



Justice Appropriations Subcommittee

Meeting Packet

**March 18, 2015
9:00 a.m. – 11:00 a.m.
Morris Hall**



The Florida House of Representatives
APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

Steve Crisafulli
Speaker

Larry Metz
Chair

MEETING AGENDA

Morris Hall
March 18, 2015

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following proposed committee bill(s):
PCB JUAS 15-01 - Juvenile Detention Costs
PCB JUAS 15-02 - Sentencing
- IV.** Consideration of the following bill(s):
CS/HB 91 Trade Secrets by Criminal Justice Subcommittee; Rep. Pilon
CS/HB 439 Department of Legal Affairs by Criminal Justice Subcommittee;
Rep. Eisnaugle
CS/HB 443 - Violation of Injunction for Protection by Criminal Justice
Subcommittee; Rep. Rodriguez, J.
CS/HB 775 Appointment of an Ad Litem by Civil Justice Subcommittee;
Rep. Powell
- V.** Chair's Budget Proposal for FY 2015-16
- VI.** Closing Remarks
- VII.** Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JUAS 15-01 Juvenile Detention Costs
SPONSOR(S): Justice Appropriations Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee		Schrader	Lloyd

SUMMARY ANALYSIS

Since 2004, the Department of Juvenile Justice (DJJ) has shared the cost of detention of juveniles in detention centers with the counties. The proposed committee bill conforms to the House of Representatives proposed Fiscal Year 2015-16 General Appropriations Act by establishing a new cost sharing methodology with the counties.

The proposed committee bill conforms to the House proposed General Appropriations Act and:

- Defines "total shared detention costs" as the funds that DJJ expends for providing detention care annually, less any funds it expends on fiscally constrained counties and the cost of housing out-of-state detainees.
- Provides for FY 2015-16 only, the total amount of the nonfiscally constrained counties' annual contribution for the shared detention costs is \$55 million.
- Provides the total shared detention costs for FY 2016-2017 and every year after. Each nonfiscally constrained county is responsible for paying a set amount based on 57 percent of the total shared detention costs. The state is responsible for paying the remaining actual costs of detention care.
- Requires DJJ to notify each county by June 5 of each year its portion of shared detention costs and each county must pay its portion by the first day of each month.
- Provides that DJJ will calculate each counties proportion of the next fiscal year's budget based on 57 percent of detention days.
- Requires unspent county funds from each fiscal year to be used to offset the following year's billings.
- Provides the Department of Revenue must review county detention payments to ensure they are paying their share of costs. If DOR determines they are not, they will deduct, from county revenue sharing program funds in s. 218.23, F.S., the amount owed to DJJ. Provides a mechanism to ensure fulfillment of billed obligations for nonfiscally constrained counties.
- Includes a provision that protects the bondholders regarding revenue sharing.

The House proposed General Appropriation Act includes \$3,020,035 above a base of \$34,311,134 for a total of \$37,331,169 to adequately fund the detention center budget entity to provide for 43 percent of shared cost and 100 percent cost for the fiscally constrained counties and out of state juveniles in detention.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Under certain circumstances outlined in s. 985.215, F.S., juveniles who are arrested can be detained within a secured detention facility where they await a court hearing. Within 24 hours, a judge decides whether on-going detention is necessary. If ongoing detention is ordered, a juvenile may be held in a secure detention facility awaiting disposition of their case. Secure detention facilities are operated by the Department of Juvenile Justice (department). In 2004, section 985.686, F.S. was created¹ which established a method of cost sharing of juvenile detention between the state and counties. The statute requires non-fiscally restrained counties to pay for the cost of detention care for juveniles who reside in that county for the period of time prior to "final court disposition". The State is responsible for all costs of detention incurred in fiscally constrained counties.²

In June 2013, the First District Court of Appeal affirmed an administrative law judge's order invalidating rules that the department had promulgated in 2010 relating to costs of detention.³ According to the ALJ order,⁴ the rules at issue shifted a greater responsibility for costs to the counties than was required by the relevant statute and this constituted an invalid exercise of delegated legislative authority. In July 2013, the Department of Juvenile Justice changed their method of billing counties to reflect their analysis of the ruling of the court.

The current methodology for billing the counties is outlined in s. 985.686(5), F.S. Prior to the June 2013 First District Court of Appeals ruling, the billing methodology for determining the counties' share of secure detention costs was based on the prior use of secure detention and the amount appropriated by the legislature in the shared county/state juvenile detention trust fund. The department would divide the total amount of the trust fund by the prior detention utilization to produce each counties share of the appropriation. At the end of the state fiscal year, the department provided the actual expenditures for the cost of secure detention and adjusted the cost allocation between the counties. This methodology was prescribed in Case No. 07-4398, as part of the Findings of Fact outlined in the administrative law judge's recommended order⁵.

It is the fiscal policy of the state that the state and counties have a joint obligation to contribute to the financial support of the detention provided for juveniles⁶. In Fiscal Year 2014-2015, thirty-five nonfiscally constrained counties were billed a portion of shared detention costs. Of the thirty-five counties, six stopped remitting payment and eleven began submitting partial payments. In February 2015 two of the six counties that had previously stopped payment submitted letters and began to make some form of payment.

¹ Originally created as s. 985.2155, F.S. in chapter 2004-263, Laws of Florida. Subsequently transferred to s. 985.686, F.S. by chapter 2006-120, s. 95, Laws of Florida.

² The term "fiscally constrained county" is defined to mean "a county within a rural area of critical economic concern as designated by the Governor pursuant to s. 288.0656 or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., from the previous July 1. Currently, 29 counties are considered fiscally constrained.

³ *Department of Juvenile Justice, v. Okaloosa County*, 113 So.3d 1074 (Fla. 1st DCA 2013).

⁴ *Okaloosa County v. Department of Juvenile Justice*, Case No. 12-0891RX

⁵ **HILLSBOROUGH COUNTY, Petitioner, vs. DEPARTMENT OF JUVENILE JUSTICE, Respondent. Case No. 07-4398. Finding of Fact - 10.** The general revenue funds are appropriated for costs that Respondent must pay, including amounts for fiscally constrained counties. The Legislature identified \$101,628,064.00 of the total appropriation as the counties' aggregate share of detention costs. Negative entries in the appropriation reduce the total amount to \$125,327,667.00. Page 5, <https://www.doah.state.fl.us/ROS/2007/07004398.pdf>. Last accessed 3/17/2014.

⁶ Originally created as 985.686 F.S. in chapter 2004-263, Laws of Florida.

During Fiscal Year 2014-15 the department experienced significant shortfalls in the Detention Centers budget entity because 17 counties remitted partial or no payment. On Thursday, February 19, 2015 the Legislative Budget Commission approved a realignment of \$10,414,121 between budget entities to cover a portion of the detention center shortfall. The department has requested a \$15.7 million trust fund loan. In order for the department to repay the loan the legislature will need to provide a current year appropriation in the General Appropriations Act.

The 2014 General Appropriations Act funded shared detention costs using the Governor's budget recommendation for Fiscal Year 2014-15. This resulted in a state share equal to about 43% of total costs. The department submitted an administrative rule clearly defining pre-disposition and post-disposition days to support this approach. The Counties challenged the proposed rule and a hearing was held in mid-November 2014. A decision on rule adoption is expected in March 2015.

Effect of the bill

The bill amends s. 985.686, F.S. relating to shared county and state responsibility for juvenile detention. The bill defines "total shared detention costs" as the funds that DJJ expends for providing detention care annually, less any funds it expends on fiscally constrained counties and the cost of housing out-of-state detainees.

The bill provides that for fiscal year 2015-16, the non-fiscally restrained counties' annual contribution for the costs of providing detention care will be \$55,000,000. The state will be responsible for paying the remaining actual costs of detention care.

The bill defines the term "total shared detention costs" as "the funds that the department expends for providing detention care annually, less any funds that it expends on fiscally constrained counties and the cost of housing out-of-state detainees." The bill provides that for the 2016-2017 state fiscal year and each year thereafter, each non-fiscally constrained county is responsible for paying a set amount based on 57 percent of the total shared detention cost. The state will be responsible for paying the remaining actual costs of detention care.

The bill requires the department to notify each county by June 5 of each year its portion of shared detention costs. DJJ will calculate the county's cost share estimate based on the actual detention days from June 1 through May 31st of each year.

Beginning July 1 of the following year, each county will provide to the department its portion of total shared detention costs by the first day of each month in 12 equal payments. The department shall calculate a county's percentage share by dividing the total number of detention days for juveniles residing in that county by the total number of detention days for all juveniles statewide. DJJ will calculate each counties proportion of the next fiscal year's budget based on 57% of detention days. Unspent county funds from each fiscal year will be used to offset the next year's budgeted costs.

The bill provides the Department of Revenue (DOR) must review county detention payments to ensure they are paying their share of costs. If DOR determines they are not, they will deduct, from county revenue sharing program funds in s. 218.23, F.S., the amount owed to DJJ. A very small amount of the funds in the revenue sharing program are bonded, this bill includes a provision that protects the bondholders.

B. SECTION DIRECTORY:

Section 1 Amends s. 985.686, F.S. relating to juvenile detention costs.

Section 2 Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The House proposed General Appropriation Act includes \$3,020,035 above a base of \$34,311,134 for a total of \$37,331,169 to adequately fund the detention center budget entity to provide for 43 percent of shared cost and 100 percent cost for the fiscally constrained counties and out of state juveniles in detention.

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 will establish the cost of juvenile detention for local government from 2016-2017 state fiscal year and each state fiscal year thereafter. Each nonfiscally constrained county is responsible for paying a set amount based on 57 percent of the total shared detention costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to juvenile detention costs; amending
 3 s. 985.686, F.S.; providing a definition; revising
 4 provisions relating to state payments for the costs of
 5 juveniles residing in fiscally constrained counties
 6 and out of state; deleting provisions relating to
 7 development and use of a methodology for determining
 8 the amount of each fiscally constrained county's costs
 9 of detention care; requiring each nonfiscally
 10 constrained county to budget sufficient funds for the
 11 costs of juvenile detention care; specifying duties of
 12 the Department of Juvenile Justice; providing for
 13 calculation of county contributions; deleting
 14 provisions relating to technical assistance to the
 15 department; providing for review of county payments;
 16 providing penalties; providing certain assurances to
 17 holders of bonds issued by counties; providing an
 18 effective date.

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

21
 22 Section 1. Section 985.686, Florida Statutes, is amended
 23 to read:
 24 985.686 Shared county and state responsibility for
 25 juvenile detention.—

26 (1) It is the policy of this state that the state and the
 27 counties have a joint obligation, as provided in this section,
 28 to contribute to the financial support of the detention care
 29 provided for juveniles.

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

31 (a) "Detention care" means secure detention and respite
 32 beds for juveniles charged with a domestic violence crime.

33 (b) "Fiscally constrained county" means a county within a
 34 rural area of opportunity as designated by the Governor pursuant
 35 to s. 288.0656 or each county for which the value of a mill will
 36 raise no more than \$5 million in revenue, based on the certified
 37 school taxable value certified pursuant to s. 1011.62(4)(a)1.a.,
 38 from the previous July 1.

39 (c) "Total shared detention costs" means the funds that
 40 the department expends for providing detention care annually,
 41 less any funds that it expends on fiscally constrained counties
 42 and the costs of housing out-of-state detainees.

43 (3)(a) For the 2015-2016 state fiscal year, the total
 44 amount of the nonfiscally constrained counties' annual
 45 contribution for the shared detention costs is \$55 million. The
 46 state is responsible for paying the remaining actual costs of
 47 detention care. This paragraph expires June 30, 2016 ~~Each county~~
 48 ~~shall pay the costs of providing detention care, exclusive of~~
 49 ~~the costs of any preadjudicatory nonmedical educational or~~
 50 ~~therapeutic services and \$2.5 million provided for additional~~

51 ~~medical and mental health care at the detention centers, for~~
 52 ~~juveniles for the period of time prior to final court~~
 53 ~~disposition. The department shall develop an accounts payable~~
 54 ~~system to allocate costs that are payable by the counties.~~

55 (b) For the 2016-2017 state fiscal year and each state
 56 fiscal year thereafter, each nonfiscally constrained county is
 57 responsible for paying a set amount as provided in subsection
 58 (5) based on 57 percent of the total shared detention costs. The
 59 state is responsible for paying the remaining actual costs of
 60 detention care.

61 ~~(4) Notwithstanding subsection (3),~~ The state shall pay
 62 all actual costs of detention care for juveniles residing in ~~for~~
 63 ~~which~~ a fiscally constrained county and for juveniles residing
 64 out of state would otherwise be billed.

