

Tab 1	SB 694 by Brandes (CO-INTRODUCERS) Bracy; (Compare to H 00481) Mandatory Sentences						
108784	A	S	RCS	ACJ, Brandes	Delete L.17 - 20:	02/15 08:29 AM	

Tab 2	SB 1270 by Brandes (CO-INTRODUCERS) Rouson; (Similar to H 01095) Penalties and Fees						
601144	A	S	RCS	ACJ, Brandes	Delete L.353 - 684:	02/15 08:30 AM	

Tab 3	SB 1318 by Rouson; (Similar to H 01201) Education for Prisoners						
979286	A	S	RS	ACJ, Bracy	Delete L.23 - 32:	02/15 10:13 AM	
774644	SA	S	RCS	ACJ, Rouson	Delete L.23 - 61:	02/15 10:13 AM	
753714	A	S	RS	ACJ, Brandes	btw L.62 - 63:	02/15 10:13 AM	
516598	SA	S	RCS	ACJ, Brandes	Before L.17:	02/15 10:13 AM	

Tab 4	CS/SB 1332 by CJ, Perry (CO-INTRODUCERS) Rouson; Restoration of Civil Rights						
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Tab 5	CS/SB 1392 by CJ, Brandes (CO-INTRODUCERS) Perry; (Similar to CS/H 01197) Prearrest Diversion Programs						
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Tab 6	CS/SB 1396 by JU, Steube (CO-INTRODUCERS) Brandes; (Similar to H 05301) Judgeships						
343172	D	S	RCS	ACJ, Steube	Delete everything after	02/15 10:31 AM	

Tab 7	SB 1552 by Bracy; (Compare to H 00195) Juvenile Justice						
378810	D	S	RS	ACJ, Bracy	Delete everything after	02/15 10:31 AM	
659892	SD	S	RCS	ACJ, Bracy	Delete everything after	02/15 10:31 AM	

Tab 8	CS/SB 1780 by CJ, Rouson; (Similar to H 01315) Victims of Reform School Abuse						
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND
CIVIL JUSTICE
Senator Brandes, Chair
Senator Bracy, Vice Chair

MEETING DATE: Wednesday, February 14, 2018

TIME: 1:30—3:30 p.m.

PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Brandes, Chair; Senator Bracy, Vice Chair; Senators Baxley, Bean, Flores, Perry, and Rodriguez

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 694 Brandes (Compare H 481, CS/S 602)	Mandatory Sentences; Authorizing a court to issue a sentence shorter than a mandatory minimum term of imprisonment for a person convicted of trafficking if the court makes certain findings on the record, etc. CJ 12/04/2017 Favorable JU 01/30/2018 Favorable ACJ 02/14/2018 Fav/CS AP	Fav/CS Yeas 5 Nays 1
2	SB 1270 Brandes (Similar H 1095, Compare CS/CS/H 731, H 1029, S 350, CS/S 732, S 1288)	Penalties and Fees; Requiring a certain application to provide the applicant with the option to fulfill any court-ordered financial obligation associated with a case by enrolling in a payment plan or by completing community service if ordered by the court; revising requirements relating to the payment of court-related fines or other monetary penalties, fees, charges, and costs; authorizing the clerk to refer any application believed to be fraudulent to the court for review; prohibiting the suspension of a person's driver license solely for failure to pay certain financial obligations if the person requests a hearing and demonstrates specified circumstances to the court, after notice of a penalty and before the suspension takes place; requiring a court to inquire at the time a certain civil penalty is ordered whether the person is able to pay it, etc. TR 01/18/2018 Favorable ACJ 02/14/2018 Fav/CS AP	Fav/CS Yeas 6 Nays 0
3	SB 1318 Rouson (Similar H 1201)	Education for Prisoners; Authorizing the Department of Corrections to contract with certain entities to provide educational services for the Correctional Education Program; authorizing each county to contract with certain entities to provide educational services for county inmates; removing a provision prohibiting state funds for the operation of postsecondary workforce programs from being used for the education of certain state inmates, etc. CJ 01/29/2018 Favorable ACJ 02/14/2018 Fav/CS AP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDAAppropriations Subcommittee on Criminal and Civil Justice
Wednesday, February 14, 2018, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1332 Criminal Justice / Perry	Restoration of Civil Rights; Requiring that an application for the restoration of civil rights which has been submitted before a specified date and which qualifies as a priority application be processed and the investigation be completed before certain other applications; requiring the applicant to keep the Florida Commission on Offender Review informed of his or her correct address, including his or her e-mail address, throughout the clemency process; requiring an applicant to be given a specified time to remedy any incomplete portions or discrepancies in the application, etc. CJ 01/22/2018 Fav/CS ACJ 02/14/2018 Favorable AP	Favorable Yeas 5 Nays 0
5	CS/SB 1392 Criminal Justice / Brandes (Similar CS/H 1197, Compare H 489, H 1199, CS/S 644, Linked S 1394)	Prearrest Diversion Programs; Encouraging counties, municipalities, and public or private educational institutions to implement prearrest diversion programs; requiring that in each judicial circuit the public defender, the state attorney, the clerks of the court, and representatives of participating law enforcement agencies create a prearrest diversion program and develop its policies and procedures; requiring, rather than authorizing, the Department of Law Enforcement to adopt rules for the expunction of certain nonjudicial records of the arrest of a minor upon his or her successful completion of a certain diversion program, etc. CJ 01/22/2018 Fav/CS ACJ 02/14/2018 Favorable AP	Favorable Yeas 6 Nays 0
6	CS/SB 1396 Judiciary / Steube (Similar H 5301, Compare CS/S 1384)	Judgeships; Adding judges to the Ninth Judicial Circuit Court; adding and removing judges from certain county courts, etc. JU 01/25/2018 Fav/CS ACJ 02/14/2018 Fav/CS AP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations Subcommittee on Criminal and Civil Justice
Wednesday, February 14, 2018, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1552 Bracy (Compare H 195, H 509, CS/H 1417, S 288, S 392, CS/S 936, S 1298)	Juvenile Justice; Requiring that a prolific juvenile offender be held in secure detention until a detention hearing is held if the juvenile violated the conditions of nonsecure detention; requiring a court to receive and consider a predisposition report before committing a child if the court determines that adjudication and commitment to the Department of Juvenile Justice is appropriate; increasing the age of a child at which a state attorney may, or is required to, request a court to transfer the child to adult court for criminal prosecution, etc. CJ 02/06/2018 Favorable ACJ 02/14/2018 Fav/CS AP	Fav/CS Yeas 6 Nays 0
8	CS/SB 1780 Criminal Justice / Rouson (Similar H 1315)	Victims of Reform School Abuse; Citing this act as the "Arthur G. Dozier School and Okeechobee School Abuse Victim Certification Act"; requiring a person seeking certification under this act to apply to the Department of Juvenile Justice by a certain date; requiring the department to examine the application, notify the applicant of any errors or omissions, and request any additional information within a certain timeframe; requiring the department to certify an applicant as a victim of Florida reform school abuse if the department determines his application meets the requirements of this act, etc. CJ 01/29/2018 Fav/CS ACJ 02/14/2018 Favorable AP	Favorable Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 694 (960376)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senators Brandes and Bracy

SUBJECT: Mandatory Sentences

DATE: February 15, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Forbes</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
4.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 694 authorizes a court to impose a sentence for a drug trafficking offense less than the mandatory minimum term of imprisonment and mandatory fine applicable to that offense if the court finds, in relation to that offense, that the offender did not:

- Engage in a continuing criminal enterprise;
- Use or threaten violence or use a weapon during the commission of the crime; or
- Cause a death or serious bodily injury.

The bill is expected to reduce the need for prison beds by a significant amount. See Section V. Fiscal Impact Statement.

II. Present Situation:

Florida's Controlled Substance Schedules

Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining which schedule

may apply to a substance are the “potential for abuse”¹ of the substance and whether there is a currently accepted medical use for the substance. The controlled substance schedules are as follows:

- Schedule I substances (s. 893.03(1), F.S.) have a high potential for abuse and no currently accepted medical use in treatment in the United States. Use of these substances under medical supervision does not meet accepted safety standards.
- Schedule II substances (s. 893.03(2), F.S.) have a high potential for abuse and a currently accepted but severely restricted medical use in treatment in the United States. Abuse of these substances may lead to severe psychological or physical dependence.
- Schedule III substances (s. 893.03(3), F.S.) have a potential for abuse less than the Schedule I and Schedule II substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to moderate or low physical dependence or high psychological dependence. Abuse of anabolic steroids may lead to physical damage.
- Schedule IV substances (s. 893.03(4), F.S.) have a low potential for abuse relative to Schedule III substances and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule III substances.
- Schedule V substances (s. 893.03(5), F.S.) have a low potential for abuse relative to the substances in Schedule IV and a currently accepted medical use in treatment in the United States. Abuse of these substances may lead to limited physical or psychological dependence relative to Schedule IV substances.

Punishment of Prohibited Drug Acts

Section 893.13, F.S., in part, punishes unlawful possession, sale, purchase, manufacture, and delivery of a controlled substance. The penalty for violating s. 893.13, F.S., can depend on the act committed, the substance and quantity of the substance involved, and the location in which the violation occurred. For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., which includes many synthetic controlled substances, is a third degree felony.² However, if that substance is sold within 1,000 feet of a K-12 school or other designated facility or location, the violation is a second-degree felony.³ With three exceptions,⁴ s. 893.13, F.S., does *not* provide for mandatory minimum terms of imprisonment.

¹ Pursuant to s. 893.035(3)(a), F.S., “potential for abuse” means a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of the substance being: (1) used in amounts that create a hazard to the user’s health or the safety of the community; (2) diverted from legal channels and distributed through illegal channels; or (3) taken on the user’s own initiative rather than on the basis of professional medical advice.

² Section 893.13(1)(a)2., F.S. A third-degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

³ Section 893.13(1)(c)2., F.S. A second-degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082(3)(d) and 775.083(1)(b), F.S.

⁴ Exceptions: s. 893.13(1)(c)1., F.S. (selling, etc., certain Schedule I and II controlled substances within 1,000 feet of a K-12 school, park, community center, or publicly owned recreational facility subject to 3-year mandatory minimum); s. 893.13(1)(g)1., F.S. (manufacturing methamphetamine or phencyclidine in a structure or conveyance where any child under 16 is present subject to 5-year mandatory minimum); and s. 893.13(1)(g)2., F.S. (manufacturing methamphetamine or phencyclidine causes a child under 16 to suffer great bodily harm subject to 10-year mandatory minimum).

Drug trafficking, which is punished in s. 893.135, F.S., consists of knowingly selling, purchasing, manufacturing, delivering, or bringing into this state (importation), or knowingly being in actual or constructive possession of, certain Schedule I or Schedule II controlled substances in a statutorily-specified quantity. The statute only applies to a limited number of such controlled substances. And the controlled substances involved in the trafficking statute must meet a specified weight or quantity threshold.

Most drug trafficking offenses are first degree felonies⁵ and are subject to a mandatory minimum term⁶ and a mandatory fine, which is determined by the weight or quantity of the substance.⁷ For example, trafficking in 28 grams or more, but less than 200 grams, of cocaine, a first degree felony, is punishable by a 3-year mandatory minimum term of imprisonment and a mandatory fine of \$50,000.⁸ Trafficking in 200 grams or more, but less than 400 grams, of cocaine, a first degree felony, is punishable by a 7-year mandatory minimum term of imprisonment and a mandatory fine of \$100,000.⁹

Criminal Punishment Code

The Criminal Punishment Code¹⁰ (Code) is Florida's "primary sentencing policy."¹¹ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹² Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a Level 7 or 8 drug trafficking offense. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹³ Absent

⁵ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. However, when specifically provided by statute, a first degree felony may be punished by imprisonment for a term of years not exceeding life imprisonment. Sections 775.082(3)(b) and 775.083(1)(b), F.S.

⁶ There are currently 56 mandatory minimum terms of imprisonment in s. 893.135, F.S., which range from three years to life imprisonment.

⁷ See s. 893.135, F.S.

⁸ Section 893.135(1)(b)1.a., F.S.

⁹ Section 893.135(1)(b)1.b., F.S.

¹⁰ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

¹¹ *Florida's Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on Feb. 14, 2018).

¹² Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹³ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

mitigation,¹⁴ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹⁵

Mandatory Minimum Sentences and Departures

Mandatory minimum terms of imprisonment limit judicial discretion in Code sentencing: “If the lowest permissible sentence is less than the mandatory minimum sentence, the mandatory minimum sentence takes precedence.”¹⁶ As previously noted, the sentencing range under the Code is generally the scored lowest permissible sentence up to and including the statutory maximum penalty. However, if there is a mandatory minimum sentence that is longer than the scored lowest permissible sentence, the sentencing range is narrowed to the mandatory minimum sentence up to and including the statutory maximum penalty.

Prosecutors have “complete discretion” in the charging decision.¹⁷ The exercise of this discretion may determine whether or not a defendant is subject to a mandatory minimum term or a reduced mandatory minimum term. A prosecutor could determine in a particular case that mandatory minimum sentencing is inappropriate or too severe and avoid or ameliorate such sentencing. For example, the prosecutor could offer a plea to a violation of s. 893.13, F.S., or attempted drug trafficking, neither of which carries a mandatory minimum term. A prosecutor could also offer a plea to a drug trafficking violation that carries a 3-year mandatory minimum term, even though the defendant could be prosecuted for a drug trafficking violation that carries a greater mandatory minimum term. Further, a prosecutor could move the court to reduce or suspend a sentence if the defendant renders substantial assistance.¹⁸

There are few circumstances in which a court is statutorily authorized to depart from a mandatory minimum term. A court may depart from a mandatory minimum term if the defendant is determined to be a youthful offender.¹⁹ In determining youthful offender status, the defendant must be given the opportunity to present facts to the court.²⁰ A court may also depart from a mandatory minimum term for a violation of s. 316.027(2)(c), F.S. (driver involved in a fatal

¹⁴ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

¹⁵ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

¹⁶ Fla. R. Crim. P. 3.704(d)(26).

¹⁷ “Under Florida’s constitution, the decision to charge and prosecute is an executive responsibility, and the state attorney has complete discretion in deciding whether and how to prosecute.” *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986) (citing FLA. CONST. art. II, s. 3) (other citations omitted).

¹⁸ Sections 790.163(2), 790.164(2), 893.135(4), and 921.0024(1)(b), F.S. However, lower-level dealers or peripheral actors may have little, if any, information beneficial to prosecutors. Inmate population data reported in a 2009 Senate interim report indicated that the average sentence of inmates with a lower-level trafficking offense was above the mandatory minimum term, while the average sentence of inmates with a higher-level trafficking offense was below the mandatory minimum term. *A Policy Analysis of Minimum Mandatory Sentencing for Drug Traffickers*, Interim Report 2010-109 (Oct. 2009), p. 7, Committee on Criminal Justice, The Florida Senate, http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-109cj.pdf (last visited on Feb. 14, 2018).

¹⁹ Section 958.04, F.S.

²⁰ Section 958.0407, F.S.

crash fails to stop and remain at the scene of a crash), upon the defendant's motion if the court "finds that a factor, consideration or circumstance clearly demonstrates that imposing a mandatory minimum term of imprisonment would constitute or result in an injustice."²¹

III. Effect of Proposed Changes:

The bill authorizes a court to impose a sentence for a drug trafficking offense less than the mandatory minimum term of imprisonment and mandatory fine applicable to that offense if the court finds, in relation to that offense, that the offender did not:

- Engage in a continuing criminal enterprise;²²
- Use or threaten violence or use a weapon during the commission of the crime; or
- Cause a death or serious bodily injury.

The bill applies to all drug trafficking acts (possession, sale, manufacture, delivery, and importation) and to most, if not all, drug trafficking mandatory minimum terms of imprisonment (ranging from 3 years to life).²³

The drug-trafficking statute prohibits a person from knowingly selling, delivering, importing, manufacturing, or possessing specified large quantities of the following controlled substances:

- Cannabis or cannabis plants;²⁴
- Cocaine;²⁵
- Various opiates or opioids, such as opium, morphine, heroin, hydromorphone, codeine, hydrocodone, oxycodone, fentanyl, and carfentanil and other fentanyl derivatives;²⁶
- Phencyclidine;²⁷
- Methaqualone;²⁸
- Amphetamine or methamphetamine;²⁹

²¹ Section 316.027(2)(g), F.S.

²² Section 893.20(1), F.S., provides that any person who commits three or more felonies under ch. 893, F.S., in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management and who obtains substantial assets or resources from these acts is guilty of engaging in a continuing criminal enterprise.

²³ The drug-trafficking statute imposes a mandatory life sentence for trafficking in especially large amounts of certain substances. However, these mandatory life sentence are never described as a "mandatory minimum" sentences like the rest of the mandatory minimum sentences imposed by the statute. Nonetheless, the mandatory life sentence that is required for certain offenses seems to be a mandatory minimum sentence, and thus a sentence to which the bill would apply.

²⁴ Section 893.135(1)(a), F.S.

²⁵ Section 893.135(1)(b), F.S.

²⁶ Section 893.135(1)(c), F.S.

²⁷ Section 893.135(1)(d), F.S. Phencyclidine "is a hallucinogen formerly used as a veterinary anesthetic, and briefly as a general anesthetic for humans." "Phencyclidine," PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/phencyclidine> (last visited on Feb. 14, 2018).

²⁸ Section 893.135(1)(e), F.S. Methaqualone "is a quinazoline derivative with hypnotic and sedative properties." "Methaqualone," PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/6292> (last visited on Feb. 14, 2018).

²⁹ Section 893.135(1)(f), F.S.

- Flunitrazepam;³⁰
- Gamma-hydroxybutyric acid (GHB);³¹
- Gamma-butyrolactone (GBL);³²
- 1,4-Butanediol;³³
- Specified phenethylamines and cathinones, substituted³⁴ phenethylamines, and substituted cathinones;³⁵
- Lysergic acid diethylamide (LSD);³⁶
- Specified synthetic cannabinoids;³⁷ and
- N-benzyl phenethylamines.³⁸

A court that is authorized to deviate below the mandatory minimum sentences set forth in the drug-trafficking statute is nonetheless generally constrained by the minimum sentence produced by this state's minimum sentence calculation statutes.³⁹ And the minimum sentence produced by this calculation may be lower or higher than the mandatory minimum set forth in the drug-trafficking statute.

The felony sentencing statute takes into account a host of factors to determine the minimum sentence that a court may impose on a felon. These factors include crimes for which the felon is being sentenced, prior offenses, and any injury suffered by the felon's victim. Each of these items are assigned number values that increase as their severity increases—the more severe the offense and the more severe the injury to a victim, the more points are assessed. These numbers

³⁰ Section 893.135(1)(g), F.S. "Flunitrazepam, trade name Rohypnol, is a central nervous system depressant in a class of drugs called benzodiazepines." "Flunitrazepam (Rohypnol)," Center for Substance Abuse Research, <http://www.cesar.umd.edu/cesar/drugs/rohypnol.asp> (last visited on Feb. 14, 2018).

³¹ Section 893.135(1)(h), F.S. "Gamma-hydroxybutyric acid (GHB) is a naturally occurring analog of gamma-aminobutyric acid (GABA) that has been used in research and clinical medicine for many years. GHB was used clinically as an anesthetic in the 1960s but was withdrawn due to side effects that included seizures and coma." Kapoor P., Revati Deshmukh R., and Kukreja I., "GHB Acid: A rage or reprove" (abstract) (Oct.–Dec. 2013) 4(4): 173, *Journal of Advanced Pharmaceutical Technology and Research*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3853692/> (last visited on Feb. 14, 2018). "The primary effects of GHB use are those of a CNS [central nervous system] depressant[.]" *Id.*

³² Section 893.135(1)(i), F.S. "Analogues that are often substituted for GHB include GBL (gamma butyrolactone) and 1,4 BD (also called just "BD"), which is 1,4-butanediol." "Drug Fact Sheet/GHB" (undated), U.S. Drug Enforcement Administration (on file with the Senate Committee on Criminal Justice).

³³ Section 893.135(1)(j), F.S.

³⁴ "The term 'substituted' is a general term that means a portion of the chemical structure is removed and replaced with a different chemical structure." Staff Analysis (CS/CS/CS/SB 150) (April 27, 2017), p. 11, n. 58, The Florida Senate, <http://www.flsenate.gov/Session/Bill/2017/150/Analyses/2017s00150.ap.PDF> (last visited on Feb. 14, 2018).

³⁵ Section 893.135(1)(k), F.S. "Phenethylamines" is a broad category of "psychoactive substances." Sanders B., Lankenau S., Bloom J., and Hathazi D., "Research chemicals': Tryptamine and Phenethylamine Use Among High Risk Youth" (2008) 43(3-4): 389, *Substance Use & Misuse*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/> (last visited on Jan. 29, 2018). "Cathinone ... is a monoamine alkaloid found in the shrub *Catha edulis* (Khat)[.]" and is "[c]losely related to ephedrine, cathine and other amphetamines[.]" "Cathinone," PubChem, U.S. National Library of Medicine, <https://pubchem.ncbi.nlm.nih.gov/compound/Cathinone#section=Top> (last visited on Feb. 14, 2018).

³⁶ Section 893.135(1)(l), F.S.

³⁷ Section 893.135(1)(m), F.S. "Synthetic [c]annabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but ... they are cannabinoid-like in their activity." "Synthetic Cannabinoids Drug Information," Redwood Toxicology Laboratory, https://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids (last visited on Feb. 14, 2018).

³⁸ Section 893.135(1)(n), F.S.

³⁹ See ss. 921.0022-921.0024, F.S. However, there are a number of circumstances in which a court may sentence a felon to a lesser sentence than is produced by the sentence calculation statutes. See ss. 921.0024-921.0027, F.S.

are then factored into a multi-step formula. The number produced by this formula determines the minimum sentence that the court may impose on the felon before it.

A court that is authorized to deviate below the mandatory minimum sentences set forth in the drug-trafficking statute is nonetheless generally constrained by the minimum sentence produced by this state's minimum felony sentence calculation statutes. And the minimum sentence produced by these calculations may be lower or higher than the applicable mandatory minimum set forth in the drug-trafficking statute.

The effective date of the bill is July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the bill will have a “negative significant” prison bed impact (a decrease of more than 25 prison beds).⁴⁰

VI. Technical Deficiencies:

None.

⁴⁰ 2018 Conference Results (through February 12, 2018), Criminal Justice Impact Conference, available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC18.xls> (last visited on Feb. 14, 2018).

VII. Related Issues:

The bill does not explicitly state whether it applies to mandatory sentences of life imprisonment set forth in the drug-trafficking statute. The bill specifically refers to “mandatory minimum” sentences imposed under the drug-trafficking statute. The statute never uses the words “mandatory minimum” sentence to refer to sentences or life imprisonment. The Legislature may wish to amend the bill to clarify its intent.

VIII. Statutes Affected:

This bill substantially amends section 893.135 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommend CS by Appropriations Subcommittee on Criminal and Civil Justice on February 14, 2018:

The committee substitute authorizes a court to impose a sentence for a drug trafficking offense other than the mandatory minimum term of imprisonment and mandatory fine applicable to that offense if the court finds, in relation to that offense, that the offender did not commit specified acts. The original bill did not authorize a departure from a drug trafficking mandatory fine.

- B. **Amendments:**

None.



108784

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
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	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 17 - 20

and insert:

(6) Notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory minimum term of imprisonment and mandatory fine if the

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



108784

11 And the title is amended as follows:

12 Delete lines 3 - 5

13 and insert:

14 893.135, F.S.; authorizing a court to impose a
15 sentence other than a mandatory minimum term of
16 imprisonment and mandatory fine for a person convicted
17 of trafficking if the court

By Senator Brandes

24-00431A-18

2018694__

1 A bill to be entitled
2 An act relating to mandatory sentences; amending s.
3 893.135, F.S.; authorizing a court to issue a sentence
4 shorter than a mandatory minimum term of imprisonment
5 for a person convicted of trafficking if the court
6 makes certain findings on the record; providing an
7 effective date.

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

10
11 Section 1. Present subsections (6) and (7) of section
12 893.135, Florida Statutes, are redesignated as subsections (7)
13 and (8), respectively, and a new subsection (6) is added to that
14 section, to read:

15 893.135 Trafficking; mandatory sentences; suspension or
16 reduction of sentences; conspiracy to engage in trafficking.—

17 (6) Notwithstanding any mandatory minimum term of
18 imprisonment under this section, the court may sentence a person
19 who has been convicted of an offense under this section to a
20 term of imprisonment less than the mandatory minimum if the
21 court finds on the record that all of the following
22 circumstances exist:

23 (a) The person did not engage in a continuing criminal
24 enterprise as defined in s. 893.20(1).

25 (b) The person did not use or threaten violence or use a
26 weapon during the commission of the crime.

27 (c) The person did not cause a death or serious bodily
28 injury.

29 Section 2. This act shall take effect July 1, 2018.



THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.14.18
Meeting Date

694
Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Tallahassee FL 32301
City State Zip

Email Barney@BarneyBishop.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14

Meeting Date

SB694

Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name David Sleeth

Job Title FL Legislative & Policy Director

Address Street

Phone

City

State

Zip

Email dsleeth@engageusa.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Engage

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

694

Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name NANCY DANIELS

Job Title Legislative Consultant

Address 103 N. Gadsden St.

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

694

Meeting Date

Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Amy Bisceglia

Job Title

Address

Phone

Street

Email

City

State

Zip

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against (The Chair will read this information into the record.)

Representing Campaign for Criminal Justice Reform

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-14-18

SB694

Meeting Date

Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Mrs. Logan Padgett

Job Title Director of Public Affairs

Address 100 N Duval Street

Phone 850-386-3131

Street

Tallahassee

FL

32301

Email lpadgett@jamesmadison.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing The James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

APPEARANCE RECORD



(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

SB 694

Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name MIA DIAZ

Job Title Executive Assistant & Office Mgr.

