



Justice Appropriations Subcommittee

Meeting Packet

**January 28, 2016
3:30 p.m. – 5:30 p.m.
Reed Hall**



The Florida House of Representatives
APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

Steve Crisafulli
Speaker

Larry Metz
Chair

MEETING AGENDA

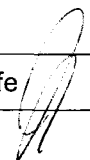

Reed Hall

January 28, 2016

- I.** Meeting Called To Order
- II.** Opening Remarks by Chair
- III.** Consideration of the following bill(s):
 - CS/HB179 - Evidence Collected in Sexual Offense Investigation by Criminal Justice Subcommittee and Rep. Adkins
 - CS/HB 673 - Adoption by Children, Families & Seniors Subcommittee and Rep. Adkins
 - CS/HB 685 - Victim Assistance by Criminal Justice Subcommittee and Rep. Slosberg
- IV.** Chair's Budget Proposal for FY 2015-16
- V.** Closing Remarks
- VI.** Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 179 Evidence Collected in Sexual Offense Investigations
SPONSOR(S): Criminal Justice Subcommittee; Adkins and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 636

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

SUMMARY ANALYSIS

Sexual offense evidence kits (SOEKs), also referred to as "rape kits," are medical kits used to collect evidence from the body and clothing of a victim of rape or other sexual offense during a forensic physical examination. Such kits are submitted by law enforcement agencies to crime laboratories for DNA analysis and resulting DNA profiles are uploaded to local, state, and federal DNA databases to determine whether a match identifying the perpetrator can be made.

During the past decade, the federal government has indicated that hundreds of thousands of SOEKs have been retained untested in law enforcement evidence storage facilities across the nation. Concerns about this issue have prompted the federal funding of studies in Houston, Texas and Detroit, Michigan to determine the number of untested SOEKs retained in those jurisdictions, federal grant funding to assist jurisdictions in analyzing untested kits, and legislation being adopted in some states which mandates periodic audits of untested SOEKs or which specifies requirements for the use, submission, and analysis of SOEKs.

Currently, Florida statute does not specify requirements regarding the testing of SOEKs. Proviso adopted as part of the 2015-2016 General Appropriations Act directed the Florida Department of Law Enforcement (FDLE) to conduct a statewide assessment of untested SOEKs, including both kits that have been submitted to a laboratory for analysis and those that have not been submitted. The FDLE reported its findings January 1, 2016.

The bill creates s. 943.326, F.S., to require a SOEK, or other DNA evidence if such kit is not collected, to be submitted to a member of the statewide criminal analysis laboratory system for forensic testing within the earlier of 30 days after:

- Receipt of the evidence by a law enforcement agency if a report of the sexual offense is made to the agency; or
- A request to have the evidence tested is made by the alleged victim or a specified representative of the victim.

The bill further requires that an alleged victim or certain representatives of the victim be informed of the purpose for and right to demand testing of such evidence. It also requires the FDLE and others to adopt guidelines for the collection, submission, and testing of DNA evidence and specifies that the section does not create certain causes of action or rights.

The bill will not have a significant fiscal impact on state or local governments.

The bill takes effect July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sexual Offense Evidence Kits; Forensic Physical Examinations; DNA Analysis

A sexual offense evidence kit (SOEK), also referred to as a "rape kit," is a medical kit used to collect evidence from the body and clothing of a victim of rape or other sexual offense during a forensic physical examination. The kit contains tools such as swabs, tubes, glass slides, containers, and plastic bags. These items are used to collect and preserve fibers from clothing, hair, and bodily fluids, which can help identify DNA and other forensic evidence left by a perpetrator.¹

In Florida, a victim of certain sexual offenses may have a forensic physical examination conducted by a healthcare provider for free regardless of whether the victim reports the offense to law enforcement authorities. Pursuant to s. 960.28(2), F.S., up to \$500 for expenses for a forensic physical examination must be paid for by the Crime Victims' Services Office within the Department of Legal Affairs (DLA) for a victim of sexual battery as defined in chapter 794 or a lewd or lascivious offense as defined in chapter 800. Such payment is made regardless of whether the victim is covered by health or disability insurance and whether the victim participates in the criminal justice system or cooperates with law enforcement.² Information received or maintained by the DLA which identifies an alleged victim who seeks payment of such medical expenses is confidential and exempt from the provisions of s. 119.07(1), F.S.³

According to protocols developed by the DLA, healthcare providers conducting the forensic physical examination should complete the document entitled "Sexual Assault Kit Form for Healthcare Providers."⁴ This document includes a consent form that requires the victim or his or her legal guardian to indicate that he or she consents to a forensic physical examination for the preservation of evidence of a sexual offense.⁵ Additionally, the victim or legal guardian must select one of the following two options:

- For Reporting Victims [i.e., victims who choose to report the sexual offense to law enforcement]: I do authorize this medical facility and the examiner to perform all necessary tests, examinations, photography, and treatment, and to supply copies of all pertinent medical laboratory reports, immediately upon completion to the law enforcement agency and the State Attorney's Office having jurisdiction.
- For Non-Reporting Victims [i.e., victims who choose to not report the sexual offense to law enforcement]: I do authorize this medical facility and the examiner to perform all necessary tests, examinations, photography, and treatment at this time.⁶

The DLA protocols provide instructions for sealing the SOEK upon completion of the exam and indicate that the SOEK must stay with the medical examiner or secured in a locked area with limited access and proper chain of custody procedures until transferred to law enforcement. For a SOEK of a non-reporting

¹ The White House, Office of Communications, *FACT SHEET: INVESTMENTS TO REDUCE THE NATIONAL RAPE KIT BACKLOG AND COMBAT VIOLENCE AGAINST WOMEN*, March 16, 2015, at 1.

² s. 960.28(2), F.S.

³ s. 960.28(4), F.S.

⁴ Florida Department of Legal Affairs, Division of Victim Services and Criminal Justice Programs, *Adult and Child Sexual Assault Protocols: Initial Forensic Physical Examination*, April 2015, at 13.

⁵ Florida Department of Law Enforcement, *Sexual Assault Kit Form for Healthcare Providers*, available at <http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx> (last visited Nov. 28, 2015).

⁶ *Id.*

victim, the protocol states that the medical examiner should check the local area for storage procedures and that a law enforcement agency is recommended for long-term storage.^{7, 8}

Generally, law enforcement agencies in Florida submit SOEKs for DNA analysis to the statewide criminal analysis laboratory system, which consists of six laboratories operated by the Florida Department of Law Enforcement (FDLE) in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties.⁹ According to information provided by the FDLE, DNA analysis of a SOEK requires on average approximately 26.25 hours of crime analyst and supervisor time.¹⁰

DNA profiles resulting from such analyses are uploaded by the laboratory to its local DNA Index System (DIS), which then uploads the profiles to the state DNA database. From there, DNA profiles are uploaded to the Federal Bureau of Investigation's Combined DIS, referred to as CODIS, which consists of DNA profiles contributed by federal, state, and local participating forensic laboratories. DNA profiles within these local, state, and federal databases are continuously searched against one another to determine whether a match exists.¹¹

In some cases, a law enforcement agency may not submit a SOEK for DNA analysis and may instead retain the SOEK in evidence storage. Reasons for not analyzing a SOEK include: (a) the victim did not want to file a police report regarding the assault; (b) the victim no longer wants the investigation to proceed; (c) the case is not being pursued by the state attorney; and (d) the suspect has pled guilty or nolo contendere.¹² According to FDLE, DNA profiles may not be uploaded into CODIS if there is no crime such as in the case of a non-reporting victim

SOEK Analysis Backlogs

National Backlog

In March 2015, the federal government estimated that a backlog of hundreds of thousands of untested SOEKs exists in crime labs throughout the United States (U.S.). As used by the federal government, the term "backlog" refers to SOEKs that were submitted to a crime laboratory for testing more than 90 days ago.¹³ Additionally, there are an unknown number of SOEKs in police evidence storage facilities throughout the nation which have not been submitted to a crime laboratory for analysis.¹⁴

To better understand the issue of SOEKs that have not been submitted for analysis, the National Institute of Justice (NIJ) awarded grants in 2011 to the Houston, Texas Police Department and Wayne County, Michigan Prosecutor's Office.¹⁵ Both entities conducted a census of untested SOEKs.¹⁶

⁷ Florida Department of Legal Affairs, *supra* note 4, at 21; *see also* Florida Department of Law Enforcement, *Instruction List for Forensic Exam Kit*, available at <http://www.fdle.state.fl.us/Content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx> (last visited Nov. 28, 2015).