65 ~~(a) By October 1, 2004, the department shall develop a~~
 66 ~~methodology for determining the amount of each fiscally~~
 67 ~~constrained county's costs of detention care for juveniles, for~~
 68 ~~the period of time prior to final court disposition, which must~~
 69 ~~be paid by the state. At a minimum, this methodology must~~
 70 ~~consider the difference between the amount appropriated to the~~
 71 ~~department for offsetting the costs associated with the~~
 72 ~~assignment of juvenile pretrial detention expenses to the~~
 73 ~~fiscally constrained county and the total estimated costs to the~~
 74 ~~fiscally constrained county, for the fiscal year, of detention~~
 75 ~~care for juveniles for the period of time prior to final court~~

76 ~~disposition.~~

77 ~~(b) Subject to legislative appropriation and based on the~~
 78 ~~methodology developed under paragraph (a), the department shall~~
 79 ~~provide funding to offset the costs to fiscally constrained~~
 80 ~~counties of detention care for juveniles for the period of time~~
 81 ~~prior to final court disposition. If county matching funds are~~
 82 ~~required by the department to eliminate the difference~~
 83 ~~calculated under paragraph (a) or the difference between the~~
 84 ~~actual costs of the fiscally constrained counties and the amount~~
 85 ~~appropriated in small county grants for use in mitigating such~~
 86 ~~costs, that match amount must be allocated proportionately among~~
 87 ~~all fiscally constrained counties.~~

88 (5) Each nonfiscally constrained county shall incorporate
 89 into its annual county budget sufficient funds to pay its costs
 90 of detention care for juveniles who reside in that county ~~for~~
 91 ~~the period of time prior to final court disposition. This amount~~
 92 ~~shall be based upon the prior use of secure detention for~~
 93 ~~juveniles who are residents of that county, as calculated by the~~
 94 ~~department. Each county shall pay the estimated costs at the~~
 95 ~~beginning of each month. Any difference between the estimated~~
 96 ~~costs and actual costs shall be reconciled at the end of the~~
 97 ~~state fiscal year.~~

98 (a) The department shall calculate each county's annual
 99 percentage of total shared detention costs based on the actual
 100 detention days from June 1 through May 31 of each year. The

101 department shall notify each county of the amount to be paid to
 102 the department for its portion of total shared detention costs
 103 by June 5 of each year. Beginning July 1 of that year, each
 104 county shall pay to the department its portion of total shared
 105 detention costs by the first day of each month in 12 equal
 106 payments.

107 (b) The department shall calculate a county's percentage
 108 share by dividing the total number of detention days for
 109 juveniles residing in that county by the total number of
 110 detention days for all juveniles statewide.

111 (c) For the 2016-2017 state fiscal year and each state
 112 fiscal year thereafter, each county's percentage share shall be
 113 multiplied by 57 percent of the total shared detention costs for
 114 the next fiscal year to establish the county's proportional
 115 share.

116 (6) Funds paid by the counties to the department pursuant
 117 to this section shall be deposited ~~Each county shall pay to the~~
 118 ~~department for deposit~~ into the Shared County/State Juvenile
 119 Detention Trust Fund. All remaining funds in the trust fund at
 120 the end of the fiscal year shall be used to offset the following
 121 year's billings ~~its share of the county's total costs for~~
 122 ~~juvenile detention, based upon calculations published by the~~
 123 ~~department with input from the counties.~~

124 (7) The department ~~of Juvenile Justice~~ shall determine
 125 each quarter whether the counties of this state are remitting to

126 the department their share of the costs of detention as required
 127 by this section.

128 ~~(8) The Department of Revenue and the counties shall~~
 129 ~~provide technical assistance as necessary to the Department of~~
 130 ~~Juvenile Justice in order to develop the most cost-effective~~
 131 ~~means of collection.~~

132 (8)(9) Funds received from counties pursuant to this
 133 section are not subject to the service charges provided in s.
 134 215.20.

135 (9)(10) This section does not apply to any county that
 136 provides detention care for preadjudicated juveniles or that
 137 contracts with another county to provide detention care for
 138 preadjudicated juveniles.

139 (10) (a) The Department of Revenue shall review county
 140 juvenile detention payments to the Department of Juvenile
 141 Justice for the purpose of ensuring that counties fulfill their
 142 financial responsibilities required in this section. The
 143 Department of Revenue shall determine whether the counties have
 144 reimbursed the Department of Juvenile Justice for the county
 145 share of detention costs as provided in this section. If the
 146 Department of Revenue determines that a county has not met its
 147 obligations, it must deduct the amount owed to the Department of
 148 Juvenile Justice from funds provided to the county under s.
 149 218.23.

150 (b) As an assurance to holders of bonds issued by counties

151 before July 1, 2015, for which distributions made pursuant to s.
 152 218.23 are pledged, or bonds issued to refund such bonds which
 153 mature no later than the bonds they refunded and which result in
 154 a reduction of debt service payable in each fiscal year, the
 155 amount available for distribution to a county shall remain as
 156 provided by law and continue to be subject to any lien or claim
 157 on behalf of the bondholders. The Department of Revenue must
 158 ensure, based on information provided by an affected county,
 159 that any reduction in amounts distributed pursuant to paragraph
 160 (a) does not reduce the amount of distribution to a county below
 161 the amount necessary for the timely payment of principal and
 162 interest when due on the bonds and the amount necessary to
 163 comply with any covenant under the bond resolution or other
 164 documents relating to the issuance of the bonds. If a reduction
 165 to a county's monthly distribution must be decreased in order to
 166 comply with this paragraph, the Department of Revenue must
 167 notify the Department of Juvenile Justice of the amount of the
 168 decrease, and the Department of Juvenile Justice must send a
 169 bill for payment of such amount to the affected county.

170 (11) The department may adopt rules to administer this
 171 section.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JUAS 15-02 Sentencing
SPONSOR(S): Justice Appropriations Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Justice Appropriations Subcommittee, McAuliffe, Lloyd

SUMMARY ANALYSIS

Section 775.08(1), F.S., defines the term "felony" as any criminal offense that is punishable under the laws of Florida, or that would be punishable if committed in Florida, by death or imprisonment in the state penitentiary.

This Proposed Committee Bill (PCB) provides that, effective for offenses committed on or after July 1, 2015, a court may sentence an offender to a term in the county jail in the county where the offense was committed for no more than 24 months if the offender meets all of the following criteria:

- The offender's total sentence points score, as provided in s. 921.0024, F.S., is more than 44 points but no more than 60 points.
The offender's primary offense is not a forcible felony as defined in s. 776.08, F.S., but excluding any third degree felony violation under chapter 810, F.S. (burglary and trespass).
The offender's primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

The court may only sentence an offender to a county jail pursuant to this PCB if there is a contractual agreement between the chief correctional officer of that county and the Department of Corrections.

The Department of Corrections (DOC) must enter into a contract with any chief correctional officer of a county that requests to enter a contract to allow inmates to be sentenced to the county jail as provided in this PCB. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

The PCB provides all contracts are contingent upon a Specific Appropriation in the General Appropriations Act. Contracts will be awarded by DOC on a first-come first-served basis and DOC must assume maximum annual value of each contract when determining the full utilization of funds appropriated.

The House proposed Fiscal Year 2015-16 General Appropriations Act provides the sum of \$5,845,415 for the incarceration of felons sentenced to a county facility pursuant to the provisions of this PCB. The PCB also limits the award of contracts to the amount appropriated. (See Fiscal Impact)

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 775.08(1), F.S., the term "felony" means any criminal offense that is punishable under the laws of Florida, or that would be punishable if committed in Florida, by death or imprisonment in the state penitentiary. "State penitentiary" includes state correctional facilities. A person must be imprisoned in the state penitentiary for each sentence which exceeds one year. All felonies are punishable by incarceration in state prison. A person who receives a sentence of a year or less for a felony serves that sentence in a county jail.

Effect of the Bill

This PCB provides that, effective for offenses committed on or after July 1, 2015, a court may sentence an offender to a term in the county jail in the county where the offense was committed for no more than 24 months if the offender meets all of the following criteria:

- The offender's total sentence points score, as provided in s. 921.0024, F.S., is more than 44 points but no more than 60 points.
- The offender's primary offense is not a forcible felony as defined in s. 776.08, F.S., but excluding any third degree felony violation under chapter 810, F.S. (burglary and trespass).
- The offender's primary offense is not punishable by a minimum mandatory sentence in excess of 24 months.

The DOC must enter into a contract with any chief correctional officer of a county that requests to enter a contract to allow inmates to be sentenced to the county jail as provided in this PCB. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

A specific appropriation category ("Inmates Sentenced to County Jail") is created within the House proposed Fiscal Year 2015-16 GAA and appropriated \$5,845,415 to fund the incarceration of offenders sentenced under this bill. In addition to the appropriation, the PCB authorizes the department to transfer funds into this specific category in order to fulfill DOC's contractual per diem obligation which may not exceed DOC's average male or female total per diem published for the preceding fiscal year. This allows DOC flexibility in the amount they must transfer into this specific category because the number of counties that will request contracts to have offenders sentenced to their jail is unknown. The \$5,845,415 appropriation will fund the remaining contract amount not to exceed a per diem of \$60. The maximum appropriation allowable would be the appropriated funds plus any funds that are transferred from other DOC categories to fulfill DOC's contractual per diem obligation.

Any contract executed as provided in this PCB is contingent upon a specific appropriation in the General Appropriations Act (GAA). Contracts must be awarded by DOC on a first-come, first-served basis up to the maximum appropriation.

B. SECTION DIRECTORY:

Section 1. Creates s. 950.021, F.S., relating to sentencing to a county jail in the county where the offense was committed.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The PCB provides DOC must enter into a contract with any chief correctional officer of a county that requests to enter a contract to allow inmates to be sentenced to the county jail as provided in this PCB. The contract must specifically establish the maximum number of beds and the validated per diem rate. The contract must provide for per diem reimbursement for occupied inmate days based on the contracting county's most recent annual adult male custody or adult female custody per diem rates not to exceed \$60. All contractual per diem rates must be validated by the Auditor General before payments are made.

The DOC's most recent annual adult male custody per diem rate is \$43.03, and the PCB limits the total per diem to \$60. Most County detention facilities per diem rates are above the \$60 rate, therefore the state will be responsible for paying that additional amount of the total per diem up to \$60. For instance, if a county per diem is \$60 and the county chooses to contract with DOC for 100 inmates, the total daily cost would be \$6,000 per day; \$4,303 (\$43.03 per inmate per day) of that would be the cost DOC would have expended if those prisoners were sentenced to state prison. The remaining would be paid from the funds provided in the specific appropriation category "Inmates Sentenced to County Jail."

The House proposed Fiscal Year 2015-16 General Appropriations Act provides the sum of \$5,845,415 for the incarceration of felons sentenced to a county facility pursuant to the provisions of this PCB.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Counties with excess jail capacity that have a contract with DOC will benefit from the state paying the cost of incarceration.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to sentencing; creating s. 950.021,
3 F.S.; authorizing a court to sentence certain
4 offenders to a county jail for up to 24 months if the
5 county has a contract with the Department of
6 Corrections; providing contractual requirements;
7 requiring specific appropriations; providing for such
8 appropriations; requiring validation of per diem
9 rates; providing an effective date.

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

Section 1. Section 950.021, Florida Statutes, is created to read:

950.021 Sentencing of offenders to county jail.-

(1) Notwithstanding s. 921.0024 or any other provision of law, and effective for offenses committed on or after July 1, 2015, a court may sentence an offender to a term in the county jail in the county where the offense was committed for up to 24 months if the offender meets all of the following criteria:

(a) The offender's total sentence points score, as provided in s. 921.0024, is more than 44 points but no more than 60 points.

(b) The offender's primary offense is not a forcible felony as defined in s. 776.08; however, an offender whose primary offense is a third degree felony under chapter 810 is

27 not ineligible to be sentenced to a county jail under this
 28 paragraph.

29 (c) The offender's primary offense is not punishable by a
 30 minimum mandatory sentence of more than 24 months.

31 (2) (a) The court may only sentence an offender to a county
 32 jail pursuant to this section if there is a contractual
 33 agreement between the chief correctional officer of that county
 34 and the Department of Corrections.

35 (b) If the chief correctional officer of a county requests
 36 the Department of Corrections to enter into a contract that
 37 allows offenders to be sentenced to the county jail pursuant to
 38 subsection (1), subject to the restrictions of this paragraph
 39 and subsections (3) and (6), the Department of Corrections must
 40 enter into such a contract. The contract shall specifically
 41 establish the maximum number of beds and the validated per diem
 42 rate. The contract shall provide for per diem reimbursement for
 43 occupied inmate days based on the contracting county's most
 44 recent annual adult male custody or adult female custody per
 45 diem rates, not to exceed \$60 per inmate.