Address 4537 Louvinia Ct

Phone _____

Street

Tallahassee

FL

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Tax Watch

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

2/14/18

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

694

Bill Number (if applicable)

Topic Mandatory Sentences

Amendment Barcode (if applicable)

Name Marc Levin

Job Title VP of Right on Crime

Address 901 Congress

Phone

Street

Austin, TX. 78701

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Right on Crime

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

2-14-18
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

S. 694
Bill Number (if applicable)

Topic Sentencing

Amendment Barcode (if applicable)

Name Greg Newburn

Job Title State Policy Director

Address PO Box 142933

Phone 352.682.2542

Gainesville FL 32614

City State Zip

Email gnewburn@fammm.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Families Against Mandatory Minimums

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 1270 (927622)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Senators Brandes and Rouson

SUBJECT: Penalties and Fees

DATE: February 16, 2018 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	Favorable
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>AP</u>	_____

I. Summary:

PCS/SB 1270 makes numerous changes to law relating to driver license (DL) suspensions and revocations, and the penalties and fees associated with them. Specifically, the bill:

- Removes suspension and revocation penalties for a number of specified non-driving-related offenses;
- Reduces the length of mandatory DL suspensions for drug convictions from a one year period to six months;
- Allows individuals whose licenses are suspended for failure to comply with a court order or failure to pay court financial obligations, under ss. 318.15 or 322.245, F.S., to apply for a hardship license issued by the Department of Highway Safety and Motor Vehicles;
- Requires the court to inquire about a person’s financial ability to pay a fine at the time a civil penalty is ordered in court;
- Prohibits court-approved payment plans from exceeding two percent of an applicant’s income, or \$25 per month, whichever is greater;
- Requires clerks of the circuit court (clerks) to competitively bid for collection agents or private attorneys taking over unpaid accounts, and:
 - Prohibits the clerk from adding collection fees to the unpaid accounts for transferring the account to an agent or attorney; and
 - Prohibits the collections agent or attorney to add additional fees to the account other than the contractually agreed upon surcharge;
- Requires uniform traffic citations include information regarding the option of a payment plan and community service;
- Requires, in criminal cases, that the public defender application forms (for determination of indigent status) include the option to fulfill any court-ordered financial obligation by enrolling in a payment plan or completing community service if ordered by the court;

- Provides that the clerk may use any readily ascertainable or publicly available information to determine whether an applicant is indigent, and may refer any application believed to be fraudulent to the court for review; and
- Allows the court to use the information provided on the application to determine the person's inability to pay court financial obligations for the purpose of converting financial obligations into court-ordered community service.
- Establishes a Clerks of Court Community Service Pilot Project in Pinellas and Clay counties to allow persons with court-ordered financial obligations to fulfill those obligations through community service.

The bill has an indeterminate negative fiscal impact on state and local government revenues and expenditures. *See* Section V. Fiscal Impact Statement for details.

The bill has an effective date of October 1, 2018.

II. Present Situation:

Driver license (DL) revocations and suspensions, respectively, terminate or temporarily withdraw one's driving privilege.¹ Although initially used to address poor driving behavior, DL sanctions are now commonly used to punish individuals engaged in behavior unrelated to the operation of a motor vehicle. Consequently, a substantial amount of time and resources are expended by state and local entities to deal with and process non-driving-related DL suspensions and revocations.

According to the American Association of Motor Vehicle Administrators (AAMVA), "[s]ome studies have shown that suspending driving privileges for non-highway safety-related reasons is not effective."² Enforcing non-driving-related suspensions is costly and detracts from highway safety priorities. Licenses being suspended for non-driving-related reasons have caused the seriousness of DL suspensions to become lessened in the minds of law enforcement, the courts, and the public, even though data shows drivers with DL suspensions for traffic-safety-related reasons are three times more likely to be involved in a crash than drivers suspended for other reasons.³

It is estimated that as many as three-fourths of drivers with suspended or revoked licenses continue to drive, indicating DL suspensions may not effectively force compliance.⁴ According to the Transportation Research Board of the National Academies, one out of five traffic fatalities nationally involves a driver who is operating a vehicle without a valid license.⁵

DL suspension and revocation penalties are used to punish individuals who do not pay certain financial penalties and obligations, sometimes whether or not the individual can afford to do so. Furthermore, penalties for driving with a DL that is suspended or revoked increase per offense,

¹ Sections 322.01(36) and (40), F.S.

² AAMVA, *Best Practices Guide to Reducing Suspended Drivers*, (Feb. 2013), available at <http://www.aamva.org/WorkArea/DownloadAsset.aspx?id=3723> at p. 2 (last visited Jan. 11, 2018).

³ *Id.*

⁴ *Id.*

⁵ See *Id.* at p. 6.

causing individuals suffering from financial hardship to become stuck in a self-perpetuating cycle. Drivers who were unable to pay their original fine or court fees may lose their ability to travel legally to and from work. If they are caught driving while the DL is suspended or revoked, they will incur additional court costs and penalties. Additionally, these drivers are not allowed to obtain a hardship license, restricted to business or employment purposes only,⁶ even though this option is available for numerous driving-related suspensions, including DUIs.⁷ A driver whose DL is suspended for inability to pay penalties or court financial obligations needs to pay reinstatement fees in addition to outstanding obligations to legally drive.

Clerks of the Court (clerks) use DL sanctions as a means to improve collections of fines and fees and have indicated that DL sanctions are their most effective tool to increase collections.⁸ However, a 2007 report by the Office of Program Policy Analysis and Government Accountability (OPPAGA) indicated, of the 67 clerks they surveyed, there was no meaningful difference between the average revenue collected overall and clerks' use of any particular collection method.⁹ According to a 2004 OPPAGA *Information Brief*, some clerks and judges both indicated that imposing sanctions against a DL for non-traffic-related offenses would not be appropriate since the punishment did not fit the crime; licenses were already overburdened with penalties; and sanctions would result in more unlicensed drivers on Florida's roadways as well as potentially more court cases.¹⁰

Non-Driving-Related DL Suspensions and Revocations

Generally, the threat of losing one's driving privilege has been used to combat truancy, theft, vandalism, illegal possession of drugs, alcohol, tobacco, and firearms, and a number of other non-driving-related offenses. Relevant non-driving offenses are detailed below.

School Attendance Requirements

A minor is not eligible for driving privileges unless that minor:¹¹

- Is enrolled in a public school, nonpublic school, home education program, or other educational activities and satisfies relevant attendance requirements;
- Has received a high school diploma, a high school equivalency diploma, a special diploma, or a certificate of high school completion;
- Is enrolled in a study course in preparation for the high school equivalency examination and satisfies relevant attendance requirements;

⁶ Section 322.271(1)(c), F.S., defines a "business purposes only" restricted driving privilege as limited to driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and medical purposes. An "employment purposes only" restricted driving privilege is limited to driving to and from work and necessary on-the-job driving.

⁷ DHSMV, *Hardship Reinstatement Eligibility Requirements*, (Revised May 12, 2014) (on file with the Senate Committee on Transportation).

⁸ OPPAGA, *Options Exist to Modify Use of Driver License Suspension for Non-Driving-Related Reasons*, Report No. 14-07, (Feb. 2014), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1407rpt.pdf> (last visited Jan. 11, 2018).

⁹ OPPAGA, *Clerks of Court Generally Are Meeting the System's Collections Performance Standards*, Report No. 07-21, (Mar. 2007), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0721rpt.pdf> at p. 4 (last visited Jan. 11, 2018).

¹⁰ OPPAGA, *Information Brief: Court Fine and Fee Collections Can Increase*, Report No. 04-07, (Jan. 2004), <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0407rpt.pdf> at p. 5 (last visited Jan. 11, 2018).

¹¹ Section 322.091(1), F.S.

- Has been issued a certificate of exemption¹² from the district school superintendent; or
- Has been issued a hardship waiver under s. 322.091, F.S.

In Fiscal Year 2016-2017, the Department of Highway Safety and Motor Vehicles (DHSMV) issued approximately 4,786 DL suspension sanctions for non-compliance with school attendance requirements.¹³ Approximately 60 percent of DL suspensions for non-compliance with school attendance requirements are reinstated in less than one year; however, the majority of the reinstatements are for individuals who reached their eighteenth birthday and were thus no longer subject to the requirements.¹⁴ According to the National Conference of State Legislatures, 29 states link minors' driving privileges to school enrollment, attendance, academic performance, or behavior.¹⁵

Worthless Check - Failure to Appear

The court may order the suspension or revocation of a DL if the licensee is being prosecuted for giving worthless checks, drafts, or debit card orders under s. 832.05, F.S., and fails to appear before the court after having been previously adjudicated guilty under the same section.¹⁶ The DHSMV issued 32 DL sanctions in Fiscal Year 2016-2017 for failing to appear on a worthless check charge.¹⁷ The driving privilege is suspended until full payment of any court financial obligations incurred as a result of the warrant or capias issued is received, the cancellation of the warrant or capias from the Department of Law Enforcement is recorded, and a payment of a \$10 fee in addition to the suspension or revocation fee is paid to the DHSMV.¹⁸

Misdemeanor Theft

The court has the option to suspend the DL of a person adjudicated guilty of any misdemeanor violation of theft regardless of the value of the property stolen.¹⁹ The first suspension following an adjudication of guilt for theft is for a period of six months, and a second or subsequent suspension is for a period of one year.²⁰ In Fiscal Year 2016-2017, the DHSMV issued 185 DL sanctions for theft pursuant to s. 812.0155, F.S.²¹

The court may also suspend, revoke, or withhold issuance of a DL of a minor found guilty of a violation of theft²² as an alternative to sentencing the minor to probation, commitment to the Department of Juvenile Justice, community control, or incarceration if the minor has never previously been convicted of or adjudicated delinquent for any criminal offense.²³

¹² See s. 1003.21(3), F.S.

¹³ DHSMV, *Sanctions Created/Effective for FY 16/17* (Dec. 19, 2017) (on file with the Senate Committee on Transportation).

¹⁴ OPPAGA 2014 Report *supra* note 8.

¹⁵ NCSL, *State Statutes Linking Driver's Licenses to School Enrollment, Attendance, Academic Performance, or Behavior* (Jan. 4, 2018), <http://www.ncsl.org/research/transportation/teen-drivers-statutes-chart.aspx> (last visited Jan. 15, 2018).

¹⁶ Section 832.09, F.S., provides the individual is also issued a warrant or capias for failure to appear by the court.

¹⁷ DHSMV, *Sanctions Created/Effective for FY 16/17* (Dec. 19, 2017) (on file with the Senate Committee on Transportation).

¹⁸ See s. 322.251(7)(a), F.S., and DHSMV website, *Fee Schedule*, <http://www.flhsmv.gov/fees/> (last visited Jan. 11, 2018).

¹⁹ Section 812.0155, F.S., allows the suspension for a misdemeanor violation under ss. 812.014 or 812.015, F.S.

²⁰ *Id.*

²¹ DHSMV, *Sanctions Created/Effective for FY 16/17* (Dec. 19, 2017) (on file with the Senate Committee on Transportation).

²² Violation of ss. 812.014 or 812.015, F.S.

²³ Section 812.0155(2), F.S.

Providing Alcohol to Persons Under 21

The court has discretion to order the DHSMV to withhold the issuance of, or suspend or revoke the DL of a person found guilty of violating s. 562.11(1), F.S., which prohibits a person from selling, giving, serving, or permitting service of alcoholic beverages to a person under the age of 21 or permitting a person under the age of 21 to consume an alcoholic beverage on a licensed premise.²⁴ Additionally, a person found guilty of violating this prohibition commits a second-degree misdemeanor, and a person who violates this prohibition a second or subsequent time within one year after a prior conviction commits a first-degree misdemeanor.

Minor Guilty of Certain Alcohol, Drug, or Tobacco Offenses

Section 322.056, F.S., requires a mandatory suspension, revocation, or withholding of a DL for persons under age 18 found guilty of certain alcohol, drug, or tobacco offenses. This penalty is in addition to any other penalty imposed by law.

Alcohol and Drug Offenses

The court must direct the DHSMV to revoke or withhold the issuance of driving privileges if a minor, who is eligible by reason of age for driving privileges, is guilty of:

- A violation of s. 562.11(2), F.S., misrepresenting his or her age or the age of another for the purpose of obtaining alcoholic beverages;
- A violation of s. 562.111, F.S., underage possession of alcoholic beverages; or
- A violation of the Florida Comprehensive Drug Abuse Prevention and Control Act.²⁵

The DL or driving privilege is revoked or withheld for six months to one year for a first violation, and two years for a second or subsequent violation. However, the court may direct the DHSMV to issue a hardship license if the person is otherwise qualified for such a license.²⁶

Tobacco and Nicotine Offenses

Section 569.11, F.S., prohibits a minor from knowingly possessing any tobacco product or misrepresenting his or her age to obtain a tobacco product. Additionally, a minor is prohibited from possessing nicotine products, possessing nicotine-dispensing devices, or misrepresenting age to obtain these products or devices.²⁷ A violation is a noncriminal violation punishable by:

- *For a first violation or subsequent violation not within 12 weeks of the first:* 16 hours of community service or a \$25 fine, and the minor must attend a school-approved anti-tobacco and nicotine program, if locally available;
- *For a second violation within 12 weeks of the first:* A \$25 fine, and
- *For a third or subsequent violation within 12 weeks of the first violation:* Suspension or withholding issuance of a DL or driving privilege for 60 consecutive days.

²⁴ Section 322.057, F.S.

²⁵ Chapter 893, F.S.

²⁶ Section 322.056(1), F.S.

²⁷ Sections 877.112(6) and (7), F.S.

If a minor, eligible by reason of age for driving privileges, fails to comply with the penalty, the court must revoke or withhold issuance of the driving privilege of the minor for a period of:²⁸

- 30 days for the first violation or a subsequent violation not within 12 weeks of the first;
- 45 days for a second violation within 12 weeks of the first; or
- 60 consecutive days for a third violation within 12 weeks of the first.

A Minor Guilty of Unlawful Possession of Firearms

Section 790.22, F.S., prohibits a minor from possessing certain weapons and firearms. A person under the age of 18 may not possess a loaded firearm, unless the minor is at least 16 years of age or being supervised by an adult, and engaged in lawful hunting, marksmanship competitions or practice, or other lawful recreational shooting activities. A minor who violates this prohibition commits a first degree misdemeanor for the first offense and may serve a detention period of up to three days, shall be required to perform community service, and have his or her DL or privilege to drive revoked or withheld for up to one year. A second or subsequent offense is a third degree felony, a detention period of up to 15 days, community service, and DL or privilege to drive is revoked or withheld for up to two years.

A minor who commits any other offense involving the use or possession of a firearm, in addition to the penalties provided by that offense and the penalties in s. 790.22(9), F.S., will also have his or her DL or privilege to drive revoked or withheld for up to one year for a first offense and up to two years for a second or subsequent offense.²⁹

Graffiti

A minor found to have illegally placed graffiti on any public or private property, in addition to any other penalty provided by law, will have his or her DL or privilege to drive revoked or withheld for a period of not more than one year.³⁰

Sexting

A minor who is issued a citation for committing a first violation of sexting³¹, and who fails to comply with the citation, may have his or her DL or driving privilege withheld or suspended for 30 consecutive days by order of the court.³²

Drug Convictions

Federal law requires the state to enact and enforce “[A] law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception...” the driver license of any individual convicted of any drug offense be suspended for at least six months.³³ A

²⁸ Sections 322.056(2) and (3), F.S.

²⁹ Section 790.22(10), F.S.

³⁰ Section 806.13(7), F.S.

³¹ Section 847.0141(1), F.S., provides that a minor commits the offense of sexting if he or she knowingly electronically transmits or distributes to another minor any photograph or video of any person which depicts nudity and is harmful to minors. A minor also commits the offense of sexting if he or she possesses a photograph or video transmitted or distributed by another minor which depicts nudity and is harmful to minors, unless the minor did not solicit the photograph or media, took reasonable steps to report the photograph or video, and did not transmit or distribute it to a third party.

³² Section 847.0141(3)(a)3., F.S.

³³ 23 U.S.C. s. 159 (2012).

percentage of federal highway funding given to the state is contingent upon this law. A state may opt-out of the law if the governor submits both written certification stating he is opposed to the enforcement of this law and certification from the legislature that it has adopted a resolution expressing opposition to the law. As of December 2016, 38 states either have eliminated automatic driver license suspensions for drug convictions or have passed a resolution to opt-out of this law.³⁴

Under Florida law, the court is required to direct the DHSMV to suspend, revoke, or withhold the issuance of the DL of a person 18 years or older who is convicted of a possession or sale or, trafficking in, or conspiracy to possess, sell, or traffic in a controlled substance.³⁵ The privilege to drive is unavailable for one year or until the person is evaluated for and, if deemed necessary, completes a drug treatment and rehabilitation program approved or regulated by the Department of Children and Families. The court has the discretion to direct the DHSMV to issue a hardship license, which is available after six months of suspension of the driving privilege, or a driver may petition the DHSMV for restoration of restricted or unrestricted driving privileges after six months. In 2014, the Legislature passed a bill, which was signed into law, reducing the length of suspension of a DL from two years to one year for individuals convicted of drug offenses.³⁶

The DHSMV issued approximately 17,558 DL sanctions for violations concerning a controlled substance in Fiscal Year 2016-2017.³⁷

Suspensions Initiated by the Clerk of Court

The majority, over 1.3 million in Fiscal Year 2016-2017, of notices of suspension issued by the DHSMV are a result of requests initiated by a clerk of the court.³⁸ Most originate from “failure to pay” offenses, actions that are not necessarily indicative of the violator’s ability to operate a motor vehicle safely.

Suspension for Failure to Comply with Civil Penalties or to Appear

An individual who is issued a noncriminal traffic citation, who is not required to appear before the court, has 30 days to comply with the penalty (i.e., pay the fine), enter into a penalty payment plan with the clerk of court, or request a hearing before the court.³⁹

If an individual does not comply with the civil penalty, enter into a payment plan, attend driver improvement school (if ordered), or appear at a scheduled hearing, the clerk of court must issue notice of failure to the DHSMV within 10 days.⁴⁰ Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective

³⁴ Prison Policy Initiative, *Reinstating Common Sense: How driver’s license suspensions for drug offenses unrelated to driving are falling out of favor* (Dec. 2016) available at https://www.prisonpolicy.org/driving/national.html#recent_reforms (last visited Jan. 11, 2018).

³⁵ Section 322.055, F.S.

³⁶ See ch. 2014-216, s. 28, Laws of Fla.

³⁷ DHSMV, *Sanctions Created/Effective for FY 16/17* (Dec. 19, 2017) (on file with the Senate Committee on Transportation).

³⁸ See *Id.*

³⁹ Section 318.14, F.S.

⁴⁰ Section 318.15, F.S.

20 days after the order of suspension is mailed to the individual.⁴¹ The DL and driving privilege are suspended until the driver meets the court requirements for reinstatement, and pays a \$60 reinstatement fee.⁴²

Section 322.245, F.S., provides that the clerk of court shall mail a notice of failure, within five days after the failure, to a person charged with a violation of any criminal offense enumerated in s. 318.17, F.S., or a misdemeanor offense under chs. 320 or 322, F.S., who fails to comply with all directives of the court within the time allotted. The notice indicates the individual has 30 days from the date of the notice to comply with the court directives and pay a delinquency fee up to \$25, or his or her DL will be suspended. Upon failure to comply with the court directives within the 30-day period, the clerk of court must notify the DHSMV of such failure within 10 days. Upon receiving the notice of failure, the DHSMV immediately issues an order suspending the driving privilege of the individual effective 20 days after the order of suspension is mailed to the individual.

Suspension for Failure to Pay Court Financial Obligations

When a clerk of court provides notification to the DHSMV that a person has failed to pay financial obligations for *any* criminal offense, in full or in part under a payment plan with the clerk of court, the DHSMV will suspend the DL of the person until:⁴³

- The person has satisfied the financial obligation in full or made all payments currently due under a payment plan;
- The person has entered into a written agreement for payment of the financial obligation if not presently enrolled in a payment plan; or
- A court has entered an order granting relief to the person ordering reinstatement of the DL.

OPPAGA reported that a large percentage of licenses suspended for failure to pay court obligations are not reinstated for at least two years, and some are not reinstated in over five years.⁴⁴

Payment Plans

The clerk of court is required to accept partial payment of court-related fees, service charges, costs, or fines in accordance with the terms of an established payment plan.⁴⁵ The court may review the reasonableness of the payment plan. A monthly payment amount is “presumed to correspond to the person’s ability to pay if the amount does not exceed two percent of the person’s annual net income,” divided by 12.⁴⁶ The Brennan Center for Justice has indicated this

⁴¹ Notice of cancellation, suspension, revocation, or disqualification of a driver license must be mailed in accordance with s. 322.251, F.S.

⁴² Section 322.29, F.S.

⁴³ Section 322.245(5), F.S.

⁴⁴ OPPAGA 2014 report, *supra* note 8 at p. 8.

⁴⁵ Section 28.246(4), F.S.

⁴⁶ *Id.*

presumption is often ignored and payment levels are set at fixed amounts.⁴⁷ Payment plan fees are \$5 per transaction or a \$25 one-time set-up fee.⁴⁸

Collection of Fees, Service Charges, Fines, Courts Costs, and Liens

Section 28.246(6), F.S., provides a clerk of court must pursue the collection of any unpaid financial obligations to the court that remain unpaid after 90 days by referring the account to a private attorney or collection agent.⁴⁹ The clerk of court must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process established by the court prior to referring the account to a private attorney or collections agent, find the referral to be cost-effective, and follow any applicable procurement processes. A collection fee may be added to the balance owed of up to 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection.

Penalties and Fees

Driving While License is Suspended or Revoked (DWLSR) Penalties

Section 322.34, F.S., provides penalties for individuals driving while their DL is suspended, revoked, canceled, or disqualified. A person, excluding a habitual traffic offender⁵⁰, whose DL has been canceled, suspended, or revoked is guilty of a moving violation if driving a motor vehicle while *unaware* of the DL sanction. A person, excluding a “habitual traffic offender,” who *knowingly* drives a motor vehicle while his or her DL is invalid is guilty of:

- A second degree misdemeanor for the first conviction;
- A first degree misdemeanor for a second conviction; and
- A third degree felony for a third or subsequent conviction.

However, if a person does not have a prior forcible felony⁵¹ conviction, and knowingly drives with a DL that is canceled, suspended, or revoked for failing to:

- Pay child support or certain financial obligations;
- Comply with a civil penalty required in s. 318.15, F.S.;
- Maintain adequate automobile insurance as required in ch. 324, F.S.; or
- Comply with attendance requirements;

⁴⁷ Brennan Center for Justice, *Criminal Justice Debt: A Barrier to Reentry*, (2010), available at <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> at p. 14 (last visited Jan. 11, 2018).

⁴⁸ Section 28.24(26), F.S.

⁴⁹ A private attorney must be a member in good standing with The Florida Bar, and the collection agent must be registered and in good standing pursuant to ch. 559, F.S.

⁵⁰ Section 322.264, F.S., defines a “habitual traffic offender” as “having at least three convictions arising out of separate acts of: manslaughter resulting from the operation of a motor vehicle; driving under the influence; any felony offense using a motor vehicle; driving while license is suspended or revoked; failing to stop and render aid as required; or driving a commercial motor vehicle while privilege is disqualified; or has accumulated 15 convictions of moving traffic offenses for which points may be assessed within a five-year period.

⁵¹ Section 776.08, F.S., defines “forcible felony” as “treason; murder; manslaughter; sexual battery; carjacking; home invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.”

then the person may be penalized with a second-degree misdemeanor, which is increased to a first-degree misdemeanor for a second or subsequent conviction.

Driver License Reinstatement Fees

Section 322.21(8), F.S., requires a person who applies for reinstatement following a DL suspension or revocation to pay a service fee of \$45 following a suspension and \$75 following a revocation, in addition to the \$25 fee to replace their license, if necessary. “Failure to comply” suspensions require a \$60 reinstatement fee.⁵² Additionally, the county tax collectors are required to charge a service fee of \$6.25, when providing services in ch. 322, F.S., including DL reinstatements.⁵³

Community Service Option in Lieu of Payment

A person ordered to pay a civil penalty for a noncriminal traffic infraction who is unable to comply with the court’s order due to demonstrable financial hardship must be allowed, by the court, to satisfy the civil penalty by participating in community service.⁵⁴ The penalty is reduced based on the hourly rate of community service performed. The specified hourly credit rate is the federal minimum wage⁵⁵, currently \$7.25, or the average prevailing wage rate for a trade or profession that the community service agency needs.⁵⁶

Similarly, the court may require a person liable for payment of a financial obligation in a criminal case to appear before the court to be examined under oath concerning the person’s ability to pay the obligation. The court may convert statutory financial obligations into community service after determining the person’s inability to pay.⁵⁷

The Florida Court Clerks and Comptrollers reported in Fiscal Year 2016-2017 that \$4,205,169 of the \$1,060,302,959 court-related fines, fees, penalties, charges, or costs assessed by the courts statewide had been converted to community service.⁵⁸

III. Effect of Proposed Changes:

The bill makes changes to the Florida Statutes in order to reduce the number of driver license (DL) suspensions and revocations for non-driving-related offenses, reduce the financial burden of DL suspensions, and reduce the severity of suspension-related penalties.

⁵² Section 322.29, F.S.

⁵³ Section 322.135(1)(c), F.S.

⁵⁴ Section 318.18(8)(b), F.S.

⁵⁵ As specified in 29 U.S.C. s. 206(a)(1) under the Federal Fair Labor Standards Act of 1938.

⁵⁶ Section 318.18(8)(b)2., F.S.

⁵⁷ Section 938.30(2), F.S.

⁵⁸ Florida Court Clerks and Comptrollers, *2017 Annual Assessments and Collections Report*, available at http://www.flclerks.com/resource/resmgr/public_documents/Final_2017_A_C_Report_Circui.zip at p. 8 (last visited Jan. 15, 2018).

Non-Driving-Related DL Suspensions and Revocations

The bill removes suspension or revocation of a DL from the potential penalties that may be applied for the following offenses:

- A minor who does not meet school attendance requirements;
- A person who fails to appear in a worthless check case;
- A person found guilty of misdemeanor theft;
- A person who provides alcohol to anyone under 21 years of age;
- A minor possessing alcohol, tobacco, tobacco products, or nicotine products, or misrepresenting age to obtain them;
- A minor illegally possessing a firearm;
- A minor found guilty of graffiti; and
- A minor who does not comply with a citation for the offense of sexting.

The bill retains the 30-day and 45-day DL suspension for minors who do not comply with the penalties for tobacco and nicotine offenses, however, this penalty is at the court's discretion rather than mandatory.

Drug Convictions

The bill reduces the length of the suspension period for a drug conviction from one year to six months for persons over the age of 18, and reduces the suspension period to six months for minors convicted of drug offenses.

The bill deletes provisions allowing individuals to petition the DHSMV for a hardship license after six months of their suspension because the bill reduces the suspension period to six months.

Payment Plans with the Clerk of the Circuit Court (Clerk of Court)

Section 28.246(4), F.S., is amended to provide that a monthly payment plan with the clerk of court may not exceed two percent of the person's annual net income, divided by 12, or \$25 per month, whichever is greater.