⁸ Chief Frank Fabrizio, who represents the Florida Police Chiefs Association, testified at a Florida Senate hearing that in Orange and Volusia Counties, SOEKs for non-reporting victims are stored by a law enforcement agency, but are not submitted to a crime laboratory for analysis. Hearing of the Florida Senate Appropriations Subcommittee on Criminal and Civil Justice, Nov. 3, 2015, available at http://www.flSenate.gov/media/videoplayer?EventID=2443575804_2015111024.

⁹ s. 943.32, F.S.; *see also* Florida Department of Law Enforcement, *Biology Screening of Sexual Assault Evidence Kits* (on file with the House Criminal Justice Subcommittee).

¹⁰ Florida Department of Law Enforcement, *supra* note 9, at 7.

¹¹ *Id.* at 7-8; *see also* Federal Bureau of Investigation, *Frequently Asked Questions (FAQs) on the CODIS Program and the National DNA Index System*, <https://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet> (last visited Nov. 28, 2015).

¹² These reasons were provided during testimony by Jennifer Pritt, Assistant Commissioner of the Florida Department of Law Enforcement, and Chief Frank Fabrizio, representing the Florida Police Chiefs Association. Hearing of the Florida Senate Appropriations Subcommittee on Criminal and Civil Justice, Nov. 3, 2015, available at http://www.flSenate.gov/media/videoplayer?EventID=2443575804_2015111024.

¹³ The White House, *supra* note 1, at 1-2.

¹⁴ *Id.*

¹⁵ The White House, *supra* note 1, at 2.

- 6,663 untested SOEKs were found in storage at the Houston Police Department.¹⁷ Each of these SOEKs were submitted for analysis. As of February 2015, such analyses had resulted in 850 matches identifying the perpetrator and in the prosecutions of 29 offenders.¹⁸
- 8,707 untested SOEKs were found in Detroit.¹⁹ Of these SOEKs, approximately 2,000 were analyzed. The analyses resulted in 760 matches identifying the perpetrator, the identification of 188 serial offenders, and 15 convictions.²⁰

More recently this year, Congress approved the National Sexual Assault Kit Initiative, a \$41 million competitive grant program administered by the Bureau of Justice Assistance within the U.S. Department of Justice to support the comprehensive reform of jurisdictions' approaches to sexual offense cases resulting from evidence found in SOEKs that have never been submitted to a crime laboratory. Grant recipients announced on September 10, 2015, included: (a) the Florida Department of Law Enforcement which received \$1,268,540; (b) the Miami-Dade Police Department Forensic Services Bureau which received \$1,968,246; and (c) the Tallahassee Police Department which received \$163,939.²¹

Florida's Backlog Assessment

Proviso adopted as part of the 2015-2016 General Appropriations Act, appropriated \$300,000 in nonrecurring general revenue funds to FDLE to conduct statewide assessment of SOEKs that have not been analyzed. The proviso required FDLE to submit a report of its findings, including reasons for delays or deferment of analysis, to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2016.²²

In August 2015, FDLE, in cooperation with the Florida Sheriff's Association and the Florida Police Chiefs Association, developed and conducted a survey of all of this state's law enforcement agencies. This survey asked the agencies to identify the number of SOEKs that have not been submitted for analysis, the number of SOEKs that should be submitted for analysis, and the number of SOEKs that are from victims who chose to not report their sexual offenses to law enforcement.

The submitted report indicated that 212 local law enforcement agencies (69 percent) and all of the state's sheriff's offices responded to the survey, which represents 89 percent of this state's population. These survey responses indicate that 13,435 SOEKs have not been submitted for analysis.²³ Of this total, 6,774 kits are housed in jurisdictions served by county forensic laboratories and 6,661 are housed in jurisdictions served by FDLE crime laboratories.

The survey also required law enforcement agencies to indicate why the SOEKs have not been submitted for analysis and provided the following selections for such reasons: (a) the victim no longer wants the investigation to proceed; (b) the SOEK was obtained from a non-reporting victim; (c) the case is not being pursued by the State Attorney's Office; (d) the suspect has pled guilty or nolo contendere; (e) the agency did not require submission; and (e) a blank text box that enables the agency to provide its own reason. Respondents were allowed to choose more than one answer to this question.

¹⁶ National Institute of Justice, Office of Justice Programs, *Untested Evidence in Sexual Assault Cases*, <http://www.nij.gov/topics/law-enforcement/investigations/sexual-assault/Pages/untested-sexual-assault.aspx#determining> (last visited Nov. 28, 2015).

¹⁷ *Id.*

¹⁸ Katherine Driessen, *City done with lab testing of rape kit backlog*, Houston Chronicle (February 23, 2015), <http://www.chron.com/news/politics/houston/article/City-done-with-lab-testing-of-rape-kit-backlog-6096424.php>.

¹⁹ National Institute of Justice, *supra* note 16.

²⁰ The White House, *supra* note 1, at 2.

²¹ The New York County District Attorney's Office, *DISTRICT ATTORNEY VANCE AWARDS \$38 MILLION IN GRANTS TO HELP 32 JURISDICTIONS IN 20 STATES TEST BACKLOGGED RAPE KITS* (Sept. 10, 2015) <http://manhattanda.org/press-release/district-attorney-vance-awards-38-million-grants-help-32-jurisdictions-20-states-test->

²² Senate Bill 2500-A (2015), Specific Appropriation 1247.

²³ Florida Department of Law Enforcement, *Assessment of Unsubmitted Sexual Assault Kits*, 12/30/2015.

Forty-seven percent of the responding jurisdictions reported they had no untested kits. Of the remaining 53 percent of the jurisdictions that reported having untested kits the survey found that:

- 77 percent of the respondents (jurisdictions) reported that one of the reasons they did not submit the SOEK was because the victim did not want to proceed with the investigation.
- 58 percent of the respondents reported that one of the reasons they did not submit the SOEK is that the State Attorney's Office declined to prosecute.
- 38 percent of the respondents reported that one of the reasons they did not submit the SOEK is that the suspect pled guilty.
- 34 percent of the respondents reported that one of the reasons they did not submit the SOEK is that it was collected from a non-reporting victim.

In addition to the above responses, other reasons why SOEKs were not submitted included: the allegation was unfounded; victim deceased; collection preceded analysis technology; sexual contact is admitted by perpetrator and the case hinges on consent; suspect convicted on other charges, SOEKs not needed; and environmental damage to packaging.

The survey only measured what percent of the respondents reported that one or more of the selections on the survey as a reason they did not submit all of their SOEKs for analysis. There is no way to tell how many of the 13,435 SOEKs that have not been submitted for analysis are from non-reporting victims. The survey only tells you the percentage of the respondents (jurisdictions) that said it was one of the reasons they did not submit the SOEK.