46 (3) A contract under this section is contingent upon a
 47 specific appropriation in the General Appropriations Act.
 48 Contracts shall be awarded by the Department of Corrections on a
 49 first-come, first-served basis up to the maximum appropriation
 50 allowable in the General Appropriations Act for this purpose.
 51 The maximum appropriation allowable consists of funds
 52 appropriated in or transferred to the specific appropriation in

53 the Inmates Sentenced to County Jail appropriation category.
 54 Prior to any transferred appropriation under this section the
 55 Inmates Sentenced to County Jail appropriation category provides
 56 for estimated incremental appropriation for county jail beds
 57 contracted under this section in excess of the Department of
 58 Corrections' per diem for adult male and female inmates.

59 (4) The Department of Corrections shall transfer funds
 60 pursuant to s. 216.177 from other appropriation categories
 61 within the Adult Male Custody Operations or Adult and Youthful
 62 Offender Female Custody Operations budget entities to the
 63 Inmates Sentenced to County Jail appropriation category in an
 64 amount necessary to satisfy the requirements of each executed
 65 contract, but not to exceed the Department of Corrections'
 66 average total per diem published for the preceding fiscal year
 67 for adult male custody or adult and youthful offender female
 68 custody inmates for each county jail bed contracted.

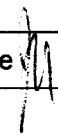
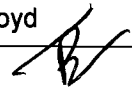
69 (5) The Department of Corrections shall assume maximum
 70 annual value of each contract when determining the full use of
 71 funds appropriated and to ensure that the maximum appropriation
 72 allowable is not exceeded.

73 (6) All contractual per diem rates under this section as
 74 well as the per diem rates used by the Department of Corrections
 75 must be validated by the Auditor General before payments are
 76 made.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 91 Trade Secrets
SPONSOR(S): Criminal Justice Subcommittee; Pilon
TIED BILLS: HB 93 IDEN./SIM. **BILLS:** SB 564

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Government Operations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Florida law currently imposes criminal penalties for a variety of acts relating to the theft, unauthorized copying, and misappropriation of trade secrets. For purposes of many of these statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., to include "any scientific, technical, or commercial information" that otherwise qualifies as trade secret.

The bill expands the definition of "trade secret" to include "any scientific, technical, commercial, or *financial* information" that otherwise qualifies as trade secret.

The Criminal Justice Impact Conference (CJIC) met March 11, 2015 and determined this bill will have a positive insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. The bill may also have a negative jail bed impact on local governments because it expands the application of a misdemeanor offense.

This bill is effective October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently prohibits a variety of acts relating to trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony¹ for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that is a trade secret that is residing or existing internal or external to a computer, computer system, computer network, or electronic device.²
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article representing a trade secret, when done with an intent to:
 - Deprive or withhold from the trade secret's owner the control of a trade secret, or
 - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it a first degree misdemeanor³ for a designated employee, inspector, or collaborator of the division or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets;⁴ however, a small number of these statutes provide other types of protections, such as procedural safeguards and civil remedies.⁵

For purposes of the above-described statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., as:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.⁶

¹ 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.

² The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

³ 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.

⁴ ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

⁵ ss. 721.071 and 812.035, F.S.

⁶ s. 812.081(1)(c), F.S.

Effect of the Bill

The bill expands the definition of "trade secret" in s. 812.081(1)(c), F.S., to include "any scientific, technical, commercial, or *financial* information" that otherwise qualifies as a trade secret. As such, the criminal offenses described above will apply to an expanded list of trade secret information.

B. SECTION DIRECTORY:

Section 1. Amends s. 812.081, F.S., relating to trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met March 11, 2015 and determined this bill will have a positive insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually. The bill may also have a negative jail bed impact on local governments because it expands the application of a misdemeanor offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

As noted above, s. 581.199, F.S., makes it a first degree misdemeanor for certain persons to use trade secret information in specified ways. Because the bill expands the definition of "trade secret," for purposes of this offense, it may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

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

On March 4, 2015, the Criminal Justice Subcommittee adopted an amendment and reported the bill as favorable as a committee substitute. The amendment:

- Removed language that repealed a trade secret public records exemption; and
- Removed the reenactment of a trade secret public records exemption.

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

1 A bill to be entitled
 2 An act relating to trade secrets; amending s. 812.081,
 3 F.S.; including financial information in provisions
 4 prohibiting the theft, embezzlement, or unlawful
 5 copying of trade secrets; providing criminal
 6 penalties; providing an effective date.

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

9
 10 Section 1. Section 812.081, Florida Statutes, is amended
 11 to read:

12 812.081 Trade secrets; theft, embezzlement; unlawful
 13 copying; definitions; penalty.—

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

15 (a) "Article" means any object, device, machine, material,
 16 substance, or composition of matter, or any mixture or copy
 17 thereof, whether in whole or in part, including any complete or
 18 partial writing, record, recording, drawing, sample, specimen,
 19 prototype model, photograph, microorganism, blueprint, map, or
 20 copy thereof.

21 (b) "Representing" means completely or partially
 22 describing, depicting, embodying, containing, constituting,
 23 reflecting, or recording.

24 (c) "Trade secret" means the whole or any portion or phase
 25 of any formula, pattern, device, combination of devices, or
 26 compilation of information which is for use, or is used, in the

27 | operation of a business and which provides the business an
 28 | advantage, or an opportunity to obtain an advantage, over those
 29 | who do not know or use it. The term ~~"Trade secret"~~ includes any
 30 | scientific, technical, ~~or~~ commercial, or financial information,
 31 | including any design, process, procedure, list of suppliers,
 32 | list of customers, business code, or improvement thereof.
 33 | Irrespective of novelty, invention, patentability, the state of
 34 | the prior art, and the level of skill in the business, art, or
 35 | field to which the subject matter pertains, a trade secret is
 36 | considered to be:

- 37 | 1. Secret;
- 38 | 2. Of value;
- 39 | 3. For use or in use by the business; and
- 40 | 4. Of advantage to the business, or providing an
 41 | opportunity to obtain an advantage, over those who do not know
 42 | or use it

43 |
 44 | when the owner thereof takes measures to prevent it from
 45 | becoming available to persons other than those selected by the
 46 | owner to have access thereto for limited purposes.

47 | (d) "Copy" means any facsimile, replica, photograph, or
 48 | other reproduction in whole or in part of an article and any
 49 | note, drawing, or sketch made of or from an article or part or
 50 | portion thereof.

51 | (2) Any person who, with intent to deprive or withhold
 52 | from the owner thereof the control of a trade secret, or with an

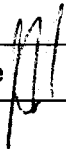
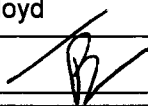
53 | intent to appropriate a trade secret to his or her own use or to
 54 | the use of another, steals or embezzles an article representing
 55 | a trade secret or without authority makes or causes to be made a
 56 | copy of an article representing a trade secret commits ~~is guilty~~
 57 | ~~of~~ a felony of the third degree, punishable as provided in s.
 58 | 775.082 or s. 775.083.

59 | (3) In a prosecution for a violation of ~~the provisions of~~
 60 | this section, the fact ~~it is no defense~~ that the person so
 61 | charged returned or intended to return the article so stolen,
 62 | embezzled, or copied is not a defense.

63 | Section 2. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 439 Department of Legal Affairs
SPONSOR(S): Criminal Justice Subcommittee; Eisnaugle
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1362

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Patton	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

The Department of Legal Affairs (Department), led by the Attorney General, provides a wide variety of legal services, including protecting Florida consumers in cases of Medicaid fraud, defending the state in civil litigation cases and representing the people of Florida when criminals appeal their convictions in state and federal courts.

This bill makes several changes to a variety of statutes affecting the Department. For example, the bill:

- Expands the jurisdiction of the Office of Statewide Prosecution to include violations of ch. 787, F.S. (kidnapping, false imprisonment, and human trafficking), that were facilitated by or connected to the use of the Internet;
- Authorizes the Department to spend no more than \$20,000 annually to:
 - Purchase and distribute promotional materials or items that serve to advance with dignity and integrity the good will of this state and the Department; and
 - Provide basic refreshments at official functions, seminars, or meetings of the department in which dignitaries or representatives from the Federal Government, other states or nationalities, or other agencies are in attendance;
- Allows funds currently awarded to persons who report Medicaid Fraud to also be used to fund the Department's Medicaid Fraud Unit;
- Expands the definition of the term "crime" for purposes of victim assistance awards;
- Prohibits victim assistance awards for "catastrophic injury" from being reduced;
- Authorizes the Department to award a lifetime maximum of \$1,000 on all victim assistance claims relating to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life; and
- Creates a separate statute (s. 960.196, F.S.) that addresses relocation assistance for victims of human trafficking.

The bill contains provisions that will have both a positive and negative fiscal impact on the Department. See Fiscal Analysis section.

The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Legal Affairs (Department), led by the Attorney General, provides a wide variety of legal services, including protecting Florida consumers in cases of Medicaid fraud, defending the state in civil litigation cases and representing the people of Florida when criminals appeal their convictions in state and federal courts.¹

This bill makes several changes to a variety of statutes affecting the Department. A detailed description of these changes follows.

Office of Statewide Prosecution Jurisdiction

The Office of Statewide Prosecution (OSP), housed within the Department, works regularly with state and federal counterparts to investigate and prosecute complex, often large scale, organized criminal activity.² In order for the Statewide Prosecutor to have jurisdiction over a case, the crime must have occurred in more than one judicial circuit or be part of a conspiracy affecting more than one judicial circuit, and it must be one of the offenses³ enumerated in s. 16.56(1)(a), F.S.⁴

In 2007, the Legislature recognized the multi-jurisdictional nature of the Internet and gave the OSP jurisdiction to investigate and prosecute any crime enumerated in s. 16.56 (1)(a), F.S., that was facilitated by or connected to the use of the Internet.⁵ Since this legislation was enacted, violations of ch. 787, F.S. (relating to kidnapping, false imprisonment, and human trafficking) were added to the list of offenses that the OSP had jurisdiction over.⁶ However, in what was likely an oversight, the OSP was not given jurisdiction over violations of ch. 787, F.S., that were facilitated by or connected to the use of the Internet.

Effect of the Bill

The bill expands the jurisdiction of the OSP to include violations of ch. 787, F.S., that were facilitated by or connected to the use of the Internet.

Spending Authority

Currently, the Department does not have specific statutory authority to spend funds on promotional materials or other similar items. Section 943.685, F.S., authorizes the Florida Department of Law Enforcement to expend no more than \$5,000 annually to purchase and distribute promotional materials or items that serve to advance with dignity and integrity the good will of this state and to provide basic refreshments at official functions, seminars, or meetings of the department in which dignitaries or representatives from the Federal Government, other states or nationalities, or other agencies are in attendance.

Effect of the Bill

¹ Florida Office of the Attorney General, *The Role and Function of the Attorney General*, <http://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F> (last visited March 6, 2015).

² Florida Office of the Attorney General, *Office of Statewide Prosecution*, <http://myfloridalegal.com/pages.nsf/Main/D243EF87774E965185256CC600785693> (last visited March 6, 2015).

³ These offense include bribery; burglary; usury; extortion; gambling; kidnapping; theft; murder; prostitution; perjury; robbery; home-invasion robbery; narcotics violations; racketeering; anti-fencing violations; antitrust violations; crimes involving fraud and deceit; certain computer-related crimes; violations of the Florida Drug and Cosmetic Act; violations of the Florida Motor Fuel Tax Relief Act of 2004; Medicaid fraud; crimes involving voter registration, voting, or candidate or issue petition activities; violations of the Florida Money Laundering Act; violations of the Florida Securities and Investor Protection Act; human trafficking; and attempts, solicitations, or conspiracies to commit these offenses.

⁴ FLA. CONST. art. IV, s. 4. s. 16.56, F.S.

⁵ Chapter 2007-143, Laws of Florida; s. 16.56(1)(b), F.S.

⁶ Chapter 2012-97, Laws of Florida.

The bill creates s. 16.62, F.S., to authorize the Department to spend no more than \$20,000 annually to:

- Purchase and distribute promotional materials or items that serve to advance with dignity and integrity the good will of this state and the Department; and
- Provide basic refreshments at official functions, seminars, or meetings of the department in which dignitaries or representatives from the Federal Government, other states or nationalities, or other agencies are in attendance.

