jury powers and  
511 duties, additional cost to fund rape crisis centers, sexual  
512 offender registration, notification upon release of sexual  
513 offenders, notification to the Department of Law Enforcement of  
514 sexual offender information, violation of probation or community  
515 control, definitions, assistance to certain victims, and the  
516 offense severity ranking chart, respectively, to incorporate the  
517 amendment made by the act to s. 847.0137, F.S.;



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 439 Mental Health Services in Criminal Justice System

**SPONSOR(S):** McBurney

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		White TW	White TW
2) Children, Families & Seniors Subcommittee			
3) Appropriations Committee			
4) Judiciary Committee			

### SUMMARY ANALYSIS

To address mental health issues in the criminal justice system, Florida has multiple programs, some of which operate on a statewide basis, e.g., state-administered forensic and civil mental health programs, and others which are only available in certain counties or circuits, e.g., mental health courts and veterans' courts. This bill amends statute governing these programs by:

- Creating the Forensic Hospital Diversion Pilot Program in Duval, Broward, and Miami-Dade Counties, which is to be modeled after the Miami-Dade Forensic Alternative Center.
- Authorizing county court judges to conditionally release misdemeanor defendants for the purpose of providing outpatient care and treatment.
- Creating statutory authority for each county to establish a mental health court program (MHCP) that provides pretrial intervention and postadjudicatory treatment-based programs.
- Authorizing courts to order adult offenders with mental illnesses to participate in pretrial intervention and postadjudicatory treatment-based programs and to admit juvenile offenders with mental illnesses into delinquency pretrial MHCPs.
- Expanding the definition of "veteran," for the purpose of eligibility for veterans' court, to include veterans who were discharged or released under a general discharge.
- Expanding the statutory authorization for certain offenders to transfer to a "problem-solving court" in another county to also include transfer to delinquency pretrial intervention programs.

This bill contains provisions that may have a negative fiscal impact on the Department of Children and Families, court system, and local governments. Please see "FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT," *infra*.

The bill takes effect July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### *Mental Health and Substance Use of Offenders in the Criminal Justice System*

On any given day in Florida, it is estimated that there are 17,000 prison inmates, 15,000 jail detainees, and 40,000 individuals under correctional supervision who experience serious mental illness.<sup>1</sup> Each year, as many as 125,000 adults with mental illnesses or substance use disorders, who require immediate treatment, are arrested and booked into Florida jails.<sup>2</sup> Further, of the 150,000 juveniles who are referred to Florida's Department of Juvenile Justice each year, more than 70 percent have at least one mental health disorder.<sup>3</sup>

Between 2002 and 2010, the population of inmates with mental illnesses or substance use disorders in Florida increased from 8,000 to 17,000 inmates.<sup>4</sup> By 2020, the number of inmates with these types of disorders is expected to reach at least 35,000, with an average annual increase of 1,700 individuals.<sup>5</sup> Between 2002 and 2010 forensic commitments increased from 863 to 1,549 and are projected to reach 2,800 by 2016.<sup>6</sup>

The majority of individuals with serious mental illnesses or substance use disorders who become involved with the criminal justice system are charged with minor misdemeanor and low-level felony offenses that are often a direct result of their untreated condition.<sup>7</sup> These individuals are typically poor, uninsured, homeless, minorities who are experiencing co-occurring mental health or substance use disorders.<sup>8</sup>

To address mental health issues in the criminal justice system, Florida has multiple programs, some of which operate on a statewide basis, e.g., forensic and civil mental health programs, and others which are only available in certain counties or circuits, e.g., mental health courts and veterans' courts,

###### *State Forensic System -- Mental Health Treatment for Criminal Defendants*

Chapter 916, F.S., governs the state forensic system, which is a network of state facilities and community services for persons who have mental health issues and who are involved with the criminal justice system. Offenders who are charged with a felony and adjudicated incompetent to proceed<sup>9</sup> and offenders who are adjudicated not guilty by reason of insanity may be involuntarily committed to state civil<sup>10</sup> and forensic<sup>11</sup> treatment facilities by the circuit court,<sup>12, 13</sup> or in lieu of such commitment, may be

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<sup>1</sup> The Florida Senate, *Forensic Hospital Diversion Pilot Program, Interim Report 2011-106*, (Oct. 2010).

<sup>2</sup> *Id.* at p. 1.

<sup>3</sup> Florida Department of Children and Families, Agency Analysis of 2009 Senate Bill 2018 (Mar. 2, 2009).

<sup>4</sup> The Florida Senate, *supra* note 1, at 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at p. 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> "Incompetent to proceed" means "the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding" or "the defendant has no rational, as well as factual, understanding of the proceedings against her or him." s. 916.12(1), F.S.

<sup>10</sup> A "civil facility" is: a mental health facility established within the Department of Children and Families (DCF) or by contract with DCF to serve individuals committed pursuant to chapter 394, F.S., and defendants pursuant to chapter 916, F.S., who do not require the security provided in a forensic facility; or an intermediate care facility for the developmentally disabled, a foster care facility, a group home facility, or a supported living setting designated by the Agency for Persons with Disabilities (APD) to serve defendants who do not require the security provided in a forensic facility. Section 916.106(4), F.S.

<sup>11</sup> A "forensic facility" is a separate and secure facility established within DCF or APD to service forensic clients. A separate and secure facility means a security-grade building for the purpose of separately housing persons who have mental illness from persons



released on conditional release by the circuit court if the person is not serving a prison sentence.<sup>14</sup> Conditional release is release into the community accompanied by outpatient care and treatment.<sup>15</sup> The committing court retains jurisdiction over the defendant while the defendant is under involuntary commitment or conditional release.<sup>16</sup>

The Department of Children and Families (DCF) oversees two state-operated forensic facilities, Florida State Hospital and North Florida Evaluation and Treatment Center, and two privately-operated, maximum security forensic treatment facilities, South Florida Evaluation and Treatment Center and Treasure Coast Treatment Center.

#### *Miami-Dade Forensic Alternative Center*

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based, forensic commitment program. The MDFAC serves adults:

- Age 18 years or older;
- Who have been found by a court to be incompetent to proceed due to serious mental illness or not guilty by reason of insanity for a second or third degree felony; and
- Who do not have a significant history of violence.<sup>17</sup>

The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community. It currently operates its 16-bed facility for a daily cost of \$284.81 per bed.<sup>18</sup>

Between August 2009 and August 2010, a total of 111 individuals were accepted and admitted to the program.<sup>19</sup> As of 2010, 38 individuals either stepped down from forensic commitment or completed the program. Of those individuals, 27 remained actively linked to the MDFAC and 11 did not.<sup>20</sup> Of the 27 individuals, 19 individuals did not recidivate.<sup>21</sup> Of recidivating individuals, only one individual was charged with committing a new offense (misdemeanor petit theft), while seven were rebooked into jail for non-compliance with conditions of release.<sup>22</sup>

As a result of the MDFAC program:

- The average number of days to restore competency has been reduced, as compared to forensic treatment facilities. The MDFAC on average restored competency within 99.3 days, while forensic treatment facilities required an average of 138.9 days.<sup>23</sup>

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who have intellectual disabilities or autism and separately housing persons who have been involuntarily committed pursuant to chapter 916, F.S., from nonforensic residents. Section 916.106(10), F.S.

<sup>12</sup> "Court" is defined to mean the circuit court. s. 916.106, F.S.

<sup>13</sup> ss. 916.13, 916.15, and 916.302, F.S.

<sup>14</sup> Section 916.17(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 916.16(1), F.S.

<sup>17</sup> Florida Department of Children and Families, Agency Analysis of 2015 House Bill 7113, p. 2 (Mar. 19, 2015).

<sup>18</sup> *Id.* at 2 and 4.

<sup>19</sup> Miami-Dade Forensic Alternative Ctr., *Pilot Program Status Report*, (Aug. 2010) (on file with the House Judiciary Comm.).