In addition, the bill requires that uniform traffic citation forms must include language indicating that a person may enter into a payment plan with the clerk of court to pay the penalty.

Collection of Fees, Service Charges, Fines, Courts Costs, and Liens by Clerk of Court

The bill amends s. 28.246(6), F.S., regarding referring accounts to private attorneys or collection agents. The clerk of court must competitively bid a contract to procure a collection agent or private attorney by considering all pertinent criteria, including, but not limited to, performance quality and customer service. The contract with a collection agent or private attorney may be in effect for no longer than three years with the opportunity to make a maximum of two 1-year extensions. The clerk of court is prohibited from assessing any collection surcharges to the account, and the collection agent or private attorney may not impose any additional fees or surcharges other than the contractually agreed upon surcharge.

Community Service Option in Lieu of Payment

The bill adds that the uniform traffic citation form must include language indicating that a person ordered to pay a noncriminal traffic infraction penalty who is unable to comply due to demonstrable hardship will be allowed by the court to satisfy payment by participating in community service. Additionally, if a person is ordered to pay a civil penalty for a noncriminal infraction in court, the court shall inquire regarding the person's ability to pay at the time the civil penalty is ordered.

Clerk of Court Community Service Pilot Program

The bill establishes a Clerk of Court Community Service Pilot Program in Pinellas and Clay counties that allows persons owing court-ordered financial obligations or payments unrelated to child support obligations to fulfill those obligations by completing community service. The pilot prevents DL suspensions solely for failure to pay fees, service charges, fines or penalties if the person complies with the program. The participant reduces his or her financial obligation by earning hourly credit based on the adjusted state minimum wage, as provided in s. 448.110, F.S. The participant must perform at least 4 hours of community service per week and the timeframe for completion may not exceed 180 days. The bill stipulates supervisory and reporting requirements for the program.

Subject to appropriations, the clerks of court for the two pilot sites may apply, on a quarterly basis, for reimbursement for the total amount of financial obligations that have been converted to community service hours for the previous quarter. If approved by the Florida Clerk of Court Operations Corporation, the funds must be distributed by the clerk in accordance with laws that would otherwise have provided for distribution of payments for the original penalty, fee, or obligation imposed on the person performing the community service.

The bill also requires the Florida Clerk of Court Operations Corporation to provide a report on the implementation of the pilot program the chairs of the legislative appropriations committees by October 1, 2019.

Public Defender Application – Determination of Indigent Status

The bill amends s. 27.52, F.S., concerning the application a person claiming indigent status makes to the clerk of court in order to receive a public defender. The bill provides that the application must provide the applicant the option to fulfill court-ordered financial obligations by enrolling in a payment plan or completing community service if ordered by the court. For financial obligations in criminal cases, the judge *may* rely on this information as a factor in determining the person's inability to pay court financial obligations when converting statutory financial obligations into court-ordered community service.

Additionally, the bill provides that the clerk may use any readily ascertainable or publicly available information to determine whether an applicant is indigent, and may refer any application believed to be fraudulent to the court for review.

Effective Date

Information regarding payment plans and community service options to be added to the uniform traffic citation form will be added upon the adoption by rule of new forms, which allows the DHSMV to deplete the current stock. DHSMV is required to notify the Division of Law Revision and Information upon the adoption of new uniform citation forms.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18, Florida Constitution, provides that a mandate may exist if a law reduces the authority that counties or municipalities have to raise revenues in the aggregate. Local government tax collectors and clerks retain a portion of driver license (DL) reinstatement fees for DL suspensions and revocations possibly eliminated or reduced by this bill. However, the bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill will have a positive impact on individuals who may have otherwise had their driver license (DL) suspended or revoked, or who will be eligible to receive a hardship license if their DL is suspended.

C. Government Sector Impact:

The bill will reduce state and local government revenues by indeterminate amounts annually.

The Revenue Estimating Conference (REC) reviewed a similar bill (HB 1095) on January 12, 2018.⁵⁹ The REC estimates the removal of suspension penalties for non-driving-related offenses will reduce state and local government revenues by \$1.5 million annually beginning in Fiscal Year 2018-2019 which will affect the General Revenue Fund, Highway Safety Operating Trust Fund, and local funds. The clerks expect that these provisions will reduce their revenues by an insignificant amount annually.

The REC concluded that the bill's sections related to community service, payment plans, and collection agents will have an indeterminate impact on clerk revenues. If more individuals opt to participate in community service rather than pay penalties, the bill will reduce revenues to the clerks who retain a portion of DL reinstatement fees, in addition to other fees associated with DL suspensions and revocations. The REC was unable to quantify the potential reduction in clerk revenues due to the community service provisions. Additionally, the clerks will likely incur costs related to the monitoring and management of the payment plans and documentation requirements of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.52, 28.246, 57.082, 316.650, 318.18, 322.055, 322.056, 322.057, 322.09, 322.091, 322.251, 322.271, 322.34, 562.11, 562.111, 569.11, 790.22, 806.13, 812.0155, 832.09, 847.0141, 877.112, 938.30, 1003.27, 318.14, 322.05, 322.27, and 1003.01.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 14, 2018:

The committee substitute:

- Removes provisions prohibiting DL suspensions solely for failure to pay fees, service charges, fines or penalties, as required under s. 318.15, F.S;
- Removes provisions prohibiting DL suspensions solely for failure to pay fees for persons charged under chapter 316 F.S., or chapter 320 F.S., or who fail to pay child support, as provided in chapter 61; and

⁵⁹ The Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Impact Conference, HB 1095*, (Jan. 12, 2018), http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page288-294.pdf (last visited Jan. 15, 2018).

- Creates a Clerks of Court Community Service Pilot Program in Pinellas and Clay Counties.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



601144

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 353 - 684

and insert:

Section 5. Paragraph (b) of subsection (8) of section
318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a
noncriminal disposition pursuant to s. 318.14 or a criminal
offense listed in s. 318.17 are as follows:

(8)



601144

11 (b)1.a. If a person has been ordered to pay a civil penalty
12 for a noncriminal traffic infraction and the person is unable to
13 comply with the court's order due to demonstrable financial
14 hardship, the court shall allow the person to satisfy the civil
15 penalty by participating in community service until the civil
16 penalty is paid.

17 b. The court shall inquire at the time the civil penalty is
18 ordered whether the person is able to pay it.

19 c. If a court orders a person to perform community service,
20 the person shall receive credit for the civil penalty at the
21 specified hourly credit rate per hour of community service
22 performed, and each hour of community service performed shall
23 reduce the civil penalty by that amount.

24 2.a. As used in this paragraph, the term "specified hourly
25 credit rate" means the wage rate that is specified in 29 U.S.C.
26 s. 206(a)(1) under the federal Fair Labor Standards Act of 1938,
27 that is then in effect, and that an employer subject to such
28 provision must pay per hour to each employee subject to such
29 provision.

30 b. However, if a person ordered to perform community
31 service has a trade or profession for which there is a community
32 service need, the specified hourly credit rate for each hour of
33 community service performed by that person shall be the average
34 prevailing wage rate for the trade or profession that the
35 community service agency needs.

36 3.a. The community service agency supervising the person
37 shall record the number of hours of community service completed
38 and the date the community service hours were completed. The
39 community service agency shall submit the data to the clerk of



601144

40 court on the letterhead of the community service agency, which
41 must also bear the notarized signature of the person designated
42 to represent the community service agency.

43 b. When the number of community service hours completed by
44 the person equals the amount of the civil penalty, the clerk of
45 court shall certify this fact to the court. Thereafter, the
46 clerk of court shall record in the case file that the civil
47 penalty has been paid in full.

48 4. As used in this paragraph, the term:

49 a. "Community service" means uncompensated labor for a
50 community service agency.

51 b. "Community service agency" means a not-for-profit
52 corporation, community organization, charitable organization,
53 public officer, the state or any political subdivision of the
54 state, or any other body the purpose of which is to improve the
55 quality of life or social welfare of the community and which
56 agrees to accept community service from persons unable to pay
57 civil penalties for noncriminal traffic infractions.

58 Section 6. Subsections (1) through (4) of section 322.055,
59 Florida Statutes, are amended to read:

60 322.055 Revocation or suspension of, or delay of
61 eligibility for, driver license for persons 18 years of age or
62 older convicted of certain drug offenses.—

63 (1) Notwithstanding s. 322.28, upon the conviction of a
64 person 18 years of age or older for possession or sale of,
65 trafficking in, or conspiracy to possess, sell, or traffic in a
66 controlled substance, the court shall direct the department to
67 revoke the driver license or driving privilege of the person.
68 The period of such revocation shall be 6 months ~~1 year~~ or until



601144

69 the person is evaluated for and, if deemed necessary by the
70 evaluating agency, completes a drug treatment and rehabilitation
71 program approved or regulated by the Department of Children and
72 Families. However, the court may, in its sound discretion,
73 direct the department to issue a license for driving privilege
74 restricted to business or employment purposes only, as defined
75 by s. 322.271, if the person is otherwise qualified for such a
76 license. ~~A driver whose license or driving privilege has been~~
77 ~~suspended or revoked under this section or s. 322.056 may, upon~~
78 ~~the expiration of 6 months, petition the department for~~
79 ~~restoration of the driving privilege on a restricted or~~
80 ~~unrestricted basis depending on length of suspension or~~
81 ~~revocation. In no case shall~~ A restricted license may not be
82 available until 6 months of the suspension or revocation period
83 has been completed ~~expired~~.

84 (2) If a person 18 years of age or older is convicted for
85 the possession or sale of, trafficking in, or conspiracy to
86 possess, sell, or traffic in a controlled substance and such
87 person is eligible by reason of age for a driver license or
88 privilege, the court shall direct the department to withhold
89 issuance of such person's driver license or driving privilege
90 for a period of 6 months ~~1 year~~ after the date the person was
91 convicted or until the person is evaluated for and, if deemed
92 necessary by the evaluating agency, completes a drug treatment
93 and rehabilitation program approved or regulated by the
94 Department of Children and Families. However, the court may, in
95 its sound discretion, direct the department to issue a license
96 for driving privilege restricted to business or employment
97 purposes only, as defined by s. 322.271, if the person is



601144

98 otherwise qualified for such a license. ~~A driver whose license~~
99 ~~or driving privilege has been suspended or revoked under this~~
100 ~~section or s. 322.056 may, upon the expiration of 6 months,~~
101 ~~petition the department for restoration of the driving privilege~~
102 ~~on a restricted or unrestricted basis depending on the length of~~
103 ~~suspension or revocation. In no case shall~~ A restricted license
104 may not be available until 6 months of the withholding
105 ~~suspension or revocation~~ period has been completed ~~expired~~.

106 (3) If a person 18 years of age or older is convicted for
107 the possession or sale of, trafficking in, or conspiracy to
108 possess, sell, or traffic in a controlled substance and such
109 person's driver license or driving privilege is already under
110 suspension or revocation for any reason, the court shall direct
111 the department to extend the period of such suspension or
112 revocation by an additional period of 6 months ~~1 year~~ or until
113 the person is evaluated for and, if deemed necessary by the
114 evaluating agency, completes a drug treatment and rehabilitation
115 program approved or regulated by the Department of Children and
116 Families. However, the court may, in its sound discretion,
117 direct the department to issue a license for driving privilege
118 restricted to business or employment purposes only, as defined
119 by s. 322.271, if the person is otherwise qualified for such a
120 license. ~~A driver whose license or driving privilege has been~~
121 ~~suspended or revoked under this section or s. 322.056 may, upon~~
122 ~~the expiration of 6 months, petition the department for~~
123 ~~restoration of the driving privilege on a restricted or~~
124 ~~unrestricted basis depending on the length of suspension or~~
125 ~~revocation. In no case shall~~ A restricted license may not be
126 available until 6 months of the suspension or revocation period



601144

127 has been completed ~~expired~~.

128 (4) If a person 18 years of age or older is convicted for
129 the possession or sale of, trafficking in, or conspiracy to
130 possess, sell, or traffic in a controlled substance and such
131 person is ineligible by reason of age for a driver license or
132 driving privilege, the court shall direct the department to
133 withhold issuance of such person's driver license or driving
134 privilege for a period of 6 months ~~1 year~~ after the date that he
135 or she would otherwise have become eligible or until he or she
136 becomes eligible by reason of age for a driver license and is
137 evaluated for and, if deemed necessary by the evaluating agency,
138 completes a drug treatment and rehabilitation program approved
139 or regulated by the Department of Children and Families.
140 However, the court may, in its sound discretion, direct the
141 department to issue a license for driving privilege restricted
142 to business or employment purposes only, as defined by s.
143 322.271, if the person is otherwise qualified for such a
144 license. ~~A driver whose license or driving privilege has been
145 suspended or revoked under this section or s. 322.056 may, upon
146 the expiration of 6 months, petition the department for
147 restoration of the driving privilege on a restricted or
148 unrestricted basis depending on the length of suspension or
149 revocation. In no case shall~~ A restricted license may not be
150 available until 6 months of the withholding ~~suspension or
151 revocation~~ period has been completed ~~expired~~.

152 Section 7. Section 322.056, Florida Statutes, is amended to
153 read:

154 322.056 Mandatory revocation or suspension of, or delay of
155 eligibility for, driver license for persons under age 18 found



601144

156 guilty of certain alcohol, drug, or tobacco offenses;
157 prohibition.—

158 (1) Notwithstanding the provisions of s. 322.055, if a
159 person under 18 years of age is found guilty of or delinquent
160 for a violation of ~~s. 562.11(2), s. 562.111, or~~ chapter 893,
161 and:

162 (a) The person is eligible by reason of age for a driver
163 license or driving privilege, the court shall direct the
164 department to revoke or to withhold issuance of his or her
165 driver license or driving privilege for a period of 6 months.÷

166 ~~1. Not less than 6 months and not more than 1 year for the~~
167 ~~first violation.~~

168 ~~2. Two years, for a subsequent violation.~~

169 (b) The person's driver license or driving privilege is
170 under suspension or revocation for any reason, the court shall
171 direct the department to extend the period of suspension or
172 revocation by an additional period of 6 months.÷

173 ~~1. Not less than 6 months and not more than 1 year for the~~
174 ~~first violation.~~

175 ~~2. Two years, for a subsequent violation.~~

176 (c) The person is ineligible by reason of age for a driver
177 license or driving privilege, the court shall direct the
178 department to withhold issuance of his or her driver license or
179 driving privilege for a period of÷

180 ~~1. Not less than 6 months and not more than 1 year after~~
181 ~~the date on which he or she would otherwise have become~~
182 ~~eligible, for the first violation.~~

183 ~~2. Two years after the date on which he or she would~~
184 ~~otherwise have become eligible, for a subsequent violation.~~



601144

185
186 ~~However, the court may, in its sound discretion, direct the~~
187 ~~department to issue a license for driving privileges restricted~~
188 ~~to business or employment purposes only, as defined in s.~~
189 ~~322.271, if the person is otherwise qualified for such a~~
190 ~~license.~~

191 ~~(2) If a person under 18 years of age is found by the court~~
192 ~~to have committed a noncriminal violation under s. 569.11 or s.~~
193 ~~877.112(6) or (7) and that person has failed to comply with the~~
194 ~~procedures established in that section by failing to fulfill~~
195 ~~community service requirements, failing to pay the applicable~~
196 ~~fine, or failing to attend a locally available school-approved~~
197 ~~anti-tobacco program, and:~~

198 ~~(a) The person is eligible by reason of age for a driver~~
199 ~~license or driving privilege, the court shall direct the~~
200 ~~department to revoke or to withhold issuance of his or her~~
201 ~~driver license or driving privilege as follows:~~

- 202 ~~1. For the first violation, for 30 days.~~
203 ~~2. For the second violation within 12 weeks of the first~~
204 ~~violation, for 45 days.~~

205 ~~(b) The person's driver license or driving privilege is~~
206 ~~under suspension or revocation for any reason, the court shall~~
207 ~~direct the department to extend the period of suspension or~~
208 ~~revocation by an additional period as follows:~~

- 209 ~~1. For the first violation, for 30 days.~~
210 ~~2. For the second violation within 12 weeks of the first~~
211 ~~violation, for 45 days.~~

212 ~~(c) The person is ineligible by reason of age for a driver~~
213 ~~license or driving privilege, the court shall direct the~~



601144

214 ~~department to withhold issuance of his or her driver license or~~
215 ~~driving privilege as follows:~~

216 ~~1. For the first violation, for 30 days.~~

217 ~~2. For the second violation within 12 weeks of the first~~
218 ~~violation, for 45 days.~~

219
220 ~~Any second violation of s. 569.11 or s. 877.112(6) or (7) not~~
221 ~~within the 12-week period after the first violation will be~~
222 ~~treated as a first violation and in the same manner as provided~~
223 ~~in this subsection.~~

224 ~~(3) If a person under 18 years of age is found by the court~~
225 ~~to have committed a third violation of s. 569.11 or s.~~
226 ~~877.112(6) or (7) within 12 weeks of the first violation, the~~
227 ~~court must direct the Department of Highway Safety and Motor~~
228 ~~Vehicles to suspend or withhold issuance of his or her driver~~
229 ~~license or driving privilege for 60 consecutive days. Any third~~
230 ~~violation of s. 569.11 or s. 877.112(6) or (7) not within the~~
231 ~~12-week period after the first violation will be treated as a~~
232 ~~first violation and in the same manner as provided in subsection~~
233 ~~(2).~~

234 ~~(2)(4)~~ A penalty imposed under this section shall be in
235 addition to any other penalty imposed by law.

236 ~~(5) The suspension or revocation of a person's driver~~
237 ~~license imposed pursuant to subsection (2) or subsection (3),~~
238 ~~shall not result in or be cause for an increase of the convicted~~
239 ~~person's, or his or her parent's or legal guardian's, automobile~~
240 ~~insurance rate or premium or result in points assessed against~~
241 ~~the person's driving record.~~

242 Section 8. Section 322.057, Florida Statutes, is repealed.



601144

243 Section 9. Present subsections (4) and (5) of section
244 322.09, Florida Statutes, are redesignated as subsections (3)
245 and (4), respectively, and present subsection (3) of that
246 section is amended, to read:

247 322.09 Application of minors; responsibility for negligence
248 or misconduct of minor.—

249 ~~(3) The department may not issue a driver license or~~
250 ~~learner's driver license to any applicant under the age of 18~~
251 ~~years who is not in compliance with the requirements of s.~~
252 ~~322.091.~~

253 Section 10. Section 322.091, Florida Statutes, is repealed.

254 Section 11. Clerks of Court Community Service Pilot
255 Program.—

256 (1) The Clerks of Court Community Service Pilot Program is
257 established in Pinellas and Clay Counties to be administered by
258 the clerks of court for the counties and by the Florida Clerks
259 of Court Operations Corporation.

260 (2) Notwithstanding any other law, the clerks of court in
261 the pilot program counties shall implement programs that allow
262 any person owing any court-ordered financial obligation or
263 payment that is unrelated to child support obligations under
264 chapter 61, Florida Statutes, to fulfill the obligation by
265 completing community service as provided in this section.

266 (a) A person's driver license may not be suspended solely
267 for a failure to pay fees, service charges, fines, or penalties
268 in a pilot program county if the person complies with the
269 requirements of the pilot program.

270 (b) A person in a pilot program county who fails to pay a
271 court-ordered financial obligation or payment unrelated to child



601144

272 support obligations under chapter 61, Florida Statutes, must be
273 notified by the clerk of court by mail immediately after such
274 failure that the person has 10 days to comply or elect to
275 participate in the community service pilot program with the
276 clerk of court to satisfy the obligation. Failure to comply or
277 make an election with the clerk of court within the required
278 timeframe shall result in suspension of the person's driver
279 license as otherwise provided in chapter 318 and chapter 322,
280 Florida Statutes.

281 (3) The clerks of court shall allow a person to satisfy the
282 financial obligation by participating in community service in
283 lieu of or in addition to making payments toward such
284 obligation. If a person performs community service, he or she
285 must receive credit for the obligation at the hourly credit rate
286 per hour of community service performed as specified in this
287 subsection, and each hour of community service performed must
288 reduce the obligation by that amount. As used in this
289 subsection, the term "hourly credit rate" means the adjusted
290 state minimum wage rate that is calculated as provided in s.
291 448.110, Florida Statutes, that is then in effect.

292 (4) The workweek schedule and timeframe permitted for
293 completing the community service must be commensurate with the
294 amount of the obligation, the employment obligations of the
295 person, and the community service needs of the local area, but
296 must equal at least 4 hours of community service per week and
297 may not exceed 180 days. Failure to complete the community
298 service requirements or pay the remaining obligation within the
299 authorized timeframe shall result in suspension of the person's
300 driver license as otherwise provided in chapters 318 and 322,



301 Florida Statutes.

302 (5) (a) The community service agency supervising the person
303 shall record the number of hours of community service completed
304 and the date the community service hours were completed. The
305 community service agency shall submit the data to the clerk of
306 court on the letterhead of the community service agency and the
307 letter must also bear the notarized signature of the person
308 designated to represent the community service agency.

309 (b) When the number of community service hours completed by
310 the person equals the amount of the obligation owed, the clerks
311 of court must certify this fact, and the amount credited, to the
312 court and to the Florida Clerks of Court Operations Corporation.
313 Thereafter, the clerks of court shall record in the case file or
314 court records that the financial obligation has been paid in
315 full.

316 (6) Subject to the appropriation of funds for this pilot
317 program, a clerk of court may apply, on a quarterly basis, for a
318 grant from the Florida Clerks of Court Operations Corporation to
319 reimburse the clerk's office for the total amount of financial
320 obligations that have been converted to community service hours
321 for the previous quarter. The Florida Clerks of Court Operations
322 Corporation may review and approve the grant application and, if
323 approved, shall transfer the requested funds to the clerk. Upon
324 receipt of any such grant proceeds, the funds must be
325 distributed by the clerk in accordance with laws that would
326 otherwise have provided for distribution of payments for the
327 original penalty, fee, or obligation imposed on the person
328 performing the community service.

329 (7) The clerks of court in the pilot program counties and



330 the Florida Clerks of Court Operations Corporation shall each
331 provide a report on the implementation of the pilot program to
332 the chairs of the legislative appropriations committees by
333 October 1, 2019. At a minimum, the reports must include the
334 number of persons converting financial obligations to community
335 service, the number of persons actually completing the community
336 service requirements, the number of persons participating in the
337 pilot program who have their driver licenses suspended, the
338 estimated costs and benefits of the pilot program, and
339 recommendations to improve the pilot program.

340 (8) Authority for a person to participate in the Clerks of
341 Court Community Service Pilot Program shall expire on June 30,
342 2019. However, community service obligations entered into
343 pursuant to this section before June 30, 2019, must continue
344 until completion of the community service or the closing of the
345 underlying court case.