Medicaid Fraud Reporting Rewards

Medicaid Fraud Reporting Rewards

The Department's Medicaid Fraud Control Unit investigates and prosecutes fraud involving providers that intentionally defraud the state's Medicaid program.⁷ This involves investigating a wide range of misconduct originating primarily from fraudulent billing schemes, which usually involve doctors, dentists, clinics and other health care providers billing for services never performed; over billing for services provided; or billing for tests, services and products that are medically unnecessary.⁸

Section 409.9203, F.S., specifies that a person who furnishes original information relating to Medicaid fraud and reports a violation of the state's Medicaid fraud laws is eligible for a reward,⁹ subject to the availability of funds, if the information and report:

- Is made to the Department, the Agency for Health Care Administration, the Department of Health, or the Department of Law Enforcement;
- Relates to criminal fraud upon Medicaid funds or a criminal violation of Medicaid laws by another person; and
- Leads to a recovery of a fine, penalty, or forfeiture of property.¹⁰

The reward is paid from the Operating Trust Fund from moneys collected pursuant to the Florida False Claims Act (FFCA).

Florida False Claims Act

The FFCA authorizes private individuals to bring "qui tam" suits in the name of the state against persons or entities who have defrauded the state in contracting or other matters.¹¹ As an incentive to bring these suits, successful plaintiffs, sometimes called whistleblowers, are permitted to share in the damages recovered.¹² The FFCA also allows the state entity injured by the submission of a false or fraudulent claim to be awarded an amount not to exceed its compensatory damages.¹³

If an FFCA action was based on a claim of funds from the state Medicaid program, 10% of the proceeds that remain after the plaintiff and the state entity have been issued their awards must be deposited into the Operating Trust Fund. Currently, 100% of these funds are used to fund rewards for persons who report Medicaid fraud pursuant to s. 409.9203, F.S.¹⁴

Effect of the Bill

The bill requires the 10% of funds that are deposited into the Operating Trust Fund pursuant to the FFCA to be allocated as follows:

- 50% to fund rewards for reporting Medicaid Fraud; and

⁷ Florida Office of the Attorney General, *Medicaid Fraud Control Unit*, <http://myfloridalegal.com/pages.nsf/Main/ebc480598bbf32d885256cc6005b54d1> (last visited March 6, 2015).

⁸ *Id.* Also see, ss. 409.920 and 409.9201, F.S.

⁹ The reward may not exceed the lesser of 25 percent of the amount recovered or \$500,000 in a single case. s. 409.9203(2), F.S.

¹⁰ s. 409.9203(1), F.S.

¹¹ The Florida Bar Journal, *Florida Updates Qui Tam Whistleblower Statute*, Ryon M. McCabe and Robert C. Glass, http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/22dfadebad8fecfc85257c6e00552de7!OpenDocument&Highlight=0,* (last visited March 6, 2015).

¹² *Id.*

¹³ s. 68.085(3), F.S.

¹⁴ *Id.*

- 50% to fund Medicaid Fraud Unit investigations of potential violations of the FFCA and any related civil actions.

This increases the funding available to the Department's Medicaid Fraud Unit, but decreases funding available to those who report Medicaid fraud.

Florida Deceptive and Unfair Trade Practices Act

Florida's Deceptive and Unfair Trade Practices Act (FDUTPA)¹⁵ gives consumers legal protection against commercial wrongdoing. Patterned after the Federal Trade Commission Act,¹⁶ FDUTPA prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.¹⁷ It enables consumers to recover actual damages, permits recovery of reasonable attorneys' fees and costs by the prevailing party, and also provides for declaratory judgments and injunctive relief. It also gives equitable remedies to state enforcement authorities,¹⁸ who may bring suit "on behalf of one or more consumers."¹⁹

In construing FDUTPA's provisions, due consideration and great weight are given to the interpretations of the Federal Trade Commission and the federal courts relating to the analogous provision of the Federal Trade Commission Act, as of July 1, 2013.²⁰

Effect of the Bill

The bill updates ss. 501.203 and 501.204, F.S., to refer to the Federal Trade Commission Act rules and regulations as of July 1, 2015.

Victim Assistance

The Department's Division of Victim Services serves as an advocate for crime victims and administers a compensation program to ensure financial assistance for innocent victims of crime.²¹ Currently, injured crime victims may be eligible for financial assistance for medical care, lost income, funeral expenses, and other out-of-pocket expenses directly related to the injury.²² Payment is made from the Crime Compensation Trust Fund.²³ The Department may adopt rules establishing compensation award limits, however, compensation awards generally may not exceed:

- \$10,000 for treatment;
- \$10,000 for continuing or periodic mental health care of a minor victim whose normal emotional development is adversely affected by being the victim of a crime;
- A total of \$25,000 for all compensable costs; or
- \$50,000 when the OAG makes a written finding that the victim has suffered a catastrophic injury as a direct result of the crime.²⁴

Definitions

¹⁵ ss. 501.201-213, F.S.

¹⁶ 15 U.S.C. §§ 41-58 (2013).

¹⁷ s. 501.204, F.S.

¹⁸ The Department is an enforcing authority of FDUTPA. As such, the Department is authorized to investigate and file civil actions against persons who engage in unfair methods of competition, unfair, unconscionable or deceptive trade practices, including, but not limited to, pyramid schemes, misleading franchise or business opportunities, travel scams, fraudulent telemarketing, and false or misleading advertising. Florida Office of the Attorney General, *Consumer Protection Division*, <http://myfloridalegal.com/pages.nsf/Main/7003247af328dc9e85256cc6006fba91> (last visited on March 6, 2015).

¹⁹ The Florida Bar Journal, *The Unexplored Territory of Unfairness in Florida's Deceptive and Unfair Trade Practices Act*, David J. Federbush, <https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Autor/F9BE91D3215162C685256ADB005D6262> (last visited on March 6, 2015).

²⁰ ss. 501.203(3) and 501.204, F.S.

²¹ Florida Office of the Attorney General, *Division of Victims Services*, <http://myfloridalegal.com/pages.nsf/main/1c7376f380d0704c85256cc6004b8ed3!OpenDocument> (last visited on March 6, 2015).

²² *Id.*

²³ s. 960.21, F.S.

²⁴ s. 960.13, F.S.

As noted above, a person must first be a victim of a crime to be eligible for victim assistance.²⁵ Section 960.03(3), F.S., defines the term “crime” for victim assistance purposes, in part, as:

- A felony or misdemeanor offense committed by an adult or a juvenile which results in physical injury or death, or a felony or misdemeanor offense of child abuse committed by an adult or a juvenile which results in a mental injury,²⁶ as defined in s. 827.03, F.S., to a person younger than 18 years of age who was not physically injured by the criminal act; or²⁷
- A violation of s. 316.193, F.S. (DUI); s. 316.027(1), F.S. (leaving the scene of a crash involving death of bodily injury); s. 327.35(1), F.S. (BUI); s. 782.071(1)(b), F.S. (vehicular homicide); or s. 860.13(1)(a), F.S. (operating an aircraft under the influence); which results in physical injury or death; however, an act involving the operation of a motor vehicle, boat, or aircraft which results in injury or death does not constitute a crime for the purpose of this chapter unless the injury or death was intentionally inflicted through the use of the vehicle, boat, or aircraft.

Section 960.03, F.S., also defines the term “disabled adult” as a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

Effect of the Bill

The bill expands the definition of the term “crime” to include:

- A forcible felony committed by an adult or juvenile which directly results in psychiatric or psychological injury;²⁸ and
- Violations of s. 316.1935, F.S. (fleeing or eluding a law enforcement officer), which results in physical injury or death.

The term is also amended to include an act involving the operation of a motor vehicle, boat, or aircraft which results in another person’s injury or death that is intentionally inflicted through the use of the vehicle, boat, or aircraft.

The bill also amends the definition of the term “disabled adult” to include persons over 18 years of age:

- Who suffer from a condition of physical or mental incapacitation due to mental illness; and
- Who have one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.

Awards

Currently, victim assistance awards, *except awards for loss of support*, are reduced by the amount of any payments or services received or to be received by the claimant as a result of the injury or death:

- From or on behalf of the person who committed the crime; provided, however, that a restitution award ordered by a court to be paid to the claimant by the person who committed the crime shall not reduce any award made pursuant to this chapter unless it appears to the department that the claimant will be unjustly enriched thereby;
- From any other public or private source or provider, including, but not limited to, an award of workers’ compensation pursuant to ch. 440, F.S.;
- From agencies mandated by other Florida statutes to provide or pay for services, except as provided in s. 960.28, F.S.; or
- From an emergency award under s. 960.12, F.S.²⁹

²⁵ ss. 960.065 and 960.03(14) and (3), F.S.

²⁶ The mental injury to the minor must be verified by a psychologist licensed under ch. 490, F.S., by a physician licensed in this state under chs. 458 or 459, F.S., who has completed an accredited residency in psychiatry, or by a physician who has obtained certification as an expert witness pursuant to s. 458.3175, F.S.

²⁷ The term also includes a criminal act that is committed within this state but that falls exclusively within federal jurisdiction.

²⁸ This change conforms with the current definition of “victim,” which includes “a person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death.” s. 960.03(14)(d), F.S.

Effect of the Bill

The bill prohibits awards for loss of support *and awards for catastrophic injury* from being reduced pursuant to the above provisions. "Catastrophic injury" is defined as a permanent impairment constituted by:

- Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;
- Amputation of an arm, a hand, a foot, or a leg;
- Severe brain or closed-head injury as evidenced by:
 - Severe sensory or motor disturbances;
 - Severe communication disturbances;
 - Severe complex integrated disturbances of cerebral function;
 - Severe episodic neurological disorders; or
 - Other severe brain and closed-head injury conditions at least as severe in nature as any condition described in subparagraphs 1.-4.;
- Second-degree or third-degree burns on 25 percent or more of the total body surface or third-degree burns on 5 percent or more of the face and hands;
- Total or industrial blindness; or
- Any other injury that would otherwise qualify under ch. 960, F.S., and that is of a nature and severity that would qualify an employee to receive disability income benefits under Title II or supplemental security income benefits under Title XVI of the federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act.³⁰

Awards to Elderly Persons or Disabled Adults

As noted above, s. 960.13, F.S., establishes criteria and limits for victim compensation awards. Section 960.195, F.S., creates separate criteria and limits for awards to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life. Under this section, the Department is authorized to award a maximum of \$500 to such elderly persons or disabled adults when:

- There is proof that a criminal or delinquent act was committed;
- The criminal or delinquent act is reported to law enforcement authorities within 72 hours;
- The victim cooperates with law enforcement authorities in the investigation of the criminal or delinquent act;
- There is proof that the tangible personal property in question belonged to the claimant;
- The claimant did not contribute to the criminal or delinquent act;
- There is no other source of reimbursement or indemnification available to the claimant; and
- The claimant would not be able to replace the tangible personal property in question without incurring a serious financial hardship.³¹

Effect of the Bill

The bill specifies that the Department is authorized to award a maximum of \$500 *on any one claim, and a lifetime maximum of \$1,000 on all claims* relating to elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life.

The bill requires the criminal or delinquent act be reported to law enforcement authorities within 72 hours, *unless the Department, for good cause shown, finds the delay to have been justified, and*

The bill also removes the requirement that the victim cooperate with law enforcement authorities in the investigation of the criminal or delinquent act. However, the bill authorizes the Department to reduce

²⁹ s. 960.13(6), F.S.

³⁰ s. 960.03(1), F.S.

³¹ s. 960.195, F.S.

an award upon finding that any claimant or award recipient has not duly cooperated with the state attorney, all law enforcement agencies, and the Department.

Relocation Assistance

Prior to 2014, s. 960.199, F.S., provided relocation assistance to victims of sexual battery. In 2014, legislation was passed that expanded the statute to include victims of human trafficking.³² Under the relocation assistance program, a victim of sexual battery³³ or human trafficking³⁴ who needs relocation assistance and meets the statutory criteria may receive a one-time payment not exceeding \$1,500 on any one claim (a lifetime maximum of \$3,000).³⁵

In order for a relocation assistance award to be granted to a sexual battery or human trafficking victim:

- There must be proof that a sexual battery offense or human trafficking offense, as described in s. 787.06(3)(b), (d), (f), or (g), was committed.
- The offense must be reported to the proper authorities.
- The victim's need for assistance must be certified by a certified rape crisis center in this state or by the state attorney or statewide prosecutor having jurisdiction over the offense. A victim of human trafficking's need for assistance may also be certified by a certified domestic violence center in this state.
- The center's certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan. If the victim seeking relocation assistance is a victim of a human trafficking offense, the certified rape crisis or certified domestic violence center's certification must include, if applicable, approval of the state attorney or statewide prosecutor attesting that the victim is cooperating with law enforcement officials.
- The act of sexual battery or human trafficking must be committed in the victim's place of residence or in a location that would lead the victim to reasonably fear for his or her continued safety in the place of residence.³⁶

Relocation payments for a sexual battery or human trafficking claim must be denied if the Department has previously approved or paid out a domestic violence relocation claim under s. 960.198, F.S., to the same victim regarding the same incident.³⁷

Effect of the Bill

The bill creates a separate statute (s. 960.196, F.S.) that addresses relocation assistance for victims of human trafficking. The eligibility criteria (described above) largely remain the same, but there are some differences. For example, the new section requires:

- Victims of human trafficking to need urgent assistance to escape from an unsafe environment directly related to the human trafficking offense.
- The offense to be reported to the proper authorities and the claim filed within 1 year (or 2 years with good cause) after the date of the last human trafficking offense. In a case that exceeds the 2-year requirement due to an active and ongoing investigation, a state attorney, statewide prosecutor, or federal prosecutor may certify in writing a human trafficking victim's need to relocate from an unsafe environment due to the threat of future violence which is directly related to the human trafficking offense.