<sup>20</sup> *Id.* at 5-6.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* The individuals who remained linked to MDFAC services accounted for 11 jail bookings and spent a total of 85 days in jail after stepping down from forensic commitment; in contrast, of the 11 individuals who did not remain linked with the program, nine were rebooked for a total of 23 bookings resulting from new offenses and 15 resulting from technical violations. The nine individuals who recidivated accounted for 1,435 days in jail since stepping down from forensic commitment. *Id.*

<sup>23</sup> *Id.* "[I]ndividuals enrolled in MDFAC are not rebooked into the jail following restoration of competency. Instead, they remain at the treatment program where they are re-evaluated by court appointed experts while the treatment team develops a comprehensive transition plan for eventual step-down into a less restrictive community placement. When court hearings are held to determine competency and/or authorize step-down into community placements, individuals are brought directly to court by MDFAC staff. This not only reduces burdens on the county jail, but eliminates the possibility that individuals will decompensate while incarcerated and require subsequent readmission to state treatment facilities. It also ensures that individuals remain linked to the service provider through the community re-entry and re-integration process." *Id.* It should be noted, however, that individuals diverted to MDFAC

- The burden on local jails has been reduced, as individuals served by MDFAC are not returned to jail upon restoration of competency.<sup>24</sup>
- As individuals are not returned to jail, the individual's symptoms are prevented from worsening while incarcerated, which could possibly require readmission to state treatment facilities.<sup>25</sup>
- Individuals access treatment more quickly and efficiently because of the ongoing assistance, support, and monitoring following discharge from inpatient treatment and community re-entry.<sup>26</sup>
- Individuals in the program receive additional services not provided in the state treatment facilities, such as intensive services targeting competency restoration, as well as community-living and re-entry skills.<sup>27</sup>
- It is standard practice at MDFAC to provide assistance to all individuals in accessing federal entitlement benefits that pay for treatment and housing upon discharge.<sup>28</sup>

### *Mental Health Courts*

Currently, the establishment of mental health courts in this state is not addressed in statute. Such courts, however, have been created in the majority of local jurisdictions for purposes of holding offenders accountable while connecting them to the treatment services necessary to address their mental illness.<sup>29</sup> Mental health courts typically share the following goals:

- To improve public safety by reducing criminal recidivism;
- To improve the quality of life of people with mental illnesses and to increase their participation in effective treatment; and
- To reduce court- and corrections-related costs through administrative efficiencies and often by providing an alternative to incarceration.<sup>30</sup>

As of March 2015, there were 27 mental health courts operating in 15 of the state's 20 judicial circuits.<sup>31</sup> Due to the fact that there is no statutory framework for these courts, eligibility criteria, program requirements, and other processes differ throughout the state. For example, to be eligible to participate in Alachua County's Mental Health Court, a defendant must be diagnosed with a mental illness or developmental disability and be arrested for certain misdemeanor or criminal traffic offenses.<sup>32</sup> Distinguishably, to be eligible to participate in Duval County's and Nassau County's Mental Health Courts, a defendant must have a mental health diagnosis of bipolar, schizophrenia, or anxiety and have been arrested for a misdemeanor or third or second degree felony.<sup>33</sup>

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have to meet certain criteria, which may result in the less mentally ill or those with less serious charges going to MDFAC as compared to the population placed in state hospitals.

<sup>24</sup> MDFAC program staff provides ongoing assistance, support and monitoring following an individual's discharge from inpatient treatment and community re-entry. Additionally, individuals are less likely to return to state hospitals, emergency rooms, and other crisis settings. *Id.*

<sup>25</sup> Of the 44 individuals referred to MDFAC between 2009 and 2010, 23 percent had one or more previous admissions to a state forensic hospital for competency restoration and subsequent readmission to the Miami-Dade County Jail. *Id.*

<sup>26</sup> The Florida Senate, *supra* note 1, at 9.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Florida Courts, *Mental Health Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/mental-health-courts.stml> (last visited Nov. 14, 2015).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Office of the State Attorney Eighth Judicial Circuit, *Alachua County Mental Health Court*, <http://sao8.org/Mental%20Health.htm> (last visited Nov. 14, 2015).

<sup>33</sup> Fourth Judicial Circuit Courts of Florida, *Duval County Mental Health Court*, <http://www.jud4.org/Court-Programs/Drug,-Mental-Health,-and-Veterans-Treatment-Courts/Mental-Health-Court-Programs/Duval-County-Mental-Health-Court.aspx> (last visited Nov. 14, 2015); Fourth Judicial Circuit Courts of Florida, *Nassau County Mental Health Court*, <http://www.jud4.org/Court-Programs/Drug,-Mental-Health,-and-Veterans-Treatment-Courts/Mental-Health-Court-Programs/Nassau-County-Mental-Health-Court.aspx> (last visited Nov. 14, 2015).

### *Veterans' Courts*

Veterans' courts are modeled after other specialty courts, such as drug courts and mental health courts. The goal of such courts is to provide treatment interventions to resolve underlying causes of criminal behavior to "reintegrate court participants into society, reduce future involvement with the criminal justice system, and promote public safety."<sup>34</sup>

Pursuant to s. 394.47891, F.S., the chief judge in each judicial circuit of this state is authorized to establish a Military Veterans and Servicemembers Court Program (hereafter referred to as "veterans' courts"). To be eligible for veterans' court, an individual must have been charged with a criminal offense, must have a military-related mental illness, traumatic brain injury, substance abuse disorder, or psychological problem, and must be a:

- Servicemember, which means "any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces."<sup>35</sup>
- Veteran, which means "a person who served in the active military, naval, or air service and who was **discharged or released under honorable conditions** only or who later received an upgraded discharge under honorable conditions...."<sup>36, 37</sup> Typically, veterans who receive honorable or general discharges are eligible for VA benefits while veterans who receive dishonorable, bad conduct, or dishonorable discharges are not.<sup>38</sup>

A servicemember or veteran who meets the qualifications and agrees to participate may be placed in a pretrial diversion program if the offense charged is a misdemeanor or a felony other than a felony listed in s. 948.06(8)(c), F.S.,<sup>39, 40</sup> or a postadjudicatory program for crimes committed on or after July 1, 2012.<sup>41</sup>

For a pretrial diversion program, a treatment intervention team must develop an individualized coordinated strategy for the servicemember or veteran which must be presented to the servicemember or veteran before he or she agrees to enter the program. The court retains jurisdiction in the case throughout the pretrial intervention period. At the end of the program, the court considers recommendations for disposition by the state attorney and the program administrator. If the veteran successfully completes the treatment program, the court must dismiss the criminal charges. If the court finds that the veteran did not successfully complete the program, the court may order the veteran to continue in education and treatment or authorize the state attorney to proceed with prosecution.<sup>42</sup>

For a postadjudicatory program, the court may require a servicemember or veteran to participate in a treatment program capable of treating his or her mental illness, traumatic brain injury, substance abuse disorder, or psychological program as a condition of probation or community control.<sup>43</sup>

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<sup>34</sup> Office of Program Policy Analysis & Government Accountability, Research Memorandum, *State-Funded Veterans' Courts in Florida*, (Jan. 30, 2015).

<sup>35</sup> s. 250.01(19), F.S.

<sup>36</sup> s. 1.01(14), F.S. (emphasis added).

<sup>37</sup> ss. 394.47891, 948.08(7), 948.16(2)(a), and 948.21, F.S.

<sup>38</sup> Office of Program Policy Analysis & Government Accountability, *supra* note 34.

<sup>39</sup> ss. 948.08(7) and 948.16(2), F.S.

<sup>40</sup> The disqualifying offenses listed in s. 948.06(8)(c), F.S., include: (a) kidnapping, false imprisonment of a child under the age of 13, or luring or enticing a child; (b) murder, felony murder, or manslaughter; (c) aggravated battery; (d) sexual battery; (e) certain lewd or lascivious offenses; (f) robbery, carjacking, or home invasion robbery; (g) sexual performance by a child; (h) computer pornography, transmission of child pornography, or selling or buying of minors; (i) poisoning food or water; (j) abuse of a dead human body; (k) certain burglary offenses; (l) arson; (m) aggravated assault; (n) aggravated stalking; (o) aircraft piracy; (p) unlawful throwing, placing, or discharging of a destructive device or bomb; and (q) treason..

<sup>41</sup> s. 948.21, F.S.

<sup>42</sup> ss. 948.08(7)(b) and (c), and 948.16(2) and (3), F.S.

<sup>43</sup> s. 948.21, F.S.

As of March 2015, Florida had 22 veterans' courts operating in 13 circuits,<sup>44</sup> which includes courts in eight counties that received state general revenue funding for Fiscal Year 2015-2016.<sup>45</sup> Six counties in Florida received state general revenue funding for Fiscal Year 2014-2015, for veterans' courts.<sup>46</sup>

According to data from a January 2015, research memorandum drafted by the Office of Program Policy Analysis and Government Accountability, 45 participants graduated from the state-funded veterans' courts between July 2013 and October 2014. Fifty-two percent of the participants had felony charges, mainly third-degree felony offenses for grand theft, burglary, felony battery, and drug possession.<sup>47</sup> The remaining 48 percent had first and second degree misdemeanor charges, the most common of which were battery and driving under the influence. Sixty-two percent of the participants had a dual diagnosis of mental health issues and substance abuse.<sup>48</sup>

#### *Transfer for Participation in a Problem-Solving Court*

A "problem-solving court" is defined to mean specified drug courts, veterans' courts pursuant to ss. 394.47891, 948.08, 948.16, or 948.21, F.S., or mental health courts.<sup>49</sup> A person who eligible for participation in a problem-solving court shall have his or case transferred to a county other than that in which the charge arose if:

- Requested by the person or a court;
- The person agrees to the transfer;
- The authorized representative of the trial court consults with the authorized representative of the problem-solving court in the county to which transfer is desired; and
- Both representatives agree to the transfer.<sup>50</sup>

The jurisdiction to which the case has been transferred is required to dispose of the case.<sup>51</sup>

#### **Effect of Bill**

##### *Forensic Hospital Diversion Pilot Program*

This bill creates s. 916.185, F.S., to establish the Forensic Hospital Diversion Pilot Program, which is to be modeled after the Miami-Dade Forensic Alternative Center. The intent of the pilot program is to serve offenders who have mental illnesses or co-occurring mental illnesses and substance use disorders and who are involved in or at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities.