State Regulation of SOEK Analyses

Like Florida, some states have adopted legislation requiring audits to be conducted of the untested SOEKs in the possession of law enforcement agencies and reports of such audits to be filed with the state.²⁴

In other states, legislation has been adopted which specifies requirements, such as procedures and timeframes, for SOEK use, submission, and analysis. For example:

- Colorado enacted legislation effective June 5, 2013, which requires the state's Department of Public Safety to adopt rules that require forensic evidence to be collected when requested by a sexual offense victim, specify standards for what evidence must be submitted to an accredited crime laboratory, and specify time frames for when such evidence must be submitted, analyzed, and compared in DNA databases. The law also directed the department to adopt a plan for prioritizing the analysis of its backlog of SOEKs and to include a requirement in its rules after the backlog is resolved that evidence be submitted for analysis within 21 days after receipt by a law enforcement agency.²⁵
- Illinois enacted legislation effective September 1, 2010, which requires law enforcement agencies to submit sexual offense evidence collected in connection with an investigation within 10 business days after receipt to an approved crime laboratory and requires crime laboratories to analyze such evidence within six months.²⁶
- Ohio adopted legislation effective March 23, 2015, which requires law enforcement agencies to forward the contents of a SOEK related to an investigation initiated after the act's effective date

²⁴ See Arkansas House Bill 1208 (2015) (requiring annual audits of untested SOEKs stored by law enforcement agencies and healthcare providers and submission of reports to the State Crime Laboratory and Legislature); Kentucky Senate Joint Resolution 20 (2015) (directing the state's Auditor of Public Accounts to study the number of untested SOEKs in the possession of law enforcement and prosecutorial agencies and to report such information to the Legislative Research Commission); Virginia Senate Bill 658 (2014) (requiring law enforcement agencies to inventory and report all untested physical evidence recovery kits to the Department of Forensic Science and requiring the Department to report to the General Assembly).

²⁵ COLO. REV. STAT. §24-33.5-113 (2015).

²⁶ 725 IL. COMP. STAT. 202/10 and 202/15 (2015).

to a crime laboratory within 30 days for analysis and directs the crime laboratory to perform the analysis as soon as possible after receipt.²⁷

Effect of Bill

The bill creates s. 943.326, F.S., to require a SOEK, or other DNA evidence if such kit is not collected, to be submitted to a member of the statewide criminal analysis laboratory system²⁸ for forensic testing within the earlier of 30 days after:

- Receipt of the evidence by a law enforcement agency if a report of the sexual offense is made to the law enforcement agency; or
- A request to have the evidence tested is made by the alleged victim, the alleged victim's parent or guardian if the alleged victim is a minor, or the alleged victim's personal representative if the alleged victim is deceased.

The new section of law further requires that an alleged victim or a specified representative of the victim be informed of the purpose for submitting evidence for testing and the right to request testing by:

- A medical provider conducting a forensic physical examination for purposes of a sexual offense evidence kit; or
- A law enforcement agency that collects other DNA evidence associated with the sexual offense if a kit is not collected.

The bill also requires FDLE and each laboratory within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, to adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense. Such guidelines and procedures must include the requirements of the section, standards for how evidence is to be packaged for submission, what evidence must be submitted to the a member of the statewide criminal analysis laboratory system, and timeframes for when the evidence must be submitted, analyzed, and compared to DNA databases.

The bill specifies that:

- The section's testing requirements are satisfied when a member of the statewide criminal analysis laboratory system tests the contents of the SOEK in an attempt to identify the foreign DNA attributable to a suspect.
- If a SOEK is not collected, the laboratory may receive and examine other items directly related to the crime scene, such as clothing or bedding or personal items left behind by the suspect.
- If probative information is obtained from the testing of the SOEK, the examination of other evidence should be based on the needs of the case and determined through cooperation among the investigating agency, the laboratory, and the prosecutor.

Finally, the bill states that the section does not create a cause of action or create any rights for an individual to challenge the admission of evidence or create a cause of action for damages or any other relief for a violation of the section.

The bill takes effect July 1, 2016.

B. SECTION DIRECTORY:

²⁷ OHIO REV. CODE ANN. §2933.82 (2015).

²⁸ The statewide criminal analysis laboratory system consists of six laboratories operated by the Florida Department of Law Enforcement (FDLE) in Ft. Myers, Jacksonville, Pensacola, Orlando, Tallahassee, and Tampa and five local laboratories in Broward, Indian River, Miami-Dade, Palm Beach, and Pinellas Counties. s. 943.32, F.S.

Section 1. Creates s. 943.326, F.S., relating to DNA evidence collected in a sexual assault investigations.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill also requires FDLE and each laboratory within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, to adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense. FDLE will be able to comply with this requirement within existing resources and reports this bill will not have a 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:

The bill does not authorize rules; instead, it requires FDLE and specified others to adopt guidelines and procedures relating to the collection, submission, and testing of DNA evidence that is obtained in connection with an alleged sexual offense.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The term “rule” is defined as “each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.”²⁹ The bill requires FDLE and specified others to adopt guidelines and procedures that address items including standards for how evidence is to be packaged for submission, what evidence must be submitted to the a member of the statewide criminal analysis laboratory system, and timeframes for when the evidence must be submitted, analyzed, and compared to DNA databases. These items appear to be a description of the procedure requirements of an agency. As such, it may be desirable to amend the bill so that it requires the adoption of rules, rather than guidelines and procedures.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 1, 2015, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the bill’s requirements for “any” DNA evidence collected in a sexual assault investigation to be analyzed.
- Increased the number of days within which a SOEK must be submitted for testing under certain circumstances from 21 to 30.
- Specified that medical providers and law enforcement agencies must provide certain information to victims or their representatives regarding SOEK testing under certain circumstances.
- Added provisions indicating when the section’s testing requirements are deemed satisfied and when other DNA evidence may be considered.
- Provided that the section does not create certain causes of action or rights.
- Removed the bill’s requirements for FDLE to adopt rules and submit a plan to analyze the untested sexual assault forensic evidence currently held in the statewide criminal analysis laboratory system by a certain date.

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

1 A bill to be entitled
 2 An act relating to evidence collected in sexual
 3 offense investigations; creating s. 943.326, F.S.;
 4 providing legislative intent; requiring that DNA
 5 evidence collected in sexual offense investigations be
 6 submitted to a member of the statewide criminal
 7 analysis laboratory system within a specified period;
 8 requiring that an alleged victim of a sexual offense
 9 be informed by medical providers and law enforcement
 10 agencies under certain circumstances of the purpose of
 11 and right to request testing of specified evidence;
 12 providing for adoption of guidelines and procedures by
 13 specified entities; providing requirements for such
 14 guidelines and procedures; providing construction;
 15 providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 943.326, Florida Statutes, is created
 20 to read:

21 943.326 DNA evidence collected in sexual offense
 22 investigations.-

23 (1) It is the intent of the Legislature that law
 24 enforcement agencies demonstrate their commitment to victims of
 25 sexual offenses through the timely submission and testing of DNA
 26 evidence collected in association with a sexual offense

27 investigation.

28 (2) A sexual offense evidence kit, or other DNA evidence

29 if a kit is not collected, must be submitted to a member of the

30 statewide criminal analysis laboratory system under s. 943.32

31 for forensic testing within 30 days after:

32 (a) Receipt of the evidence by a law enforcement agency if

33 a report of the sexual offense is made to the law enforcement

34 agency; or

35 (b) A request to have the evidence tested is made by:

36 1. The alleged victim;

37 2. The alleged victim's parent, guardian, or legal

38 representative, if the alleged victim is a minor; or

39 3. The alleged victim's personal representative, if the

40 alleged victim is deceased.

41 (3) An alleged victim or, if applicable, the person

42 representing the alleged victim under subparagraph (2)(b)2. or

43 subparagraph (2)(b)3. must be informed of the purpose of

44 submitting evidence for testing and the right to request testing

45 under subsection (2) by:

46 (a) A medical provider conducting a forensic physical

47 examination for purposes of a sexual offense evidence kit; or

48 (b) A law enforcement agency that collects other DNA

49 evidence associated with the sexual offense if a kit is not

50 collected under paragraph (a).