The bill also makes conforming changes to ss. 960.198 and 960.199, F.S., relating to relocation assistance for victims of domestic violence and sexual battery.

³² Chapter 2014-160, Laws of Florida.

³³ As defined in s. 794.011, F.S.

³⁴ As described in s. 787.06(3)(b), (d), (f), or (g), F.S.

³⁵ s. 960.199(1), F.S.

³⁶ s. 960.199(2), F.S.

³⁷ s. 960.199(3), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 16.56, F.S., relating to Office of Statewide prosecution.

Section 2. Creates s. 16.62, F.S., relating to promotional materials and good will.

Section 3. Amends s. 409.9203, F.S., relating to rewards for reporting Medicaid fraud.

Section 4. Amends s. 501.203, F.S., relating to definitions.

Section 5. Amends s. 501.204, F.S., relating to unlawful acts and practices.

Section 6. Amends s. 960.03, F.S., relating to definitions; ss. 960.01-960.28.

Section 7. Amends s. 960.13, F.S., relating to awards.

Section 8. Amends s. 960.195, F.S., relating to awards to elderly persons or disabled adults for property loss.

Section 9. Creates s. 960.196, F.S., relating to relocation assistance for victims of human trafficking.

Section 10. Amends s. 960.198, F.S., relating to relocation assistance for victims of domestic violence.

Section 11. Amends s. 960.199, F.S., relating to relocation assistance for victim of sexual battery or human trafficking.

Section 12. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

If an FFCA action was based on a claim of funds from the state Medicaid program, 10% of the proceeds that remain after the plaintiff and the state entity have been issued their awards must be deposited into the Operating Trust Fund. Currently 100% of these funds are used to fund rewards for persons who report Medicaid fraud pursuant to s. 409.9203, F.S. However, the awards granted for this have been minimal. Of the \$2.6 million collected by the state in the last two fiscal years, only \$22,652 in awards has been paid by the state.

The bill requires the 10% of funds that are deposited into the Operating Trust Fund pursuant to the Florida False Claims Act to be allocated as follows:

- 50% to fund rewards for reporting Medicaid Fraud; and
- 50% to fund Medicaid Fraud Unit investigations of potential violations of the FFCA and any related civil actions.

This increases the funding available to the Department's Medicaid Fraud Unit.

2. Expenditures:

The bill expands the definitions of "crime" and "elderly person or disabled adult" for purposes of victim assistance awards. The bill also prohibits the Department from reducing awards for catastrophic injury. This may have a negative fiscal impact on the Department.

The bill also requires victims of human trafficking to meet additional requirements before being eligible for relocation assistance, and limits victim assistance awards for elderly persons and disabled adults who suffer a property loss that causes a substantial diminution in their quality of life to a lifetime maximum of \$1,000. These provisions may have a positive fiscal impact on the Department.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The committee substitute:

- Creates s. 16.62, F.S., authorizing the Department to spend no more than \$20,000 annually to purchase and distribute promotional materials and to provide basic refreshments at official functions;
- Removes provisions increasing the penalties for failing to report known or suspected abuse, neglect, or exploitation of a vulnerable adult;
- Removes provisions relating to the Fair Housing Act;
- Removes provisions relating to assault and battery on disabled adults;
- Removes provisions relating to convenience businesses; and

- Updates Florida's FDUTPA statutes to refer to the Federal Trade Commission Act rules and regulations as of July 1, 2015.

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

1 A bill to be entitled
2 An act relating to the Department of Legal Affairs;
3 amending s. 16.56, F.S.; revising the list of offenses
4 that may be investigated and prosecuted by the Office
5 of Statewide Prosecution; creating s. 16.62, F.S.;
6 authorizing the Department of Legal Affairs to expend
7 a specified amount annually to purchase and distribute
8 promotional materials or expend funds for other
9 specified purposes to promote good will; amending s.
10 409.9203, F.S.; specifying the distribution of certain
11 funds recovered in Medicaid fraud actions; amending
12 ss. 501.203 and 501.204, F.S.; updating references for
13 purposes of the Florida Deceptive and Unfair Trade
14 Practices Act; amending s. 960.03, F.S.; revising the
15 definition of the term "crime" for purposes of
16 obtaining crime victim compensation from the
17 department to include certain forcible felonies;
18 revising provisions concerning acts involving the
19 operation of a motor vehicle, boat, or aircraft;
20 revising the definition of the term "disabled adult";
21 correcting a cross-reference; amending s. 960.13,
22 F.S.; exempting crime victim compensation awards for
23 catastrophic injury from certain deductions; amending
24 s. 960.195, F.S.; revising the maximum victim
25 compensation amounts that the department may award to
26 an elderly person or disabled adult who suffers a

27 property loss that causes a substantial diminution in
 28 his or her quality of life in certain circumstances;
 29 revising the conditions under which such persons are
 30 eligible for awards; authorizing the department to
 31 deny, reduce, or withdraw a specified award upon
 32 finding that a claimant or award recipient has not
 33 duly cooperated with certain persons and entities;
 34 creating s. 960.196, F.S.; providing for relocation
 35 assistance for human trafficking victims; amending s.
 36 960.198, F.S.; prohibiting relocation assistance for a
 37 domestic violence claim if the victim has received
 38 previous relocation assistance for a human trafficking
 39 claim; amending s. 960.199, F.S.; deleting provisions
 40 relating to relocation assistance for human
 41 trafficking victims; providing an effective date.

42

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

44

45 Section 1. Paragraphs (a) and (b) of subsection (1) of
 46 section 16.56, Florida Statutes, are amended to read:

47

16.56 Office of Statewide Prosecution.—

48

(1) There is created in the Department of Legal Affairs an
 49 Office of Statewide Prosecution. The office shall be a separate
 50 "budget entity" as that term is defined in chapter 216. The
 51 office may:

52

(a) Investigate and prosecute the offenses of:

- 53 1. Bribery, burglary, criminal usury, extortion, gambling,
 54 kidnapping, larceny, murder, prostitution, perjury, robbery,
 55 carjacking, and home-invasion robbery;
- 56 2. Any crime involving narcotic or other dangerous drugs;
- 57 3. Any violation of ~~the provisions of~~ the Florida RICO
 58 (Racketeer Influenced and Corrupt Organization) Act, including
 59 any offense listed in the definition of racketeering activity in
 60 s. 895.02(1)(a), providing such listed offense is investigated
 61 in connection with a violation of s. 895.03 and is charged in a
 62 separate count of an information or indictment containing a
 63 count charging a violation of s. 895.03, the prosecution of
 64 which listed offense may continue independently if the
 65 prosecution of the violation of s. 895.03 is terminated for any
 66 reason;
- 67 4. Any violation of ~~the provisions of~~ the Florida Anti-
 68 Fencing Act;
- 69 5. Any violation of ~~the provisions of~~ the Florida
 70 Antitrust Act of 1980, as amended;
- 71 6. Any crime involving, or resulting in, fraud or deceit
 72 upon any person;
- 73 7. Any violation of s. 847.0135, relating to computer
 74 pornography and child exploitation prevention, or any offense
 75 related to a violation of s. 847.0135 or any violation of
 76 chapter 827 where the crime is facilitated by or connected to
 77 the use of the Internet or any device capable of electronic data
 78 storage or transmission;

- 79 8. Any violation of ~~the provisions of~~ chapter 815;
- 80 9. Any criminal violation of part I of chapter 499;
- 81 10. Any violation of ~~the provisions of~~ the Florida Motor
- 82 Fuel Tax Relief Act of 2004;
- 83 11. Any criminal violation of s. 409.920 or s. 409.9201;
- 84 12. Any crime involving voter registration, voting, or
- 85 candidate or issue petition activities;
- 86 13. Any criminal violation of the Florida Money Laundering
- 87 Act;
- 88 14. Any criminal violation of the Florida Securities and
- 89 Investor Protection Act; or
- 90 15. Any violation of ~~the provisions of~~ chapter 787, as
- 91 well as any and all offenses related to a violation of ~~the~~
- 92 ~~provisions of~~ chapter 787;
- 93
- 94 or any attempt, solicitation, or conspiracy to commit any of the
- 95 crimes specifically enumerated above. The office shall have such
- 96 power only when any such offense is occurring, or has occurred,
- 97 in two or more judicial circuits as part of a related
- 98 transaction, or when any such offense is connected with an
- 99 organized criminal conspiracy affecting two or more judicial
- 100 circuits. Informations or indictments charging such offenses
- 101 shall contain general allegations stating the judicial circuits
- 102 and counties in which crimes are alleged to have occurred or the
- 103 judicial circuits and counties in which crimes affecting such
- 104 circuits or counties are alleged to have been connected with an

105 | organized criminal conspiracy.

106 | (b) Investigate and prosecute any crime enumerated in
 107 | paragraph (a) ~~subparagraphs (a)1-14.~~ facilitated by or
 108 | connected to the use of the Internet. Any such crime is a crime
 109 | occurring in every judicial circuit within the state.

110 | Section 2. Section 16.62, Florida Statutes, is created to
 111 | read:

112 | 16.62 Promotional materials and good will.--In addition to
 113 | expenditures separately authorized by law, the Department of
 114 | Legal Affairs may expend no more than \$20,000 annually to
 115 | purchase and distribute promotional materials or items that
 116 | serve to advance, with dignity and integrity, the good will of
 117 | this state and the department and to provide basic refreshments
 118 | at official functions, seminars, or meetings of the department
 119 | in which dignitaries or representatives from the Federal
 120 | Government, other states or nationalities, or other agencies are
 121 | in attendance.

122 | Section 3. Subsection (5) is added to section 409.9203,
 123 | Florida Statutes, to read:

124 | 409.9203 Rewards for reporting Medicaid fraud.--

125 | (5) Notwithstanding s. 68.085(3), 10 percent of any
 126 | remaining proceeds deposited into the Operating Trust Fund from
 127 | an action based on a claim of funds from the state Medicaid
 128 | program shall be allocated in the following manner:

129 | (a) Fifty percent of such moneys shall be used to fund
 130 | rewards for reporting Medicaid fraud pursuant to this section.

131 **(b) The remaining 50 percent of such moneys shall be used**
 132 **by the Medicaid Fraud Control Unit to fund its investigations of**
 133 **potential violations of s. 68.082 and any related civil actions.**

134 Section 4. Subsection (3) of section 501.203, Florida
 135 Statutes, is amended to read:

136 501.203 Definitions.—As used in this chapter, unless the
 137 context otherwise requires, the term:

138 (3) "Violation of this part" means any violation of this
 139 act or the rules adopted under this act and may be based upon
 140 any of the following as of July 1, 2015 ~~2013~~:

141 (a) Any rules promulgated pursuant to the Federal Trade
 142 Commission Act, 15 U.S.C. ss. 41 et seq.;

143 (b) The standards of unfairness and deception set forth
 144 and interpreted by the Federal Trade Commission or the federal
 145 courts; or

146 (c) Any law, statute, rule, regulation, or ordinance which
 147 proscribes unfair methods of competition, or unfair, deceptive,
 148 or unconscionable acts or practices.

149 Section 5. Section 501.204, Florida Statutes, is amended
 150 to read:

151 501.204 Unlawful acts and practices.—

152 (1) Unfair methods of competition, unconscionable acts or
 153 practices, and unfair or deceptive acts or practices in the
 154 conduct of any trade or commerce are hereby declared unlawful.

155 (2) It is the intent of the Legislature that, in
 156 construing subsection (1), due consideration and great weight

157 shall be given to the interpretations of the Federal Trade
 158 Commission and the federal courts relating to s. 5(a)(1) of the
 159 Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July
 160 1, 2015 ~~2013~~.