Under the bill, DCF is required to implement the pilot program in Duval, Broward, and Miami-Dade counties if existing are available to do so on a recurring basis. The pilot program must include a comprehensive continuum of care and services that use evidence-based practices and best practices.<sup>52</sup> The DCF is authorized to request budget amendments to realign funds between mental health services and community substance abuse and mental health services in order to implement the pilot program.

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<sup>44</sup> Florida Courts, *Veterans Courts*, <http://www.flcourts.org/resources-and-services/court-improvement/problem-solving-courts/veterans-court.stm> (last visited Nov. 14, 2015).

<sup>45</sup> The following nine counties were appropriated recurring general revenue funds for Fiscal Year 2015-2016: Clay, Okaloosa, Pasco, Pinellas, and Escambia Counties each received \$150,000; Leon County received \$125,000; and Duval and Orange Counties each received \$200,000. Senate Bill 2500-A (2015), Specific Appropriation 3169.

<sup>46</sup> The following seven counties were appropriated recurring general revenue funds for Fiscal Year 2014-2015: Clay, Okaloosa, Pasco, and Pinellas Counties each received \$150,000; and Duval and Orange Counties each received \$200,000. House Bill 5001 (2014), Specific Appropriation 3193.

<sup>47</sup> *Id.* at 5.

<sup>48</sup> Office of Program Policy Analysis & Government Accountability, *supra* note 34.

<sup>49</sup> s. 910.035(5)(a), F.S.

<sup>50</sup> s. 910.035(5)(b), F.S.

<sup>51</sup> s. 910.035(5)(f), F.S.

<sup>52</sup> The bill defines the terms "best practices," "community forensic system," and "evidence-based practices" for purposes of the section in s. 916.185(2)(a)-(c), F.S., respectively.

Participation in the program is limited to persons who:

- Are 18 years of age and older;
- Are charged with a second or third degree felony;
- Do not have a significant history of violent criminal offenses;
- Have been adjudicated either incompetent to proceed to trial or not guilty by reason of insanity;
- Meet safety and treatment criteria established by DCF for placement in the community; and
- Would otherwise be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court, in conjunction with the Supreme Court Mental Health and Substance Abuse Committee, to develop educational training for judges in the pilot program counties on the community forensic system.

The DCF is authorized to adopt rules to administer the section.

#### *Conditional Release*

The bill amends ss. 916.06 and 916.17, F.S., which currently authorize circuit courts to conditionally release a felony defendant in lieu of involuntary commitment, to also authorize county courts to conditionally release a misdemeanor defendant solely for the purpose of providing outpatient care and treatment.

#### *Treatment-Based Mental Health Court Programs*

The bill creates s. 394.47892, F.S., to authorize each county to fund a treatment-based mental health court program (MHCP) under which defendants in the justice system who are assessed with a mental illness will be processed in a manner that appropriately addresses the severity of the mental illness through treatment services tailored to the participant. If a county chooses to fund a MHCP, it must secure funding from sources other than the state for costs not otherwise assumed by the state; however, counties may use funds for treatment and other services provided through state executive branch agencies and may provide, by interlocal agreement, for the collective funding of the programs.

The bill specifies that a MHCP may include:

- Pretrial intervention programs under ss. 948.08, 948.16, and 985.345, F.S.
- Postadjudicatory treatment-based mental health court programs under ss. 948.01 and 948.06, F.S.
- Review of the status of compliance or noncompliance of sentenced defendants in the program.

Under the bill, entry into a:

- Pretrial treatment-based MHCP must be voluntary.
- Postadjudicatory treatment-based MHCP must be based on the sentencing court's assessment of:
  - The defendant's criminal history, mental health screening outcome, amenability to the services of the program, total sentence points, and agreement to enter the program.
  - The recommendation of the state attorney and the victim, if any.

If a defendant, while participating in a postadjudicatory MHCP, is subject to a violation of probation or community control under s. 948.06, such violation must be heard by the judge presiding over the MHCP. The judge is authorized to dispose of the violation as he or she deems appropriate if the resulting sentence or conditions are lawful.

Contingent on annual appropriation, the bill requires each judicial circuit to establish at least one coordinator position for the MHCP and establishes the coordinator's duties and responsibilities.

Further, each circuit is required to annually report sufficient client-level and programmatic data to the Office of State Courts Administrator annually for the purposes of program evaluation. Client-level data include:

- Primary offenses that resulted in the mental health court referral or sentence;
- Treatment compliance;
- Completion status and reasons for failure to complete;
- Offenses committed during treatment and sanctions imposed;
- Frequency of court appearances; and
- Units of service.

Programmatic data include referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources.

The bill also authorizes the chief judge of each judicial circuit to appoint an advisory committee for the treatment-based MHCP and specifies who may serve on such committee.

Finally, the bill amends various sections of law, as described below, to authorize courts to order defendants into pretrial and postadjudicatory treatment-based MHCPs.

- Pretrial MHCPs
  - Section 948.08(8), F.S., is amended to authorize a defendant to be voluntarily admitted into a *felony pretrial MHCP*, upon motion of either party or the court, if the defendant has a mental illness, has not been convicted of a felony, and is charged with:
    - A nonviolent felony that includes a third degree felony violation of chapter 810<sup>53</sup> or any other felony offense that is not a forcible felony as defined in s. 776.08;
    - Resisting an officer with violence under s. 843.01, or battery on a law enforcement officer under s. 784.07, if the law enforcement officer and state attorney consent to the defendant's participation; or
    - Aggravated assault if the victim and state attorney consent to the defendant's participation.<sup>54</sup>
  - Section 948.16(3), is amended to authorize a defendant to be voluntarily admitted into a *misdemeanor pretrial MHCP*, upon motion of either party or the court, if the defendant has a mental illness.
  - Section 985.345(4), F.S., is amended to authorize a child to be voluntarily admitted to a *delinquency pretrial MHCP*, upon motion of either party or the court, if the child has a mental illness, has not been previously adjudicated for a felony, and is charged with:
    - A misdemeanor;
    - A nonviolent felony meaning a third degree felony violation of chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08;
    - Resisting an officer with violence under s. 843.01, F.S., or battery on a law enforcement officer under s. 784.07, F.S., if the law enforcement officer and state attorney consent to the child's participation; or
    - Aggravated assault, if the victim and state attorney consent to the child's participation.<sup>55</sup>
- Postadjudicatory treatment based MHCPs
  - Section 948.01(8), F.S., is amended to authorize a court to place a defendant into a postadjudicatory treatment-based MHCP, as a condition of the defendant's probation or

<sup>53</sup> Chapter 810, F.S., addresses burglary and trespass.

<sup>54</sup> The bill specifies that at the end of the pretrial intervention period, the court must consider the recommendations of the treatment provider and state attorney as to disposition of the pending charges. The court shall determine, by written finding, if the defendant has successfully completed program. If unsuccessful, the court may order the person to continue in education and treatment or order that the charges revert to normal channels for prosecution. If successful, the court shall dismiss the charges. s. 948.08(8)(b), F.S.

<sup>55</sup> The bill specifies that at the end of the delinquency pretrial intervention period, the court must consider the recommendations of the state attorney and the program administrator as to disposition of the pending charges. The court shall determine, by written finding, if the child has successfully completed the program. If unsuccessful, the court may order the child to continue in an education, treatment, or monitoring program if resources and funding are available or order that the charges revert to normal channels for prosecution. If successful, the court may dismiss the charges. If charges are dismissed, the child may, if otherwise eligible, may have his or her arrest record and plea of nolo contendere to the dismissed charges expunged under s. 943.0585, F.S. s. 985.345(5) and (6), F.S.

community control, and s. 948.06(2)(j), F.S., is amended to authorize a court to order the successful completion of postadjudicatory treatment-based MHCP when an offender admits that he or she has violated his or her community control or probation, if:

- The offense is a nonviolent felony;<sup>56</sup>
- The defendant is amenable to mental health treatment, including taking prescribed medications;
- The defendant is otherwise qualified under s. 394.47892(4), based on his or her criminal history, mental health screening outcome, amenability to the services of the program, total sentence points, and agreement to enter the program, and the recommendation of the state attorney and the victim, if any; and
- The defendant, after being fully advised of the purpose of the program, agrees to enter the program.<sup>57</sup>

#### *Veterans' Courts*

The bill amends ss. 394.47891, 948.08(7)(a), 948.16(2), and 948.21, F.S., to expand the pool of veterans who are eligible for veterans' courts from only those who have been discharged or released under honorable conditions to also include veterans who have been discharged or released under a general discharge. With respect to post-adjudication diversion programs imposed as a condition of probation or community control, the bill specifies in s. 948.21(2), F.S., that the expanded eligibility criteria for general discharges applies to crimes committed on or after July 1, 2016.