51 (4) The department and each laboratory within the

52 statewide criminal analysis laboratory system, in coordination

53 with the Florida Council Against Sexual Violence, shall adopt
 54 and disseminate guidelines and procedures for the collection,
 55 submission, and testing of DNA evidence that is obtained in
 56 connection with an alleged sexual offense. The timely submission
 57 and testing of sexual offense evidence kits is a core public
 58 safety issue.

59 (a) The guidelines and procedures must include the
 60 requirements of this section, standards for how evidence is to
 61 be packaged for submission, what evidence must be submitted to a
 62 member of the statewide criminal analysis laboratory system, and
 63 timeframes for when the evidence must be submitted, analyzed,
 64 and compared to DNA databases.

65 (b) The testing requirements of this section are satisfied
 66 when a member of the statewide criminal analysis laboratory
 67 system tests the contents of the sexual offense evidence kit in
 68 an attempt to identify the foreign DNA attributable to a
 69 suspect. If a sexual offense evidence kit is not collected, the
 70 laboratory may receive and examine other items directly related
 71 to the crime scene, such as clothing or bedding or personal
 72 items left behind by the suspect. If probative information is
 73 obtained from the testing of the sexual offense evidence kit,
 74 the examination of other evidence should be based on the needs
 75 of the case and determined through cooperation among the
 76 investigating agency, the laboratory, and the prosecutor.

77 (5) This section does not create a cause of action or
 78 create any rights for an individual to challenge the admission

79 | of evidence or create a cause of action for damages or any other
80 | relief for a violation of this section.

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

Amendment No.

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 Adkins offered the following:
4

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
7 Section 1. Section 943.326, Florida Statutes, is created
8 to read:

9 943.326 DNA evidence collected in sexual offense
10 investigations.-

11 (1) A sexual offense evidence kit, or other DNA evidence
12 if a kit is not collected, must be submitted to a member of the
13 statewide criminal analysis laboratory system under s. 943.32
14 for forensic testing within 30 days after:

15 (a) Receipt of the evidence by a law enforcement agency if
16 a report of the sexual offense is made to the law enforcement
17 agency; or

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18 (b) A request to have the evidence tested is made to the
19 medical provider or the law enforcement agency by:

20 1. The alleged victim;

21 2. The alleged victim's parent, guardian, or legal
22 representative, if the alleged victim is a minor; or

23 3. The alleged victim's personal representative, if the
24 alleged victim is deceased.

25 (2) An alleged victim or, if applicable, the person
26 representing the alleged victim under subparagraph (1)(b)2. or
27 subparagraph (1)(b)3. must be informed of the purpose of
28 submitting evidence for testing and the right to request testing
29 under subsection (1) by:

30 (a) A medical provider conducting a forensic physical
31 examination for purposes of a sexual offense evidence kit; or

32 (b) A law enforcement agency that collects other DNA
33 evidence associated with the sexual offense if a kit is not
34 collected under paragraph (a).

35 (3) A collected sexual offense evidence kit must be
36 retained in a secure, environmentally safe manner until the
37 prosecuting agency has approved its destruction.

38 (4) By January 1, 2017, the department and each laboratory
39 within the statewide criminal analysis laboratory system, in
40 coordination with the Florida Council Against Sexual Violence,
41 shall adopt and disseminate guidelines and procedures for the
42 collection, submission, and testing of DNA evidence that is
43 obtained in connection with an alleged sexual offense. The

Amendment No.

44 timely submission and testing of sexual offense evidence kits is
45 a core public safety issue. Testing of sexual offense evidence
46 kits must be completed no later than 120 days after submission
47 to a member of the statewide criminal analysis laboratory
48 system.

49 (a) The guidelines and procedures must include the
50 requirements of this section, standards for how evidence is to
51 be packaged for submission, what evidence must be submitted to a
52 member of the statewide criminal analysis laboratory system, and
53 timeframes for when the evidence must be submitted, analyzed,
54 and compared to DNA databases.

55 (b) The testing requirements of this section are satisfied
56 when a member of the statewide criminal analysis laboratory
57 system tests the contents of the sexual offense evidence kit in
58 an attempt to identify the foreign DNA attributable to a
59 suspect. If a sexual offense evidence kit is not collected, the
60 laboratory may receive and examine other items directly related
61 to the crime scene, such as clothing or bedding or personal
62 items left behind by the suspect. If probative information is
63 obtained from the testing of the sexual offense evidence kit,
64 the examination of other evidence should be based on the
65 potential evidentiary value to the case and determined through
66 cooperation among the investigating agency, the laboratory, and
67 the prosecutor.

68 (5) This section does not create a cause of action or
69 create any rights for an individual to challenge the admission

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70 | of evidence or create a cause of action for damages or any other
71 | relief for a violation of this section.

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

73 |
74 | -----

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


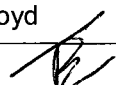

76 | Remove everything before the enacting clause and insert:

77 | A bill to be entitled

78 | An act relating to evidence collected in sexual
79 | offense investigations; creating s. 943.326, F.S.;
80 | requiring that a sexual offense evidence kit or other
81 | DNA evidence be submitted to a member of the statewide
82 | criminal analysis laboratory system within a specified
83 | timeframe after specified occurrences; requiring a
84 | medical provider or law enforcement agency to inform
85 | an alleged victim of a sexual offense of certain
86 | information relating to sexual offense evidence kits;
87 | requiring the retention of specified evidence;
88 | requiring adoption and dissemination of guidelines and
89 | procedures by certain entities by a specified date;
90 | requiring the testing of sexual offense evidence kits
91 | within a specified timeframe after submission to a
92 | member of the statewide criminal analysis laboratory;
93 | providing requirements for such guidelines and
94 | procedures; providing construction; providing an
95 | effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 673 Adoption
SPONSOR(S): Children, Families & Seniors Subcommittee, Adkins
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	10 Y, 0 N, As CS	Tuszynski	Brazzell
2) Justice Appropriations Subcommittee		Smith 	Lloyd 
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Florida Adoption Act, ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system. The chapter's intent is to provide stable and permanent homes for adoptive children in a prompt manner, prevent the disruption of adoptive placement, and hold parents accountable for meeting the needs of children.

For children in the child welfare system whose permanency goal is adoption, community-based care lead agencies generally work to find adoptive families and the court approves such placements using the best interest standard in ch. 39, F.S. That section authorizes the court to look broadly at all relevant factors to determine what would be in a child's best interest.

Section 63.082, F.S., allows a private adoption entity to intervene in the child welfare case to instead place a dependent child with prospective adoptive parents chosen by the child's parent or the private adoption entity. However, the best interest standard that applies in this instance is narrower than that in ch. 39, F.S. Section 63.082(6)(e) lists 4 specific factors the court must consider to determine whether it is in the best interest of the child to transfer custody to the prospective adoptive parents.

HB 673 changes the standard in s. 63.082(6)(e), F.S., for determining whether the transfer of a child's placement is in the child's best interest. The bill requires the court to consider and weigh all relevant factors, including new factors regarding whether a petition for termination of parental rights has been filed pursuant to s. 39.806(1)(f), (g), or (h), the stability of the current placement, the child's wishes, and what is best for the child.

For situations where a child's placement is transferred through the intervention process, the bill permits the court to establish requirements for the transfer of custody rather than ordering an immediate transfer.

The bill also creates timelines for intervention and placement hearings under s. 63.082(6), F.S., as well as increased requirements for notice to a parent of the right to private adoption from the child welfare system.

The bill states that in adoptions not involving the child welfare system, a birth parent's consent for adoption for a child 6 months old or younger is valid upon execution.