346
347 ===== T I T L E A M E N D M E N T =====

348 And the title is amended as follows:

349 Delete lines 27 - 89

350 and insert:

351 of a penalty; amending s. 318.18, F.S.; requiring a
352 court to inquire at the time a certain civil penalty
353 is ordered whether the person is able to pay it;
354 amending s. 322.055, F.S.; decreasing the period for
355 revocation or suspension of, or delay of eligibility
356 for, driver licenses or driving privileges for certain
357 persons convicted of certain drug offenses; deleting
358 provisions authorizing a driver to petition the



601144

359 Department of Highway Safety and Motor Vehicles for
360 restoration of his or her driving privilege; amending
361 s. 322.056, F.S.; decreasing the period for revocation
362 or suspension of, or delay of eligibility for, driver
363 licenses or driving privileges for certain persons
364 found guilty of certain drug offenses; deleting a
365 provision authorizing a court to direct the department
366 to issue a license for certain restricted driving
367 privileges under certain circumstances; deleting
368 requirements relating to the revocation or suspension
369 of, or delay of eligibility for, driver licenses or
370 driving privileges for certain persons found guilty of
371 certain alcohol or tobacco offenses; repealing s.
372 322.057, F.S., relating to discretionary revocation or
373 suspension of a driver license for certain persons who
374 provide alcohol to persons under a specified age;
375 amending s. 322.09, F.S.; deleting a provision
376 prohibiting the issuance of a driver license or
377 learner's driver license under certain circumstances;
378 repealing s. 322.091, F.S., relating to attendance
379 requirements for driving privileges; creating the
380 Clerks of Court Community Service Pilot Program in
381 Pinellas and Clay Counties; requiring the program to
382 be administered by the clerks of court for the
383 counties and by the Florida Clerks of Court Operations
384 Corporation; requiring the clerks of court in the
385 pilot program counties to implement programs that
386 allow any person owing any court-ordered financial
387 obligation or payment that is unrelated to certain



601144

388 child support obligations to fulfill the obligation by
389 completing community service; providing that a
390 person's driver license may not be suspended solely
391 for a failure to pay fees, service charges, fines, or
392 penalties in a pilot program county if the person
393 complies with the requirements of the program;
394 requiring that a person in a pilot program county who
395 fails to pay a court-ordered financial obligation or
396 payment unrelated to child support obligations be
397 notified by the clerk of court by mail that the person
398 has a specified time to comply or elect to participate
399 in the community service pilot program; providing that
400 failure to comply or make an election with the clerk
401 of court within the required timeframe results in
402 suspension of the person's driver license; authorizing
403 the clerks of court to allow a person to satisfy the
404 financial obligation by participating in community
405 service in lieu of or in addition to making payments
406 toward such obligation; providing requirements for the
407 community service; defining the term "hourly credit
408 rate"; providing requirements for the workweek
409 schedule and timeframe permitted for completing the
410 community service; providing that failure to complete
411 the community service requirements or pay the
412 remaining obligation within the authorized timeframe
413 results in suspension of the person's driver license;
414 providing requirements for the community service
415 agency supervising the person; providing requirements
416 for the clerks of the court; authorizing the clerks of



601144

417 court to apply, on a quarterly basis, for a certain
418 grant from the corporation; authorizing the
419 corporation to review and approve the grant
420 application; requiring the corporation to transfer the
421 requested funds to the clerks if approved; providing
422 requirements for distribution of funds; requiring the
423 clerks of court in the pilot program counties and the
424 corporation to each provide a report on the
425 implementation of the pilot program to the chairs of
426 the legislative appropriations committees by a
427 specified date; providing requirements for the report;
428 requiring authority for a person to participate in the
429 pilot program to expire on a specified date; requiring
430 community service obligations entered into before a
431 specified date to continue until completion of the
432 community service or the closing of the underlying
433 court case; repealing s. 322.251(7), F.S.,

By Senator Brandes

24-00140C-18

20181270__

1 A bill to be entitled
2 An act relating to penalties and fees; amending s.
3 27.52, F.S.; requiring a certain application to
4 provide the applicant with the option to fulfill any
5 court-ordered financial obligation associated with a
6 case by enrolling in a payment plan or by completing
7 community service if ordered by the court; requiring a
8 clerk of the court to compare the information provided
9 in the application to any readily ascertainable or
10 publicly available information under certain
11 circumstances; authorizing the clerk to refer any
12 application believed to be fraudulent to the court for
13 review; amending s. 28.246, F.S.; revising
14 requirements relating to the payment of court-related
15 fines or other monetary penalties, fees, charges, and
16 costs; requiring a clerk of the circuit court to
17 solicit competitive bids from private attorneys or
18 collection agents for collection services, subject to
19 certain requirements; prohibiting the clerk from
20 assessing a certain surcharge; prohibiting the private
21 attorney or collection agent from imposing certain
22 additional fees or surcharges; amending s. 57.082,
23 F.S.; authorizing the clerk to refer any application
24 believed to be fraudulent to the court for review;
25 amending s. 316.650, F.S.; requiring traffic citation
26 forms to include certain language relating to payment
27 of a penalty; amending s. 318.15, F.S.; prohibiting
28 the suspension of a person's driver license solely for
29 failure to pay certain financial obligations if the

24-00140C-18

20181270__

30 person requests a hearing and demonstrates specified
31 circumstances to the court, after notice of a penalty
32 and before the suspension takes place; requiring a
33 person who meets specified criteria to provide the
34 clerk with updated documentation at specified
35 intervals; requiring the person to begin paying
36 certain outstanding financial obligations under
37 certain circumstances; requiring the clerk to notify
38 the Department of Highway Safety and Motor Vehicles of
39 the person's failure to pay within a specified time
40 under certain circumstances; requiring the department
41 to immediately issue an order suspending the driver
42 license and privilege to drive of the person upon
43 receipt of such notice, effective after a specified
44 time; amending s. 318.18, F.S.; requiring a court to
45 inquire at the time a certain civil penalty is ordered
46 whether the person is able to pay it; amending s.
47 322.055, F.S.; decreasing the period for revocation or
48 suspension of, or delay of eligibility for, driver
49 licenses or driving privileges for certain persons
50 convicted of certain drug offenses; deleting
51 provisions authorizing a driver to petition the
52 department for restoration of his or her driving
53 privilege; amending s. 322.056, F.S.; decreasing the
54 period for revocation or suspension of, or delay of
55 eligibility for, driver licenses or driving privileges
56 for certain persons found guilty of certain drug
57 offenses; deleting a provision authorizing a court to
58 direct the department to issue a license for certain

24-00140C-18

20181270__

59 restricted driving privileges under certain
60 circumstances; deleting requirements relating to the
61 revocation or suspension of, or delay of eligibility
62 for, driver licenses or driving privileges for certain
63 persons found guilty of certain alcohol or tobacco
64 offenses; repealing s. 322.057, F.S., relating to
65 discretionary revocation or suspension of a driver
66 license for certain persons who provide alcohol to
67 persons under a specified age; amending s. 322.09,
68 F.S.; deleting a provision prohibiting the issuance of
69 a driver license or learner's driver license under
70 certain circumstances; repealing s. 322.091, F.S.,
71 relating to attendance requirements for driving
72 privileges; amending s. 322.245, F.S.; prohibiting the
73 suspension of a person's driver license solely for
74 failure to pay certain financial obligations if the
75 person requests a hearing and demonstrates specified
76 circumstances to the court, after notice of a penalty
77 and before the suspension takes place; providing an
78 exception; requiring a person who meets specified
79 criteria to provide the clerk with updated
80 documentation every specified number of days;
81 requiring the person to begin paying certain
82 outstanding financial obligations under certain
83 circumstances; requiring the clerk to notify the
84 department of the person's failure to pay within a
85 specified time under certain circumstances; requiring
86 the department to immediately issue an order
87 suspending the driver license and privilege to drive

24-00140C-18

20181270__

88 of the person upon receipt of such notice, effective
89 after a specified time; repealing s. 322.251(7), F.S.,
90 relating to notice of suspension or revocation of
91 driving privileges, reasons for reinstatement of such
92 driving privileges, and certain electronic access to
93 identify a person who is the subject of an outstanding
94 warrant or capias for passing worthless bank checks;
95 amending s. 322.271, F.S.; providing that a person
96 whose driver license or privilege to drive has been
97 suspended may have his or her driver license or
98 driving privilege reinstated on a restricted basis
99 under certain circumstances; providing the period of
100 validity of such restricted license; amending s.
101 322.34, F.S.; revising the underlying violations
102 resulting in driver license or driving privilege
103 cancellation, suspension, or revocation for which
104 specified penalties apply; amending s. 562.11, F.S.;
105 revising penalties for selling, giving, serving, or
106 permitting to be served alcoholic beverages to a
107 person under a specified age or permitting such person
108 to consume such beverages on licensed premises;
109 revising penalties for misrepresenting or misstating
110 age or age of another to induce a licensee to serve
111 alcoholic beverages to a person under a specified age;
112 conforming provisions to changes made by the act;
113 repealing s. 562.111(3), F.S., relating to withholding
114 issuance of, or suspending or revoking, a driver
115 license or driving privilege for possession of
116 alcoholic beverages by persons under a specified age;

24-00140C-18

20181270__

117 amending s. 569.11, F.S.; revising penalties for
118 persons under a specified age who knowingly possess,
119 misrepresent their age or military service to
120 purchase, or purchase or attempt to purchase tobacco
121 products; authorizing, rather than requiring, the
122 court to direct the department to withhold issuance of
123 or suspend a person's driver license or driving
124 privilege for certain violations; amending s. 790.22,
125 F.S.; revising penalties relating to suspending,
126 revoking, or withholding issuance of driver licenses
127 or driving privileges for minors under a specified age
128 who possess firearms under certain circumstances;
129 deleting provisions relating to penalties for certain
130 offenses involving the use or possession of a firearm
131 by a minor under a specified age; amending s. 806.13,
132 F.S.; deleting provisions relating to certain
133 penalties for criminal mischief by a minor; repealing
134 s. 812.0155, F.S., relating to suspension of a driver
135 license following an adjudication of guilt for theft;
136 repealing s. 832.09, F.S., relating to suspension of a
137 driver license after warrant or capias is issued in
138 worthless check cases; amending s. 847.0141, F.S.;
139 deleting a provision authorizing a court, upon a
140 certain finding of contempt, to issue an order to the
141 department to withhold issuance of or suspend the
142 driver license or driving privilege of a minor for a
143 specified time; amending s. 877.112, F.S.; revising
144 penalties for persons under a specified age who
145 knowingly possess, misrepresent their age or military

24-00140C-18

20181270__

146 service to purchase, or purchase or attempt to
147 purchase any nicotine product or nicotine dispensing
148 device; authorizing, rather than requiring, the court
149 to direct the department to withhold issuance of or
150 suspend a person's driver license or driving privilege
151 for certain violations; amending s. 938.30, F.S.;
152 authorizing a judge to convert certain statutory
153 financial obligations into court-ordered obligations
154 to perform community service by reliance upon
155 specified information under certain circumstances;
156 amending s. 1003.27, F.S.; deleting provisions
157 relating to procedures and penalties for nonenrollment
158 and nonattendance cases; amending ss. 318.14, 322.05,
159 322.27, and 1003.01, F.S.; conforming provisions to
160 changes made by the act; providing applicability of
161 certain changes made by the act; requiring the
162 department to notify the Division of Law Revision and
163 Information upon the adoption of certain uniform
164 traffic citation forms; providing effective dates.

165
166 Be It Enacted by the Legislature of the State of Florida:

167
168 Section 1. Paragraph (a) of subsection (1), paragraph (d)
169 of subsection (2), paragraph (a) of subsection (4), and
170 paragraph (a) of subsection (7) of section 27.52, Florida
171 Statutes, are amended to read:

172 27.52 Determination of indigent status.—

173 (1) APPLICATION TO THE CLERK.—A person seeking appointment
174 of a public defender under s. 27.51 based upon an inability to

24-00140C-18

20181270__

175 pay must apply to the clerk of the court for a determination of
176 indigent status using an application form developed by the
177 Florida Clerks of Court Operations Corporation with final
178 approval by the Supreme Court.

179 (a) The application must include, at a minimum, the
180 following financial information:

181 1. Net income, consisting of total salary and wages, minus
182 deductions required by law, including court-ordered support
183 payments.

184 2. Other income, including, but not limited to, social
185 security benefits, union funds, veterans' benefits, workers'
186 compensation, other regular support from absent family members,
187 public or private employee pensions, reemployment assistance or
188 unemployment compensation, dividends, interest, rent, trusts,
189 and gifts.

190 3. Assets, including, but not limited to, cash, savings
191 accounts, bank accounts, stocks, bonds, certificates of deposit,
192 equity in real estate, and equity in a boat or a motor vehicle
193 or in other tangible property.

194 4. All liabilities and debts.

195 5. If applicable, the amount of any bail paid for the
196 applicant's release from incarceration and the source of the
197 funds.

198

199 The application must provide the applicant with the option to
200 fulfill any court-ordered financial obligation associated with a
201 case by enrolling in a payment plan or by completing community
202 service if ordered by the court. The application must include a
203 signature by the applicant which attests to the truthfulness of

24-00140C-18

20181270__

204 the information provided. The application form developed by the
205 corporation must include notice that the applicant may seek
206 court review of a clerk's determination that the applicant is
207 not indigent, as provided in this section.

208 (2) DETERMINATION BY THE CLERK.—The clerk of the court
209 shall determine whether an applicant seeking appointment of a
210 public defender is indigent based upon the information provided
211 in the application and the criteria prescribed in this
212 subsection.

213 (d) The duty of the clerk in determining whether an
214 applicant is indigent shall be limited to receiving the
215 application and comparing the information provided in the
216 application to the criteria prescribed in this subsection and to
217 any readily ascertainable or publicly available information. The
218 determination of indigent status is a ministerial act of the
219 clerk and not a decision based on further investigation or the
220 exercise of independent judgment by the clerk. The clerk may
221 contract with third parties to perform functions assigned to the
222 clerk under this section.

223 (4) REVIEW OF CLERK'S DETERMINATION.—

224 (a) If the clerk of the court determines that the applicant
225 is not indigent, and the applicant seeks review of the clerk's
226 determination, the court shall make a final determination of
227 indigent status by reviewing the information provided in the
228 application against the criteria prescribed in subsection (2),
229 along with any readily ascertainable or publicly available
230 information provided by the clerk, and by considering the
231 following additional factors:

232 1. Whether the applicant has been released on bail in an

24-00140C-18

20181270__

233 amount of \$5,000 or more.

234 2. Whether a bond has been posted, the type of bond, and
235 who paid the bond.

236 3. Whether paying for private counsel in an amount that
237 exceeds the limitations in s. 27.5304, or other due process
238 services creates a substantial hardship for the applicant or the
239 applicant's family.

240 4. Any other relevant financial circumstances of the
241 applicant or the applicant's family.

242 (7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.—

243 (a) The clerk may refer any application believed to be
244 fraudulent to the court for review. If the court learns of
245 discrepancies between the application or motion and the actual
246 financial status of the person found to be indigent or indigent
247 for costs, the court shall determine whether the public
248 defender, office of criminal conflict and civil regional
249 counsel, or private attorney shall continue representation or
250 whether the authorization for any other due process services
251 previously authorized shall be revoked. The person may be heard
252 regarding the information learned by the court. If the court,
253 based on the information, determines that the person is not
254 indigent or indigent for costs, the court shall order the public
255 defender, office of criminal conflict and civil regional
256 counsel, or private attorney to discontinue representation and
257 revoke the provision of any other authorized due process
258 services.

259 Section 2. Subsections (4) and (6) of section 28.246,
260 Florida Statutes, are amended to read:

261 28.246 Payment of court-related fines or other monetary

24-00140C-18

20181270__

262 penalties, fees, charges, and costs; partial payments;
263 distribution of funds.—

264 (4) The clerk of the circuit court shall accept partial
265 payments for court-related fees, service charges, costs, and
266 fines in accordance with the terms of an established payment
267 plan. An individual seeking to defer payment of fees, service
268 charges, costs, or fines imposed by operation of law or order of
269 the court under any provision of general law, including an
270 individual found indigent by the clerk or the court, shall apply
271 to the clerk for enrollment in a payment plan. The clerk shall
272 accept a qualified individual's application for a payment plan
273 and accept ~~The clerk shall enter into a payment plan with an~~
274 ~~individual who the court determines is indigent for costs.~~ a
275 monthly payment amount, calculated based upon all fees and all
276 anticipated costs. The monthly payment amount may, is presumed
277 ~~to correspond to the person's ability to pay if the amount does~~
278 not exceed 2 percent of the person's annual net income, as
279 defined in s. 27.52(1), divided by 12, or \$25 per month,
280 whichever is greater. The court may review the reasonableness of
281 the payment plan upon motion of the party and may modify the
282 plan.

283 (6) (a) A clerk of court shall pursue the collection of any
284 fees, service charges, fines, court costs, and liens for the
285 payment of attorney fees and costs pursuant to s. 938.29 which
286 remain unpaid after 90 days by referring the account to a
287 private attorney who is a member in good standing of The Florida
288 Bar or collection agent who is registered and in good standing
289 pursuant to chapter 559. In pursuing the collection of such
290 unpaid financial obligations through a private attorney or

24-00140C-18

20181270__

291 collection agent, the clerk of the court must have attempted to
292 collect the unpaid amount through a collection court,
293 collections docket, or other collections process, if any,
294 established by the court, find this to be cost-effective and
295 follow any applicable procurement practices.

296 (b) In retaining a private attorney or collection agent as
297 provided in this subsection, the clerk shall solicit competitive
298 bids from private attorneys or collection agents. The contract
299 awarded to the successful bidder may be in effect for no longer
300 than 3 years, with a maximum of two 1-year extensions.

301 (c) The clerk shall consider all pertinent criteria when
302 considering bids, including, but not limited to, performance
303 quality and customer service. The collection fee paid to the
304 private, including any reasonable attorney's fee, paid to any
305 attorney or collection agent retained by the clerk may be added
306 to the balance owed in an amount not to exceed 40 percent of the
307 amount owed at the time the account is referred to the attorney
308 or agent for collection.

309 (d) The clerk may not assess any surcharge to refer the
310 account to a private attorney or an agent for collection.

311 (e) The private attorney or collection agent may not impose
312 any additional fees or surcharges other than the contractually
313 agreed-upon amounts.

314 (f) The clerk shall give the private attorney or collection
315 agent the application for the appointment of court-appointed
316 counsel regardless of whether the court file is otherwise
317 confidential from disclosure.

318 Section 3. Paragraph (a) of subsection (7) of section
319 57.082, Florida Statutes, is amended to read:

24-00140C-18

20181270__

320 57.082 Determination of civil indigent status.—

321 (7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.—

322 (a) The clerk may refer any application believed to be
323 fraudulent to the court for review. If the court learns of
324 discrepancies between the application and the actual financial
325 status of the person found to be indigent, the court shall
326 determine whether the status and any relief provided as a result
327 of that status shall be revoked. The person may be heard
328 regarding the information learned by the court. If the court,
329 based on the information, determines that the person is not
330 indigent, the court shall revoke the provision of any relief
331 under this section.

332 Section 4. Present paragraphs (b), (c), and (d) of
333 subsection (1) of section 316.650, Florida Statutes, are
334 redesignated as paragraphs (c), (d), and (e), respectively, a
335 new paragraph (b) is added to that subsection, and present
336 paragraph (c) of that subsection is amended, to read:

337 316.650 Traffic citations.—

338 (1)

339 (b) The traffic citation form must include language
340 indicating that a person may enter into a payment plan with the
341 clerk of court to pay a penalty. The form must also indicate
342 that a person ordered to pay a penalty for a noncriminal traffic
343 infraction who is unable to comply due to demonstrable financial
344 hardship will be allowed by the court to satisfy the payment by
345 participating in community service pursuant to s. 318.18(8)(b).

346 (d)~~(e)~~ Notwithstanding paragraphs (a) and (c) ~~(b)~~, a
347 traffic enforcement agency may produce uniform traffic citations
348 by electronic means. Such citations must be consistent with the

24-00140C-18

20181270__

349 state traffic court rules and the procedures established by the
350 department and must be appropriately numbered and inventoried.
351 Affidavit-of-compliance forms may also be produced by electronic
352 means.

353 Section 5. Subsections (4) and (5) are added to section
354 318.15, Florida Statutes, to read:

355 318.15 Failure to comply with civil penalty or to appear;
356 penalty.-

357 (4) Notwithstanding any other law, a person's driver
358 license may not be suspended solely for a failure to pay fees,
359 service charges, fines, or penalties if the person demonstrates
360 to the court, after notice of the penalty and before the
361 suspension takes place, that the person is unable to pay and
362 that the person:

363 (a) Receives reemployment assistance or unemployment
364 compensation pursuant to chapter 443;

365 (b) Receives benefits under the federal Supplemental
366 Security Income program or Social Security Disability Insurance
367 program;

368 (c) Receives temporary cash assistance pursuant to chapter
369 414;

370 (d) Is making payments in accordance with a confirmed
371 bankruptcy plan under chapter 11, chapter 12, or chapter 13 of
372 the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq.;

373 (e) Is on a payment plan or payment plans with the clerk of
374 court pursuant to s. 28.246(4);

375 (f) Has been determined to be indigent after filing an
376 application with the clerk in accordance with s. 27.52 or s.
377 57.082; or

24-00140C-18

20181270__

378 (g) Is incarcerated.
379 (5) A person who meets the criteria under subsection (4)
380 must provide the clerk with updated documentation every 90 days.
381 If the person fails to provide the necessary documentation to
382 the clerk or no longer meets the criteria under subsection (4),
383 he or she must begin paying the outstanding fees, service
384 charges, fines, or penalties. If payment does not begin within
385 30 days, the clerk must notify the department of such failure
386 within 10 days after the failure occurs. Upon receipt of such
387 notice, the department must immediately issue an order
388 suspending the driver license and privilege to drive of such
389 person effective 20 days after the date the order of suspension
390 is mailed in accordance with s. 322.251(1), (2), and (6).

391 Section 6. Paragraph (b) of subsection (8) of section
392 318.18, Florida Statutes, is amended to read:

393 318.18 Amount of penalties.—The penalties required for a
394 noncriminal disposition pursuant to s. 318.14 or a criminal
395 offense listed in s. 318.17 are as follows:

396 (8)

397 (b)1.a. If a person has been ordered to pay a civil penalty
398 for a noncriminal traffic infraction and the person is unable to
399 comply with the court's order due to demonstrable financial
400 hardship, the court shall allow the person to satisfy the civil
401 penalty by participating in community service until the civil
402 penalty is paid.

403 b. The court shall inquire at the time the civil penalty is
404 ordered whether the person is able to pay it.

405 c. If a court orders a person to perform community service,
406 the person shall receive credit for the civil penalty at the

24-00140C-18

20181270__

407 specified hourly credit rate per hour of community service
408 performed, and each hour of community service performed shall
409 reduce the civil penalty by that amount.

410 2.a. As used in this paragraph, the term "specified hourly
411 credit rate" means the wage rate that is specified in 29 U.S.C.
412 s. 206(a)(1) under the federal Fair Labor Standards Act of 1938,
413 that is then in effect, and that an employer subject to such
414 provision must pay per hour to each employee subject to such
415 provision.

416 b. However, if a person ordered to perform community
417 service has a trade or profession for which there is a community
418 service need, the specified hourly credit rate for each hour of
419 community service performed by that person shall be the average
420 prevailing wage rate for the trade or profession that the
421 community service agency needs.

422 3.a. The community service agency supervising the person
423 shall record the number of hours of community service completed
424 and the date the community service hours were completed. The
425 community service agency shall submit the data to the clerk of
426 court on the letterhead of the community service agency, which
427 must also bear the notarized signature of the person designated
428 to represent the community service agency.

429 b. When the number of community service hours completed by
430 the person equals the amount of the civil penalty, the clerk of
431 court shall certify this fact to the court. Thereafter, the
432 clerk of court shall record in the case file that the civil
433 penalty has been paid in full.

434 4. As used in this paragraph, the term:

435 a. "Community service" means uncompensated labor for a

24-00140C-18

20181270__

436 community service agency.

437 b. "Community service agency" means a not-for-profit
438 corporation, community organization, charitable organization,
439 public officer, the state or any political subdivision of the
440 state, or any other body the purpose of which is to improve the
441 quality of life or social welfare of the community and which
442 agrees to accept community service from persons unable to pay
443 civil penalties for noncriminal traffic infractions.

444 Section 7. Subsections (1) through (4) of section 322.055,
445 Florida Statutes, are amended to read:

446 322.055 Revocation or suspension of, or delay of
447 eligibility for, driver license for persons 18 years of age or
448 older convicted of certain drug offenses.—

449 (1) Notwithstanding s. 322.28, upon the conviction of a
450 person 18 years of age or older for possession or sale of,
451 trafficking in, or conspiracy to possess, sell, or traffic in a
452 controlled substance, the court shall direct the department to
453 revoke the driver license or driving privilege of the person.
454 The period of such revocation shall be 6 months ~~1 year~~ or until
455 the person is evaluated for and, if deemed necessary by the
456 evaluating agency, completes a drug treatment and rehabilitation
457 program approved or regulated by the Department of Children and
458 Families. However, the court may, in its sound discretion,
459 direct the department to issue a license for driving privilege
460 restricted to business or employment purposes only, as defined
461 by s. 322.271, if the person is otherwise qualified for such a
462 license. ~~A driver whose license or driving privilege has been
463 suspended or revoked under this section or s. 322.056 may, upon
464 the expiration of 6 months, petition the department for~~

24-00140C-18

20181270__

465 ~~restoration of the driving privilege on a restricted or~~
466 ~~unrestricted basis depending on length of suspension or~~
467 ~~revocation. In no case shall~~ A restricted license may not be
468 available until 6 months of the suspension or revocation period
469 has been completed ~~expired~~.

470 (2) If a person 18 years of age or older is convicted for
471 the possession or sale of, trafficking in, or conspiracy to
472 possess, sell, or traffic in a controlled substance and such
473 person is eligible by reason of age for a driver license or
474 privilege, the court shall direct the department to withhold
475 issuance of such person's driver license or driving privilege
476 for a period of 6 months ~~1 year~~ after the date the person was
477 convicted or until the person is evaluated for and, if deemed
478 necessary by the evaluating agency, completes a drug treatment
479 and rehabilitation program approved or regulated by the
480 Department of Children and Families. However, the court may, in
481 its sound discretion, direct the department to issue a license
482 for driving privilege restricted to business or employment
483 purposes only, as defined by s. 322.271, if the person is
484 otherwise qualified for such a license. ~~A driver whose license~~
485 ~~or driving privilege has been suspended or revoked under this~~
486 ~~section or s. 322.056 may, upon the expiration of 6 months,~~
487 ~~petition the department for restoration of the driving privilege~~
488 ~~on a restricted or unrestricted basis depending on the length of~~
489 ~~suspension or revocation. In no case shall~~ A restricted license
490 may not be available until 6 months of the withholding
491 ~~suspension or revocation~~ period has been completed ~~expired~~.

492 (3) If a person 18 years of age or older is convicted for
493 the possession or sale of, trafficking in, or conspiracy to

24-00140C-18

20181270__

494 possess, sell, or traffic in a controlled substance and such
495 person's driver license or driving privilege is already under
496 suspension or revocation for any reason, the court shall direct
497 the department to extend the period of such suspension or
498 revocation by an additional period of 6 months ~~1 year~~ or until
499 the person is evaluated for and, if deemed necessary by the
500 evaluating agency, completes a drug treatment and rehabilitation
501 program approved or regulated by the Department of Children and
502 Families. However, the court may, in its sound discretion,
503 direct the department to issue a license for driving privilege
504 restricted to business or employment purposes only, as defined
505 by s. 322.271, if the person is otherwise qualified for such a
506 license. ~~A driver whose license or driving privilege has been~~
507 ~~suspended or revoked under this section or s. 322.056 may, upon~~
508 ~~the expiration of 6 months, petition the department for~~
509 ~~restoration of the driving privilege on a restricted or~~
510 ~~unrestricted basis depending on the length of suspension or~~
511 ~~revocation. In no case shall~~ A restricted license may not be
512 available until 6 months of the suspension or revocation period
513 has been completed ~~expired~~.