The bill also amends s. 948.06(2)(j), F.S., to permit a court to order an offender to a veterans' court program when the offender admits that he or she has violated his or her community control or probation if:

- The offense is a nonviolent felony;
- The offender is amenable to a veterans' court program;
- The offender, after being fully advised of the purpose of the program, agrees to enter the program; and
- The offender is otherwise qualified for a veterans' court program under s. 394.47891, F.S.<sup>58</sup>

#### *Transfer to Participate in a Problem-Solving Court*

The bill amends the definition of "problem-solving court" set forth in s. 910.035(5), F.S., to: (a) clarify that under existing law servicemembers are included in "veterans' courts"; (b) make conforming changes for the bill's authorization of MHCPs by specifying the citations for the sections of law created or amended by the bill to reference mental health courts; and (c) add delinquency pretrial intervention court programs under s. 985.345, F.S.

## **B. SECTION DIRECTORY:**

Section 1. Amending s. 394.47891, F.S., relating to military veterans and servicemembers court programs.

Section 2. Creating s. 394.47892, F.S., relating to treatment-based mental health court programs.

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<sup>56</sup> The amendment defines the term "nonviolent felony" as "a third degree felony violation under chapter 810 or any other felony offense that is not a forcible felony as defined in s. 776.08." It further specifies that, "[d]efendants charged with resisting an officer with violence under s. 843.01, battery on a law enforcement officer under s. 784.07, or aggravated assault may participate in the mental health court program if the court so orders after the victim is given his or her right to provide testimony or written statement to the court as provided in s. 921.143." ss. 948.01(8)(a), ) and 948.06(2)(j)1., F.S.

<sup>57</sup> When a post-adjudicatory treat-based MCHP is ordered, the original sentencing court must relinquish jurisdiction of the defendant's case to the MHCP until the defendant is no longer active in the program, the case is returned to the sentencing court due to the defendant's termination from the program for failure to comply, or the defendant's sentence is completed. The Department of Corrections is authorized by the bill to establish designated mental health probation officers to support individuals under supervision of the MHCP. ss. 948.01(8)(b) and (c) and 948.06(2)(j)2., F.S.

<sup>58</sup> The provisions discussed in Footnotes 56 and 57 also apply when a court orders an offender to a veterans' court program for a violation of the offender's community control or probation. s. 948.06(2)(j), F.S.

Section 3. Amending s. 910.035(5), F.S., relating to transfer for participation in a problem-solving court.

Section 4. Amending s. 916.06(5), F.S., relating to definitions for the chapter entitled "Mentally Deficient and Mentally Ill Defendants."

Section 5. Amending s. 916.17(1), F.S., relating to conditional release.

Section 6. Creating s. 916.185, F.S., relating to the Forensic Hospital Diversion Pilot Program.

Section 7. Amending s. 948.01, F.S., relating to when a court may place a defendant on probation or into community control.

Section 8. Amending s. 948.06(2)(j), F.S., relating to violations of probation or community control.

Section 9. Amending s. 948.08(7) and (8), F.S., relating to felony pretrial intervention programs.

Section 10. Amending s. 948.16, F.S., relating to misdemeanor pretrial intervention programs.

Section 11. Amending s. 948.21, F.S., relating to conditions of community control or probation for military servicemembers and veterans.

Section 12. Amending s. 985.385(4) through (7), F.S., relating to delinquency pretrial intervention programs.

Section 13. Providing an effective 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:

This bill expands the definition of the term "veteran" for purposes of veterans' courts to include veterans who were discharged or released under a general discharge. This may increase the number of veterans eligible to participate in veterans' court programs, which could increase the costs associated with these programs; however, such costs will be limited by the amount of state funds appropriated to such programs. Additionally, such costs may be offset to the extent that the need for prison beds is reduced by placement in veterans' court programs.

The bill requires DCF to implement the Forensic Hospital Diversion Pilot Program in Duval, Broward, and Miami-Dade Counties. A fiscal impact statement for this requirement was not available from the DCF at the time of this analysis. For CS/HB 7113 (2015), which contained a similar Forensic Hospital Diversion Pilot Program that was authorized to be implemented by DCF in Escambia, Hillsborough, and Miami-Dade Counties, the DCF estimated that it would cost a total of approximately \$4,788,000 to fund the three pilot programs.<sup>59</sup>

<sup>59</sup> The Florida Department of Children and Families, *supra* note 17, at 2, 4.  
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DATE: 11/16/2015



The Office of State Courts Administrator (OSCA) indicates that the fiscal impact of the bill cannot be accurately determined due to the unavailability of data needed to quantifiably establish the impact on judicial and court workload. Specifically, OSCA noted that:

- An increased number of MHCPs will increase judicial and court workload on the front end because such programs require more hearings and monitoring; however, such increase may be mitigated by a decrease in recidivism which may be generated by additional MHCPs.
- Expanded eligibility for veterans' courts could increase costs; however, such programs are discretionary with the courts and limited by available resources.
- Authorizing county courts to order conditional release of a defendant for outpatient care and treatment is not expected to significantly impact judicial or court workload.<sup>60</sup>

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

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

##### 2. Expenditures:

This bill expands the definition of the term "veteran" for purposes of veterans' courts to include veterans who were discharged or released under a general discharge. This may increase the number of veterans eligible to participate in veterans' court programs, which could increase the costs associated with these programs for counties that choose to fund such programs. Such costs may be offset, however, to the extent that the need for jail beds is reduced by placement in veterans' court programs.

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The bill authorizes DCF to adopt rules to administer s. 916.185, F.S., which establishes the Forensic Hospital Diversion Pilot Program.

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<sup>60</sup> Florida Office of the State Courts Administrator, Analysis of 2016 Senate Bill 604, pp. 2-3 (Nov. 13, 2015) .

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A



27 | mental health court programs; amending s. 948.08,  
 28 | F.S.; expanding eligibility requirements for certain  
 29 | pretrial intervention programs; providing for  
 30 | voluntary admission into pretrial mental health court  
 31 | program; amending s. 948.16, F.S.; expanding  
 32 | eligibility of veterans for a misdemeanor pretrial  
 33 | veterans' treatment intervention program; providing  
 34 | eligibility of misdemeanor defendants for a  
 35 | misdemeanor pretrial mental health court program;  
 36 | amending s. 948.21, F.S.; expanding veterans'  
 37 | eligibility for participating in treatment programs  
 38 | while on court-ordered probation or community control;  
 39 | amending s. 985.345, F.S.; authorizing pretrial mental  
 40 | health court programs for certain juvenile offenders;  
 41 | providing for disposition of pending charges after  
 42 | completion of the pretrial intervention program;  
 43 | providing an effective date.

44 |  
 45 | Be It Enacted by the Legislature of the State of Florida:

46 |  
 47 | Section 1. Section 394.47891, Florida Statutes, is amended  
 48 | to read:

49 | 394.47891 Military veterans and servicemembers court  
 50 | programs.—The chief judge of each judicial circuit may establish  
 51 | a Military Veterans and Servicemembers Court Program under which  
 52 | veterans, as defined in s. 1.01, including veterans who were

53 discharged or released under a general discharge, and  
 54 servicemembers, as defined in s. 250.01, who are charged or  
 55 convicted of a criminal offense and who suffer from a military-  
 56 related mental illness, traumatic brain injury, substance abuse  
 57 disorder, or psychological problem can be sentenced in  
 58 accordance with chapter 921 in a manner that appropriately  
 59 addresses the severity of the mental illness, traumatic brain  
 60 injury, substance abuse disorder, or psychological problem  
 61 through services tailored to the individual needs of the  
 62 participant. Entry into any Military Veterans and Servicemembers  
 63 Court Program must be based upon the sentencing court's  
 64 assessment of the defendant's criminal history, military  
 65 service, substance abuse treatment needs, mental health  
 66 treatment needs, amenability to the services of the program, the  
 67 recommendation of the state attorney and the victim, if any, and  
 68 the defendant's agreement to enter the program.

69 Section 2. Section 394.47892, Florida Statutes, is created  
 70 to read:

71 394.47892 Treatment-based mental health court programs.-  
 72 (1) Each county may fund a treatment-based mental health  
 73 court program under which defendants in the justice system  
 74 assessed with a mental illness shall be processed in such a  
 75 manner as to appropriately address the severity of the  
 76 identified mental illness through treatment services tailored to  
 77 the individual needs of the participant. The Legislature intends  
 78 to encourage the department, the Department of Corrections, the

79 Department of Juvenile Justice, the Department of Health, the  
 80 Department of Law Enforcement, the Department of Education, and  
 81 other such agencies, local governments, law enforcement  
 82 agencies, interested public or private entities, and individuals  
 83 to support the creation and establishment of problem-solving  
 84 court programs. Participation in a treatment-based mental health  
 85 court program does not relieve a public or private agency of its  
 86 responsibility for a child or an adult, but enables such agency  
 87 to better meet the child's or adult's needs through shared  
 88 responsibility and resources.