161 Section 6. Subsections (3) and (6) of section 960.03,
 162 Florida Statutes, are amended to read:

163 960.03 Definitions; ss. 960.01-960.28.—As used in ss.
 164 960.01-960.28, unless the context otherwise requires, the term:

165 (3) "Crime" means:

166 (a) A felony or misdemeanor offense committed by an adult
 167 or a juvenile which results in physical injury or death, a
 168 forcible felony committed by an adult or juvenile which directly
 169 results in psychiatric or psychological injury, or a felony or
 170 misdemeanor offense of child abuse committed by an adult or a
 171 juvenile which results in a mental injury, as defined in s.
 172 827.03, to a person younger than 18 years of age who was not
 173 physically injured by the criminal act. The mental injury to the
 174 minor must be verified by a psychologist licensed under chapter
 175 490, by a physician licensed in this state under chapter 458 or
 176 chapter 459 who has completed an accredited residency in
 177 psychiatry, or by a physician who has obtained certification as
 178 an expert witness pursuant to s. 458.3175. The term also
 179 includes a criminal act that is committed within this state but
 180 that falls exclusively within federal jurisdiction.

181 (b) A violation of s. 316.027(2), s. 316.193, s. 316.1935
 182 ~~s. 316.027(1)~~, s. 327.35(1), s. 782.071(1)(b), or s.

183 860.13(1)(a) which results in physical injury or death.

184 (c) ~~however,~~ An act involving the operation of a motor
 185 vehicle, boat, or aircraft which results in another person's
 186 injury or death that is intentionally inflicted through the use
 187 of the vehicle, boat, or aircraft; however, no other act
 188 involving the operation of a motor vehicle, boat, or aircraft
 189 constitutes a crime for purposes of this chapter ~~does not~~
 190 ~~constitute a crime for the purpose of this chapter unless the~~
 191 ~~injury or death was intentionally inflicted through the use of~~
 192 ~~the vehicle, boat, or aircraft.~~

193 (d) ~~(e)~~ A criminal act committed outside this state against
 194 a resident of this state which would have been compensable if it
 195 had occurred in this state and which occurred in a jurisdiction
 196 that does not have an eligible crime victim compensation program
 197 as the term is defined in the federal Victims of Crime Act of
 198 1984.

199 (e) ~~(d)~~ A violation of s. 827.071, s. 847.0135, s.
 200 847.0137, or s. 847.0138, related to online sexual exploitation
 201 and child pornography.

202 (6) "Disabled adult" means a person 18 years of age or
 203 older who suffers from a condition of physical or mental
 204 incapacitation due to a developmental disability, ~~or~~ organic
 205 brain damage, or mental illness, or who has one or more physical
 206 or mental limitations that restrict the person's ability to
 207 perform the normal activities of daily living.

208 Section 7. Subsection (6) of section 960.13, Florida

209 Statutes, is amended to read:

210 960.13 Awards.—

211 (6) Any award made pursuant to this chapter, except an
 212 award for loss of support or catastrophic injury, shall be
 213 reduced by the amount of any payments or services received or to
 214 be received by the claimant as a result of the injury or death:

215 (a) From or on behalf of the person who committed the
 216 crime; provided, however, that a restitution award ordered by a
 217 court to be paid to the claimant by the person who committed the
 218 crime shall not reduce any award made pursuant to this chapter
 219 unless it appears to the department that the claimant will be
 220 unjustly enriched thereby.

221 (b) From any other public or private source or provider,
 222 including, but not limited to, an award of workers' compensation
 223 pursuant to chapter 440.

224 (c) From agencies mandated by other Florida statutes to
 225 provide or pay for services, except as provided in s. 960.28.

226 (d) From an emergency award under s. 960.12.

227 Section 8. Section 960.195, Florida Statutes, is amended
 228 to read:

229 960.195 Awards to elderly persons or disabled adults for
 230 property loss.—

231 (1) Notwithstanding the criteria in s. 960.13, for crime
 232 victim compensation awards, the department may award a maximum
 233 of \$500 on any one claim and a lifetime maximum of \$1,000 on all
 234 claims to elderly persons or disabled adults who suffer a

235 | property loss that causes a substantial diminution in their
 236 | quality of life when:

237 | ~~(a)(1)~~ There is proof that a criminal or delinquent act
 238 | was committed.~~†~~

239 | ~~(b)(2)~~ The criminal or delinquent act is reported to law
 240 | enforcement authorities within 72 hours, unless the department,
 241 | for good cause shown, finds the delay to have been justified.~~†~~

242 | ~~(3) The victim cooperates with law enforcement authorities~~
 243 | ~~in the investigation of the criminal or delinquent act;~~

244 | ~~(c)(4)~~ There is proof that the tangible personal property
 245 | in question belonged to the claimant.~~†~~

246 | ~~(d)(5)~~ The claimant did not contribute to the criminal or
 247 | delinquent act.~~†~~

248 | ~~(e)(6)~~ There is no other source of reimbursement or
 249 | indemnification available to the claimant.~~†~~ ~~and~~

250 | ~~(f)(7)~~ The claimant would not be able to replace the
 251 | tangible personal property in question without incurring a
 252 | serious financial hardship.

253 | (2) The department may deny, reduce, or withdraw any award
 254 | under subsection (1) upon finding that any claimant or award
 255 | recipient has not duly cooperated with the state attorney, all
 256 | law enforcement agencies, and the department.

257 | Section 9. Section 960.196, Florida Statutes, is created
 258 | to read:

259 | 960.196 Relocation assistance for victims of human
 260 | trafficking.-

261 (1) Notwithstanding the criteria specified in ss.
 262 960.07(2) and 960.13 for crime victim compensation awards, the
 263 department may award a one-time payment of up to \$1,500 for any
 264 one claim and a lifetime maximum of \$3,000 to a victim of human
 265 trafficking who needs urgent assistance to escape from an unsafe
 266 environment directly related to the human trafficking offense.

267 (2) In order for an award to be granted to a victim for
 268 relocation assistance:

269 (a) There must be proof that a human trafficking offense,
 270 as described in s. 787.06(3)(b), (d), (f), or (g), was
 271 committed.

272 (b) The crime must be reported to the proper authorities
 273 and the claim must be filed within 1 year, or 2 years with good
 274 cause, after the date of the last human trafficking offense, as
 275 described in s. 787.06(3)(b), (d), (f), or (g). In a case that
 276 exceeds the 2-year requirement due to an active and ongoing
 277 investigation, a state attorney, statewide prosecutor, or
 278 federal prosecutor may certify in writing a human trafficking
 279 victim's need to relocate from an unsafe environment due to the
 280 threat of future violence that is directly related to the human
 281 trafficking offense.

282 (c) The victim's need must be certified by a certified
 283 domestic violence or rape crisis center in this state, unless a
 284 state attorney, statewide prosecutor, or federal prosecutor has
 285 certified in writing that the victim needs to relocate from an
 286 unsafe environment due to the threat of future violence that is

287 directly related to the human trafficking offense. The center's
 288 certification must assert that the victim is cooperating with
 289 the proper authorities and must include documentation that the
 290 victim has developed a safety plan.

291 (3) Relocation payments for a human trafficking claim
 292 shall be denied if the department has previously approved or
 293 paid out a domestic violence or sexual battery relocation claim
 294 under s. 960.198 or s. 960.199 to the same victim regarding the
 295 same incident.

296 Section 10. Subsection (3) of section 960.198, Florida
 297 Statutes, is amended to read:

298 960.198 Relocation assistance for victims of domestic
 299 violence.—

300 (3) Relocation payments for a domestic violence claim
 301 shall be denied if the department has previously approved or
 302 paid out a human trafficking or sexual battery relocation claim
 303 under s. 960.196 or s. 960.199 to the same victim regarding the
 304 same incident.

305 Section 11. Section 960.199, Florida Statutes, is amended
 306 to read:

307 960.199 Relocation assistance for victims of sexual
 308 battery ~~or human trafficking~~.—

309 (1) The department may award a one-time payment of up to
 310 \$1,500 on any one claim and a lifetime maximum of \$3,000 to a
 311 victim of sexual battery, as defined in s. 794.011, ~~or a victim~~
 312 ~~of human trafficking, as described in s. 787.06(3)(b), (d), (f),~~

313 ~~or (g)~~, who needs relocation assistance.

314 (2) In order for an award to be granted to a victim for
315 relocation assistance:

316 (a) There must be proof that a sexual battery offense ~~or~~
317 ~~human trafficking offense, as described in s. 787.06(3)(b), (d),~~
318 ~~(f), or (g)~~, was committed.

319 (b) The sexual battery offense ~~or human trafficking~~
320 ~~offense, as defined in s. 787.06(3)(b), (d), (f), or (g)~~, must
321 be reported to the proper authorities.

322 (c) The victim's need for assistance must be certified by
323 a certified rape crisis center in this state ~~or by the state~~
324 ~~attorney or statewide prosecutor having jurisdiction over the~~
325 ~~offense. A victim of human trafficking's need for assistance may~~
326 ~~also be certified by a certified domestic violence center in~~
327 ~~this state.~~

328 (d) The center's certification must assert that the victim
329 is cooperating with law enforcement officials, if applicable,
330 and must include documentation that the victim has developed a
331 safety plan. ~~If the victim seeking relocation assistance is a~~
332 ~~victim of a human trafficking offense as described in s.~~
333 ~~787.06(3)(b), (d), (f), or (g), the certified rape crisis~~
334 ~~center's or certified domestic violence center's certification~~
335 ~~must include, if applicable, approval of the state attorney or~~
336 ~~statewide prosecutor attesting that the victim is cooperating~~
337 ~~with law enforcement officials.~~

338 (e) The act of sexual battery ~~or human trafficking, as~~

339 | ~~described in s. 787.06(3)(b), (d), (f), or (g),~~ must be
 340 | committed in the victim's place of residence or in a location
 341 | that would lead the victim to reasonably fear for his or her
 342 | continued safety in the place of residence.

343 | (3) Relocation payments for a sexual battery ~~or human~~
 344 | ~~trafficking~~ claim under this section shall be denied if the
 345 | department has previously approved or paid out a human
 346 | trafficking or domestic violence relocation claim under s.
 347 | 960.196 or s. 960.198 to the same victim regarding the same
 348 | incident.

349 | Section 12. This act shall take effect July 1, 2015.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Eisnaugle offered the following:

Amendment (with title amendment)

6 Remove lines 112-121 and insert:

7 16.62 Recognition and awards.-In addition to expenditures
8 separately authorized by law, the Department of Legal Affairs
9 may expend no more than \$20,000 annually to support costs
10 associated with the agency's Law Enforcement Officer of the Year
11 Recognition and Awards Program, and Victims Services Recognition
12 and Awards Program.

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

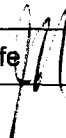
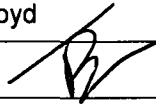
16 Remove lines 7-9 and insert:

Amendment No. 1

17 a specified amount annually for certain recognition and awards
18 programs; amending s.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 443 Violation of an Injunction for Protection
SPONSOR(S): Criminal Justice Subcommittee; Rodríguez
TIED BILLS: None **IDEN./SIM. BILLS:** SB 804

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

Victims of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking may obtain an injunction for protection if certain requirements are met. An injunction is either temporary, lasting a maximum of 15 days, or final, lasting until dissolved by the court. A respondent violates the terms of an injunction for protection if the respondent willfully commits specified prohibited acts against the petitioner. The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor.

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection to a third degree felony.

The Criminal Justice Impact Conference (CJIC) met March 11, 2015 and determined this bill will have a positive indeterminate impact on state prison beds. This means CJIC estimates that this bill may result in an unquantifiable increase in state prison beds. Because the bill reduces the number of persons subject to misdemeanor penalties for third or subsequent violations of such injunctions for protection, the bill may decrease the number of offenders sentenced to county jail.

The bill is effective on October 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Injunctions for Protection against Specified Acts of Violence

Domestic Violence

Any person who is the victim of domestic violence¹ or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.² The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.³ A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.⁴ At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.⁵

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction *ex parte*.^{6,7} Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.⁸ The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.⁹

Repeat, Dating, and Sexual Violence

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,¹⁰ dating violence,¹¹ and sexual violence.¹² This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

¹ Section 741.28, F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

² s. 741.30(1), F.S.

³ s. 741.30(3), F.S.

⁴ s. 741.30(4), F.S.

⁵ s. 741.30(6), F.S. Either party may move the court to modify or dissolve an injunction at any time. s. 741.30(6)(c) and (10), F.S.

⁶ The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan. s. 741.30(5), F.S.

⁷ The only evidence admissible in the *ex parte* hearing is verified pleadings or affidavits, unless the respondent appears at the hearing or has received reasonable notice of the hearing. s. 741.30(5)(b), F.S.

⁸ s. 741.30(5)(c), F.S.