The bill has an insignificant fiscal impact on state and local expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Child Welfare System

Chapter 39, F.S., creates the dependency system that is charged with protecting child welfare. The Department of Children and Families (DCF) Office of Child Welfare works in partnership with local communities and the courts to ensure the safety, timely permanency and well-being of children.

Child welfare services are directed toward the prevention of abandonment, abuse, and neglect of children.¹ DCF's practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her home environment. Such services are coordinated by community-based care lead agencies which are contracted by DCF.

However, when it is determined that a child cannot safely remain in his or her own home, DCF works, through the involvement of the dependency courts, toward guaranteeing the safety of the child out of home while providing services to reunify the child as soon as it is no longer unsafe to do so.

Ultimately, if a child's home remains unsafe and the court is unable to reunify him or her in the family home, the child welfare system may seek a permanent home for that child through the adoption process.

The Dependency Process

Dependency Proceeding	Description of Process	Controlling Statute
Removal	The child's home is determined to be unsafe, and the child is removed.	s. 39.401, F.S.
Shelter Hearing	A shelter hearing occurs within 24 hours after removal. The judge determines whether to keep the child out-of-home.	s. 39.401, F.S.
Petition for Dependency	A petition for dependency occurs within 21 days of the shelter hearing. This petition seeks to find the child dependent.	s. 39.501, F.S.
Arraignment Hearing and Shelter Review	An arraignment and shelter review occurs within 28 days of the shelter hearing. This allows the parent to admit, deny, or consent to the allegations within the petition for dependency and allows the court to review any shelter placement.	s. 39.506, F.S.
Adjudicatory Trial	An adjudicatory trial is held within 30 days of arraignment. The judge determines whether a child is dependent during this trial.	s. 39.507, F.S.
Disposition Hearing	If the child is found dependent, disposition occurs within 15 days of arraignment or 30 days of adjudication. The judge reviews the case plan and placement of the child. The judge orders the case plan for the family and the appropriate placement of the child.	ss. 39.506 and 39.521, F.S.
Judicial Review Hearings	The court must review the case plan and placement every 6 months, or upon motion of a party.	s. 39.701, F.S.

¹ S. 39.001(8), F.S.

Dependency Proceeding	Description of Process	Controlling Statute
Petition for Termination of Parental Rights	Once the child has been out of home for 12 months, if DCF determines that reunification is no longer a viable goal, termination of parental rights is in the best interest of the child, and other requirements are met, a petition for termination of parental rights is filed.	ss. 39.802, F.S., 3.8055, F.S., 39.806, F.S., and 39.810, F.S.
Advisory Hearing	This hearing is set as soon as possible after all parties have been served with the petition for termination of parental rights. The hearing allows the parent to admit, deny, or consent to the allegations within the petition for termination of parental rights.	s. 39.808, F.S.
Adjudicatory Trial	An adjudicatory trial shall be set within 45 days after the advisory hearing. The judge determines whether to terminate parental rights to the child at this trial.	s. 39.809, F.S.

Adoption from the Child Welfare System

Statute requires child welfare services, including adoption services, to be delivered through community-based care (CBC) lead agencies contracted by DCF.² For example, CBC's provide pre- and post-adoption services and administer maintenance adoption subsidies which provide ongoing financial support for children adopted from the foster care system.

Adoption is a method of achieving permanency for children who have suffered abuse, neglect, or abandonment and who are unable to be reunified with their parents. Research indicates that children generally have better outcomes through adoption than through placement in long-term foster care.³

The Florida Adoption Act

The Florida Adoption Act, ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities:⁴

- Department of Children and Families (DCF);
- Child-placing agencies licensed by DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is qualified by DCF to place children in Florida.

Chapter 63, F.S., provides extensive legislative intent for the purpose and process of adoption,⁵ and for cooperation between private adoption entities and DCF in matters relating to permanent placement options for children in the care of DCF whose parents wish to participate in a private adoption plan.⁶ While the child welfare system uses adoption as a way to achieve permanency for children after the rights of the parents are terminated, ch. 63, F.S., allows a child welfare-involved parent whose parental rights have not been terminated to work with a private adoption entity to find a permanent home for his or her child.

² S. 409.986(1), F.S.

³ Evan B. Donaldson Adoption Institute, *Keeping the Promise: Critical Need for Post-Adoption Services to Enable Children and Families to Succeed*, Oct. 2010, p. 8.

⁴ S. 63.032(3), F.S.

⁵ S. 63.022, F.S.

⁶ S. 63.022(5), F.S.

Intervention by an Adoption Entity into a Dependency Proceeding

Section 63.082, F.S., allows a private adoption entity to intervene in ch. 39, F.S., dependency cases. The intervention process allows a child welfare-involved parent to have his or her dependent child removed from the child's current child welfare placement and adopted by other parents chosen by the child-welfare involved birth parent or adoption entity; the child-welfare involved parent could also choose to have his or her child adopted by the child's current foster parents. Statute currently requires courts to notify welfare-involved parents about this option after it has been determined that reunification is not a viable alternative and before the filing of a petition of termination of parental rights (at or after the disposition hearing).⁷

For children already in DCF custody, s. 63.082(6), F.S., provides that parental consent for placement of a minor with an adoption entity or qualified adoptive parents is valid, binding, and enforceable by the court.⁸ After the parent executes the consent, the process is as follows:

1. The court permits the adoption entity to intervene in the dependency case.⁹
2. The adoption entity provides the court with a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the proposed placement.¹⁰
3. The dependency court holds a hearing to determine if the required documents to intervene have been filed and whether a change in the child's placement is appropriate.¹¹
4. Upon the court's determination that the prospective adoptive parents are appropriate and that the adoption appears to be in the best interest of the minor child, the court immediately orders transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity.¹²
5. The adoption entity keeps the dependency court informed of the status of the adoption proceedings at least every 90 days from the date of the order changing placement of the child until the date the adoption is finalized.¹³

There are no statutory timeframes for when steps in this process must occur.

"Best Interest" Standards

Under ch. 39, F.S., the dependency court has broad powers to determine what is in the best interest of the child. Florida law does not enumerate the factors to be considered to determine the best interest of the child.¹⁴ The court has the ability to look at all relevant factors to determine what would be in a child's best interest while under the jurisdiction of the court.

However, ch. 63, F.S., has a different best interest standard for intervention by an adoption entity in a dependency proceeding. Chapter 63, F.S., states the best interest of the child should govern and be of foremost concern in the court's determination in adoption proceedings.¹⁵ Section 63.082(6)(e), F.S., expressly enumerates the factors to be considered in determining the best interest of the child. To determine whether the child's best interests are served by transferring custody to the prospective adoptive parent or adoption entity selected by the child's parent, statute directs the court to consider:

1. The right of the parent to determine an appropriate placement;
2. The permanency offered;

⁷ S. 63.082(6)(g), F.S.

⁸ S. 63.082(6)(a), F.S.

⁹ S. 63.082(6)(b), F.S.

¹⁰ Id.

¹¹ S. 63.082(6)(c), F.S.

¹² S. 63.072(d), F.S.

¹³ S. 63.082(f), F.S.

¹⁴ During termination of parental rights proceedings, 11 enumerated factors must be considered under s. 39.810, F.S., to determine that it is in the manifest best interest to terminate parental rights.

¹⁵ S. 63.022(2), F.S.

3. The child's bonding with any potential adoptive home that the child has been residing in; and
4. The importance of maintaining sibling relationships, if any.¹⁶

Florida courts have found that the best interest determination under the ch. 63, F.S., adoption intervention process is unique and not the same as the best interest determination under ch. 39, F.S. The court stated in *In re S.N.W.*¹⁷ that once the court gives consideration to the right of the parent to determine an appropriate placement for the child as required under s. 63.082(6)(e), F.S.,¹⁸ the court is prevented from comparing the birth parents' choice of prospective adoptive parents with other potential placements that the court or DCF might choose. Additionally, the court stated that the "best interest" analysis requires a determination that the birth parent's choice of prospective adoptive parents is appropriate and protects the well-being of the child, not that it is the best choice as evaluated by the court or DCF in light of other alternatives.