89 (2) Treatment-based mental health court programs may  
 90 include pretrial intervention programs as provided in ss.  
 91 948.08, 948.16, and 985.345, postadjudicatory treatment-based  
 92 mental health court programs as provided in ss. 948.01 and  
 93 948.06, and review of the status of compliance or noncompliance  
 94 of sentenced defendants through a treatment-based mental health  
 95 court program.

96 (3) Entry into a pretrial treatment-based mental health  
 97 court program is voluntary.

98 (4)(a) Entry into a postadjudicatory treatment-based  
 99 mental health court program as a condition of probation or  
 100 community control pursuant to s. 948.01 or s. 948.06 must be  
 101 based upon the sentencing court's assessment of the defendant's  
 102 criminal history, mental health screening outcome, amenability  
 103 to the services of the program, and total sentence points; the  
 104 recommendation of the state attorney and the victim, if any; and

105 the defendant's agreement to enter the program.

106 (b) A defendant who is sentenced to a postadjudicatory  
 107 mental health court program and who, while a mental health court  
 108 participant, is the subject of a violation of probation or  
 109 community control under s. 948.06 shall have the violation of  
 110 probation or community control heard by the judge presiding over  
 111 the postadjudicatory mental health court program. After a  
 112 hearing on or admission of the violation, the judge shall  
 113 dispose of any such violation as he or she deems appropriate if  
 114 the resulting sentence or conditions are lawful.

115 (5) (a) Contingent upon an annual appropriation by the  
 116 Legislature, each judicial circuit shall establish, at a  
 117 minimum, one coordinator position for the treatment-based mental  
 118 health court program within the state courts system to  
 119 coordinate the responsibilities of the participating agencies  
 120 and service providers. Each coordinator shall provide direct  
 121 support to the treatment-based mental health court program by  
 122 providing coordination between the multidisciplinary team and  
 123 the judiciary, providing case management, monitoring compliance  
 124 of the participants in the treatment-based mental health court  
 125 program with court requirements, and providing program  
 126 evaluation and accountability.

127 (b) Each circuit shall report sufficient client-level and  
 128 programmatic data to the Office of the State Courts  
 129 Administrator annually for purposes of program evaluation.  
 130 Client-level data include primary offenses that resulted in the

131 mental health court referral or sentence, treatment compliance,  
 132 completion status and reasons for failure to complete, offenses  
 133 committed during treatment and the sanctions imposed, frequency  
 134 of court appearances, and units of service. Programmatic data  
 135 include referral and screening procedures, eligibility criteria,  
 136 type and duration of treatment offered, and residential  
 137 treatment resources.

138 (6) If a county chooses to fund a treatment-based mental  
 139 health court program, the county must secure funding from  
 140 sources other than the state for those costs not otherwise  
 141 assumed by the state pursuant to s. 29.004. However, this  
 142 subsection does not preclude counties from using funds for  
 143 treatment and other services provided through state executive  
 144 branch agencies. Counties may provide, by interlocal agreement,  
 145 for the collective funding of these programs.

146 (7) The chief judge of each judicial circuit may appoint  
 147 an advisory committee for the treatment-based mental health  
 148 court program. The committee shall be composed of the chief  
 149 judge, or his or her designee, who shall serve as chair; the  
 150 judge of the treatment-based mental health court program, if not  
 151 otherwise designated by the chief judge as his or her designee;  
 152 the state attorney, or his or her designee; the public defender,  
 153 or his or her designee; the treatment-based mental health court  
 154 program coordinators; community representatives; treatment  
 155 representatives; and any other persons who the chair deems  
 156 appropriate.



157 Section 3. Paragraph (a) of subsection (5) of section  
 158 910.035, Florida Statutes, is amended to read:

159 910.035 Transfer from county for plea, sentence, or  
 160 participation in a problem-solving court.-

161 (5) TRANSFER FOR PARTICIPATION IN A PROBLEM-SOLVING  
 162 COURT.-

163 (a) For purposes of this subsection, the term "problem-  
 164 solving court" means a drug court pursuant to s. 948.01, s.  
 165 948.06, s. 948.08, s. 948.16, or s. 948.20; a military veterans'  
 166 and servicemembers' court pursuant to s. 394.47891, s. 948.08,  
 167 s. 948.16, or s. 948.21; ~~or~~ a mental health court pursuant to s.  
 168 394.47892, s. 948.01, s. 948.06, s. 948.08, or s. 948.16; or a  
 169 delinquency pretrial intervention court program pursuant to s.  
 170 985.345.

171 Section 4. Subsection (5) of section 916.106, Florida  
 172 Statutes, is amended to read:

173 916.106 Definitions.-For the purposes of this chapter, the  
 174 term:

175 (5) "Court" means the circuit court and includes a county  
 176 court ordering the conditional release of a defendant as  
 177 provided in s. 916.17.

178 Section 5. Subsection (1) of section 916.17, Florida  
 179 Statutes, is amended to read:

180 916.17 Conditional release.-

181 (1) Except for an inmate currently serving a prison  
 182 sentence, the committing court may order a conditional release

183 of any defendant in lieu of an involuntary commitment to a  
 184 facility pursuant to s. 916.13 or s. 916.15 based upon an  
 185 approved plan for providing appropriate outpatient care and  
 186 treatment. A county court may order the conditional release of a  
 187 defendant for purposes of the provision of outpatient care and  
 188 treatment only. Upon a recommendation that outpatient treatment  
 189 of the defendant is appropriate, a written plan for outpatient  
 190 treatment, including recommendations from qualified  
 191 professionals, must be filed with the court, with copies to all  
 192 parties. Such a plan may also be submitted by the defendant and  
 193 filed with the court with copies to all parties. The plan shall  
 194 include:

- 195 (a) Special provisions for residential care or adequate
- 196 supervision of the defendant.
- 197 (b) Provisions for outpatient mental health services.
- 198 (c) If appropriate, recommendations for auxiliary services
- 199 such as vocational training, educational services, or special
- 200 medical care.

201  
 202 In its order of conditional release, the court shall specify the  
 203 conditions of release based upon the release plan and shall  
 204 direct the appropriate agencies or persons to submit periodic  
 205 reports to the court regarding the defendant's compliance with  
 206 the conditions of the release and progress in treatment, with  
 207 copies to all parties.

208 Section 6. Section 916.185, Florida Statutes, is created

209 to read:

210 916.185 Forensic Hospital Diversion Pilot Program.-

211 (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds  
 212 that many jail inmates who have serious mental illnesses and who  
 213 are committed to state forensic mental health treatment  
 214 facilities for restoration of competency to proceed could be  
 215 served more effectively and at less cost in community-based  
 216 alternative programs. The Legislature further finds that many  
 217 people who have serious mental illnesses and who have been  
 218 discharged from state forensic mental health treatment  
 219 facilities could avoid returning to the criminal justice and  
 220 forensic mental health systems if they received specialized  
 221 treatment in the community. Therefore, it is the intent of the  
 222 Legislature to create the Forensic Hospital Diversion Pilot  
 223 Program to serve offenders who have mental illnesses or co-  
 224 occurring mental illnesses and substance use disorders and who  
 225 are involved in or at risk of entering state forensic mental  
 226 health treatment facilities, prisons, jails, or state civil  
 227 mental health treatment facilities.

228 (2) DEFINITIONS.-As used in this section, the term:

229 (a) "Best practices" means treatment services that  
 230 incorporate the most effective and acceptable interventions  
 231 available in the care and treatment of offenders who are  
 232 diagnosed as having mental illnesses or co-occurring mental  
 233 illnesses and substance use disorders.

234 (b) "Community forensic system" means the community mental

235 health and substance use forensic treatment system, including  
 236 the comprehensive set of services and supports provided to  
 237 offenders involved in or at risk of becoming involved in the  
 238 criminal justice system.

239 (c) "Evidence-based practices" means interventions and  
 240 strategies that, based on the best available empirical research,  
 241 demonstrate effective and efficient outcomes in the care and  
 242 treatment of offenders who are diagnosed as having mental  
 243 illnesses or co-occurring mental illnesses and substance use  
 244 disorders.

245 (3) CREATION.—There is created a Forensic Hospital  
 246 Diversion Pilot Program to provide competency-restoration and  
 247 community-reintegration services in either a locked residential  
 248 treatment facility when appropriate or a community-based  
 249 facility based on considerations of public safety, the needs of  
 250 the individual, and available resources.

251 (a) The department shall implement a Forensic Hospital  
 252 Diversion Pilot Program modeled after the Miami-Dade Forensic  
 253 Alternative Center, taking into account local needs and  
 254 resources in Duval County, in conjunction with the Fourth  
 255 Judicial Circuit in Duval County; in Broward County, in  
 256 conjunction with the Seventeenth Judicial Circuit in Broward  
 257 County; and in Miami-Dade County, in conjunction with the  
 258 Eleventh Judicial Circuit in Miami-Dade County.