514 (4) If a person 18 years of age or older is convicted for
515 the possession or sale of, trafficking in, or conspiracy to
516 possess, sell, or traffic in a controlled substance and such
517 person is ineligible by reason of age for a driver license or
518 driving privilege, the court shall direct the department to
519 withhold issuance of such person's driver license or driving
520 privilege for a period of 6 months ~~1 year~~ after the date that he
521 or she would otherwise have become eligible or until he or she
522 becomes eligible by reason of age for a driver license and is

24-00140C-18

20181270__

523 evaluated for and, if deemed necessary by the evaluating agency,
 524 completes a drug treatment and rehabilitation program approved
 525 or regulated by the Department of Children and Families.
 526 However, the court may, in its sound discretion, direct the
 527 department to issue a license for driving privilege restricted
 528 to business or employment purposes only, as defined by s.
 529 322.271, if the person is otherwise qualified for such a
 530 license. ~~A driver whose license or driving privilege has been~~
 531 ~~suspended or revoked under this section or s. 322.056 may, upon~~
 532 ~~the expiration of 6 months, petition the department for~~
 533 ~~restoration of the driving privilege on a restricted or~~
 534 ~~unrestricted basis depending on the length of suspension or~~
 535 ~~revocation. In no case shall A restricted license may not be~~
 536 available until 6 months of the withholding ~~suspension or~~
 537 ~~revocation period has been completed expired.~~

538 Section 8. Section 322.056, Florida Statutes, is amended to
 539 read:

540 322.056 Mandatory revocation or suspension of, or delay of
 541 eligibility for, driver license for persons under age 18 found
 542 guilty of certain alcohol, drug, ~~or tobacco~~ offenses;
 543 prohibition.-

544 (1) Notwithstanding ~~the provisions of~~ s. 322.055, if a
 545 person under 18 years of age is found guilty of or delinquent
 546 for a violation of ~~s. 562.11(2), s. 562.111, or~~ chapter 893,
 547 and:

548 (a) The person is eligible by reason of age for a driver
 549 license or driving privilege, the court shall direct the
 550 department to revoke or to withhold issuance of his or her
 551 driver license or driving privilege for a period of 6 months.†

24-00140C-18

20181270__

552 ~~1. Not less than 6 months and not more than 1 year for the~~
553 ~~first violation.~~

554 ~~2. Two years, for a subsequent violation.~~

555 (b) The person's driver license or driving privilege is
556 under suspension or revocation for any reason, the court shall
557 direct the department to extend the period of suspension or
558 revocation by an additional period of 6 months.÷

559 ~~1. Not less than 6 months and not more than 1 year for the~~
560 ~~first violation.~~

561 ~~2. Two years, for a subsequent violation.~~

562 (c) The person is ineligible by reason of age for a driver
563 license or driving privilege, the court shall direct the
564 department to withhold issuance of his or her driver license or
565 driving privilege for a period of÷

566 ~~1. Not less than 6 months and not more than 1 year after~~
567 ~~the date on which he or she would otherwise have become~~
568 ~~eligible, for the first violation.~~

569 ~~2. Two years after the date on which he or she would~~
570 ~~otherwise have become eligible, for a subsequent violation.~~

571
572 ~~However, the court may, in its sound discretion, direct the~~
573 ~~department to issue a license for driving privileges restricted~~
574 ~~to business or employment purposes only, as defined in s.~~
575 ~~322.271, if the person is otherwise qualified for such a~~
576 ~~license.~~

577 ~~(2) If a person under 18 years of age is found by the court~~
578 ~~to have committed a noncriminal violation under s. 569.11 or s.~~
579 ~~877.112(6) or (7) and that person has failed to comply with the~~
580 ~~procedures established in that section by failing to fulfill~~

24-00140C-18

20181270__

581 ~~community service requirements, failing to pay the applicable~~
582 ~~fine, or failing to attend a locally available school-approved~~
583 ~~anti-tobacco program, and:~~

584 ~~(a) The person is eligible by reason of age for a driver~~
585 ~~license or driving privilege, the court shall direct the~~
586 ~~department to revoke or to withhold issuance of his or her~~
587 ~~driver license or driving privilege as follows:~~

- 588 ~~1. For the first violation, for 30 days.~~
589 ~~2. For the second violation within 12 weeks of the first~~
590 ~~violation, for 45 days.~~

591 ~~(b) The person's driver license or driving privilege is~~
592 ~~under suspension or revocation for any reason, the court shall~~
593 ~~direct the department to extend the period of suspension or~~
594 ~~revocation by an additional period as follows:~~

- 595 ~~1. For the first violation, for 30 days.~~
596 ~~2. For the second violation within 12 weeks of the first~~
597 ~~violation, for 45 days.~~

598 ~~(c) The person is ineligible by reason of age for a driver~~
599 ~~license or driving privilege, the court shall direct the~~
600 ~~department to withhold issuance of his or her driver license or~~
601 ~~driving privilege as follows:~~

- 602 ~~1. For the first violation, for 30 days.~~
603 ~~2. For the second violation within 12 weeks of the first~~
604 ~~violation, for 45 days.~~

605
606 ~~Any second violation of s. 569.11 or s. 877.112(6) or (7) not~~
607 ~~within the 12-week period after the first violation will be~~
608 ~~treated as a first violation and in the same manner as provided~~
609 ~~in this subsection.~~

24-00140C-18

20181270__

610 ~~(3) If a person under 18 years of age is found by the court~~
611 ~~to have committed a third violation of s. 569.11 or s.~~
612 ~~877.112(6) or (7) within 12 weeks of the first violation, the~~
613 ~~court must direct the Department of Highway Safety and Motor~~
614 ~~Vehicles to suspend or withhold issuance of his or her driver~~
615 ~~license or driving privilege for 60 consecutive days. Any third~~
616 ~~violation of s. 569.11 or s. 877.112(6) or (7) not within the~~
617 ~~12-week period after the first violation will be treated as a~~
618 ~~first violation and in the same manner as provided in subsection~~
619 ~~(2).~~

620 (2)~~(4)~~ A penalty imposed under this section shall be in
621 addition to any other penalty imposed by law.

622 ~~(5) The suspension or revocation of a person's driver~~
623 ~~license imposed pursuant to subsection (2) or subsection (3),~~
624 ~~shall not result in or be cause for an increase of the convicted~~
625 ~~person's, or his or her parent's or legal guardian's, automobile~~
626 ~~insurance rate or premium or result in points assessed against~~
627 ~~the person's driving record.~~

628 Section 9. Section 322.057, Florida Statutes, is repealed.

629 Section 10. Present subsections (4) and (5) of section
630 322.09, Florida Statutes, are redesignated as subsections (3)
631 and (4), respectively, and present subsection (3) of that
632 section is amended, to read:

633 322.09 Application of minors; responsibility for negligence
634 or misconduct of minor.—

635 ~~(3) The department may not issue a driver license or~~
636 ~~learner's driver license to any applicant under the age of 18~~
637 ~~years who is not in compliance with the requirements of s.~~
638 ~~322.091.~~

24-00140C-18

20181270__

639 Section 11. Section 322.091, Florida Statutes, is repealed.

640 Section 12. Subsections (6) and (7) are added to section
641 322.245, Florida Statutes, to read:

642 322.245 Suspension of license upon failure of person
643 charged with specified offense under chapter 316, chapter 320,
644 or this chapter to comply with directives ordered by traffic
645 court or upon failure to pay child support in non-IV-D cases as
646 provided in chapter 61 or failure to pay any financial
647 obligation in any other criminal case.-

648 (6) Notwithstanding any other law, a person's driver
649 license may not be suspended solely for a failure to pay fees,
650 service charges, fines, or penalties if the person demonstrates
651 to the court, after notice of the penalty and before the
652 suspension takes place, that the person is unable to pay and
653 that the person:

654 (a) Receives reemployment assistance or unemployment
655 compensation pursuant to chapter 443;

656 (b) Receives benefits under the federal Supplemental
657 Security Income program or Social Security Disability Insurance
658 program;

659 (c) Receives temporary cash assistance pursuant to chapter
660 414;

661 (d) Is making payments in accordance with a confirmed
662 bankruptcy plan under chapter 11, chapter 12, or chapter 13 of
663 the United States Bankruptcy Code, 11 U.S.C. ss. 101 et seq.;

664 (e) Is on a payment plan or payment plans with the clerk of
665 court pursuant to s. 28.246(4);

666 (f) Has been determined to be indigent after filing an
667 application with the clerk in accordance with s. 27.52 or s.

24-00140C-18

20181270__

668 57.082; or669 (g) Is incarcerated.

670

671 This subsection does not apply to failure to pay child support
672 in non-IV-D cases as provided in chapter 61.673 (7) A person who meets the criteria under subsection (6)
674 must provide the clerk with updated documentation every 90 days.
675 If the person fails to provide the necessary documentation to
676 the clerk or no longer meets the criteria under subsection (6),
677 he or she must begin paying the outstanding fees, service
678 charges, fines, or penalties. If payment does not begin within
679 30 days, the clerk must notify the department of such failure
680 within 10 days after the failure occurs. Upon receipt of such
681 notice, the department must immediately issue an order
682 suspending the driver license and privilege to drive of such
683 person effective 20 days after the date the order of suspension
684 is mailed in accordance with s. 322.251(1), (2), and (6).685 Section 13. Subsection (7) of section 322.251, Florida
686 Statutes, is repealed.687 Section 14. Subsection (8) is added to section 322.271,
688 Florida Statutes, to read:689 322.271 Authority to modify revocation, cancellation, or
690 suspension order.—691 (8) A person whose driver license or privilege to drive has
692 been suspended under s. 318.15 or s. 322.245, with the exception
693 of any suspension related to s. 61.13016, may have his or her
694 driver license or driving privilege reinstated on a restricted
695 basis by the department in accordance with this section. The
696 restricted license is valid until the 7-year suspension period

24-00140C-18

20181270__

697 ends as provided in s. 318.15 or until the debt is paid.

698 Section 15. Subsection (10) of section 322.34, Florida
699 Statutes, is amended to read:

700 322.34 Driving while license suspended, revoked, canceled,
701 or disqualified.—

702 (10) (a) Notwithstanding any other provision of this
703 section, if a person does not have a prior forcible felony
704 conviction as defined in s. 776.08, the penalties provided in
705 paragraph (b) apply if a person's driver license or driving
706 privilege is canceled, suspended, or revoked for:

707 1. Failing to pay child support as provided in s. 322.245
708 or s. 61.13016;

709 2. Failing to pay any other financial obligation as
710 provided in s. 322.245 ~~other than those specified in s.~~
711 ~~322.245(1);~~

712 3. Failing to comply with a civil penalty required in s.
713 318.15;

714 4. Failing to maintain vehicular financial responsibility
715 as required by chapter 324; or

716 ~~5. Failing to comply with attendance or other requirements~~
717 ~~for minors as set forth in s. 322.091; or~~

718 5.6. Having been designated a habitual traffic offender
719 under s. 322.264(1) (d) as a result of suspensions of his or her
720 driver license or driver privilege for any underlying violation
721 listed in subparagraphs 1.-4. ~~1.-5.~~

722 (b)1. Upon a first conviction for knowingly driving while
723 his or her license is suspended, revoked, or canceled for any of
724 the underlying violations listed in subparagraphs (a)1.-5.

725 ~~(a)1.-6.~~, a person commits a misdemeanor of the second degree,

24-00140C-18

20181270__

726 punishable as provided in s. 775.082 or s. 775.083.

727 2. Upon a second or subsequent conviction for the same
728 offense of knowingly driving while his or her license is
729 suspended, revoked, or canceled for any of the underlying
730 violations listed in subparagraphs (a)1.-5. ~~(a)1.-6.~~, a person
731 commits a misdemeanor of the first degree, punishable as
732 provided in s. 775.082 or s. 775.083.

733 Section 16. Paragraph (a) of subsection (1) and paragraph
734 (c) of subsection (2) of section 562.11, Florida Statutes, are
735 amended to read:

736 562.11 Selling, giving, or serving alcoholic beverages to
737 person under age 21; providing a proper name; misrepresenting or
738 misstating age or age of another to induce licensee to serve
739 alcoholic beverages to person under 21; penalties.—

740 (1) ~~(a)1.~~ A person may not sell, give, serve, or permit to
741 be served alcoholic beverages to a person under 21 years of age
742 or permit a person under 21 years of age to consume such
743 beverages on the licensed premises. A person who violates this
744 paragraph ~~subparagraph~~ commits a misdemeanor of the second
745 degree, punishable as provided in s. 775.082 or s. 775.083. A
746 person who violates this paragraph ~~subparagraph~~ a second or
747 subsequent time within 1 year after a prior conviction commits a
748 misdemeanor of the first degree, punishable as provided in s.
749 775.082 or s. 775.083.

750 ~~2. In addition to any other penalty imposed for a violation~~
751 ~~of subparagraph 1., the court may order the Department of~~
752 ~~Highway Safety and Motor Vehicles to withhold the issuance of,~~
753 ~~or suspend or revoke, the driver license or driving privilege,~~
754 ~~as provided in s. 322.057, of any person who violates~~

24-00140C-18

20181270__

755 ~~subparagraph 1. This subparagraph does not apply to a licensee,~~
756 ~~as defined in s. 561.01, who violates subparagraph 1. while~~
757 ~~acting within the scope of his or her license or an employee or~~
758 ~~agent of a licensee, as defined in s. 561.01, who violates~~
759 ~~subparagraph 1. while engaged within the scope of his or her~~
760 ~~employment or agency.~~

761 ~~3. A court that withholds the issuance of, or suspends or~~
762 ~~revokes, the driver license or driving privilege of a person~~
763 ~~pursuant to subparagraph 2. may direct the Department of Highway~~
764 ~~Safety and Motor Vehicles to issue the person a license for~~
765 ~~driving privilege restricted to business purposes only, as~~
766 ~~defined in s. 322.271, if he or she is otherwise qualified.~~

767 (2) It is unlawful for any person to misrepresent or
768 misstate his or her age or the age of any other person for the
769 purpose of inducing any licensee or his or her agents or
770 employees to sell, give, serve, or deliver any alcoholic
771 beverages to a person under 21 years of age, or for any person
772 under 21 years of age to purchase or attempt to purchase
773 alcoholic beverages.

774 (c) In addition to any other penalty imposed for a
775 violation of this subsection, if a person uses a driver license
776 or identification card issued by the Department of Highway
777 Safety and Motor Vehicles in violation of this subsection, the
778 court:

779 ~~1. may order the person to participate in public service or~~
780 ~~a community work project for a period not to exceed 40 hours;~~
781 ~~and~~

782 ~~2. Shall direct the Department of Highway Safety and Motor~~
783 ~~Vehicles to withhold issuance of, or suspend or revoke, the~~

24-00140C-18

20181270__

784 ~~person's driver license or driving privilege, as provided in s.~~
785 ~~322.056.~~

786 Section 17. Subsection (3) of section 562.111, Florida
787 Statutes, is repealed.

788 Section 18. Subsections (1), (2), and (5) of section
789 569.11, Florida Statutes, are amended to read:

790 569.11 Possession, misrepresenting age or military service
791 to purchase, and purchase of tobacco products by persons under
792 18 years of age prohibited; penalties; jurisdiction; disposition
793 of fines.—

794 (1) It is unlawful for any person under 18 years of age to
795 knowingly possess any tobacco product. Any person under 18 years
796 of age who violates ~~the provisions of~~ this subsection commits a
797 noncriminal violation as provided in s. 775.08(3), punishable
798 by:

799 (a) For a first violation, 16 hours of community service
800 or, instead of community service, a \$25 fine. In addition, the
801 person must attend a school-approved anti-tobacco program, if
802 locally available; or

803 (b) For a second or subsequent violation within 12 weeks
804 after ~~of~~ the first violation, a \$25 fine. ~~or~~

805 ~~(c) For a third or subsequent violation within 12 weeks of~~
806 ~~the first violation, the court must direct the Department of~~
807 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
808 ~~suspend or revoke the person's driver license or driving~~
809 ~~privilege, as provided in s. 322.056.~~

810

811 Any second or subsequent violation not within the 12-week time
812 period after the first violation is punishable as provided for a

24-00140C-18

20181270__

813 first violation.

814 (2) It is unlawful for any person under 18 years of age to
815 misrepresent his or her age or military service for the purpose
816 of inducing a dealer or an agent or employee of the dealer to
817 sell, give, barter, furnish, or deliver any tobacco product, or
818 to purchase, or attempt to purchase, any tobacco product from a
819 person or a vending machine. Any person under 18 years of age
820 who violates ~~a provision of~~ this subsection commits a
821 noncriminal violation as provided in s. 775.08(3), punishable
822 by:

823 (a) For a first violation, 16 hours of community service
824 or, instead of community service, a \$25 fine. ~~and~~, In addition,
825 the person must attend a school-approved anti-tobacco program,
826 if locally available; or

827 (b) For a second or subsequent violation within 12 weeks
828 after ~~of~~ the first violation, a \$25 fine. ~~;~~ ~~or~~

829 ~~(c) For a third or subsequent violation within 12 weeks of~~
830 ~~the first violation, the court must direct the Department of~~
831 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
832 ~~suspend or revoke the person's driver license or driving~~
833 ~~privilege, as provided in s. 322.056.~~

834

835 Any second or subsequent violation not within the 12-week time
836 period after the first violation is punishable as provided for a
837 first violation.

838 (5) (a) If a person under 18 years of age is found by the
839 court to have committed a noncriminal violation under this
840 section and that person has failed to complete community
841 service, pay the fine as required by paragraph (1) (a) or

24-00140C-18

20181270__

842 paragraph (2) (a), or attend a school-approved anti-tobacco
 843 program, if locally available, the court may ~~must~~ direct the
 844 Department of Highway Safety and Motor Vehicles to withhold
 845 issuance of or suspend the driver license or driving privilege
 846 of that person for a period of 30 consecutive days.

847 (b) If a person under 18 years of age is found by the court
 848 to have committed a noncriminal violation under this section and
 849 that person has failed to pay the applicable fine as required by
 850 paragraph (1) (b) or paragraph (2) (b), the court may ~~must~~ direct
 851 the Department of Highway Safety and Motor Vehicles to withhold
 852 issuance of or suspend the driver license or driving privilege
 853 of that person for a period of 45 consecutive days.

854 Section 19. Subsections (5) and (10) of section 790.22,
 855 Florida Statutes, are amended to read:

856 790.22 Use of BB guns, air or gas-operated guns, or
 857 electric weapons or devices by minor under 16; limitation;
 858 possession of firearms by minor under 18 prohibited; penalties.-

859 (5) (a) A minor who violates subsection (3) commits a
 860 misdemeanor of the first degree; for a first offense, may serve
 861 a period of detention of up to 3 days in a secure detention
 862 facility; and, in addition to any other penalty provided by law,
 863 shall be required to perform 100 hours of community service. †
 864 ~~and:~~

865 ~~1. If the minor is eligible by reason of age for a driver~~
 866 ~~license or driving privilege, the court shall direct the~~
 867 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
 868 ~~withhold issuance of the minor's driver license or driving~~
 869 ~~privilege for up to 1 year.~~

870 ~~2. If the minor's driver license or driving privilege is~~

24-00140C-18

20181270__

871 ~~under suspension or revocation for any reason, the court shall~~
872 ~~direct the Department of Highway Safety and Motor Vehicles to~~
873 ~~extend the period of suspension or revocation by an additional~~
874 ~~period of up to 1 year.~~

875 ~~3. If the minor is ineligible by reason of age for a driver~~
876 ~~license or driving privilege, the court shall direct the~~
877 ~~Department of Highway Safety and Motor Vehicles to withhold~~
878 ~~issuance of the minor's driver license or driving privilege for~~
879 ~~up to 1 year after the date on which the minor would otherwise~~
880 ~~have become eligible.~~

881 (b) For a second or subsequent offense, a minor who
882 violates subsection (3) commits a felony of the third degree and
883 shall serve a period of detention of up to 15 days in a secure
884 detention facility and shall be required to perform not less
885 than 100 or ~~not~~ more than 250 hours of community service~~.~~. and~~+~~

886 ~~1. If the minor is eligible by reason of age for a driver~~
887 ~~license or driving privilege, the court shall direct the~~
888 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
889 ~~withhold issuance of the minor's driver license or driving~~
890 ~~privilege for up to 2 years.~~

891 ~~2. If the minor's driver license or driving privilege is~~
892 ~~under suspension or revocation for any reason, the court shall~~
893 ~~direct the Department of Highway Safety and Motor Vehicles to~~
894 ~~extend the period of suspension or revocation by an additional~~
895 ~~period of up to 2 years.~~

896 ~~3. If the minor is ineligible by reason of age for a driver~~
897 ~~license or driving privilege, the court shall direct the~~
898 ~~Department of Highway Safety and Motor Vehicles to withhold~~
899 ~~issuance of the minor's driver license or driving privilege for~~

24-00140C-18

20181270__

900 ~~up to 2 years after the date on which the minor would otherwise~~
901 ~~have become eligible.~~

902

903 For the purposes of this subsection, community service shall be
904 performed, if possible, in a manner involving a hospital
905 emergency room or other medical environment that deals on a
906 regular basis with trauma patients and gunshot wounds.

907 ~~(10) If a minor is found to have committed an offense under~~
908 ~~subsection (9), the court shall impose the following penalties~~
909 ~~in addition to any penalty imposed under paragraph (9) (a) or~~
910 ~~paragraph (9) (b):~~

911 ~~(a) For a first offense:~~

912 ~~1. If the minor is eligible by reason of age for a driver~~
913 ~~license or driving privilege, the court shall direct the~~
914 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
915 ~~withhold issuance of the minor's driver license or driving~~
916 ~~privilege for up to 1 year.~~

917 ~~2. If the minor's driver license or driving privilege is~~
918 ~~under suspension or revocation for any reason, the court shall~~
919 ~~direct the Department of Highway Safety and Motor Vehicles to~~
920 ~~extend the period of suspension or revocation by an additional~~
921 ~~period for up to 1 year.~~

922 ~~3. If the minor is ineligible by reason of age for a driver~~
923 ~~license or driving privilege, the court shall direct the~~
924 ~~Department of Highway Safety and Motor Vehicles to withhold~~
925 ~~issuance of the minor's driver license or driving privilege for~~
926 ~~up to 1 year after the date on which the minor would otherwise~~
927 ~~have become eligible.~~

928 ~~(b) For a second or subsequent offense:~~

24-00140C-18

20181270__

929 ~~1. If the minor is eligible by reason of age for a driver~~
930 ~~license or driving privilege, the court shall direct the~~
931 ~~Department of Highway Safety and Motor Vehicles to revoke or to~~
932 ~~withhold issuance of the minor's driver license or driving~~
933 ~~privilege for up to 2 years.~~

934 ~~2. If the minor's driver license or driving privilege is~~
935 ~~under suspension or revocation for any reason, the court shall~~
936 ~~direct the Department of Highway Safety and Motor Vehicles to~~
937 ~~extend the period of suspension or revocation by an additional~~
938 ~~period for up to 2 years.~~

939 ~~3. If the minor is ineligible by reason of age for a driver~~
940 ~~license or driving privilege, the court shall direct the~~
941 ~~Department of Highway Safety and Motor Vehicles to withhold~~
942 ~~issuance of the minor's driver license or driving privilege for~~
943 ~~up to 2 years after the date on which the minor would otherwise~~
944 ~~have become eligible.~~

945 Section 20. Present subsections (7) and (8) of section
946 806.13, Florida Statutes, are amended, and present subsection
947 (9) of that section is redesignated as subsection (7), to read:

948 806.13 Criminal mischief; penalties; penalty for minor.—

949 ~~(7) In addition to any other penalty provided by law, if a~~
950 ~~minor is found to have committed a delinquent act under this~~
951 ~~section for placing graffiti on any public property or private~~
952 ~~property, and:~~

953 ~~(a) The minor is eligible by reason of age for a driver~~
954 ~~license or driving privilege, the court shall direct the~~
955 ~~Department of Highway Safety and Motor Vehicles to revoke or~~
956 ~~withhold issuance of the minor's driver license or driving~~
957 ~~privilege for not more than 1 year.~~

24-00140C-18

20181270__

958 ~~(b) The minor's driver license or driving privilege is~~
959 ~~under suspension or revocation for any reason, the court shall~~
960 ~~direct the Department of Highway Safety and Motor Vehicles to~~
961 ~~extend the period of suspension or revocation by an additional~~
962 ~~period of not more than 1 year.~~

963 ~~(c) The minor is ineligible by reason of age for a driver~~
964 ~~license or driving privilege, the court shall direct the~~
965 ~~Department of Highway Safety and Motor Vehicles to withhold~~
966 ~~issuance of the minor's driver license or driving privilege for~~
967 ~~not more than 1 year after the date on which he or she would~~
968 ~~otherwise have become eligible.~~

969 ~~(8) A minor whose driver license or driving privilege is~~
970 ~~revoked, suspended, or withheld under subsection (7) may elect~~
971 ~~to reduce the period of revocation, suspension, or withholding~~
972 ~~by performing community service at the rate of 1 day for each~~
973 ~~hour of community service performed. In addition, if the court~~
974 ~~determines that due to a family hardship, the minor's driver~~
975 ~~license or driving privilege is necessary for employment or~~
976 ~~medical purposes of the minor or a member of the minor's family,~~
977 ~~the court shall order the minor to perform community service and~~
978 ~~reduce the period of revocation, suspension, or withholding at~~
979 ~~the rate of 1 day for each hour of community service performed.~~
980 ~~As used in this subsection, the term "community service" means~~
981 ~~cleaning graffiti from public property.~~

982 Section 21. Section 812.0155, Florida Statutes, is
983 repealed.

984 Section 22. Section 832.09, Florida Statutes, is repealed.

985 Section 23. Paragraph (a) of subsection (3) of section
986 847.0141, Florida Statutes, is amended to read:

24-00140C-18

20181270__

987 847.0141 Sexting; prohibited acts; penalties.—

988 (3) A minor who violates subsection (1):

989 (a) Commits a noncriminal violation for a first violation.

990 The minor must sign and accept a citation indicating a promise
991 to appear before the juvenile court. In lieu of appearing in
992 court, the minor may complete 8 hours of community service work,
993 pay a \$60 civil penalty, or participate in a cyber-safety
994 program if such a program is locally available. The minor must
995 satisfy any penalty within 30 days after receipt of the
996 citation.

997 1. A citation issued to a minor under this subsection must
998 be in a form prescribed by the issuing law enforcement agency,
999 must be signed by the minor, and must contain all of the
1000 following:

1001 a. The date and time of issuance.

1002 b. The name and address of the minor to whom the citation
1003 is issued.

1004 c. A thumbprint of the minor to whom the citation is
1005 issued.

1006 d. Identification of the noncriminal violation and the time
1007 it was committed.

1008 e. The facts constituting reasonable cause.

1009 f. The specific section of law violated.

1010 g. The name and authority of the citing officer.

1011 h. The procedures that the minor must follow to contest the
1012 citation, perform the required community service, pay the civil
1013 penalty, or participate in a cyber-safety program.

1014 2. If the citation is contested and the court determines
1015 that the minor committed a noncriminal violation under this

24-00140C-18

20181270__

1016 section, the court may order the minor to perform 8 hours of
1017 community service, pay a \$60 civil penalty, or participate in a
1018 cyber-safety program, or any combination thereof.

1019 3. A minor who fails to comply with the citation waives his
1020 or her right to contest it, and the court may impose any of the
1021 penalties identified in subparagraph 2. or issue an order to
1022 show cause. Upon a finding of contempt, the court may impose
1023 additional age-appropriate penalties, ~~which may include issuance~~
1024 ~~of an order to the Department of Highway Safety and Motor~~
1025 ~~Vehicles to withhold issuance of, or suspend the driver license~~
1026 ~~or driving privilege of, the minor for 30 consecutive days.~~
1027 However, the court may not impose incarceration.