Consent to Private Adoption

Chapter 63 also governs private adoptions, which involve children who have not been found dependent. Pursuant to s. 63.082(4)(c), F.S., if a child is older than 6 months at the time a birth parent signs a consent for the child's adoption, that consent is subject to a revocation period of 3 days. This gives the parent 3 days to change his or her mind about the adoption and means the adoption entity must wait before placing the child with a prospective adoptive parent. However, the statute is silent as to whether a consent for adoption of a child 6 months or younger becomes valid immediately or after a revocation period.

Effect of Proposed Changes

The bill provides that the act may be cited as the "Child's Best Hope Act."

Intervention by an Adoption Entity Into a Dependency Proceeding

The bill amends s. 63.082(6)(a), F.S., changing the application of the statute from children "in the custody" of DCF to children "under the supervision" of DCF or "otherwise subject to the jurisdiction of the dependency court." This clarifies that s. 63.082, F.S., applies to not only children placed in foster care but also any child under the jurisdiction of the dependency court, such as those in a relative placement.

Notice to Parents

The bill instructs the court to provide written notice to the child-welfare involved parent of the right to participate in a private adoption plan at several points during the dependency process. These include:

- the arraignment hearing held pursuant to s. 39.506, F.S.;
- in the order approving the case plan pursuant to s. 39.603, F.S.; and
- in the order that changes the permanency goal to adoption and termination of parental rights pursuant to s. 39.621, F.S.

This timeframe allows a parent to consider and evaluate this option beginning much earlier in the dependency process, before the child has been in a placement for a significant length of time.

¹⁶ S. 63.082(e), F.S.

¹⁷ 912 So2d 368 (2005), See also *In re K.A.G.*, 152 So3d 1271 (2014).

¹⁸ In determining the best interest of the child under s. 63.082, F.S., the court shall consider the rights of the parent to determine an appropriate placement for the child, the permanency offered, the child's bonding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships, if possible.

Best Interest Standard

The bill changes the best interest standard in s. 63.082(6)(e), F.S., for evaluating whether a child's custody will be transferred from the child welfare system to a prospective adoptive parent or adoption entity selected by the child's parent. The bill specifies that the court shall weigh all relevant factors. It also adds as new factors:

- Whether a petition for termination of parental rights has been filed pursuant to s. 39.806(1)(f),¹⁹ (g),²⁰ or (h);²¹
- The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of the placement;
- The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference; and
- What is best for the child.

The bill permits the court to establish reasonable requirements for the transfer of custody of the child to the prospective adoptive parents, including a reasonable period of time for the transfer to occur. Currently the court must immediately order the transfer of custody of the child to the prospective adoptive parents.

The bill also requires the court, absent good cause or mutual agreement, to hold the hearing on the motion to intervene within 30 days after filing, and a written final order shall be filed within 15 days after the hearing.

Consent to Private Adoption

The bill amends s. 63.082(4)(c), F.S., and specifies when the consent for private adoption of a child 6 months or younger becomes valid. For children who are 6 months old or younger when the parent executes consent to adoption, such consent is valid upon execution, without a revocation period. This means that for a child whose consent to adoption was signed immediately or shortly after birth (up to 6 months) that consent is valid as soon as it is signed, with no revocation period, and the adoption entity can begin the process of placing the child with an adoptive family.

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

B. SECTION DIRECTORY:

- Section 1:** Provides the act may be cited as the "Child's Best Hope Act."
Section 2: Amends s. 63.082, F.S., relating to execution of consent to adoption, and intervention.
Section 3: Provides an effective date of July 1, 2016.

¹⁹ Parent or parents have engaged in egregious conduct.

²⁰ Parent or parents have subjected the child or another child to aggravated child abuse as defined in s. 827.03, sexual battery or sexual abuse as defined in s. 39.01, or chronic abuse.

²¹ Parent or parents have committed the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or to another child.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill has an insignificant fiscal impact on expenditures and workload for the courts.

“The bill could increase judicial or court workload to the extent that providing such written notice requires more time than the current notice requirement, which does not specify the form that such notice must take. Notice may currently be provided verbally by a judge during the hearing.”²²

The bill requires the courts to hold a hearing within 30 days, and issue an order within 15 days after the hearing. This should not have a significant impact on workload as other cases could be shifted to comply with the timeframe if needed.

The bill also changes the standard for determining a change of placement by amending the best interest factors in s. 63.082(6)(e), F.S.²³ This change will require courts to consider more factors than under current law, which could require additional judicial time for judges who do not currently take these factors into consideration.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill has an insignificant fiscal impact on expenditures and workload for the courts.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

²² Office of the State Courts Administrator, *CS/HB 673 Judicial Impact Statement*, Dated: January 21, 2016, On file with the House Justice Appropriations Subcommittee.

²³ *Id.*

The United States Supreme Court has concluded, "freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment."²⁴

Florida courts have long recognized this fundamental right: "[W]e nevertheless cannot lose sight of the basic proposition that a parent has a natural God-given legal right to enjoy the custody, fellowship and companionship of his offspring. This is a rule older than the common law itself..."²⁵ However, "the only limitation on this rule of parental privilege is that as between the parent and the child the ultimate welfare of the child itself must be controlling."²⁶ The "right is not absolute but is subject to the overriding principle that it is the ultimate welfare or best interest of the child which must prevail".²⁷

There is no consensus among Florida courts on where the right of the parent begins to cede to the right of the child in dependency cases, prior to termination of parental rights. This legislation sits right at the intersection of these sometimes-competing interests.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Children, Families and Seniors Subcommittee adopted two amendments. The amendments made the following changes:

- Added two additional factors for the court to consider in the best interest analysis when deciding on granting an adoption intervention:
 - The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of the placement; and
 - The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference;
- Moved the "rights of the parent to determine an appropriate placement" factor to the end of the list;
- Struck language providing for a presumption to guide the court's decision based on the time a child has been in a placement; and
- Made a technical correction to cite the correct name of the permanency goal being referenced.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

²⁴ *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 1394, 71 L.Ed.2d 599 (1982)

²⁵ *State ex rel. Sparks v. Reeves*, 97 So.2d 18, 20 (Fla. 1957) See also *In re Camm*, 294 So.2d 318, 320 (Fla.), cert. denied, 419 U.S. 866, 95 S.Ct. 121, 42 L.Ed.2d 103 (1974)

²⁶ *Id.*

²⁷ *In re Camm*, 294 So.2d 318, 320 (Fla.), cert. denied, 419 U.S. 866, 95 S.Ct. 121, 42 L.Ed.2d 103 (1974).

1 A bill to be entitled
 2 An act relating to adoption; creating the "Child's
 3 Best Hope Act"; amending s. 63.082, F.S.; revising
 4 provisions for execution and disposition of a consent
 5 for adoption of a minor with an adoption entity or
 6 prospective adoptive parents when the minor child is
 7 in the custody of the Department of Children and
 8 Families or otherwise subject to the jurisdiction of
 9 the dependency court; providing that such consent is a
 10 permanent relinquishment of parental rights and is not
 11 revocable by the parent under certain conditions;
 12 requiring the court to hold a final hearing on a
 13 motion to intervene and change the placement of a
 14 child within a specified timeframe; directing the
 15 court to file a written final order within a specified
 16 timeframe; authorizing the court to establish certain
 17 requirements for transfer of custody; providing
 18 additional factors for court consideration in transfer
 19 of custody cases; directing the court to provide
 20 written notice to the biological parent of his or her
 21 right to participate in a private adoption plan;
 22 providing an effective date.