259 (b) The department shall include a comprehensive continuum  
 260 of care and services that use evidence-based practices and best

261 | practices to treat offenders who have mental health and co-  
 262 | occurring substance use disorders.

263 | (c) The department and the corresponding judicial circuits  
 264 | shall implement this section if existing resources are available  
 265 | to do so on a recurring basis. The department may request budget  
 266 | amendments pursuant to chapter 216 to realign funds between  
 267 | mental health services and community substance abuse and mental  
 268 | health services in order to implement this pilot program.

269 | (4) ELIGIBILITY.—Participation in the Forensic Hospital  
 270 | Diversion Pilot Program is limited to offenders who:

271 | (a) Are 18 years of age or older.

272 | (b) Are charged with a felony of the second degree or a  
 273 | felony of the third degree.

274 | (c) Do not have a significant history of violent criminal  
 275 | offenses.

276 | (d) Are adjudicated incompetent to proceed to trial or not  
 277 | guilty by reason of insanity pursuant to this part.

278 | (e) Meet public safety and treatment criteria established  
 279 | by the department for placement in a community setting.

280 | (f) Otherwise would be admitted to a state mental health  
 281 | treatment facility.

282 | (5) TRAINING.—The Legislature encourages the Florida  
 283 | Supreme Court, in consultation and cooperation with the Florida  
 284 | Supreme Court Task Force on Substance Abuse and Mental Health  
 285 | Issues in the Courts, to develop educational training for judges  
 286 | in the pilot program areas which focuses on the community

287 forensic system.

288 (6) RULEMAKING.—The department may adopt rules to  
 289 administer this section.

290 Section 7. Subsection (8) is added to section 948.01,  
 291 Florida Statutes, to read:

292 948.01 When court may place defendant on probation or into  
 293 community control.—

294 (8)(a) Notwithstanding s. 921.0024 and effective for  
 295 offenses committed on or after July 1, 2016, the sentencing  
 296 court may place the defendant into a postadjudicatory treatment-  
 297 based mental health court program if the offense is a nonviolent  
 298 felony, the defendant is amenable to mental health treatment,  
 299 including taking prescribed medications, and the defendant is  
 300 otherwise qualified under s. 394.47892(4). The satisfactory  
 301 completion of the program must be a condition of the defendant's  
 302 probation or community control. As used in this subsection, the  
 303 term "nonviolent felony" means a third degree felony violation  
 304 under chapter 810 or any other felony offense that is not a  
 305 forcible felony as defined in s. 776.08. Defendants charged with  
 306 resisting an officer with violence under s. 843.01, battery on a  
 307 law enforcement officer under s. 784.07, or aggravated assault  
 308 may participate in the mental health court program if the court  
 309 so orders after the victim is given his or her right to provide  
 310 testimony or written statement to the court as provided in s.  
 311 921.143.

312 (b) The defendant must be fully advised of the purpose of

313 the program and the defendant must agree to enter the program.  
 314 The original sentencing court shall relinquish jurisdiction of  
 315 the defendant's case to the postadjudicatory treatment-based  
 316 mental health court program until the defendant is no longer  
 317 active in the program, the case is returned to the sentencing  
 318 court due to the defendant's termination from the program for  
 319 failure to comply with the terms thereof, or the defendant's  
 320 sentence is completed.

321 (c) The Department of Corrections may establish designated  
 322 mental health probation officers to support individuals under  
 323 supervision of the mental health court.

324 Section 8. Paragraph (j) is added to subsection (2) of  
 325 section 948.06, Florida Statutes, to read:

326 948.06 Violation of probation or community control;  
 327 revocation; modification; continuance; failure to pay  
 328 restitution or cost of supervision.—

329 (2)

330 (j)1. Notwithstanding s. 921.0024 and effective for  
 331 offenses committed on or after July 1, 2016, the court may order  
 332 the offender to successfully complete a postadjudicatory  
 333 treatment-based mental health court program under s. 394.47892  
 334 or a military veterans and servicemembers court program under s.  
 335 394.47891 if:

336 a. The court finds or the offender admits that the  
 337 offender has violated his or her community control or probation.

338 b. The underlying offense is a nonviolent felony. As used

339 in this subsection, the term "nonviolent felony" means a third  
 340 degree felony violation under chapter 810 or any other felony  
 341 offense that is not a forcible felony as defined in s. 776.08.  
 342 Offenders charged with resisting an officer with violence under  
 343 s. 843.01, battery on a law enforcement officer under s. 784.07,  
 344 or aggravated assault may participate in the mental health court  
 345 program if the court so orders after the victim is given his or  
 346 her right to provide testimony or written statement to the court  
 347 as provided in s. 921.143.

348 c. The court determines that the offender is amenable to  
 349 the services of a postadjudicatory treatment-based mental health  
 350 court program, including taking prescribed medications, or a  
 351 military veterans and servicemembers court program.

352 d. The court explains the purpose of the program to the  
 353 offender and the offender agrees to participate.

354 e. The offender is otherwise qualified to participate in a  
 355 postadjudicatory treatment-based mental health court program  
 356 under s. 394.47892(4) or a military veterans and servicemembers  
 357 court program under s. 394.47891.

358 2. After the court orders the modification of community  
 359 control or probation, the original sentencing court shall  
 360 relinquish jurisdiction of the offender's case to the  
 361 postadjudicatory treatment-based mental health court program  
 362 until the offender is no longer active in the program, the case  
 363 is returned to the sentencing court due to the offender's  
 364 termination from the program for failure to comply with the



365 terms thereof, or the offender's sentence is completed.

366 Section 9. Subsection (8) of section 948.08, Florida  
 367 Statutes, is renumbered as subsection (9), paragraph (a) of  
 368 subsection (7) is amended, and a new subsection (8) is added to  
 369 that section, to read:

370 948.08 Pretrial intervention program.—

371 (7)(a) Notwithstanding any provision of this section, a  
 372 person who is charged with a felony, other than a felony listed  
 373 in s. 948.06(8)(c), and identified as a veteran, as defined in  
 374 s. 1.01, including veterans who were discharged or released  
 375 under a general discharge, or servicemember, as defined in s.  
 376 250.01, who suffers from a military service-related mental  
 377 illness, traumatic brain injury, substance abuse disorder, or  
 378 psychological problem, is eligible for voluntary admission into  
 379 a pretrial veterans' treatment intervention program approved by  
 380 the chief judge of the circuit, upon motion of either party or  
 381 the court's own motion, except:

382 1. If a defendant was previously offered admission to a  
 383 pretrial veterans' treatment intervention program at any time  
 384 before trial and the defendant rejected that offer on the  
 385 record, the court may deny the defendant's admission to such a  
 386 program.

387 2. If a defendant previously entered a court-ordered  
 388 veterans' treatment program, the court may deny the defendant's  
 389 admission into the pretrial veterans' treatment program.

390 (8)(a) Notwithstanding any provision of this section, a

391 defendant is eligible for voluntary admission into a pretrial  
 392 mental health court program, established pursuant to s.  
 393 394.47892, and approved by the chief judge of the circuit, for a  
 394 period to be determined by the risk and needs assessment of the  
 395 defendant, upon motion of either party or the court's own motion  
 396 if:

- 397 1. The defendant is identified as having a mental illness;
- 398 2. The defendant has not been convicted of a felony; and
- 399 3. The defendant is charged with:

- 400 a. A nonviolent felony that includes a third degree felony  
 401 violation of chapter 810 or any other felony offense that is not  
 402 a forcible felony as defined in s. 776.08;

- 403 b. Resisting an officer with violence under s. 843.01, if  
 404 the law enforcement officer and state attorney consent to the  
 405 defendant's participation;

- 406 c. Battery on a law enforcement officer under s. 784.07,  
 407 if the law enforcement officer and state attorney consent to the  
 408 defendant's participation; or

- 409 d. Aggravated assault where the victim and state attorney  
 410 consent to the defendant's participation.

- 411 (b) At the end of the pretrial intervention period, the  
 412 court shall consider the recommendation of the treatment  
 413 provider and the recommendation of the state attorney as to  
 414 disposition of the pending charges. The court shall determine,  
 415 by written finding, whether the defendant has successfully  
 416 completed the pretrial intervention program. If the court finds

417 that the defendant has not successfully completed the pretrial  
 418 intervention program, the court may order the person to continue  
 419 in education and treatment, which may include a mental health  
 420 program offered by a licensed service provider, as defined in s.  
 421 394.455, or order that the charges revert to normal channels for  
 422 prosecution. The court shall dismiss the charges upon a finding  
 423 that the defendant has successfully completed the pretrial  
 424 intervention program.