1028 Section 24. Subsections (6) and (7) and paragraphs (c) and
1029 (d) of subsection (8) of section 877.112, Florida Statutes, are
1030 amended to read:

1031 877.112 Nicotine products and nicotine dispensing devices;
1032 prohibitions for minors; penalties; civil fines; signage
1033 requirements; preemption.—

1034 (6) PROHIBITIONS ON POSSESSION OF NICOTINE PRODUCTS OR
1035 NICOTINE DISPENSING DEVICES BY MINORS.—It is unlawful for any
1036 person under 18 years of age to knowingly possess any nicotine
1037 product or a nicotine dispensing device. Any person under 18
1038 years of age who violates this subsection commits a noncriminal
1039 violation as defined in s. 775.08(3), punishable by:

1040 (a) For a first violation, 16 hours of community service
1041 or, instead of community service, a \$25 fine. In addition, the
1042 person must attend a school-approved anti-tobacco and nicotine
1043 program, if locally available; or

1044 (b) For a second or subsequent violation within 12 weeks

24-00140C-18

20181270__

1045 ~~after~~ ~~of~~ the first violation, a \$25 fine. ~~;~~ ~~or~~

1046 ~~(c) For a third or subsequent violation within 12 weeks of~~
1047 ~~the first violation, the court must direct the Department of~~
1048 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
1049 ~~suspend or revoke the person's driver license or driving~~
1050 ~~privilege, as provided in s. 322.056.~~

1051
1052 Any second or subsequent violation not within the 12-week time
1053 period after the first violation is punishable as provided for a
1054 first violation.

1055 (7) PROHIBITION ON MISREPRESENTING AGE.—It is unlawful for
1056 any person under 18 years of age to misrepresent his or her age
1057 or military service for the purpose of inducing a retailer of
1058 nicotine products or nicotine dispensing devices or an agent or
1059 employee of such retailer to sell, give, barter, furnish, or
1060 deliver any nicotine product or nicotine dispensing device, or
1061 to purchase, or attempt to purchase, any nicotine product or
1062 nicotine dispensing device from a person or a vending machine.
1063 Any person under 18 years of age who violates this subsection
1064 commits a noncriminal violation as defined in s. 775.08(3),
1065 punishable by:

1066 (a) For a first violation, 16 hours of community service
1067 or, instead of community service, a \$25 fine. ~~and~~. In addition,
1068 the person must attend a school-approved anti-tobacco and
1069 nicotine program, if locally available; or

1070 (b) For a second or subsequent violation within 12 weeks of
1071 the first violation, a \$25 fine. ~~;~~ ~~or~~

1072 ~~(c) For a third or subsequent violation within 12 weeks of~~
1073 ~~the first violation, the court must direct the Department of~~

24-00140C-18

20181270__

1074 ~~Highway Safety and Motor Vehicles to withhold issuance of or~~
1075 ~~suspend or revoke the person's driver license or driving~~
1076 ~~privilege, as provided in s. 322.056.~~

1077
1078 Any second or subsequent violation not within the 12-week time
1079 period after the first violation is punishable as provided for a
1080 first violation.

1081 (8) PENALTIES FOR MINORS.—

1082 (c) If a person under 18 years of age is found by the court
1083 to have committed a noncriminal violation under this section and
1084 that person has failed to complete community service, pay the
1085 fine as required by paragraph (6) (a) or paragraph (7) (a), or
1086 attend a school-approved anti-tobacco and nicotine program, if
1087 locally available, the court may ~~must~~ direct the Department of
1088 Highway Safety and Motor Vehicles to withhold issuance of or
1089 suspend the driver license or driving privilege of that person
1090 for 30 consecutive days.

1091 (d) If a person under 18 years of age is found by the court
1092 to have committed a noncriminal violation under this section and
1093 that person has failed to pay the applicable fine as required by
1094 paragraph (6) (b) or paragraph (7) (b), the court may ~~must~~ direct
1095 the Department of Highway Safety and Motor Vehicles to withhold
1096 issuance of or suspend the driver license or driving privilege
1097 of that person for 45 consecutive days.

1098 Section 25. Subsection (2) of section 938.30, Florida
1099 Statutes, is amended to read:

1100 938.30 Financial obligations in criminal cases;
1101 supplementary proceedings.—

1102 (2) The court may require a person liable for payment of an

24-00140C-18

20181270__

1103 obligation to appear and be examined under oath concerning the
1104 person's financial ability to pay the obligation. The judge may
1105 convert the statutory financial obligation into a court-ordered
1106 obligation to perform community service, subject to ~~the~~
1107 ~~provisions of s. 318.18(8)~~, after examining a person under oath
1108 and determining the person's inability to pay, or by relying
1109 upon information provided under s. 27.52(1)(a). Any person who
1110 fails to attend a hearing may be arrested on warrant or capias
1111 issued by the clerk upon order of the court.

1112 Section 26. Subsection (2) of section 1003.27, Florida
1113 Statutes, is amended to read:

1114 1003.27 Court procedure and penalties.—The court procedure
1115 and penalties for the enforcement of the provisions of this
1116 part, relating to compulsory school attendance, shall be as
1117 follows:

1118 (2) NONENROLLMENT AND NONATTENDANCE CASES.—

1119 ~~(a)~~ In each case of nonenrollment or of nonattendance upon
1120 the part of a student who is required to attend some school,
1121 when no valid reason for such nonenrollment or nonattendance is
1122 found, the district school superintendent shall institute a
1123 criminal prosecution against the student's parent.

1124 ~~(b) Each public school principal or the principal's~~
1125 ~~designee shall notify the district school board of each minor~~
1126 ~~student under its jurisdiction who accumulates 15 unexcused~~
1127 ~~absences in a period of 90 calendar days. Each designee of the~~
1128 ~~governing body of each private school, and each parent whose~~
1129 ~~child is enrolled in a home education program, may provide the~~
1130 ~~Department of Highway Safety and Motor Vehicles with the legal~~
1131 ~~name, sex, date of birth, and social security number of each~~

24-00140C-18

20181270__

1132 ~~minor student under his or her jurisdiction who fails to satisfy~~
1133 ~~relevant attendance requirements and who fails to otherwise~~
1134 ~~satisfy the requirements of s. 322.091. The district school~~
1135 ~~superintendent must provide the Department of Highway Safety and~~
1136 ~~Motor Vehicles the legal name, sex, date of birth, and social~~
1137 ~~security number of each minor student who has been reported~~
1138 ~~under this paragraph and who fails to otherwise satisfy the~~
1139 ~~requirements of s. 322.091. The Department of Highway Safety and~~
1140 ~~Motor Vehicles may not issue a driver license or learner's~~
1141 ~~driver license to, and shall suspend any previously issued~~
1142 ~~driver license or learner's driver license of, any such minor~~
1143 ~~student, pursuant to the provisions of s. 322.091.~~

1144 Section 27. Paragraph (a) of subsection (10) of section
1145 318.14, Florida Statutes, is amended to read:

1146 318.14 Noncriminal traffic infractions; exception;
1147 procedures.—

1148 (10) (a) Any person who does not hold a commercial driver
1149 license or commercial learner's permit and who is cited while
1150 driving a noncommercial motor vehicle for an offense listed
1151 under this subsection may, in lieu of payment of fine or court
1152 appearance, elect to enter a plea of nolo contendere and provide
1153 proof of compliance to the clerk of the court, designated
1154 official, or authorized operator of a traffic violations bureau.
1155 In such case, adjudication shall be withheld; however, a person
1156 may not make an election under this subsection if the person has
1157 made an election under this subsection in the preceding 12
1158 months. A person may not make more than three elections under
1159 this subsection. This subsection applies to the following
1160 offenses:

24-00140C-18

20181270__

1161 1. Operating a motor vehicle without a valid driver license
1162 in violation of s. 322.03, s. 322.065, or s. 322.15(1), or
1163 operating a motor vehicle with a license that has been suspended
1164 for failure to appear, failure to pay civil penalty, or failure
1165 to attend a driver improvement course pursuant to s. 322.291.

1166 2. Operating a motor vehicle without a valid registration
1167 in violation of s. 320.0605, s. 320.07, or s. 320.131.

1168 3. Operating a motor vehicle in violation of s. 316.646.

1169 4. Operating a motor vehicle with a license that has been
1170 suspended under s. 61.13016 or s. 322.245 for failure to pay
1171 child support or for failure to pay any other financial
1172 obligation as provided in s. 322.245; however, this subparagraph
1173 does not apply if the license has been suspended pursuant to s.
1174 322.245(1).

1175 ~~5. Operating a motor vehicle with a license that has been~~
1176 ~~suspended under s. 322.091 for failure to meet school attendance~~
1177 ~~requirements.~~

1178 Section 28. Subsections (1) and (2) of section 322.05,
1179 Florida Statutes, are amended to read:

1180 322.05 Persons not to be licensed.—The department may not
1181 issue a license:

1182 (1) To a person who is under the age of 16 years, except
1183 that the department may issue a learner's driver license to a
1184 person who is at least 15 years of age and who meets the
1185 requirements of s. 322.1615 ~~ss. 322.091 and 322.1615~~ and of any
1186 other applicable law or rule.

1187 (2) To a person who is at least 16 years of age but is
1188 under 18 years of age unless the person ~~meets the requirements~~
1189 ~~of s. 322.091~~ and holds a valid:

24-00140C-18

20181270__

1190 (a) Learner's driver license for at least 12 months, with
 1191 no moving traffic convictions, before applying for a license;

1192 (b) Learner's driver license for at least 12 months and who
 1193 has a moving traffic conviction but elects to attend a traffic
 1194 driving school for which adjudication must be withheld pursuant
 1195 to s. 318.14; or

1196 (c) License that was issued in another state or in a
 1197 foreign jurisdiction and that would not be subject to suspension
 1198 or revocation under the laws of this state.

1199 Section 29. Paragraph (b) of subsection (5) of section
 1200 322.27, Florida Statutes, is amended to read:

1201 322.27 Authority of department to suspend or revoke driver
 1202 license or identification card.—

1203 (5)

1204 (b) If a person whose driver license has been revoked under
 1205 paragraph (a) as a result of a third violation of driving a
 1206 motor vehicle while his or her license is suspended or revoked
 1207 provides proof of compliance for an offense listed in s.
 1208 318.14(10)(a)1.-4. ~~s. 318.14(10)(a)1.-5.~~, the clerk of court
 1209 shall submit an amended disposition to remove the habitual
 1210 traffic offender designation.

1211 Section 30. Subsection (9) of section 1003.01, Florida
 1212 Statutes, is amended to read:

1213 1003.01 Definitions.—As used in this chapter, the term:

1214 (9) "Dropout" means a student who meets any one or more of
 1215 the following criteria:

1216 (a) The student has voluntarily removed himself or herself
 1217 from the school system before graduation for reasons that
 1218 include, but are not limited to, marriage, or the student has

24-00140C-18

20181270__

1219 withdrawn from school because he or she has failed the statewide
1220 student assessment test and thereby does not receive any of the
1221 certificates of completion;

1222 (b) The student has not met the relevant attendance
1223 requirements of the school district pursuant to State Board of
1224 Education rules, or the student was expected to attend a school
1225 but did not enter as expected for unknown reasons, or the
1226 student's whereabouts are unknown;

1227 (c) The student has withdrawn from school, but has not
1228 transferred to another public or private school or enrolled in
1229 any career, adult, home education, or alternative educational
1230 program;

1231 (d) The student has withdrawn from school due to hardship,
1232 unless such withdrawal has been granted because of ~~under the~~
1233 ~~provisions of s. 322.091,~~ court action, expulsion, medical
1234 reasons, or pregnancy; or

1235 (e) The student is not eligible to attend school because of
1236 reaching the maximum age for an exceptional student program in
1237 accordance with the district's policy.

1238
1239 The State Board of Education may adopt rules to implement ~~the~~
1240 ~~provisions of~~ this subsection.

1241 Section 31. The amendments made by this act to s. 316.650,
1242 Florida Statutes, shall take effect upon the depletion of the
1243 current inventory of uniform traffic citation forms and the
1244 adoption by rule of new uniform traffic citation forms. The
1245 Department of Highway Safety and Motor Vehicles shall notify the
1246 Division of Law Revision and Information upon the adoption of
1247 the new forms.

24-00140C-18

20181270__

1248 Section 32. Except as otherwise expressly provided in this
1249 act and except for this section, which shall take effect upon
1250 this act becoming a law, this act shall take effect October 1,
1251 2018.

THE FLORIDA SENATE
APPEARANCE RECORD



(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18
Meeting Date

1270
Bill Number (if applicable)

Topic Penalties + Fees

Strike - All
Amendment Barcode (if applicable)

Name /

Job Title _____

Address 101 E College Ave
Street

Phone 591 0915

Tall FL 32312
City State Zip

Email Baggett@GTLaw.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Clerks of Court

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.14.18

Meeting Date

1270

Bill Number (if applicable)

Topic Penalties and Fees

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1270

Bill Number (if applicable)

Topic Penalties and Fees

Amendment Barcode (if applicable)

Name NANCY DANIELS

Job Title Legislative Consultant

Address 103 N. Gadsden St.

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD



2/14/18

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1270

Meeting Date

Bill Number (if applicable)

Topic Penalties → Fees

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 874 N. Duval St

Phone 954 557 0016

TLH FL 32303

City State Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Right on Crime

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18
Meeting Date

1270
Bill Number (if applicable)

Topic Penalties & Fees/ Diver Licenses

Amendment Barcode (if applicable)

Name ~~XXXXXXXXXXXX~~ Jennifer Wilson

Job Title Lobbyist

Address 101 E. Kennedy Blvd, Suite 4000

Phone 813-407-0703

Tampa FL 33602
City State Zip

Email Jennifer.Wilson@arlawson.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing The Florida Collectors Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1270

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo

City

Fl.

State

33773

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Savingfamilies7@gmail.com

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 1318 (578002)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senator Rouson

SUBJECT: Licensing and Training

DATE: February 16, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Favorable
2.	Forbes	Sadberry	ACJ	Recommend: Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1318 authorizes a county or municipal detention facility or the Department of Corrections (DOC) to contract with a district school board, the Florida Virtual School, a Florida College System institution, a virtual education provider approved by the State Board of Education, or a charter school (school provider) to provide educational services to its inmates. The educational services may include any educational, career, or vocational training.

The bill allows state funding for postsecondary education to be used for an inmate with less than 60 months of time remaining on his or her sentence.

The bill also makes various changes to procedures related to business licensing for persons who have previously been convicted of a criminal offense, including:

- Permits a person to submit a petition for declaratory statement to any Florida agency to determine the effect of a criminal background on his or her eligibility for occupational or professional licensure;
- Requires the agency to indicate specified information in its declaratory statement conclusion;
- Requires the agency's conclusion in the declaratory statement is binding on the agency as to the petitioner;
- Requires specified submissions to be included with the petition for declaratory statement, including a fee of not more than \$100;
- Prohibits an agency from denying an application for licensure for certain professions if a specific duration has passed since the applicant's conviction;

- Authorizes a person to apply for licensing from Department of Business and Professional Regulation (DBPR) prior to being released from incarceration and provides a process for the staying of the issuance of the license until the person's release from custody;
- Specifies accommodations that an agency must make for applicants who are under confinement or supervision at the time of their application; and
- Requires pertinent boards under the DBPR and Department of Health to adopt rules that specify crimes that constitute grounds for licensure denial.

The bill will likely have no fiscal impact on the school districts. If the DOC or county or municipal detention facilities elect to contract with a school provider to provide services under such contract, the services will need to be funded out of an appropriation specific for this purpose. The bill may result in an increased workload and revenues to agencies that must process the petitions for declaratory statements from a licensing agency. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

II. Present Situation:

Sentencing of Inmates – Overview

A defendant that is convicted of a crime in the state of Florida may be incarcerated in either county jail or state prison based upon the degree of the offense. A number of factors are taken into consideration when determining whether a defendant will be committed to the custody of the jail or the DOC. A defendant convicted of a misdemeanor offense can be committed to the custody of the county's chief correctional officer for no more than one year for a first degree misdemeanor or 60 days for a second degree misdemeanor.¹

For a defendant convicted of a felony offense, the Criminal Punishment Code² (Code) applies to sentencing for felony offenses committed on or after October 1, 1998.³ The permissible sentence (absent a downward departure) for an offense ranges from the calculated lowest permissible sentence as determined by the Code to the statutory maximum for the primary offense. The statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.⁴

Education for County Inmates

Section 951.176, F.S., requires county and municipal detention facilities⁵ to provide educational services to minors detained in such facilities if the minor has not graduated from high school or

¹ Section 775.082(4), F.S.

² Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

³ Section 921.0022, F.S.

⁴ See s. 775.082, F.S.

⁵ Section 951.23(1)(a) and (d), F.S., define county detention facility to mean a county jail, a county stockade, a county work camp, a county residential probation center, and any other place except a municipal detention facility used by a county or county officer for the detention of persons charged with or convicted of either a felony or misdemeanor; and a municipal

is an eligible student with disabilities under the age of 22 who has not graduated with a standard diploma or its equivalent. The educational services must be offered by the local school district in which the facility is located.⁶ These educational services are based on the estimated length of time the youth will be in the facility and the youth's current level of functioning. School district superintendents or their designees must be notified by the county's chief correctional officer if a youth under the age of 21 is accepted into the facility.⁷

Florida law is silent as to whether a county or municipal detention facility is required to provide educational services to its adult inmates. However, The County Corrections Equality Act requires that females have access to educational, vocational training, rehabilitation and substance abuse treatment that are equivalent to that provided to male inmates.⁸

Education for State Prisoners

Florida law establishes (under the DOC) a Correctional Education Program (CEP), which must be composed of the educational facilities and services of all institutions, and facilities housing inmates operated by the DOC.⁹ The duties of the CEP include, but are not limited to:

- Developing guidelines for collecting education-related information during the inmate reception process and for disseminating such information to the classification staff of the DOC.¹⁰
- Approving educational programs of the appropriate levels and types in the correctional institutions and developing procedures for the admission of inmate students into such programs.¹¹
- Entering into agreements with public or private school districts, entities, community colleges, junior colleges, colleges, or universities as may be deemed appropriate for the purpose of carrying out the CEP duties.¹²
- Ensuring that such local agreements require minimum performance standards and standards for measurable objectives, in accordance with established Department of Education standards.¹³
- Developing and maintaining complete and reliable statistics on the number of high school equivalency diplomas and vocational certificates issued by each institution in each skill area, the change in inmate literacy levels, and the number of inmate admissions to and withdrawals from education courses.¹⁴

detention facility to mean a city jail, a city stockade, a city prison camp, and any other place except a county detention facility used by a municipality or municipal officer for the detention of persons charged with or convicted of violation of municipal laws or ordinances.

⁶ Section 951.176, F.S.

⁷ Section 951.176, F.S., also requires the development of a cooperative agreement with the local school district and applicable law enforcement units to address the notification requirement and the provision of educational services to these youth.

⁸ Section 951.175, F.S.

⁹ Section 944.801(1), F.S.

¹⁰ Section 944.801(3)(a), F.S., also provides that the information collected must include the inmate's areas of educational or vocational interest, vocational skills, and level of education.

¹¹ Section 944.801(3)(d), F.S.

¹² Section 944.801(3)(e), F.S.

¹³ *Id.*

¹⁴ Section 944.801(3)(g), F.S.

- Ensuring every inmate who has two years or more on his or her sentence at the time of being received at an institution and who lacks basic and functional literacy skills as defined in s. 1004.02, F.S.,¹⁵ attends not less than 150 hours of sequential instruction in a correctional adult basic education program.¹⁶
- Ensure that all education staff are certified in accordance with the Department of Education standards.¹⁷

Providers of K-20 Education in Florida

School Districts

A district school system includes all public schools, classes, and courses of instruction and all services and activities directly related to education in that district which are under the direction of the district school officials.¹⁸ Any district school board, after first obtaining the approval of the Department of Education, may, as a part of the district school system, organize, establish, and operate a career center, or acquire and operate a career center previously established.¹⁹

Charter Schools

Charter schools are nonsectarian, public schools that operate under a performance contract with a sponsor. This performance contract is known as a “charter.”²⁰ The charter exempts the school from many regulations applicable to traditional public schools to encourage the use of innovative learning methods.²¹ One of the guiding principles of charter schools is to meet high standards of student achievement while providing parents flexibility to choose among diverse educational opportunities within the state’s public school system.²² The school must be operated by a Florida College System institution, municipality, or nonprofit organization. While a charter school must be a public or nonprofit entity, it may be managed by a for-profit education management organization.²³ A district school board may sponsor a charter school in the county over which the district school board has jurisdiction.²⁴

¹⁵ Section 1004.02(4), F.S., defines basic literacy to mean the demonstration of academic competence from 2.0 through 5.9 educational grade levels as measured by means approved for this purpose by the State Board of Education. Section 1004.02(15), F.S., defines functional literacy to mean the demonstration of academic competence from 6.0 through 8.9 educational grade levels as measured by means approved for this purpose by the State Board of Education.

¹⁶ Section 944.801(3)(i), F.S., further provides that highest priority of inmate participation must be focused on youthful offenders and those inmates nearing release from the correctional system and that an inmate is not allowed to participate in the adult basic education program if he or she is serving a life sentence or is under sentence of death, specifically exempted for security or health reasons, housed at a community correctional center, road prison, work camp, or vocational center, attains a functional literacy level after attendance in fewer than 150 hours of adult basic education instruction, or is unable to enter such instruction because of insufficient facilities, staff, or classroom capacity.

¹⁷ Section 944.801(3)(k), F.S. See ss. 1002.33(12)(f), 1012.54, 1012.55, and 1012.56, F.S.

¹⁸ Section 1001.31, F.S.

¹⁹ Section 1001.14, F.S.

²⁰ Section 1002.33(5)(a), (6)(h), (7) and (9)(a), F.S.

²¹ Section 1002.33(2)(b)3. and (16), F.S.

²² Section 1002.33(2)(a)1., F.S.

²³ Section 1002.33(12)(i), F.S.

²⁴ Section 1002.33(5)(a)1., F.S.

Virtual Instruction

The Florida Virtual School (FVS) is established for the development and delivery of online and distance learning education and its mission is to provide students with technology-based educational opportunities to gain the knowledge and skills necessary to succeed.²⁵ The school must serve any student in the state and must give priority to:

- Students who need expanded access to courses in order to meet their educational goals, such as home education students and students in inner-city and rural high schools who do not have access to higher-level courses; and
- Students seeking accelerated access in order to obtain a high school diploma at least one semester early.²⁶

There is no specific prohibition against district, charter, or virtual schools providing classes to local or state inmates or in defining “student” to exclude inmates from such instruction.

Workforce Education Through K-20 School Providers

Florida school districts are encouraged to develop educational opportunities for adults who have earned a diploma or high school equivalency diploma, but who lack the basic skills necessary to function effectively in everyday situations, to enter the job market, or to enter career certificate instruction.²⁷ Each district school board or Florida College System institution board of trustees must negotiate with the local workforce development board for basic and functional literacy skills assessments for participants in the welfare transition employment and training programs. Such assessments are conducted at a site mutually acceptable to the district school board or Florida College System institution board of trustees and the local workforce development board.²⁸

Any workforce education program may be conducted by a Florida College System institution and school district unless restricted by statute.²⁹ Additionally, s. 1004.98, F.S., establishes the workforce literacy program within the Florida College System institutions and school districts. Workforce literacy programs are designed:

- To ensure that a sufficient numbers of employees who possess the skills necessary to perform in entry-level occupations exist;
- To adapt to technological advances in the workplace; and
- With the intention of supporting economic development in Florida by increasing adult literacy and producing an educated workforce.³⁰

²⁵ Section 1002.37(1), F.S.

²⁶ Section 1002.37(b), F.S.

²⁷ Section 1004.93(1), F.S.

²⁸ Section 1004.93(3)(a), F.S.

²⁹ Section 1011.80(2), F.S. Section 1011.80(1), F.S., defines the terms workforce education and workforce education program to include: a) adult general education programs designed to improve the employability skills of the state’s workforce as defined in s. 1004.02(3), F.S.; b) career certificate programs, as defined in s. 1004.02(20), F.S.; c) applied technology diploma programs; d) continuing workforce education courses; e) degree career education programs; f) apprenticeship and preapprenticeship programs as defined in s. 446.021, F.S.

³⁰ Section 1004.98, F.S.

Florida College System institutions and school districts may also offer courses that assist adults with gaining the communication and computation skills necessary to complete a career program, to gain or maintain entry-level employment, or to upgrade employment.³¹

Funding for Workforce Education Programs

Expenditures for the continuing workforce education programs provided by the Florida College System institutions or school districts must be fully supported by fees. For all other workforce education programs, state funding must equal 75 percent of the average cost of instruction with the remaining 25 percent made up from student fees, which are based on a uniform fee calculated and set at the state level, as adopted by the State Board of Education, unless otherwise specified in the General Appropriations Act. For fee-exempt students pursuant to s. 1009.25, F.S., unless otherwise provided for in law, state funding must equal 100 percent of the average cost of instruction.³²

Since 2011, state funds allocated for postsecondary workforce programs are explicitly prohibited from being used to educate state or federal inmates.³³

Agency Declaratory Statements

The Administrative Procedure Act provides uniform procedures for agencies to exercise their authority, and is applicable to every Florida administrative agency.³⁴

A declaratory statement is meant to “‘enable members of the public to definitively resolve ambiguities of law arising in the conduct of their daily affairs or in the planning of their future affairs’ and ‘to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts.’”³⁵ A petition for declaratory statement must include a petitioner’s specific set of circumstances and the applicable law, rule, or order he or she wishes to have interpreted in light of those circumstances.³⁶

When a petitioner files a petition for a declaratory statement with an agency, the agency must file a notice of the petition in the next available issue of the Florida Administrative Register and transmit copies of the petition to the Joint Administrative Procedures Committee.³⁷ Within 90 days from the petition’s filing, the agency must either issue a declaratory statement or deny the

³¹ See s. 1004.98, F.S.

³² Section 1011.80(5), F.S.

³³ Section 1011.80(7) F.S. and ch. 2011-63, s. 35, L.O.F.

³⁴ See ss. 120.50-120.515, F.S.

³⁵ Section 120.565(1), F.S.; *Fla. Dept. of Bus. & Pro. Reg., Div. of Pari-Mutuel Wagering v. Invest. Corp. of Palm Bch.*, 747 So. 2d 374, 376 (Fla. 1999), quoting Patricia A. Dore, *Access to Florida Administrative Proceedings*, 13 Fla. St. U. L. Rev. 965 (1986).

³⁶ Section 120.565(2), F.S.

³⁷ Section 120.565(3), F.S. The Joint Administrative Procedures Committee (JAPC) is a joint standing committee of the Legislature created by Rule 4.1 of the Joint Rules of the Florida Legislature. It is composed of five Senators appointed by the President of the Senate and six Representatives appointed by the Speaker of the House of Representatives. The primary function of JAPC is to generally review agency action pursuant to the operation of the Administrative Procedure Act in ch. 120, F.S., related to the rulemaking process, to ensure that rules adopted by the executive branch agencies do not create new law and stay within the authority specifically delegated to them by the Legislature.

petition. The agency must give notice of its action in the next available issue of the Florida Administrative Register.³⁸

Generally, an agency will only issue a declaratory statement on actions that will take place in the future.³⁹ However, the fact pattern must not be hypothetical so as to amount to a request for an advisory opinion regarding facts that are only ‘contingent, uncertain, [and] rest in the future.’⁴⁰

Current law does not require a fee for filing a petition for declaratory statement with an agency.