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

25
 26 Section 1. This act may be cited as the "Child's Best Hope

27 Act."

28 Section 2. Paragraph (c) of subsection (4) and subsection
29 (6) of section 63.082, Florida Statutes, are amended to read:

30 63.082 Execution of consent to adoption or affidavit of
31 nonpaternity; family social and medical history; revocation of
32 consent.—

33 (4)

34 (c) If the minor to be adopted is 6 months of age or
35 younger at the time of the execution of the consent, the consent
36 to adoption is valid upon execution. If the minor to be adopted
37 is older than 6 months of age at the time of the execution of
38 the consent, the consent to adoption is valid upon execution;
39 however, the consent ~~it~~ is subject to a revocation period of 3
40 business days.

41 (6) (a) If a parent executes a consent for adoption
42 ~~placement~~ of a minor with an adoption entity or qualified
43 prospective adoptive parents and the minor child is under the
44 supervision in the custody of the department, or otherwise
45 subject to the jurisdiction of the dependency court as a result
46 of the filing of a shelter petition, a dependency petition, or a
47 petition for termination of parental rights pursuant to chapter
48 39, but parental rights have not yet been terminated, the
49 adoption consent is valid, binding, and enforceable by the
50 court. The consent executed under this section shall operate as
51 a permanent relinquishment of parental rights and is not
52 revocable by the parent unless consent is revoked within 3

53 business days in accordance with paragraph (4) (c).

54 (b) Upon execution of the consent of the parent, the
 55 adoption entity shall be permitted to intervene in the
 56 dependency case as a party in interest and must provide the
 57 court that acquired jurisdiction over the minor, pursuant to the
 58 shelter or dependency petition filed by the department, a copy
 59 of the preliminary home study of the prospective adoptive
 60 parents and any other evidence of the suitability of the
 61 placement. The preliminary home study must be maintained with
 62 strictest confidentiality within the dependency court file and
 63 the department's file. A preliminary home study must be provided
 64 to the court in all cases in which an adoption entity has
 65 intervened pursuant to this section. Unless the court has
 66 concerns regarding the qualifications of the home study
 67 provider, or concerns that the home study may not be adequate to
 68 determine the best interests of the child, the home study
 69 provided by the adoption entity shall be deemed to be sufficient
 70 and no additional home study needs to be performed by the
 71 department.

72 (c) If an adoption entity files a motion to intervene in
 73 the dependency case in accordance with this chapter, the
 74 dependency court shall promptly grant a hearing to determine
 75 whether the adoption entity has filed the required documents to
 76 be permitted to intervene and whether a change of placement of
 77 the child is appropriate. Absent good cause or mutual agreement
 78 of the parties, the final hearing on the motion to intervene and

79 change the placement of the child must be held within 30 days
 80 after the filing of the motion and a written final order shall
 81 be filed within 15 days after the hearing.

82 (d) Upon a determination by the court that the prospective
 83 adoptive parents are properly qualified to adopt the minor child
 84 and that the adoption appears to be in the best interests of the
 85 minor child, the court shall promptly ~~immediately~~ order the
 86 transfer of custody of the minor child to the prospective
 87 adoptive parents, under the supervision of the adoption entity.
 88 The court may establish reasonable requirements for the transfer
 89 of custody in the transfer order, including a reasonable period
 90 of time to transition final custody to the prospective adoptive
 91 parents. The adoption entity shall thereafter provide monthly
 92 supervision reports to the department until finalization of the
 93 adoption. If the child has been determined to be dependent by
 94 the court, the department shall provide information to the
 95 prospective adoptive parents at the time they receive placement
 96 of the dependent child regarding approved parent training
 97 classes available within the community. The department shall
 98 file with the court an acknowledgment of the parent's receipt of
 99 the information regarding approved parent training classes
 100 available within the community.

101 (e) In determining whether the best interests of the child
 102 are served by transferring the custody of the minor child to the
 103 prospective adoptive parent selected by the parent or adoption
 104 entity, the court shall consider and weigh all relevant factors,

105 | including, but not limited to: ~~the rights of the parent to~~
 106 | ~~determine an appropriate placement for the child,~~
 107 | 1. The permanency offered;
 108 | 2. The established bonded relationship between the child
 109 | and the current caregiver in ~~child's bonding with~~ any potential
 110 | adoptive home in which ~~that~~ the child has been residing;
 111 | 3. The stability of the potential adoptive home in which
 112 | the child has been residing as well as the desirability of
 113 | maintaining continuity of the placement; ~~in, and~~
 114 | 4. The importance of maintaining sibling relationships, if
 115 | possible;
 116 | 5. The reasonable preferences and wishes of the child, if
 117 | the court deems the child to be of sufficient maturity,
 118 | understanding, and experience to express a preference;
 119 | 6. Whether a petition for termination of parental rights
 120 | has been filed pursuant to s. 39.806(1)(f), (g), or (h);
 121 | 7. What is best for the child; and
 122 | 8. The rights of the parent to determine an appropriate
 123 | placement for the child.
 124 | (f) The adoption entity shall be responsible for keeping
 125 | the dependency court informed of the status of the adoption
 126 | proceedings at least every 90 days from the date of the order
 127 | changing placement of the child until the date of finalization
 128 | of the adoption.
 129 | (g) At the arraignment hearing held pursuant to s. 39.506,
 130 | in the order that approves the case plan pursuant to s. 39.603,

131 and in the order that changes the permanency goal to adoption
 132 pursuant to s. 39.621 ~~In all dependency proceedings, after it is~~
 133 ~~determined that reunification is not a viable alternative and~~
 134 ~~prior to the filing of a petition for termination of parental~~
 135 ~~rights,~~ the court shall provide written notice to advise the
 136 biological parent who is a party to the case of his or her ~~the~~
 137 right to participate in a private adoption plan, including
 138 written notice of the factors and timeframes provided in
 139 paragraph (e).

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

Amendment No.

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 Adkins offered the following:
4

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (1) and (49) of section 39.01, Florida Statutes, are amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(1) "Abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

For purposes of this subsection, "establish or maintain a

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18 substantial and positive relationship" includes, but is not
19 limited to, frequent and regular contact with the child through
20 frequent and regular visitation or frequent and regular
21 communication to or with the child, and the exercise of parental
22 rights and responsibilities. Marginal efforts and incidental or
23 token visits or communications are not sufficient to establish
24 or maintain a substantial and positive relationship with a
25 child. A man's acknowledgement of paternity of the child does
26 not limit the period of time considered in determining whether
27 the child was abandoned. The term does not include a surrendered
28 newborn infant as described in s. 383.50, a "child in need of
29 services" as defined in chapter 984, or a "family in need of
30 services" as defined in chapter 984. The incarceration, repeated
31 incarceration, or extended incarceration of a parent, legal
32 custodian, or caregiver responsible for a child's welfare may
33 support a finding of abandonment.

34 (49) "Parent" means a woman who gives birth to a child and
35 a man whose consent to the adoption of the child would be
36 required under s. 63.062(1). If a child has been legally
37 adopted, the term "parent" means the adoptive mother or father
38 of the child. ~~The term does not include an individual whose~~
39 ~~parental relationship to the child has been legally terminated,~~
40 ~~or an alleged or prospective parent, unless the parental status~~
41 ~~falls within the terms of s. 39.503(1) or s. 63.062(1).~~ For
42 purposes of this chapter only, when the phrase "parent or legal
43 custodian" is used, it refers to rights or responsibilities of

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44 the parent and, only if there is no living parent with intact
45 parental rights, to the rights or responsibilities of the legal
46 custodian who has assumed the role of the parent. The term does
47 not include an individual whose parental relationship to the
48 child has been legally terminated, or an alleged or prospective
49 parent, unless:

50 (a) The parental status falls within the terms of s.
51 39.503(1) or s. 63.062(1); or

52 (b) Parental status is applied for the purpose of
53 determining whether the child has been abandoned.