425 Section 10. Subsections (3) and (4) of section 948.16,  
 426 Florida Statutes, are renumbered as subsections (4) and (5),  
 427 respectively, paragraph (a) of subsection (2) and present  
 428 subsection (4) are amended, and a new subsection (3) is added to  
 429 that section, to read:

430 948.16 Misdemeanor pretrial substance abuse education and  
 431 treatment intervention program; misdemeanor pretrial veterans'  
 432 treatment intervention program; misdemeanor pretrial mental  
 433 health court program.—

434 (2)(a) A veteran, as defined in s. 1.01, including  
 435 veterans who were discharged or released under a general  
 436 discharge, or servicemember, as defined in s. 250.01, who  
 437 suffers from a military service-related mental illness,  
 438 traumatic brain injury, substance abuse disorder, or  
 439 psychological problem, and who is charged with a misdemeanor is  
 440 eligible for voluntary admission into a misdemeanor pretrial  
 441 veterans' treatment intervention program approved by the chief  
 442 judge of the circuit, for a period based on the program's

443 requirements and the treatment plan for the offender, upon  
 444 motion of either party or the court's own motion. However, the  
 445 court may deny the defendant admission into a misdemeanor  
 446 pretrial veterans' treatment intervention program if the  
 447 defendant has previously entered a court-ordered veterans'  
 448 treatment program.

449 (3) A defendant who is charged with a misdemeanor and  
 450 identified as having a mental illness is eligible for voluntary  
 451 admission into a misdemeanor pretrial mental health court  
 452 program established pursuant to s. 394.47892, approved by the  
 453 chief judge of the circuit, for a period to be determined by the  
 454 risk and needs assessment of the defendant, upon motion of  
 455 either party or the court's own motion.

456 (5)~~(4)~~ Any public or private entity providing a pretrial  
 457 substance abuse education and treatment program or mental health  
 458 program under this section shall contract with the county or  
 459 appropriate governmental entity. The terms of the contract shall  
 460 include, but not be limited to, the requirements established for  
 461 private entities under s. 948.15(3). This requirement does not  
 462 apply to services provided by the Department of Veterans'  
 463 Affairs or the United States Department of Veterans Affairs.

464 Section 11. Section 948.21, Florida Statutes, is amended  
 465 to read:

466 948.21 Condition of probation or community control;  
 467 military servicemembers and veterans.—

468 (1) Effective for a probationer or community controllee

469 whose crime was committed on or after July 1, 2012, and who is a  
 470 veteran, as defined in s. 1.01, or servicemember, as defined in  
 471 s. 250.01, who suffers from a military service-related mental  
 472 illness, traumatic brain injury, substance abuse disorder, or  
 473 psychological problem, the court may, in addition to any other  
 474 conditions imposed, impose a condition requiring the probationer  
 475 or community controllee to participate in a treatment program  
 476 capable of treating the probationer or community controllee's  
 477 mental illness, traumatic brain injury, substance abuse  
 478 disorder, or psychological problem.

479 (2) Effective for a probationer or community controllee  
 480 whose crime is committed on or after July 1, 2016, and who is a  
 481 veteran, as defined in s. 1.01, including veterans who were  
 482 discharged or released under a general discharge, or  
 483 servicemember, as defined in s. 250.01, who suffers from a  
 484 military service-related mental illness, traumatic brain injury,  
 485 substance abuse disorder, or psychological problem, the court  
 486 may, in addition to any other conditions imposed, impose a  
 487 condition requiring the probationer or community controllee to  
 488 participate in a treatment program capable of treating the  
 489 probationer or community controllee's mental illness, traumatic  
 490 brain injury, substance abuse disorder, or psychological  
 491 problem.

492 (3) The court shall give preference to treatment programs  
 493 for which the probationer or community controllee is eligible  
 494 through the United States Department of Veterans Affairs or the

495 Florida Department of Veterans' Affairs. The Department of  
 496 Corrections is not required to spend state funds to implement  
 497 this section.

498 Section 12. Subsection (4) of section 985.345, Florida  
 499 Statutes, is renumbered as subsection (7) and amended, and new  
 500 subsections (4) through (6) are added to that section, to read:

501 985.345 Delinquency pretrial intervention program.—

502 (4) Notwithstanding any other provision of law, a child  
 503 who has been identified as having a mental illness and who has  
 504 not been previously adjudicated for a felony is eligible for  
 505 voluntary admission into a delinquency pretrial mental health  
 506 court program, established pursuant to s. 394.47892, approved by  
 507 the chief judge of the circuit, for a period based on the  
 508 program requirements and the treatment services that are  
 509 suitable for the child, upon motion of either party or the  
 510 court's own motion if the child is charged with:

511 (a) A misdemeanor;

512 (b) A nonviolent felony; for purposes of this subsection,  
 513 the term "nonviolent felony" means a third degree felony  
 514 violation of chapter 810 or any other felony offense that is not  
 515 a forcible felony as defined in s. 776.08;

516 (c) Resisting an officer with violence under s. 843.01, if  
 517 the law enforcement officer and state attorney consent to the  
 518 child's participation;

519 (d) Battery on a law enforcement officer under 784.07, if  
 520 the law enforcement officer and state attorney consent to the

521 child's participation; or

522 (e) Aggravated assault, if the victim and state attorney  
 523 consent to the child's participation,

524 (5) At the end of the delinquency pretrial intervention  
 525 period, the court shall consider the recommendation of the state  
 526 attorney and the program administrator as to disposition of the  
 527 pending charges. The court shall determine, by written finding,  
 528 whether the child has successfully completed the delinquency  
 529 pretrial intervention program. If the court finds that the child  
 530 has not successfully completed the delinquency pretrial  
 531 intervention program, the court may order the child to continue  
 532 in an education, treatment, or monitoring program if resources  
 533 and funding are available or order that the charges revert to  
 534 normal channels for prosecution. The court may dismiss the  
 535 charges upon a finding that the child has successfully completed  
 536 the delinquency pretrial intervention program.

537 (6) A child whose charges are dismissed after successful  
 538 completion of the mental health court program, if otherwise  
 539 eligible, may have his or her arrest record and plea of nolo  
 540 contendere to the dismissed charges expunged under s. 943.0585.

541 (7)~~(4)~~ Any entity, whether public or private, providing  
 542 pretrial substance abuse education, treatment intervention, and  
 543 a urine monitoring program or a mental health program under this  
 544 section must contract with the county or appropriate  
 545 governmental entity, and the terms of the contract must include,  
 546 but need not be limited to, the requirements established for

547 private entities under s. 948.15(3). It is the intent of the  
548 Legislature that public or private entities providing substance  
549 abuse education and treatment intervention programs involve the  
550 active participation of parents, schools, churches, businesses,  
551 law enforcement agencies, and the department or its contract  
552 providers.



553       Section 13. This act shall take effect July 1, 2016.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 257 Terroristic Threats  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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

**SUMMARY ANALYSIS**

Florida law currently imposes criminal penalties for making specific types of threats, as well as false reports regarding explosives or other destructive devices. However, such a threat or report must fall into narrow categories to be criminal. There are a number of states throughout the nation that criminalize threats of violence when made with the intent to cause some type of harm, such as an evacuation or other serious public inconvenience. Florida currently does not have such a prohibition in place.

The bill makes it a third degree felony for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for causing:

- Terror; or
- The evacuation of a building, place of assembly, or facility of public transportation.

A violation is punishable as a second degree felony, if the violation:

- Causes the occupants of a building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations;
- Involves a threat against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official; or
- Involves a threat against a family member of instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department (i.e., an increase of ten or fewer prison beds).

This bill is effective July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Florida law currently imposes criminal penalties for making specific types of threats, as well as false reports regarding explosives or other destructive devices. Such a threat or report must fall into one of several narrow categories to constitute a crime, with varying penalties depending on the type of threat or report that is made.

There are a number of states throughout the nation that criminalize threats of violence against others. Many of these states criminalize threats of violence when made with the intent to cause some type of harm, such as terror, an evacuation, or other serious public inconvenience.<sup>1</sup> Florida currently does not have such a prohibition in place.

##### Written Threat to Kill

It is currently a second degree felony<sup>2</sup> to write or compose and send, or procure the sending, of any written communication containing a threat to kill or do bodily injury to the person to whom the letter is sent, or a threat to kill or do bodily injury to the family of the person to whom such letter or communication is sent.<sup>3</sup>

This prohibition does not apply to unwritten threats, such as a threat made over the telephone, nor does it apply to written threats against a third party who is not the person, or the family of the person, to whom the letter was sent.

##### Threat Regarding a Destructive Device

It is currently a second degree felony for any person to threaten to throw, project, place, or discharge any destructive device<sup>4</sup> with intent to do bodily harm to any person or with intent to do damage to any property of any person.<sup>5</sup> A conviction under this statute does not require proof that the accused actually intended to follow through with the threat, only that the threat conveyed the intent to do bodily harm to another.<sup>6</sup>

This prohibition applies to both written and unwritten threats, but it does not apply to threats to do violence to a person without the use of a destructive device.