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR), which has 12 divisions tasked with the regulation of several professions and businesses.⁴¹

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁴²

The DBPR may engage in the regulation of professions “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”⁴³ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁴⁴

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.⁴⁵

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.⁴⁶

³⁸ Section 120.565(3), F.S.

³⁹ *Fed’n of Mobile Home Owners of Fla., Inc. v. Dept. of Bus. Regulation*, 479 So. 2d 252 (Fla. Dist. Ct. App. 1985).

⁴⁰ *Santa Rosa Cnty. v. Admin. Comm’n., Div. of Admin. Hearings*, 661 So. 2d 1190 (Fla. 1995).

⁴¹ See s. 20.165, F.S. creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

⁴² See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing the DBPR staff counsel. See s. 455.221(1), F.S.

⁴³ Section 455.201(2), F.S.

⁴⁴ *Id.*

⁴⁵ Section 455.201(4)(b), F.S.

⁴⁶ Section 455.01(4) and (5), F.S.

In Fiscal Year 2016-2017, there were 412,872 active licensees in the Division of Professions,⁴⁷ including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers (19,098 active and 199 inactive);
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors (71,818 active and 15,004 inactive);
- Cosmetologists (237,090 active and 1,600 inactive);
- Electrical contractors (11,960 active and 1,285 inactive);
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Harbor pilots;
- Landscape architects;
- Mold-related services;
- Talent agencies; and
- Veterinarians.⁴⁸

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.⁴⁹

Barbering

The term “barbering” in ss. 476.014 through 476.254, F.S., (the Barbers’ Act) includes any of the following practices when done for payment: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.⁵⁰

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, the applicant must:

- Be at least 16 years of age;
- Pay the application fee; and

⁴⁷ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2016-2017*, available at <http://www.myfloridialicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199> (last visited Feb. 15, 2018) at pages 21 and 22. Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive. *Id.* at page 22.

⁴⁸ *Id.*

⁴⁹ Section 455.219(1), F.S.

⁵⁰ See s. 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.

- Have held an active valid license in another state for at least one year,⁵¹ or have a minimum of 1,200 hours of specified training.⁵²

Alternatively, a person may apply for and receive a “restricted license” to practice barbering, which authorizes the licensee to practice only in areas in which he or she has demonstrated competency pursuant to rules of the Barbers’ Board.⁵³

Nail and Facial Specialists, Hair Braiders, Hair Wrappers, and Body Wrappers

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair braiders, hair wrappers, nail specialists, facial specialists, full specialists, body wrappers, and related salons in the state. The Board of Cosmetology, within the DBPR’s Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.⁵⁴

Individuals are prohibited from providing manicures, pedicures, or facials without first becoming licensed as a cosmetologist or registered as a nail specialist, facial specialist, or full specialist.⁵⁵

A “specialist” is “any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]”⁵⁶ The term “specialty” is defined as “the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.”⁵⁷

An applicant for a specialist license must:

- Be at least 16 years of age;
- Obtain a certificate of completion from an approved specialty education program; and

⁵¹ Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida. *See* s. 476.144(5), F.S.

⁵² *See* s. 476.114(2), F.S.; the training must include, but is not limited to the completion of services directly related to the practice of barbering at a licensed school of barbering, a public school barbering program, or a government-operated barbering program in Florida.

⁵³ *See* s. 476.144(6), F.S.

⁵⁴ *See* Department of Business and Professional Regulation, *Cosmetology*, available at <http://www.myfloridalicense.com/DBPR/cosmetology/> (last visited Feb. 15, 2018).

⁵⁵ *See* Florida Department of Business and Professional Regulation, *Board of Cosmetology Frequently Asked Questions and Answers* (Aug. 2017), available at http://www.myfloridalicense.com/dbpr/pro/cosmo/documents/cosmo_faq.pdf (last visited Feb. 14, 2018). The application of polish to fingernails and toenails is considered manicuring, even though the individual is not cutting, cleansing, adding, or extending the nails. Therefore, a registration as a specialist or licensure as a cosmetologist is required to apply polish to fingernails and toenails for compensation. *See* s. 477.013(6)(a) and (b), F.S.

⁵⁶ *See* s. 477.013(5), F.S.

⁵⁷ *See* s. 477.013(6), F.S.

- Submit an application for registration to the DBPR with the registration fee.⁵⁸

A “cosmetologist” is a person who is licensed to engage in the practice of cosmetology.⁵⁹ “Cosmetology” is “the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than for medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.”⁶⁰

Certain persons who apply cosmetic products (makeup) are exempt from ch. 477, F.S., under limited conditions, including application of such products in photography studio salons, in connection with certain retail sales, or during the production of qualified films.⁶¹ In addition, persons who provide makeup in a theme park or entertainment complex to actors and others or the general public are exempt from licensing requirements.⁶²

An applicant for a cosmetologist license must pass a licensure examination and:

- Be at least 16 years of age;
- Have a high school diploma;
- Submit an application with the applicable fee and examination fee; and
- Be licensed in another state or country for at least one year, or received 1,200 hours training, including completion of an education at an approved cosmetology school or program.

Licensing and Criminal Background

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.⁶³ Notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant’s lack of civil rights.⁶⁴

DBPR

The regulatory boards of the DBPR, or the department if there is no board, may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession’s practice act.⁶⁵ Specifically, the regulatory

⁵⁸ See s. 477.0201, F.S.

⁵⁹ See s. 477.013(3), F.S.

⁶⁰ See s. 477.013(4), F.S. A licensed cosmetologist is not required to register separately as a hair braider, hair wrapper, body wrapper, or specialist. See *supra* at note 55.

⁶¹ See ss. 477.013(11), 477.0135(1)(f), and 477.0135(5), F.S.

⁶² See s. 477.0135(6), F.S.

⁶³ Section 112.011(1)(b), F.S.

⁶⁴ Section 112.011(1)(c), F.S.

⁶⁵ Section 455.227(2), F.S.

board, or the department if there is no board, may deny a license application for any person having been:

convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.⁶⁶

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

Department of Health

The Department of Health (DOH) or an applicable board may deny the licensure of any applicant who has been “convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state”⁶⁷ or related to certain types of fraud,⁶⁸ or for other reasons in the applicable practice act.

There are no statutory provisions or rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release.⁶⁹

Certified Nursing Assistants

The Board of Nursing within the DOH is responsible for licensing and regulating the certified nursing assistants (CNA) under part II of ch. 464, F.S.⁷⁰ In Fiscal Year 2015-2016, there were 146,495 active certified nursing assistants.⁷¹

The “practice of a certified nursing assistant” means:

providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents’ or patients’ rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may

⁶⁶ Section 455.227(1)(c), F.S.

⁶⁷ Sections 456.024(3)(c), 456.072(1)(c), (x), (ii) and (ll), and 456.071(2)(a), F.S.

⁶⁸ Section 456.0635, F.S.

⁶⁹ Florida Department of Health, *Agency Analysis of HB 1041*, p. 2 (Jan. 24, 2018) (on file with the Criminal Justice Committee).

⁷⁰ See s. 489.107, F.S.

⁷¹ See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2016-2017*, p. 14, available at <http://mqawebteam.com/annualreports/1617/#1/z> (last visited Feb. 14, 2018). Of the total 193,637 certified nursing assistants, 42,209 are in-state delinquent, 2,019 are out-of-state delinquent, and are active military.

perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.⁷²

The definition of “practice of a certified nursing assistant” does not restrict a person who is otherwise trained and educated from performing the tasks specified in the definition.⁷³

To be certified in Florida, a person must have a high school diploma, or its equivalent; or be at least 18 years of age, and pass a nursing assistant competency examination. Alternatively, a person may be certified in Florida if he or she is certified by another state and has not been found to have committed abuse, neglect, or exploitation in that state.⁷⁴

The qualifications for certification as a CNA do not specifically refer to a person’s criminal background, but an applicant must pass a background screening pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level two background screening, or s. 408.809, F.S.⁷⁵ The background screening must be completed every five years following licensure, employment, or entering into contract in a capacity that requires background screening.⁷⁶

Level two background screening ensures that a subject of the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or not entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 prohibited offenses.⁷⁷ The prohibited offenses include violent crimes, property crimes, and sexual offenses.⁷⁸

In addition to the crimes specified under s. 435.04, F.S., a CNA may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery.⁷⁹

A level two background screening includes fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is complete, and the FDLE receives the information from the FBI, the criminal history information is transmitted to the DOH. The DOH determines if the screening contains any disqualifying information for employment.

If a person is disqualified from employment due to failing the required background screening, the DOH may grant an exemption from disqualification for:

⁷² Section 464.201(5), F.S.

⁷³ *Id.*

⁷⁴ Section 464.203, F.S.

⁷⁵ Section 408.809(1), F.S.

⁷⁶ Section 408.809(2), F.S.

⁷⁷ Section 435.04, F.S.

⁷⁸ *See* s. 435.04(2), F.S.

⁷⁹ *See* s. 408.809(4), F.S.

- Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.⁸⁰

However, DOH may not grant an exemption until at least three years have elapsed since the applicant's completion or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for the offense if the:

- Applicant was a juvenile at the time of the commission of the offense;
- Offense committed is a disqualifying crime that would be considered a felony if committed by an adult; and
- Record has not been sealed or expunged.⁸¹

An applicant who seeks an exemption must first pay any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.⁸²

However, the DOH may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03, F.S., or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.⁸³

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register).⁸⁴ The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.⁸⁵

III. Effect of Proposed Changes:

Education of State and County Inmates (Sections 5 through 7)

The bill amends ss. 951.176 and 944.801, F.S., respectively, to authorize a county or municipal detention facility or the DOC to contract with a district school board, the Florida Virtual School,

⁸⁰ Section 435.07(1)(a), F.S.

⁸¹ *Id.*

⁸² Section 435.07(1)(b), F.S.

⁸³ *See* s. 435.07(4)(a), F.S.

⁸⁴ *See* s. 435.07(4)(b), F.S.

⁸⁵ *See* s. 435.07(4)(c), F.S.

a Florida College System institution, a virtual education provider approved by the State Board of Education, or a charter school to provide educational services. The educational services may include any educational, career, or vocational training that is authorized by a county or municipal detention facility or the DOC.

The bill amends s. 1011.80, F.S., to allow state funding for postsecondary education to be used on inmates with less than 60 months of time remaining on his or her sentence.

Declaratory Statements (Section 1)

The bill creates a new declaratory statement process that permits a person who desires to become licensed in a state-regulated profession or occupation to obtain a binding determination of whether his or her criminal conviction or sanction will prevent such licensure, registration, or certification in the profession or occupation.

A person may seek the agency's opinion prior to the person possessing the training or education required for the license, registration, or certificate in the profession or occupation. Additionally, he or she may request the agency's determination while still under criminal confinement or supervision.

The petition may include mitigating factors or other information the petitioner believes relevant to establish the petitioner's eligibility, including, but not limited to:

- The time elapsed since completion of or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense; and
- The petitioner's standing in his or her community.

The agency's declaratory statement must further indicate whether:

- The petitioner is disqualified from obtaining the license, registration, or certification due to the petitioner's criminal background, regardless of the petitioner's education, training, experience, or other prerequisites required for the license, registration, or certification.
- The petitioner is not eligible for a specified occupational or professional license, registration, or certification because of his or her criminal background.
- The agency's determination of disqualification as a result of criminal background may be reversed based on evidence of rehabilitation or mitigation.
- Any federal laws or regulations or any conditions imposed by the court on the petitioner may impede his or her licensure, registration, or certification in the profession or occupation.
- Conditions or restrictions imposed by the court on the petitioner for a disqualifying offense may impede the petitioner's licensure, registration, or certification in the profession or occupation.

The agency's conclusion is binding on the agency as to the petitioner, but any subsequent criminal history may form an independent basis for denial of licensure, registration, or certification.

An agency may require a petitioner to submit the following with his or her petition for declaratory statement:

- A fee of not more than \$100;

- A certified copy of each criminal judgment rendered against the petitioner;
- A complete set of fingerprints; and
- A fingerprint processing fee.

The agency must submit the fingerprints to the FDLE for a state criminal history record check and the FDLE must forward the fingerprints to the FBI for a national criminal history record check.

Licensing and Criminal Background (Sections 2 through 4)

The bill creates a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR and the DOH.

The bill amends s. 455.213, F.S., dealing with the general licensing provisions of the DBPR, and s. 464.203, F.S., dealing with the certification requirements for certified nursing assistants under the DOH.

The license application review process in the bill applies to the following professions and occupations:

- Barbers.
- Cosmetologists and cosmetology specialists (i.e., hair braiders, hair wrappers, and body wrappers).
- Construction Professionals, including:
 - Air-conditioning contractor;
 - Electrical contractor;
 - Mechanical contractor;
 - Plumbing contractor;
 - Pollutant storage systems contractor;
 - Roofing contractor;
 - Septic tank contractor;
 - Sheet metal contractor;
 - Solar contractor;
 - Swimming pool and spa contractor;
 - Underground utility and excavation contractor; and
 - Other specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.
- Certified Nursing Assistants.

The process created in the bill:

- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision.
- Limits the period during which the agency may consider criminal history as an impairment to licensure to seven years from the date of the criminal conviction for CNAs and five years from the date of criminal conviction for all other professions covered by the bill.
- Requires each agency to identify by rule the crimes that do not impair a person's qualifications for licensure.

- Requires each agency to identify by rule the crimes that do impair a person's qualifications for licensure.
- Prohibits the board from denying an application for a license solely on the basis of the applicant's current confinement or supervision.
- Authorizes board to stay the issuance of a license until the applicant is lawfully released from confinement or supervision, the applicant notifies the board of such release, and the board has verified the release with the DOC.
- Requires an agency to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.
- Requires the DOC to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

The bill amends s. 400.211, F.S., incorporating changes made by the act.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes a charter school or virtual instruction provider, which can be managed by a for-profit entity, to contract with the DOC or a county or municipal entity to provide educational services to inmates. To the extent that this bill increases the pool of students that a private company can serve, it may result in a positive fiscal impact to the private company.

Additionally, persons who submit a petition for a declaratory statement from an agency to determine whether the petitioner's criminal history affects the person's eligibility for a

license, registration, or certificate, must pay a filing fee not to exceed \$100 for the petition and the actual cost of state and federal processing related to the criminal background check. However, such individuals may also forego certain unnecessary schooling, training, or application costs, depending on the agency's determination.

C. Government Sector Impact:

The bill authorizes the state or a local entity to contract with district, charter, or virtual school entities (school providers) to offer educational services to its inmates. Such services will be provided by the school providers through the workforce education models that currently exist. The DOC or a county and municipal detention facility may use funds appropriated for the education of inmates to contract with the school providers to offer such educational services.

The bill authorizes persons to submit a petition for a declaratory statement from an agency to determine whether the petitioner's criminal history affects the person's eligibility for a license, etc. To the extent that the bill results in an increase in submissions of petitions for declaratory statements, this may result in an increased workload to government agencies that provide occupational or professional licenses. Additionally, the agencies will likely have increased revenues associated with the declaratory statement petition fee of not more than \$100.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 2500 appropriates \$2,000,000 from the General Revenue Fund for postsecondary education of state inmates.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.565, 400.211, 455.213, 464.203, 944.801, 951.176, and 1011.80.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 14, 2018:

The committee substitute:

- Permits a person to submit a petition for declaratory statement to any Florida agency to determine the effect of a criminal background on his or her eligibility for occupational or professional licensure;

- Requires the agency to indicate specified information in its declaratory statement conclusion;
- Requires the agency's conclusion in the declaratory statement is binding on the agency as to the petitioner;
- Requires specified submissions to be included with the petition for declaratory statement, including a fee of not more than \$100;
- Prohibits an agency from denying an application for licensure for certain professions if a specific duration has passed since the applicant's conviction;
- Authorizes a person to apply for licensing from the DBPR prior to being released from incarceration and provides a process for the staying of the issuance of the license until the person's release from custody;
- Specifies accommodations that an agency must make for applicants who are under confinement or supervision at the time of their application;
- Requires pertinent boards under the DBPR and the DOH to adopt rules that specify crimes that constitute grounds for licensure denial;
- Expands the entities that the DOC or a county may contract with to provide educational services for inmates to include a Florida College System institution or a virtual education provider approved by the State Board of Education; and
- Allows state funds to be expended for inmates that have 60 months left on the term of incarceration.

B. Amendments:

None.



979286

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/15/2018	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Bracy) recommended the following:

Senate Amendment

Delete lines 23 - 32
and insert:
board; the Florida Virtual School; a virtual instruction program
approved provider, as defined in s. 1002.45(1)(a)1.; or a
charter school authorized to operate under s. 1002.33 to provide
educational services for the Correctional Education Program. The
educational services may include any educational, career, or
vocational training that is authorized by the department.



979286

11 Section 2. Section 951.176, Florida Statutes, is amended to
12 read:

13 951.176 Provision of education ~~programs for youth.~~

14 (1) Each county may contract with a district school board;
15 the Florida Virtual School; a virtual instruction program
16 approved provider, as defined in s. 1002.45(1)(a)1.; or a
17 charter school authorized to



774644

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Rouson) recommended the following:

Senate Substitute for Amendment (979286)

Delete lines 23 - 61
and insert:
board, the Florida Virtual School, a Florida College System
institution, a virtual education provider approved by the State
Board of Education, or a charter school authorized to operate
under s. 1002.33 to provide educational services for the
Correctional Education Program. The educational services may
include any educational, career, or workforce education training



774644

11 that is authorized by the department.

12 Section 2. Section 951.176, Florida Statutes, is amended to
13 read:

14 951.176 Provision of education ~~programs for youth.~~-

15 (1) Each county may contract with a district school board,
16 the Florida Virtual School, a Florida College System
17 institution, a virtual education provider approved by the State
18 Board of Education, or a charter school authorized to operate
19 under s. 1002.33 to provide educational services for inmates at
20 county detention facilities. The educational services may
21 include any educational, career, or workforce education training
22 that is authorized by the sheriff or chief correctional officer,
23 or his or her designee.

24 (2) Minors who have not graduated from high school and
25 eligible students with disabilities under the age of 22 who have
26 not graduated with a standard diploma or its equivalent who are
27 detained in a county or municipal detention facility as defined
28 in s. 951.23 shall be offered educational services by the local
29 school district in which the facility is located. These
30 educational services shall be based upon the estimated length of
31 time the youth will be in the facility and the youth's current
32 level of functioning. School district superintendents or their
33 designees shall be notified by the county sheriff or chief
34 correctional officer, or his or her designee, upon the
35 assignment of a youth under the age of 21 to the facility. A
36 cooperative agreement with the local school district and
37 applicable law enforcement units shall be developed to address
38 the notification requirement and the provision of educational
39 services to these youth.



774644

40 Section 3. Paragraph (b) of subsection (7) of section
41 1011.80, Florida Statutes, is amended to read:

42 1011.80 Funds for operation of workforce education
43 programs.—

44 (7)

45 (b) State funds provided for the operation of postsecondary
46 workforce programs may not be expended for the education of
47 state inmates with more than 60 months of time remaining to



753714

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/15/2018	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 62 and 63

insert:

Section 4. Subsection (4) is added to section 120.565,
Florida Statutes, to read:

120.565 Declaratory statement by agencies.-

(4) (a) Any person may seek a declaratory statement
regarding an agency's opinion as to the effect of the
petitioner's criminal background on his or her eligibility for a



753714

11 specific occupational or professional license, registration, or
12 certificate issued by the agency based on the applicable
13 statutes and rules for the occupation or profession. The
14 petition may include mitigating factors or other information the
15 petitioner believes is relevant to establish the petitioner's
16 eligibility, including, but not limited to, the time elapsed
17 since completion of or lawful release from confinement,
18 supervision, or nonmonetary condition imposed by the court for a
19 disqualifying offense, and the petitioner's standing in his or
20 her community. A person may seek a declaratory statement under
21 this subsection before attaining any education, training,
22 experience, or other prerequisites for the license,
23 registration, or certification.

24 (b) The agency's conclusion in the declaratory statement
25 must indicate whether:

26 1. The petitioner is disqualified from obtaining the
27 license, registration, or certification due to the petitioner's
28 criminal background, regardless of the petitioner's education,
29 training, experience, or other prerequisites required for the
30 license, registration, or certification.

31 2. The petitioner is not eligible for a specified
32 occupational or professional license, registration, or
33 certification because of his or her criminal background, but
34 that the conclusion may be reversed upon the petitioner's
35 presentation of evidence of rehabilitation or mitigation
36 identified by the agency in the declaratory statement at any
37 time subsequent to the issuance of the declaratory statement.

38 3. Federal laws or regulations may impede the petitioner's
39 licensure, registration, or certification in the profession or



753714

40 occupation.

41 4. Conditions or restrictions imposed by the court on the
42 petitioner for a disqualifying offense may impede the
43 petitioner's licensure, registration, or certification in the
44 profession or occupation.

45 (c) The agency's conclusion in the declaratory statement
46 shall be binding on the agency as to the petitioner, unless the
47 petitioner's subsequent criminal history constitutes an
48 independent basis for denial of the petitioner's application for
49 a license, registration, or certification in the profession or
50 occupation. The agency's conclusion is subject to judicial
51 review pursuant to s. 120.68.

52 (d) A person seeking a declaratory statement under this
53 subsection must submit to the agency, in addition to the
54 petition for a declaratory statement:

- 55 1. A fee set by the agency not to exceed \$100;
56 2. A certified copy of each criminal judgment rendered
57 against the petitioner; and
58 3. A complete set of electronic fingerprints.

59 (e) The agency shall submit the fingerprints to the
60 Department of Law Enforcement for a state criminal history
61 record check and the Department of Law Enforcement shall forward
62 them to the Federal Bureau of Investigation for a national
63 criminal history record check. The agency shall review the
64 criminal history record results to determine if the petitioner
65 meets licensure, registration, or certification requirements.
66 The petitioner shall pay the actual cost of state and federal
67 processing in addition to the fee in subparagraph (d)1.

68 Section 5. Subsection (13) of section 326.004, Florida



753714

69 Statutes, is amended to read:

70 326.004 Licensing.—

71 (13) Each broker must maintain a principal place of
72 business in this state and may establish branch offices in the
73 state. ~~A separate license must be maintained for each branch~~
74 ~~office. The division shall establish by rule a fee not to exceed~~
75 ~~\$100 for each branch office license.~~

76 Section 6. Subsection (3) of section 447.02, Florida
77 Statutes, is amended to read:

78 447.02 Definitions.—The following terms, when used in this
79 chapter, shall have the meanings ascribed to them in this
80 section:

81 ~~(3) The term "department" means the Department of Business~~
82 ~~and Professional Regulation.~~

83 Section 7. Section 447.04, Florida Statutes, is repealed.

84 Section 8. Section 447.041, Florida Statutes, is repealed.

85 Section 9. Section 447.045, Florida Statutes, is repealed.

86 Section 10. Section 447.06, Florida Statutes, is repealed.

87 Section 11. Subsections (6) and (8) of section 447.09,

88 Florida Statutes, are amended to read:

89 447.09 Right of franchise preserved; penalties.—It shall be
90 unlawful for any person:

91 ~~(6) To act as a business agent without having obtained and~~
92 ~~possessing a valid and subsisting license or permit.~~

93 ~~(8) To make any false statement in an application for a~~
94 ~~license.~~

95 Section 12. Section 447.12, Florida Statutes, is repealed.

96 Section 13. Section 447.16, Florida Statutes, is repealed.

97 Section 14. Subsection (4) of section 447.305, Florida



753714

98 Statutes, is amended to read:

99 447.305 Registration of employee organization.—

100 ~~(4) Notification of registrations and renewals of~~
101 ~~registration shall be furnished at regular intervals by the~~
102 ~~commission to the Department of Business and Professional~~
103 ~~Regulation.~~

104 Section 15. Present subsections (3) through (12) of section
105 455.213, Florida Statutes, are redesignated as subsections (4)
106 through (13), respectively, subsection (2) of that section is
107 amended, and a new subsection (3) is added to that section, to
108 read:

109 455.213 General licensing provisions.—

110 (2) Before the issuance of any license, the department may
111 charge an initial license fee as determined by rule of the
112 applicable board or, if no such board exists, by rule of the
113 department. Upon receipt of the appropriate license fee, except
114 as provided in subsection (4) ~~(3)~~, the department shall issue a
115 license to any person certified by the appropriate board, or its
116 designee, or the department when there is no board, as having
117 met the applicable requirements imposed by law or rule. However,
118 an applicant who is not otherwise qualified for licensure is not
119 entitled to licensure solely based on a passing score on a
120 required examination. Upon a determination by the department
121 that it erroneously issued a license, or upon the revocation of
122 a license by the applicable board, or by the department when
123 there is no board, the licensee must surrender his or her
124 license to the department.

125 (3) (a) Notwithstanding any other provision of law, the
126 board shall use the process in this subsection for review of an



753714

127 applicant's criminal record to determine his or her eligibility
128 for licensure as a:

129 1. Barber under chapter 476;

130 2. Cosmetologist or cosmetology specialist under chapter
131 477; or

132 3. Any of the following construction professions under
133 chapter 489:

134 a. Air-conditioning contractor;

135 b. Electrical contractor;

136 c. Mechanical contractor;

137 d. Plumbing contractor;

138 e. Pollutant storage systems contractor;

139 f. Roofing contractor;

140 g. Septic tank contractor;

141 h. Sheet metal contractor;

142 i. Solar contractor;

143 j. Swimming pool and spa contractor;

144 k. Underground utility and excavation contractor; and

145 l. Other specialty contractors.

146 (b) A conviction for a crime more than 5 years before the
147 date of the application may not be grounds for denial of a
148 license specified in paragraph (a). For purposes of this
149 paragraph, the term "conviction" means a determination of guilt
150 that is the result of a plea or trial, regardless of whether
151 adjudication is withheld.

152 (c)1. A person may apply for a license before his or her
153 lawful release from confinement or supervision. The department
154 may not charge an applicant an additional fee for being confined
155 or under supervision. The board may not deny an application for



753714

156 a license solely on the basis of the applicant's current
157 confinement or supervision.