⁹ The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance. s. 741.30(5)(c), F.S.

¹⁰ Section 784.046(1)(b), F.S., defines “repeat violence” to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner’s immediate family member. Section 784.046(1)(a), F.S., defines “violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

¹¹ Section 784.046(1)(d), F.S., defines “dating violence” to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:

- A dating relationship must have existed within the past six months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and

Stalking and Cyberstalking

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

Violation of an Injunction against Specified Acts of Violence

A respondent violates the terms of an injunction against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking¹³ if the respondent willfully:

- Refuses to vacate the dwelling that the parties share;¹⁴
- Goes to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Commits an act of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking against the petitioner;
- Commits any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephones, contacts, or otherwise communicates with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally comes within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defaces or destroys the petitioner's personal property, including the petitioner's car; or
- Refuses to surrender firearms or ammunition if ordered to do so by the court.¹⁵

A court can enforce a violation of an injunction for protection through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.^{16,17}

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.

Effect of the Bill

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., making the penalty for an offense of violating an injunction for protection a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines "conviction" to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

B. SECTION DIRECTORY:

Section 1. Amends s. 741.31, F.S., relating to violation of an injunction for protection against domestic violence.

Section 2. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violators.

-
- The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

¹² Section 784.046(1)(c), F.S., defines "sexual violence" to mean any one incident of: sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

¹³ Sections 741.31(4)(a), 784.047, and 784.0487(4), F.S., provide that this includes foreign protection orders that are accorded full and faith credit pursuant to s. 741.315, F.S.

¹⁴ This provision does not apply to injunctions for protection against stalking or cyberstalking. s. 784.0487, F.S.

¹⁵ ss. 741.31(4)(a), 784.047, and 784.0487, F.S.

¹⁶ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹⁷ ss. 741.30(9), 784.046(9), and 784.0485(9), F.S.

Section 3. Amends s. 784.0487, F.S., relating to violation of an injunction for protection against stalking or cyberstalking.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met March 11, 2015 and determined this bill will have a positive indeterminate impact on state prison beds. This means CJIC estimates that this bill may result in an unquantifiable increase in state prison beds.

This bill amends ss. 741.31, 784.047, and 784.0487, F.S. Under current law, it is a 1st degree misdemeanor to willfully violate an injunction for protection against domestic violence (s. 741.31, F.S.). It is a 1st degree misdemeanor to willfully violate an injunction for protection against repeat violence, sexual violence, or dating violence (s. 784.047, F.S.). Also, it is a 1st degree misdemeanor to willfully violate an injunction for protection against stalking or cyberstalking (s. 784.0487, F.S.). The proposed legislation adds an unranked, 3rd degree felony for a person who has two or more prior convictions for violating an injunction and commits any third or subsequent violation under each of these three statutes.

Per FDLE, in Fiscal Year 2013-14, there were 183 guilty/convicted counts and six adjudication withheld counts for repeat offenders violating s. 741.31, F.S. There were 13 guilty/convicted counts and one adjudication withheld count for repeat offenders violating s. 784.047, F.S. There were no guilty/convicted counts or adjudication withheld counts for repeat offenders violating s. 784.0487. It is unknown what number of these repeat offenses were third or subsequent violations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Because the bill reduces the number of persons subject to misdemeanor penalties for third or subsequent violations of such injunctions for protection, the bill may decrease the number of offenders sentenced to county jail.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment increases the penalty to a third degree felony when a person commits a third or subsequent violation of an injunction for protection against repeat, dating, or sexual violence, or stalking or cyberstalking.

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

1 A bill to be entitled
 2 An act relating to violation of an injunction for
 3 protection; amending ss. 741.31, 784.047, and
 4 784.0487, F.S.; providing enhanced criminal penalties
 5 for a third or subsequent violation of an injunction
 6 for protection against specified acts of violence or a
 7 foreign protection order issued under specified
 8 provisions; providing an effective date.

9

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

11

12 Section 1. Subsection (4) of section 741.31, Florida
 13 Statutes, is amended to read:

14 741.31 Violation of an injunction for protection against
 15 domestic violence.—

16 (4) (a) A person who willfully violates an injunction for
 17 protection against domestic violence issued pursuant to s.
 18 741.30, or a foreign protection order accorded full faith and
 19 credit pursuant to s. 741.315, by:

20 1. Refusing to vacate the dwelling that the parties share;

21 2. Going to, or being within 500 feet of, the petitioner's
 22 residence, school, place of employment, or a specified place
 23 frequented regularly by the petitioner and any named family or
 24 household member;

25 3. Committing an act of domestic violence against the
 26 petitioner;

27 4. Committing any other violation of the injunction
 28 through an intentional unlawful threat, word, or act to do
 29 violence to the petitioner;
 30 5. Telephoning, contacting, or otherwise communicating
 31 with the petitioner directly or indirectly, unless the
 32 injunction specifically allows indirect contact through a third
 33 party;
 34 6. Knowingly and intentionally coming within 100 feet of
 35 the petitioner's motor vehicle, whether or not that vehicle is
 36 occupied;
 37 7. Defacing or destroying the petitioner's personal
 38 property, including the petitioner's motor vehicle; or
 39 8. Refusing to surrender firearms or ammunition if ordered
 40 to do so by the court
 41
 42 commits a misdemeanor of the first degree, punishable as
 43 provided in s. 775.082 or s. 775.083, except as provided in
 44 paragraph (c).
 45 (b)1. It is a violation of s. 790.233, and a misdemeanor
 46 of the first degree, punishable as provided in s. 775.082 or s.
 47 775.083, for a person to violate a final injunction for
 48 protection against domestic violence by having in his or her
 49 care, custody, possession, or control any firearm or ammunition.
 50 2. It is the intent of the Legislature that the
 51 disabilities regarding possession of firearms and ammunition are
 52 consistent with federal law. Accordingly, this paragraph shall

53 | not apply to a state or local officer as defined in s.
 54 | 943.10(14), holding an active certification, who receives or
 55 | possesses a firearm or ammunition for use in performing official
 56 | duties on behalf of the officer's employing agency, unless
 57 | otherwise prohibited by the employing agency.

58 | (c) A person who has two or more prior convictions for
 59 | violation of an injunction and who commits any third or
 60 | subsequent violation commits a felony of the third degree,
 61 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 62 | For purposes of this paragraph, the term "conviction" means a
 63 | determination of guilt that is the result of a plea or a trial,
 64 | regardless of whether adjudication is withheld or a plea of nolo
 65 | contendere is entered.

66 | Section 2. Section 784.047, Florida Statutes, is amended
 67 | to read:

68 | 784.047 Penalties for violating protective injunction
 69 | against violators.—

70 | (1) A person who willfully violates an injunction for
 71 | protection against repeat violence, sexual violence, or dating
 72 | violence, issued pursuant to s. 784.046, or a foreign protection
 73 | order accorded full faith and credit pursuant to s. 741.315 by:

74 | (a)~~(1)~~ Refusing to vacate the dwelling that the parties
 75 | share;

76 | (b)~~(2)~~ Going to, or being within 500 feet of, the
 77 | petitioner's residence, school, place of employment, or a
 78 | specified place frequented regularly by the petitioner and any

79 | named family or household member;

80 | ~~(c)(3)~~ Committing an act of repeat violence, sexual
81 | violence, or dating violence against the petitioner;

82 | ~~(d)(4)~~ Committing any other violation of the injunction
83 | through an intentional unlawful threat, word, or act to do
84 | violence to the petitioner;

85 | ~~(e)(5)~~ Telephoning, contacting, or otherwise communicating
86 | with the petitioner directly or indirectly, unless the
87 | injunction specifically allows indirect contact through a third
88 | party;

89 | ~~(f)(6)~~ Knowingly and intentionally coming within 100 feet
90 | of the petitioner's motor vehicle, whether or not that vehicle
91 | is occupied;

92 | ~~(g)(7)~~ Defacing or destroying the petitioner's personal
93 | property, including the petitioner's motor vehicle; or

94 | ~~(h)(8)~~ Refusing to surrender firearms or ammunition if
95 | ordered to do so by the court,

96 |
97 | commits a misdemeanor of the first degree, punishable as
98 | provided in s. 775.082 or s. 775.083, except as provided in
99 | subsection (2).

100 | (2) A person who has two or more prior convictions for
101 | violation of an injunction and who commits any third or
102 | subsequent violation commits a felony of the third degree,
103 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
104 | For purposes of this subsection, the term "conviction" means a

105 determination of guilt that is the result of a plea or a trial,
 106 regardless of whether adjudication is withheld or a plea of nolo
 107 contendere is entered.

108 Section 3. Subsection (4) of section 784.0487, Florida
 109 Statutes, is amended to read:

110 784.0487 Violation of an injunction for protection against
 111 stalking or cyberstalking.—

112 (4) (a) A person who willfully violates an injunction for
 113 protection against stalking or cyberstalking issued pursuant to
 114 s. 784.0485, or a foreign protection order accorded full faith
 115 and credit pursuant to s. 741.315, by:

116 1. (a) Going to, or being within 500 feet of, the
 117 petitioner's residence, school, place of employment, or a
 118 specified place frequented regularly by the petitioner and any
 119 named family members or individuals closely associated with the
 120 petitioner;

121 2. (b) Committing an act of stalking against the
 122 petitioner;

123 3. (c) Committing any other violation of the injunction
 124 through an intentional unlawful threat, word, or act to do
 125 violence to the petitioner;

126 4. (d) Telephoning, contacting, or otherwise communicating
 127 with the petitioner, directly or indirectly, unless the
 128 injunction specifically allows indirect contact through a third
 129 party;

130 5. (e) Knowingly and intentionally coming within 100 feet

131 of the petitioner's motor vehicle, whether or not that vehicle
 132 is occupied;

133 ~~6.(f)~~ Defacing or destroying the petitioner's personal
 134 property, including the petitioner's motor vehicle; or

135 ~~7.(g)~~ Refusing to surrender firearms or ammunition if
 136 ordered to do so by the court,

137

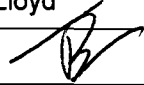
138 commits a misdemeanor of the first degree, punishable as
 139 provided in s. 775.082 or s. 775.083, except as provided in
 140 paragraph (b).

141 (b) A person who has two or more prior convictions for
 142 violation of an injunction and who commits any third or
 143 subsequent violation commits a felony of the third degree,
 144 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 145 For purposes of this paragraph, the term "conviction" means a
 146 determination of guilt that is the result of a plea or a trial,
 147 regardless of whether adjudication is withheld or a plea of nolo
 148 contendere is entered.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 775 Appointment of a Guardian Ad Litem
SPONSOR(S): Civil Justice Subcommittee; Powell
TIED BILLS: None **IDEN./SIM. BILLS:** SB 922

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 0 N, As CS	Robinson	Bond
2) Justice Appropriations Subcommittee		Schrader	Lloyd
3) Judiciary Committee		JSS	

SUMMARY ANALYSIS

Service of process is essential to satisfy jurisdictional requirements over the subject matter and the parties in a civil action. In some cases, a plaintiff is unable to effectuate actual service of process on a party because the party's identity or location may be unknown, the party may be evading service, the party may be away on active military service, or the party may have died. Despite the inability to effect actual service of process on such persons, a plaintiff may proceed in certain actions by providing such persons constructive service of process through publication of a legal notice.

In such actions, constitutional due process may require that a court appoint a representative for the party who is unknown or who cannot be found. Such representative may be known as a "guardian ad litem," an "attorney ad litem", or an "administrator ad litem," depending upon the interests represented. The ad litem has the responsibility to ensure that the absent party's due process rights are considered by the court, even if the person cannot ultimately be located. Practitioners report that some courts are reluctant to appoint an ad litem because there is no statutory authority for such appointments.

This bill creates a statutory framework for the appointment of a guardian ad litem, attorney ad litem, or administrator ad litem to represent certain persons in civil litigation who are unknown or cannot be located.

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

The effective date of the bill is July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Constructive Service of Process

The basic due process guarantee of the United States Constitution and the Florida Constitution provides that no person shall be deprived of life, liberty, or property without due process of law.¹ Procedural due process ensures that defendants in legal actions are given fair notice and afforded a real opportunity to be heard and defend in an orderly procedure before being deprived of property.² In civil actions, this usually requires that a person being sued receive notification of the lawsuit so that he or she can assert his or her rights and lawful defenses.³ This notice in a civil action is commonly referred to as "service of process." Service of original process or "actual service of process" is made by personally delivering notice along with a copy of the complaint, or other initial pleading or paper, of the civil action to the person to be served.⁴ However, in some cases, actual service of process may be impossible because a party's identity or location may be unknown, the party may be evading service, the party may be away on active military service, or the party may have died.