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<sup>1</sup> See, e.g., ALA. CODE §13A-10-15; GA. CODE ANN. §16-11-37; N.J. STAT. ANN. §2C:12-3; WYO. STAT. ANN. §6-2-505;

<sup>2</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S. s. 836.10, F.S.

<sup>4</sup> "Destructive device" means any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. "Destructive device" does not include: (1) A device which is not designed, redesigned, used, or intended for use as a weapon; (2) Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; (3) Any shotgun other than a short-barreled shotgun; or (4) Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

<sup>5</sup> s. 790.162, F.S.

<sup>6</sup> *Reid v. State*, 405 So. 2d 500 (Fla. 2d DCA 1981).

### Threat against a Public Servant

It is unlawful to harm or threaten to harm any public servant, his or her immediate family, or any other person with whose welfare the public servant is interested, with the intent to:

- Influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of, a public duty.
- Cause or induce the public servant to use or exert any influence on another public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant in violation of a public duty, or in performance of a public duty.<sup>7</sup>

It is a second degree felony to unlawfully harm any public servant or another other person with whose welfare the public servant is interested.<sup>8</sup> It is a third degree felony<sup>9</sup> to threaten unlawful harm to any public servant or to any other person with whose welfare the public servant is interested.<sup>10</sup>

This prohibition criminalizes both written and unwritten threats; however, it only applies to a threat that is made with the intent to influence or coerce a public servant. This prohibition is also limited to criminalizing threats made against public servants, their families, and other people with whose welfare the public servant is interested, and does not criminalize threats against other members of the public.

### False Reports

It is a second degree felony for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the place or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction,<sup>11</sup> or concerning any act of arson or other violence to property owned by the state or any political subdivision.<sup>12</sup> Any person who is convicted of a commission of this offense that resulted in the mobilization or action of any law enforcement officer or any state or local agency, may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.<sup>13</sup>

### Effect of the Bill

The bill makes it a third degree felony for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for causing:

- Terror;<sup>14</sup> or
- The evacuation of a building, place of assembly, or facility of public transportation.

A violation is punishable as a second degree felony, if the violation:

- Causes the occupants of a building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations;

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<sup>7</sup> s. 838.021, F.S.

<sup>8</sup> s. 838.021(3)(a), F.S.

<sup>9</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

<sup>10</sup> s. 838.021(3)(b), F.S.

<sup>11</sup> “Weapon of mass destruction” is defined as (1) any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; (2) any device or object involving a biological agent; (3) any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or (4) any biological agent, toxin, vector, or delivery system. s. 790.166(a), F.S.

<sup>12</sup> s. 790.164, F.S.

<sup>13</sup> s. 790.164(4)(d), F.S.

<sup>14</sup> “Terror” is defined as “a very strong feeling of fear.” MERRIAM-WEBSTER, *Terror*, <http://www.merriam-webster.com/dictionary/terror> (last visited Nov. 9, 2015). In Alabama, Georgia, and Kansas, which have statutes criminalizing a threat to commit violence with the purpose of terrorizing another, courts have rejected arguments that such statutes are unconstitutionally vague and overbroad. *Lansdell v. State*, 25 So.3d 1169 (Ala. Crim. App. 2007); *Lanthrip v. State*, 218 S.E.2d 771 (Ga. 1975); and *State v. Gunzelman*, 210 Kan. 481, 502 P.2d 705 (Kan. 1972).

- Involves a threat against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge or elected official; or
- Involves a threat against a family member of instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge or elected official.

A person who is convicted of a violation shall, in addition to any other restitution or penalty provided by law, pay restitution for all costs and damages caused by an evacuation resulting from the criminal conduct.

The bill provides the following definitions:

- “Family member of a person” means:
  - An individual related to the person by blood or marriage;
  - An individual living in the person's household or having the same legal residence as the person;
  - An individual who is engaged to be married to the person, or who holds himself or herself out as, or is generally known as, an individual whom the person intends to marry; or
  - An individual to whom the person stands in loco parentis.<sup>15</sup>
- “Instructional personnel” is defined in accordance with s. 1012.01, F.S.<sup>16</sup>
- “Law enforcement officer” means a current or former:
  - Law enforcement officer, correctional officer, correctional probation officer, part-time law enforcement officer, part-time correctional officer, part-time correctional probation officer, auxiliary law enforcement officer, auxiliary correctional officer, or auxiliary correctional probation officer, as those terms are respectively defined in s. 943.10, or county probation officer;
  - Employee or agent of the Department of Corrections who supervises or provides services to inmates;
  - Officer of the Florida Commission on Offender Review;
  - Federal law enforcement officer as defined in s. 901.1505; or
  - Law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

## B. SECTION DIRECTORY:

Section 1. Creates s. 836.12, F.S., relating to terroristic threats.

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 government revenues.

<sup>15</sup> “In loco parentis” means “in the place of a parent.” MERRIAM-WEBSTER, *In Loco Parentis*, <http://www.merriam-webster.com/dictionary/in%20loco%20parentis> (last visited Nov. 9, 2015).

<sup>16</sup> “Instructional personnel” means any K-12 staff member whose function includes the provision of direct instructional services to students. The term also includes K-12 personnel whose functions provide direct support in the learning process of students. s. 1012.01(2), F.S.

2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department (i.e., an increase of ten or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled  
 2 An act relating to terroristic threats; creating s.  
 3 836.12, F.S.; providing definitions; providing that a  
 4 person commits the crime of terroristic threats if he  
 5 or she threatens to commit a crime of violence under  
 6 specified circumstances; providing criminal penalties;  
 7 requiring payment of restitution; providing an  
 8 effective date.

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

11  
12 Section 1. Section 836.12, Florida Statutes, is created to  
13 read:

14 836.12 Terroristic Threats.-

15 Section 1. Section 836.12, Florida Statutes, is created to  
16 read:

17 836.12 Terroristic threats.-

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

19 (a) "Facility of public transportation" means a public  
 20 conveyance and any area, structure, or device which is used to  
 21 support, guide, control, permit, or facilitate the movement,  
 22 starting, stopping, takeoff, landing, or servicing of a public  
 23 conveyance or the loading or unloading of passengers, freight,  
 24 or goods. For purposes of this paragraph, the term "public  
 25 conveyance" includes a passenger or freight train, airplane,  
 26 bus, truck, car, boat, tramway, gondola, lift, elevator,

27 | escalator, or other device used for the public carriage of  
 28 | persons or property.

29 | (b) "Family member of a person" means:

30 | 1. An individual related to the person by blood or  
 31 | marriage;

32 | 2. An individual living in the person's household or  
 33 | having the same legal residence as the person;

34 | 3. An individual who is engaged to be married to the  
 35 | person, or who holds himself or herself out as, or is generally  
 36 | known as, an individual whom the person intends to marry; or

37 | 4. An individual to whom the person stands in loco  
 38 | parentis.

39 | (c) "Instructional personnel" has the same meaning as  
 40 | provided in s. 1012.01.

41 | (d) "Law enforcement officer" means a current or former:

42 | 1. Law enforcement officer, correctional officer,  
 43 | correctional probation officer, part-time law enforcement  
 44 | officer, part-time correctional officer, part-time correctional  
 45 | probation officer, auxiliary law enforcement officer, auxiliary  
 46 | correctional officer, or auxiliary correctional probation  
 47 | officer, as those terms are respectively defined in s. 943.10,  
 48 | or county probation officer;

49 | 2. Employee or agent of the Department of Corrections who  
 50 | supervises or provides services to inmates;

51 | 3. Officer of the Florida Commission on Offender Review;

52 | 4. Federal law enforcement officer as defined in s.



53 | 901.1505; or

54 | 5. Law enforcement personnel of the Fish and Wildlife  
 55 | Conservation Commission or the Department of Law Enforcement.

56 | (2) It is unlawful for a person to threaten to commit a  
 57 | crime of violence with the intent to cause, or with reckless  
 58 | disregard for the risk of causing:

59 | (a) Terror; or

60 | (b) The evacuation of a building, place of assembly, or  
 61 | facility of public transportation.

62 | (3) Except as provided in subsection (4), a person who  
 63 | violates subsection (2) commits a felony of the third degree,  
 64 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

65 | (4) A person who violates subsection (2) commits a felony  
 66 | of the second degree, punishable as provided in s. 775.082, s.  
 67 | 775.083, or s. 775.084, if the violation:

68 | (a) Causes the occupants of a building, place of assembly,  
 69 | or facility of public transportation to be diverted from their  
 70 | normal or customary operations;

71 | (b) Involves a threat against instructional personnel, a  
 72 | law enforcement officer, state attorney or assistant state  
 73 | attorney, firefighter, judge, or elected official; or

74 | (c) Involves a threat against a family member of a person  
 75 | identified in paragraph (b).

76 | (5) A person convicted of violating subsection (2) shall,  
 77 | in addition to any other restitution or penalty provided by law,  
 78 | pay restitution for all costs and damages caused by an

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79 | evacuation resulting from the criminal conduct.

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