54 Section 2. Subsection (6) of section 63.082, Florida
55 Statutes, is amended to read:

56 63.082 Execution of consent to adoption or affidavit of
57 nonpaternity; family social and medical history; revocation of
58 consent.—

59 (6) (a) If a parent executes a consent for adoption
60 ~~placement~~ of a minor with an adoption entity or qualified
61 prospective adoptive parents and the minor child is under the
62 supervision in the custody of the department, or otherwise
63 subject to the jurisdiction of the dependency court as a result
64 of the entry of a shelter order petition, a dependency petition,
65 or a petition for termination of parental rights pursuant to
66 chapter 39, but parental rights have not yet been terminated,
67 the adoption consent is valid, binding, and enforceable by the
68 court.

69 (b) Upon execution of the consent of the parent, the

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70 adoption entity shall be permitted to intervene in the
71 dependency case as a party in interest and must provide the
72 court that acquired jurisdiction over the minor, pursuant to the
73 shelter or dependency petition filed by the department, a copy
74 of the preliminary home study of the prospective adoptive
75 parents and any other evidence of the suitability of the
76 placement. The preliminary home study must be maintained with
77 strictest confidentiality within the dependency court file and
78 the department's file. A preliminary home study must be provided
79 to the court in all cases in which an adoption entity has
80 intervened pursuant to this section. Unless the court has
81 concerns regarding the qualifications of the home study
82 provider, or concerns that the home study may not be adequate to
83 determine the best interests of the child, the home study
84 provided by the adoption entity shall be deemed to be sufficient
85 and no additional home study needs to be performed by the
86 department.

87 (c) If an adoption entity files a motion to intervene in
88 the dependency case in accordance with this chapter, the
89 dependency court shall promptly grant a hearing to determine
90 whether the adoption entity has filed the required documents to
91 be permitted to intervene and whether a change of placement of
92 the child is in the best interests of the child appropriate.
93 Absent good cause or mutual agreement of the parties, the final
94 hearing on the motion to intervene and the change of placement
95 of the child must be held within 30 days after the filing of the

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96 motion and a written final order shall be filed within 15 days
97 after the hearing.

98 (d) If after consideration of all relevant factors,
99 including those set forth in paragraph (e), the court determines
100 ~~Upon a determination by the court~~ that the prospective adoptive
101 parents are properly qualified to adopt the minor child and that
102 the adoption is ~~appears to be~~ in the best interests of the minor
103 child, the court shall promptly ~~immediately~~ order the transfer
104 of custody of the minor child to the prospective adoptive
105 parents, under the supervision of the adoption entity. The court
106 may establish reasonable requirements for the transfer of
107 custody in the transfer order, including a reasonable period of
108 time to transition final custody to the prospective adoptive
109 parents. The adoption entity shall thereafter provide monthly
110 supervision reports to the department until finalization of the
111 adoption. If the child has been determined to be dependent by
112 the court, the department shall provide information to the
113 prospective adoptive parents at the time they receive placement
114 of the dependent child regarding approved parent training
115 classes available within the community. The department shall
116 file with the court an acknowledgment of the parent's receipt of
117 the information regarding approved parent training classes
118 available within the community.

119 (e) In determining whether the best interests of the child
120 are served by transferring the custody of the minor child to the
121 prospective adoptive parent selected by the parent or adoption

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122 entity, the court shall consider and weigh all relevant factors,
123 including, but not limited to: ~~the rights of the parent to~~
124 ~~determine an appropriate placement for the child,~~

125 1. The permanency offered;

126 2. The established bonded relationship between the child
127 and the current caregiver in ~~child's bonding with~~ any potential
128 adoptive home in which ~~that~~ the child has been residing;

129 3. The stability of the potential adoptive home in which
130 the child has been residing as well as the desirability of
131 maintaining continuity of placement; ~~in, and~~

132 4. The importance of maintaining sibling relationships, if
133 possible;

134 5. The reasonable preferences and wishes of the child, if
135 the court deems the child to be of sufficient maturity,
136 understanding, and experience to express a preference;

137 6. Whether a petition for termination of parental rights
138 has been filed pursuant to s. 39.806(1)(f), (g), or (h);

139 7. What is best for the child; and

140 8. The right of the parent to determine an appropriate
141 placement for the child.

142 (f) The adoption entity shall be responsible for keeping
143 the dependency court informed of the status of the adoption
144 proceedings at least every 90 days from the date of the order
145 changing placement of the child until the date of finalization
146 of the adoption.

147 (g) At the arraignment hearing held pursuant to s. 39.506,

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148 in the order that approves the case plan pursuant to s. 39.603,
149 and in the order that changes the permanency goal to adoption
150 pursuant to s. 39.621 ~~In all dependency proceedings, after it is~~
151 ~~determined that reunification is not a viable alternative and~~
152 ~~prior to the filing of a petition for termination of parental~~
153 ~~rights,~~ the court shall provide written notice to advise the
154 biological parent who is a party to the case of his or her ~~the~~
155 right to participate in a private adoption plan, including
156 written notice of the factors provided in paragraph (e).

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

158 -----
159
160 **T I T L E A M E N D M E N T**

161 Remove everything before the enacting clause and insert:

162 A bill to be entitled

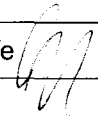
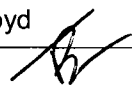
163 An act relating to adoption; amending s. 39.01, F.S.;
164 redefining the terms "abandoned" or "abandonment" and
165 "parent"; amending s. 63.082, F.S.; revising the
166 circumstances under which an adoption consent is
167 valid, binding, and enforceable; requiring a court to
168 determine, under certain circumstances, whether a
169 change of placement of a child is in the child's best
170 interests, rather than whether the change of placement
171 is appropriate; deleting a determination that a court
172 must consider under certain circumstances; authorizing
173 the court to establish certain requirements for the

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174 | transfer of custody; providing factors that the court
175 | shall consider and weigh under certain circumstances;
176 | revising circumstances under which a court must
177 | provide written notice to a parent of specified
178 | information; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee		McAuliffe 	Lloyd 
3) Judiciary Committee			

SUMMARY ANALYSIS

Reports frequently surface about people using pawnbrokers to sell stolen jewelry and other goods.

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

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

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

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

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

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Pawnbrokers

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

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

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

Victim Notification Statutes

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

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

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

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

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

³ s. 539.001(2)(i), F.S.

⁴ s. 539.001(15), F.S.

⁵ s. 539.001(15)(a), F.S.

⁶ *Id.*

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

⁹ s. 539.001(15)(c), F.S.

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

¹¹ s. 960.001(1)(a)5., F.S.

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

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

Effect of the Bill

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

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

The bill is effective July 1, 2016.

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

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

¹³ s. 960.001(1)(b)1., F.S.

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

¹⁵ s. 960.001(1)(b)3., F.S.

¹⁶ s. 960.001(1)(c), F.S.

¹⁷ s. 960.001(1)(h), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the requirement on law enforcement to “immediately notify” a victim and replaces it with “promptly make reasonable efforts to notify” a victim;
- Adds a statutory reference to the definition of “pawnbroker;” and
- Creates consistent terms throughout the bill.

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 victim assistance; amending s.
 3 960.001, F.S.; requiring a law enforcement agency to
 4 promptly make reasonable efforts to notify a victim if
 5 his or her property is determined to be in the
 6 possession of a pawnbroker; requiring the law
 7 enforcement agency to provide specified information to
 8 the victim; providing an effective date.

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

11
 12 Section 1. Paragraph (h) of subsection (1) of section
 13 960.001, Florida Statutes, is amended to read:

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

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

27 (h) Return of property to victim.—

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

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

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