Where the goal of the lawsuit is to obtain a judgment against the person, due process requires that such person receive actual service of process to confer personal jurisdiction over such person upon the court,⁵ and in the absence thereof, the lawsuit may not proceed. Examples of such lawsuits include tort claims, actions to collect on a debt, and injunctions.

However, s. 49.011, F.S. specifies 15 actions or proceedings that may proceed even if actual service of process cannot be made because a party is unknown or cannot be located, including foreclosure, repossession, probate, and quiet title actions.⁶ Such proceedings are actions *in rem*, the purpose of which are to determine title to or to affect interests in specific property.⁷ Courts have subject matter jurisdiction to adjudicate the class of cases listed in s. 49.011, F.S. and have territorial jurisdiction or authority over the property, or "res" that is the object of the action,⁸ therefore the court does not need personal jurisdiction over the defendant. Although the court needs no personal jurisdiction over the defendant, service of process upon the defendant is still required in order to obtain a valid judgment over the "res" of the action. In cases or proceedings specified in s. 49.011, F.S. where the party is

¹ U.S. CONST. amend. XIV, § 1; FLA. CONST. art. I, s. 9.

² *Department of Law Enforcement v. Real Property*, 588 So. 2d 957, 960 (Fla. 1991); *See also Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (procedural due process under the fourteenth amendment of the United States Constitution guarantees notice and an opportunity to be heard at a meaningful time and in a meaningful manner).

³ *State ex rel. Merritt v. Heffernan*, 195 So. 145, 147 (Fla. 1940).

⁴ Section 48.031(1)(a), F.S.; A copy of the notice may also be left at the party's home with another resident who is at least 15 years of age.

⁵ *Bedford Computer Corp. v. Graphic Press, Inc.*, 484 So.2d 1225, 1227 (Fla. 1986) (holding that a personal judgment against a defendant based upon constructive service of process would deprive a defendant of his property without due process of law).

⁶ The law prefers actual service of process in all cases, and there are drawbacks to a suit without actual service of process. If constructive service of process must be used, then it confers only *in rem* or quasi *in rem* jurisdiction upon the court. For instance, a foreclosure suit can proceed against a party without actual service of process, but cannot yield a deficiency judgment as part of the suit because a personal judgment against a defendant based upon constructive service of process would deprive a defendant of his property without due process of law. Likewise, a divorce without actual service of process cannot provide for alimony or child support. *See Bedford Computer Corp. v. Graphic Press, Inc.*, 484 So. 2d 1225, 1227 (Fla. 1986).

⁷ *Rosado v. Bieluch*, 827 So. 2d 1115, 1117 (Fla. 4th DCA 2002).

⁸ *Board of Trustees of the Internal Improvement Trust Fund of the State of Florida v. Mobile Oil Corp.*, 455 So. 2d 412, 415-16 (Fla. 2d DCA 1984).

unknown or cannot be found, service of process may be accomplished service of process by publication, otherwise known as "constructive service of process." Chapter 49, F.S., authorizes constructive service through publication of a legal notice provided certain conditions are met. An in rem proceeding, when properly commenced and noticed, becomes binding as to the resulting adjudication.⁹

Court Appointed Representatives of an Unknown or Absent Party

One or more of the known or unknown parties in such actions may be a minor, an incompetent person, or a person under some other legal disability. Because the court's ruling may bind such persons, due process may further require that the trial court appoint one or more of an administrator ad litem, a guardian ad litem, or an attorney ad litem to protect the interests of the known or unknown party.

The distinction between a guardian ad litem, attorney ad litem, or administrator ad litem depends upon the interests they were appointed to represent.

- Guardian ad litem: A court appoints a guardian ad litem to represent a minor or incompetent person.¹⁰
- Attorney ad litem: A court appoints an attorney ad litem to represent the interests of an unknown entity or person, including a person who is away on active military service.¹¹
- Administrator ad litem: A court appoints an administrator ad litem to represent the estate of a decedent.¹²

The ad litem has the legal duty to make a diligent effort to find the interest for which he or she was appointed and to determine if the interest is competent to handle their own affairs, and if the interest is competent, to inform the interest of the pending litigation.¹³ If the absent party is not located before the case is submitted to the court for judgment, the ad litem is nevertheless obligated to represent the absent party's interest in good faith.¹⁴

Current law and court rules provide for the appointment of a guardian ad litem, administrator ad litem, or attorney ad litem for the estates of a deceased person, minors, persons under a legal disability, or unknown parties in specific contexts and situations, for instance:

- Quiet title actions.¹⁵
- The administration of or in judicial proceedings involving estates of decedents.¹⁶
- Termination of parental rights proceedings.¹⁷
- Dissolution of marriage or custody proceedings.¹⁸
- Claims against a dissolved limited liability company, corporation, or limited partnership.¹⁹
- Eminent domain proceedings.²⁰
- Conservatorships.²¹

⁹ *Pitts v. Pitts*, 162 So. 708 (Fla. 1935).

¹⁰ Fla. R. Civ. P. 1.210(b).

¹¹ The Service Members Civil Relief Act of 2003 requires that a court appoint an attorney to represent a member of the armed services on active duty. 50 App. U.S.C. § 521(b)(2).

¹² Section 733.308, F.S.; Fla. Prob. R. 5.120.

¹³ *Rodriguez v. Levin*, 524 So. 2d 1107, 1108 (Fla. 3d DCA 1988).

¹⁴ *Id.*

¹⁵ Section 65.061(2), F.S.

¹⁶ Sections 731.303(4) and 733.308, F.S.

¹⁷ Section 39.807(2)(a), F.S.

¹⁸ Section 61.401, F.S.

¹⁹ Sections 605.0711(7), 605.0713(3), 607.1406(7), 608.4421(7), 617.1408(7), and 620.1806(7), F.S.

²⁰ Section 73.021(4), F.S.

²¹ Sections 747.031(3) and 747.052(5), F.S.

- Guardianship.²²
- Settlement of certain civil claims by a minor.²³

However, under current law, there is no statute that specifically authorizes a court to appoint an ad litem to protect the rights and lawful defenses of all persons who have been constructively served in a proceeding specified in s. 49.011, F.S. In light of various statutes expressly mandating or permitting the appointment of ad litem in specific contexts/cases, some courts have concluded that absent express statutory authority to appoint an ad litem in a particular case, the court lacked inherent authority to appoint an ad litem - even in cases where the court thought it otherwise appropriate.²⁴ As a result of the lack of such specific authority, there has been inconsistency among the courts, in that some courts have nevertheless appointed an ad litem, while other courts have refused to do so.²⁵

The inability to obtain the appointment of an ad litem may affect the sufficiency of certain legal proceedings, particularly those involving real property, such as quiet title actions and foreclosures. Accordingly, lack of an ad litem may impair the marketability of real estate titles at the conclusion of such litigation.²⁶

Effect of Proposed Changes

The bill creates s. 49.31, F.S., to allow the court to appoint a guardian ad litem, attorney ad litem, or administrator ad litem ("ad litem"), as appropriate, for any party served by publication in a proceeding specified in ch. 49, F.S. who fails to respond to an action in the time required by law. The ad litem:

- Is not required to post a bond or designate a resident agent in order to serve.
- Serves through final judgment unless otherwise discharged by the court.
- Is entitled to a fee for services and costs which are assessed against the party requesting the ad litem or as otherwise ordered by the court.
- May not be appointed to represent an interest for which a personal representative, guardian of the property, or trustee is serving.

If an ad litem is appointed and he or she discovers that a personal representative, guardian of the property, or trustee is serving and represents the interest for which the ad litem was appointed, the ad litem must promptly report that finding to the court and must file a petition for discharge as to any interest for which a personal representative, guardian of the property, or trustee is serving. If an ad litem is appointed to represent an interest and discovers that the person whose interest is represented is deceased and there is no personal representative, guardian of the property, or trustee to represent the decedent's interest, the ad litem must use reasonable efforts to locate any spouse, heir, devisee, or beneficiary of the decedent, must report to the court the name and address of any such person the ad litem locates, and must petition for discharge as to any interest of the person located.

These statutory requirements regarding the conduct of an ad litem are consistent with normal practice and expectations of an ad litem.

The bill provides that a proceeding adjudicated before the effective date of the bill in which the court appointed an ad litem may not be declared ineffective solely due to lack of statutory authority to have appointed an ad litem.

²² Section 744.1075(4)(b), F.S.; Fla. Prob. R. 5.120.

²³ Section 744.3025, F.S.

²⁴ The Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Proposed Revisions to §49.021, Fla. Stats., Concerning Appointment of Ad Litem*s (on file with the Civil Justice Subcommittee, Florida House of Representatives).

²⁵ *Id.*

²⁶ *Damiano v. Weinstein*, 355 So.2d 819, 820 (Fla. 3d DCA 1978).

The bill does not abrogate the common law authority of a court to appoint an ad litem.

B. SECTION DIRECTORY:

Section 1 creates s. 49.31, F.S., relating to appointment of an ad litem.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2015, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Created a new section of the Florida Statutes for the substantive changes made by the bill.
- Clarified that all provisions of the bill apply to guardian ad litem, attorney ad litem, and administrator ad litem.
- Changed the effective date of the bill to July 1, 2015.
- Made organizational, stylistic, grammatical, and technical revisions.

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

1 A bill to be entitled

2 An act relating to the appointment of an ad litem;
3 creating s. 49.31, F.S.; defining the term "ad litem";
4 authorizing a court to appoint an ad litem for certain
5 parties upon whom service of process by publication is
6 made; prohibiting a court from appointing an ad litem
7 to represent an interest for which a personal
8 representative, guardian of property, or trustee is
9 serving; requiring an ad litem, upon discovery that
10 the party it represents is already represented by a
11 personal representative, guardian of property, or
12 trustee, or is deceased, to take certain actions;
13 prohibiting a court from requiring an ad litem to post
14 a bond or designate a resident agent; requiring a
15 court to discharge an ad litem when the final judgment
16 is entered or as otherwise ordered by the court;
17 providing that an ad litem is entitled to an award of
18 a reasonable fee for services and costs; providing for
19 assessment; prohibiting declaring certain proceedings
20 ineffective solely due to a lack of statutory
21 authority to appoint an ad litem; providing
22 construction; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

26 Section 1. Section 49.31, Florida Statutes, is created to
 27 read:

28 49.31 Appointment of ad litem.-

29 (1) As used in this section, the term "ad litem" means an
 30 attorney, administrator, or guardian ad litem.

31 (2) The court may appoint an ad litem for any party,
 32 whether known or unknown, upon whom service of process by
 33 publication under this chapter has been properly made and who
 34 has failed to file or serve any paper in the action within the
 35 time required by law. A court may not appoint an ad litem to
 36 represent an interest for which a personal representative,
 37 guardian of property, or trustee is serving.

38 (a) If the court has appointed an ad litem and the ad
 39 litem discovers that a personal representative, guardian of
 40 property, or trustee is serving who represents the interest for
 41 which the ad litem was appointed, the ad litem must promptly
 42 report that finding to the court and must file a petition for
 43 discharge as to any interest for which the personal
 44 representative, guardian of property, or trustee is serving.

45 (b) If the court has appointed an ad litem to represent an
 46 interest and the ad litem discovers that the person whose
 47 interest he or she represents is deceased and there is no
 48 personal representative, guardian of property, or trustee to
 49 represent the decedent's interest, the ad litem must make a
 50 reasonable attempt to locate any spouse, heir, devisee, or
 51 beneficiary of the decedent, must report to the court the name

52 and address of all such persons whom the ad litem locates, and
 53 must petition for discharge as to any interest of the person
 54 located.

55 (3) The court may not require an ad litem to post a bond
 56 or designate a resident agent in order to serve as an ad litem.

57 (4) The court shall discharge the ad litem when the final
 58 judgment is entered or as otherwise ordered by the court.

59 (5) The ad litem is entitled to an award of a reasonable
 60 fee for services rendered and costs, which shall be assessed
 61 against the party requesting the appointment of the ad litem, or
 62 as otherwise ordered by the court.

63 (6) In all cases adjudicated in which the court appointed
 64 an ad litem, a proceeding may not be declared ineffective solely
 65 due to lack of statutory authority to appoint an ad litem.

66 (7) This section does not abrogate a court's common law
 67 authority to appoint an ad litem.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Powell offered the following:

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

6 Remove line 62 and insert:

7 as otherwise ordered by the court. No state funds may be used to
8 pay fees for services rendered by the ad litem.

9
10 -----
11 **T I T L E A M E N D M E N T**

12 Remove line 18 and insert:

13 a reasonable fee for services and costs; restricting the use of
14 state funds; providing for