158 2. After a license application is approved, the board may
159 stay the issuance of a license until the applicant is lawfully
160 released from confinement or supervision and the applicant
161 notifies the board of such release. The board must verify the
162 applicant's release with the Department of Corrections before it
163 issues a license.

164 3. If an applicant is unable to appear in person due to his
165 or her confinement or supervision, the board must permit the
166 applicant to appear by teleconference or video conference, as
167 appropriate, at any meeting of the board or other hearing by the
168 agency concerning his or her application.

169 4. If an applicant is confined or under supervision, the
170 Department of Corrections and the board shall cooperate and
171 coordinate to facilitate the appearance of the applicant at a
172 board meeting or agency hearing in person, by teleconference, or
173 by video conference, as appropriate.

174 (d) The board shall adopt rules specifying the crimes that,
175 if committed, and regardless of adjudication, do not relate to
176 the practice of the profession or the ability to practice the
177 profession and do not constitute grounds for denial of a
178 license.

179 (e) The board shall adopt rules specifying the crimes that,
180 if committed, and regardless of adjudication, relate to the
181 practice of the profession or the ability to practice the
182 profession and may constitute grounds for denial of a license.

183 Section 16. Present subsections (2) through (8) of section
184 464.203, Florida Statutes, are redesignated as subsections (3)



753714

185 through (9), respectively, and a new subsection (2) is added to
186 that section, to read:

187 464.203 Certified nursing assistants; certification
188 requirement.—

189 (2) (a) 1. Except as provided in s. 435.07(4), a conviction
190 for a crime more than 7 years before the date of the application
191 may not be grounds for denial of a certificate to practice as a
192 certified nursing assistant.

193 2. Except as provided in s. 435.07(4), a conviction for a
194 crime more than 7 years before the date of the application may
195 not be grounds for failure of a required background screening.

196 3. For purposes of this paragraph, the term "conviction"
197 means a determination of guilt that is the result of a plea or
198 trial, regardless of whether adjudication is withheld.

199 (b) 1. A person may apply for a certificate to practice as a
200 certified nursing assistant before his or her lawful release
201 from confinement or supervision. The department may not charge
202 an applicant an additional fee for being confined or under
203 supervision. The board may not deny an application for a
204 certificate solely on the basis of the person's current
205 confinement or supervision.

206 2. After a certification application is approved, the board
207 may stay the issuance of a certificate until the applicant
208 notifies the board of his or her lawful release from confinement
209 or supervision. The board must verify the applicant's release
210 with the Department of Corrections before it issues a license.

211 3. If an applicant is unable to appear in person due to his
212 or her confinement or supervision, the board must permit the
213 applicant to appear by teleconference or video conference, as



753714

214 appropriate, at any meeting of the board or other hearing by the
215 agency concerning his or her application.

216 4. If an applicant is confined or under supervision, the
217 Department of Corrections and the board shall cooperate and
218 coordinate to facilitate the appearance of the applicant at a
219 board meeting or agency hearing in person, by teleconference, or
220 by video conference, as appropriate.

221 (d) The board shall adopt rules specifying the crimes that,
222 if committed, and regardless of adjudication, do not relate to
223 the practice of the profession or the ability to practice the
224 profession and do not constitute grounds for denial of a
225 certification.

226 (e) The board shall adopt rules specifying the crimes that,
227 if committed, and regardless of adjudication, relate to the
228 practice of the profession or the ability to practice the
229 profession and may constitute grounds for denial of a
230 certification.

231 Section 17. Subsection (4) of section 400.211, Florida
232 Statutes, is amended to read:

233 400.211 Persons employed as nursing assistants;
234 certification requirement.—

235 (4) When employed by a nursing home facility for a 12-month
236 period or longer, a nursing assistant, to maintain
237 certification, shall submit to a performance review every 12
238 months and must receive regular inservice education based on the
239 outcome of such reviews. The inservice training must meet all of
240 the following requirements:

241 (a) Be sufficient to ensure the continuing competence of
242 nursing assistants and must meet the standard specified in s.



753714

243 464.203(8). ~~s. 464.203(7);~~

244 (b) Include, at a minimum:

245 1. Techniques for assisting with eating and proper feeding;

246 2. Principles of adequate nutrition and hydration;

247 3. Techniques for assisting and responding to the

248 cognitively impaired resident or the resident with difficult

249 behaviors;

250 4. Techniques for caring for the resident at the end-of-

251 life; and

252 5. Recognizing changes that place a resident at risk for

253 pressure ulcers and falls. ~~;~~ ~~and~~

254 (c) Address areas of weakness as determined in nursing

255 assistant performance reviews and may address the special needs

256 of residents as determined by the nursing home facility staff.

257

258 Costs associated with this training may not be reimbursed from

259 additional Medicaid funding through interim rate adjustments.

260 Section 18. Paragraphs (a) and (e) of subsection (2),

261 subsection (3), paragraph (b) of subsection (4), and subsection

262 (6) of section 469.006, Florida Statutes, are amended to read:

263 469.006 Licensure of business organizations; qualifying

264 agents.-

265 (2) (a) If the applicant proposes to engage in consulting or

266 contracting as a partnership, corporation, business trust, or

267 other legal entity, or in any name other than the applicant's

268 legal name, ~~the legal entity must apply for licensure through a~~

269 ~~qualifying agent or the individual applicant must apply for~~

270 licensure under the fictitious name of the business

271 organization.



753714

272 (e) ~~A~~ The license, ~~when issued upon application of a~~
273 ~~business organization,~~ must be in the name of the qualifying
274 agent business organization, and the name of the business
275 organization ~~qualifying agent~~ must be noted on the license
276 ~~thereon~~. If there is a change in any information that is
277 required to be stated on the application, the qualifying agent
278 ~~business organization~~ shall, within 45 days after such change
279 occurs, mail the correct information to the department.

280 (3) The qualifying agent must ~~shall~~ be licensed under this
281 chapter in order for the business organization to be qualified
282 ~~licensed~~ in the category of the business conducted for which the
283 qualifying agent is licensed. If any qualifying agent ceases to
284 be affiliated with such business organization, the agent shall
285 so inform the department. In addition, if such qualifying agent
286 is the only licensed individual affiliated with the business
287 organization, the business organization shall notify the
288 department of the termination of the qualifying agent and has
289 ~~shall have~~ 60 days after ~~from~~ the date of termination of the
290 qualifying agent's affiliation with the business organization ~~in~~
291 ~~which~~ to employ another qualifying agent. The business
292 organization may not engage in consulting or contracting until a
293 qualifying agent is employed, unless the department has granted
294 a temporary nonrenewable license to the financially responsible
295 officer, the president, the sole proprietor, a partner, or, in
296 the case of a limited partnership, the general partner, who
297 assumes all responsibilities of a primary qualifying agent for
298 the entity. This temporary license only allows ~~shall only allow~~
299 the entity to proceed with incomplete contracts.

300 (4)



753714

301 (b) Upon a favorable determination by the department, after
302 investigation of the financial responsibility, credit, and
303 business reputation of the qualifying agent and the new business
304 organization, the department shall issue, without any
305 examination, a new license in the qualifying agent's business
306 ~~organization's~~ name, and the name of the business organization
307 ~~qualifying agent~~ shall be noted thereon.

308 (6) Each qualifying agent shall pay the department an
309 amount equal to the original fee for licensure ~~of a new business~~
310 ~~organization.~~ if the qualifying agent for a business
311 organization desires to qualify additional business
312 organizations. ~~The department shall require the agent to~~
313 present evidence of supervisory ability and financial
314 responsibility of each such organization. Allowing a licensee to
315 qualify more than one business organization must ~~shall~~ be
316 conditioned upon the licensee showing that the licensee has both
317 the capacity and intent to adequately supervise each business
318 organization. The department may ~~shall~~ not limit the number of
319 business organizations that ~~which~~ the licensee may qualify
320 except upon the licensee's failure to provide such information
321 as is required under this subsection or upon a finding that the
322 ~~such~~ information or evidence ~~as is~~ supplied is incomplete or
323 unpersuasive in showing the licensee's capacity and intent to
324 comply with the requirements of this subsection. A qualification
325 for an additional business organization may be revoked or
326 suspended upon a finding by the department that the licensee has
327 failed in the licensee's responsibility to adequately supervise
328 the operations of the business organization. Failure to
329 adequately supervise the operations of a business organization



753714

330 ~~is shall be~~ grounds for denial to qualify additional business
331 organizations.

332 Section 19. Subsection (1) of section 469.009, Florida
333 Statutes, is amended to read:

334 469.009 License revocation, suspension, and denial of
335 issuance or renewal.—

336 (1) The department may revoke, suspend, or deny the
337 issuance or renewal of a license; reprimand, censure, or place
338 on probation any contractor, consultant, or financially
339 responsible officer, ~~or business organization~~; require financial
340 restitution to a consumer; impose an administrative fine not to
341 exceed \$5,000 per violation; require continuing education; or
342 assess costs associated with any investigation and prosecution
343 if the contractor or consultant, or business organization or
344 officer or agent thereof, is found guilty of any of the
345 following acts:

346 (a) Willfully or deliberately disregarding or violating the
347 health and safety standards of the Occupational Safety and
348 Health Act of 1970, the Construction Safety Act, the National
349 Emission Standards for Asbestos, the Environmental Protection
350 Agency Asbestos Abatement Projects Worker Protection Rule, the
351 Florida Statutes or rules promulgated thereunder, or any
352 ordinance enacted by a political subdivision of this state.

353 (b) Violating any provision of chapter 455.

354 (c) Failing in any material respect to comply with the
355 provisions of this chapter or any rule promulgated hereunder.

356 (d) Acting in the capacity of an asbestos contractor or
357 asbestos consultant under any license issued under this chapter
358 except in the name of the licensee as set forth on the issued



753714

359 license.

360 (e) Proceeding on any job without obtaining all applicable
361 approvals, authorizations, permits, and inspections.

362 (f) Obtaining a license by fraud or misrepresentation.

363 (g) Being convicted or found guilty of, or entering a plea
364 of nolo contendere to, regardless of adjudication, a crime in
365 any jurisdiction which directly relates to the practice of
366 asbestos consulting or contracting or the ability to practice
367 asbestos consulting or contracting.

368 (h) Knowingly violating any building code, lifesafety code,
369 or county or municipal ordinance relating to the practice of
370 asbestos consulting or contracting.

371 (i) Performing any act which assists a person or entity in
372 engaging in the prohibited unlicensed practice of asbestos
373 consulting or contracting, if the licensee knows or has
374 reasonable grounds to know that the person or entity was
375 unlicensed.

376 (j) Committing mismanagement or misconduct in the practice
377 of contracting that causes financial harm to a customer.

378 Financial mismanagement or misconduct occurs when:

379 1. Valid liens have been recorded against the property of a
380 contractor's customer for supplies or services ordered by the
381 contractor for the customer's job; the contractor has received
382 funds from the customer to pay for the supplies or services; and
383 the contractor has not had the liens removed from the property,
384 by payment or by bond, within 75 days after the date of such
385 liens;

386 2. The contractor has abandoned a customer's job and the
387 percentage of completion is less than the percentage of the



753714

388 total contract price paid to the contractor as of the time of
389 abandonment, unless the contractor is entitled to retain such
390 funds under the terms of the contract or refunds the excess
391 funds within 30 days after the date the job is abandoned; or

392 3. The contractor's job has been completed, and it is shown
393 that the customer has had to pay more for the contracted job
394 than the original contract price, as adjusted for subsequent
395 change orders, unless such increase in cost was the result of
396 circumstances beyond the control of the contractor, was the
397 result of circumstances caused by the customer, or was otherwise
398 permitted by the terms of the contract between the contractor
399 and the customer.

400 (k) Being disciplined by any municipality or county for an
401 act or violation of this chapter.

402 (l) Failing in any material respect to comply with the
403 provisions of this chapter, or violating a rule or lawful order
404 of the department.

405 (m) Abandoning an asbestos abatement project in which the
406 asbestos contractor is engaged or under contract as a
407 contractor. A project may be presumed abandoned after 20 days if
408 the contractor terminates the project without just cause and
409 without proper notification to the owner, including the reason
410 for termination; if the contractor fails to reasonably secure
411 the project to safeguard the public while work is stopped; or if
412 the contractor fails to perform work without just cause for 20
413 days.

414 (n) Signing a statement with respect to a project or
415 contract falsely indicating that the work is bonded; falsely
416 indicating that payment has been made for all subcontracted



753714

417 work, labor, and materials which results in a financial loss to
418 the owner, purchaser, or contractor; or falsely indicating that
419 workers' compensation and public liability insurance are
420 provided.

421 (o) Committing fraud or deceit in the practice of asbestos
422 consulting or contracting.

423 (p) Committing incompetency or misconduct in the practice
424 of asbestos consulting or contracting.

425 (q) Committing gross negligence, repeated negligence, or
426 negligence resulting in a significant danger to life or property
427 in the practice of asbestos consulting or contracting.

428 (r) Intimidating, threatening, coercing, or otherwise
429 discouraging the service of a notice to owner under part I of
430 chapter 713 or a notice to contractor under chapter 255 or part
431 I of chapter 713.

432 (s) Failing to satisfy, within a reasonable time, the terms
433 of a civil judgment obtained against the licensee, or the
434 business organization qualified by the licensee, relating to the
435 practice of the licensee's profession.

436
437 For the purposes of this subsection, construction is considered
438 to be commenced when the contract is executed and the contractor
439 has accepted funds from the customer or lender.

440 Section 20. Subsections (2) and (3) of section 476.034,
441 Florida Statutes, are amended, and subsections (6) and (7) are
442 added to that section, to read:

443 476.034 Definitions.—As used in this act:

444 (2) "Barbering" means any of the following practices when
445 done for remuneration and for the public, but not when done for



753714

446 the treatment of disease or physical or mental ailments:
447 shaving, cutting, trimming, coloring, shampooing, arranging,
448 dressing, curling, or waving the hair or beard or applying oils,
449 creams, lotions, or other preparations to the face, scalp, or
450 neck, either by hand or by mechanical appliances, and includes
451 any services defined as restricted barbering.

452 (3) "Barbershop" means any place of business wherein the
453 practice of barbering or restricted barbering is carried on.

454 (6) "Restricted barber" means a person who is licensed to
455 engage in the practice of restricted barbering in this state
456 under the authority of this chapter and is subject to the same
457 requirements and restrictions as a barber, except as
458 specifically provided in s. 476.114.

459 (7) "Restricted barbering" means any of the following
460 practices when done for remuneration and for the public, but not
461 when done for the treatment of disease or physical or mental
462 ailments:

463 (a) Hair cutting and styling, including the application of
464 hair tonics and hair spray, but not including the application of
465 other chemical preparations or solutions to the hair;

466 (b) Full facial shaves;

467 (c) Mustache and beard trimming; and

468 (d) Shampooing hair, including the application of shampoos
469 and conditioners, and blow drying the hair.

470 Section 21. Section 476.114, Florida Statutes, is amended
471 to read:

472 476.114 Examination; prerequisites.—

473 (1) A person desiring to be licensed as a barber shall
474 apply to the department for licensure and-



753714

475 ~~(2) An applicant~~ shall be eligible for licensure by
476 examination to practice barbering if the applicant:
477 (a) Is at least 16 years of age;
478 (b) Pays the required application fee; and
479 (c)1. Holds an active valid license to practice barbering
480 in another state, has held the license for at least 1 year, and
481 does not qualify for licensure by endorsement as provided for in
482 s. 476.144(5); or

483 2. Has received a minimum of 1,200 hours of training as
484 established by the board, which shall include, but ~~shall~~ not be
485 limited to, the equivalent of completion of services directly
486 related to the practice of barbering at one of the following:
487 a. A school of barbering licensed pursuant to chapter 1005;
488 b. A barbering program within the public school system; or
489 c. A government-operated barbering program in this state.

490
491 The board shall establish by rule procedures whereby the school
492 or program may certify that a person is qualified to take the
493 required examination after the completion of a minimum of 1,000
494 actual school hours. If the person passes the examination, she
495 or he shall have satisfied this requirement; but if the person
496 fails the examination, she or he shall not be qualified to take
497 the examination again until the completion of the full
498 requirements provided by this section.

499 (2) A person desiring to be licensed as a restricted barber
500 shall apply to the department for licensure and shall be
501 eligible for licensure by examination to practice restricted
502 barbering if the applicant:

503 (a) Is at least 16 years of age;



753714

504 (b) Pays the required application fee; and
505 (c)1. Holds an active valid license to practice barbering
506 in another state, has held the license for at least 1 year, and
507 does not qualify for licensure by endorsement as provided for in
508 s. 476.144(5); or
509 2. Has received a minimum of 325 hours of training in
510 sanitation, safety, and laws and rules, as established by the
511 board, which must include, but not be limited to, the equivalent
512 of completion of services directly related to the practice of
513 restricted barbering at one of the following:
514 a. A school of barbering licensed pursuant to chapter 1005;
515 b. A barbering program within the public school system; or
516 c. A government-operated barbering program in this state.
517 (3) An applicant who meets the requirements set forth in
518 subparagraphs (1)(c)1. and 2. subparagraphs ~~(2)(c)1. and 2.~~ who
519 fails to pass the examination may take subsequent examinations
520 as many times as necessary to pass, except that the board may
521 specify by rule reasonable timeframes for rescheduling the
522 examination and additional training requirements for applicants
523 who, after the third attempt, fail to pass the examination.
524 Before ~~Prior to~~ reexamination, the applicant must file the
525 appropriate form and pay the reexamination fee as required by
526 rule.
527 Section 22. Subsections (1) and (6) of section 476.144,
528 Florida Statutes, are amended to read:
529 476.144 Licensure.—
530 (1) The department shall license any applicant who the
531 board certifies is qualified to practice barbering or restricted
532 barbering in this state.



753714

533 (6) A person may apply for a restricted license to practice
534 barbering. The board shall adopt rules specifying procedures for
535 an applicant to obtain a restricted license if the applicant:

536 (a)1. Has successfully completed a restricted barber
537 course, as established by rule of the board, at a school of
538 barbering licensed pursuant to chapter 1005, a barbering program
539 within the public school system, or a government-operated
540 barbering program in this state; or

541 2.a. Holds or has within the previous 5 years held an
542 active valid license to practice barbering in another state or
543 country or has held a Florida barbering license which has been
544 declared null and void for failure to renew the license, and the
545 applicant fulfilled the requirements of s. 476.114(2)(c)2. for
546 initial licensure; and

547 b. Has not been disciplined relating to the practice of
548 barbering in the previous 5 years; and

549 (b) Passes a written examination on the laws and rules
550 governing the practice of barbering in Florida, as established
551 by the board.

552
553 ~~The restricted license shall limit the licensee's practice to~~
554 ~~those specific areas in which the applicant has demonstrated~~
555 ~~competence pursuant to rules adopted by the board.~~

556 Section 23. Subsections (6) and (9) of section 477.013,
557 Florida Statutes, are amended to read:

558 477.013 Definitions.—As used in this chapter:

559 (6) "Specialty" means the practice of one or more of the
560 following:

561 (a) "Nail specialty" means manicuring, or the cutting,



753714

562 polishing, tinting, coloring, cleansing, adding, or extending of
563 the nails, and massaging of the hands. This term includes any
564 procedure or process for the affixing of artificial nails,
565 except those nails which may be applied solely by use of a
566 simple adhesive; and-

567 ~~(b)~~ pedicuring, or the shaping, polishing, tinting, or
568 cleansing of the nails of the feet, and massaging or beautifying
569 of the feet.

570 ~~(b)~~~~(e)~~ "Facial specialty" means facials, or the massaging
571 or treating of the face or scalp with oils, creams, lotions, or
572 other preparations, and skin care services.

573 (c) "Full specialty" means all services within the
574 definition of nail specialty and facial specialty, including
575 manicuring, pedicuring, and facial services.

576 (9) "Hair braiding" means the weaving or interweaving of
577 natural human hair or commercial hair, including the use of hair
578 extensions or wefts, for compensation without cutting, coloring,
579 permanent waving, relaxing, removing, or chemical treatment ~~and~~
580 ~~does not include the use of hair extensions or wefts.~~

581 Section 24. Section 477.0132, Florida Statutes, is
582 repealed.

583 Section 25. Subsections (7) through (11) are added to
584 section 477.0135, Florida Statutes, to read:

585 477.0135 Exemptions.-

586 (7) A license or registration is not required for a person
587 whose occupation or practice is confined solely to hair braiding
588 as defined in s. 477.013(9).

589 (8) A license or registration is not required for a person
590 whose occupation or practice is confined solely to hair wrapping



753714

591 as defined in s. 477.013(10).

592 (9) A license or registration is not required for a person
593 whose occupation or practice is confined solely to body wrapping
594 as defined in s. 477.013(12).

595 (10) A license or registration is not required for a person
596 whose occupation or practice is confined solely to applying
597 polish to fingernails and toenails.

598 (11) A license or registration is not required for a person
599 whose occupation or practice is confined solely to makeup
600 application.

601 Section 26. Paragraph (b) of subsection (7) of section
602 477.019, Florida Statutes, is amended to read:

603 477.019 Cosmetologists; qualifications; licensure;
604 supervised practice; license renewal; endorsement; continuing
605 education.—

606 (7)

607 ~~(b) Any person whose occupation or practice is confined~~
608 ~~solely to hair braiding, hair wrapping, or body wrapping is~~
609 ~~exempt from the continuing education requirements of this~~
610 ~~subsection.~~

611 Section 27. Present subsections (2) through (6) of section
612 477.0201, Florida Statutes, are redesignated as subsections (4)
613 through (8), respectively, new subsections (2) and (3) are added
614 to that section, and subsection (1) of that section is amended
615 to read:

616 477.0201 Specialty registration; qualifications;
617 registration renewal; endorsement.—

618 (1) Any person is qualified for registration as a
619 specialist in a nail ~~any one or more of the specialty practice~~



753714

620 ~~practices~~ within the practice of cosmetology under this chapter
621 who:

622 (a) Is at least 16 years of age or has received a high
623 school diploma.

624 (b) Has received at least 150 hours of training as
625 established by the board, which must focus primarily on
626 sanitation and safety and must include, but not be limited to,
627 the equivalent of completion of services directly related to the
628 practice of a nail ~~a certificate of completion in a~~ specialty
629 pursuant to s. 477.013(6) (a) ~~477.013(6)~~ from one of the
630 following:

631 1. A school licensed pursuant to s. 477.023.

632 2. A school licensed pursuant to chapter 1005 or the
633 equivalent licensing authority of another state.

634 3. A specialty program within the public school system.

635 4. A specialty division within the Cosmetology Division of
636 the Florida School for the Deaf and the Blind, provided the
637 training programs comply with minimum curriculum requirements
638 established by the board.

639 (2) Any person is qualified for registration as a
640 specialist in a facial specialty practice within the practice of
641 cosmetology under this chapter who:

642 (a) Is at least 16 years of age or has received a high
643 school diploma.

644 (b) Has received at least 165 hours of training as
645 established by the board, which must focus on sanitation and
646 safety and must include, but not be limited to, the equivalent
647 of completion of services directly related to the practice of
648 facial specialty pursuant to s. 477.013(6) (b) from one of the



753714

649 following:

650 1. A school licensed pursuant to s. 477.023.

651 2. A school licensed pursuant to chapter 1005 or the
652 equivalent licensing authority of another state.

653 3. A specialty program within the public school system.

654 4. A specialty division within the Cosmetology Division of
655 the Florida School for the Deaf and the Blind, provided the
656 training programs comply with minimum curriculum requirements
657 established by the board.

658 (3) Any person is qualified for registration as a
659 specialist in a full specialty practice within the practice of
660 cosmetology under this chapter who:

661 (a) Is at least 16 years of age or has received a high
662 school diploma.

663 (b) Has received at least 300 hours of training as
664 established by the board, which must focus primarily on
665 sanitation and safety and must include, but not be limited to,
666 the equivalent of completion of services directly related to the
667 practice of full specialty pursuant to s. 477.013(6)(c) from one
668 of the following:

669 1. A school licensed pursuant to s. 477.023.

670 2. A school licensed pursuant to chapter 1005 or the
671 equivalent licensing authority of another state.

672 3. A specialty program within the public school system.

673 4. A specialty division within the Cosmetology Division of
674 the Florida School for the Deaf and the Blind, provided the
675 training programs comply with minimum curriculum requirements
676 established by the board.

677 Section 28. Paragraph (f) of subsection (1) of section



753714

678 477.026, Florida Statutes, is amended to read:

679 477.026 Fees; disposition.—

680 (1) The board shall set fees according to the following
681 schedule:

682 ~~(f) For hair braiders, hair wrappers, and body wrappers,~~
683 ~~fees for registration shall not exceed \$25.~~

684 Section 29. Paragraph (f) of subsection (1) of section
685 477.0265, Florida Statutes, is amended to read:

686 477.0265 Prohibited acts.—

687 (1) It is unlawful for any person to:

688 (f) Advertise or imply that skin care services ~~or body~~
689 ~~wrapping~~, as performed under this chapter, have any relationship
690 to the practice of massage therapy as defined in s. 480.033(3),
691 except those practices or activities defined in s. 477.013.

692 Section 30. Paragraph (a) of subsection (1) of section
693 477.029, Florida Statutes, is amended to read:

694 477.029 Penalty.—

695 (1) It is unlawful for any person to:

696 (a) Hold himself or herself out as a cosmetologist or
697 ~~specialist, hair wrapper, hair braider, or body wrapper~~ unless
698 duly licensed or registered, or otherwise authorized, as
699 provided in this chapter.

700 Section 31. Subsection (5) of section 481.203, Florida
701 Statutes, is amended to read:

702 481.203 Definitions.—As used in this part:

703 (5) "Business organization" means a partnership, a limited
704 liability company, a corporation, or an individual operating
705 under a fictitious name ~~"Certificate of authorization" means a~~
706 ~~certificate issued by the department to a corporation or~~



753714

707 ~~partnership to practice architecture or interior design.~~

708 Section 32. Section 481.219, Florida Statutes, is amended
709 to read:

710 481.219 Business organization; qualifying agents
711 ~~Certification of partnerships, limited liability companies, and~~
712 ~~corporations.-~~

713 (1) A licensee may ~~The practice of or the offer to practice~~
714 ~~architecture or interior design by licensees through a business~~
715 ~~organization that offers~~ corporation, limited liability company,
716 ~~or partnership offering~~ architectural or interior design
717 services to the public, or through ~~by~~ a business organization
718 that offers ~~corporation, limited liability company, or~~
719 ~~partnership offering~~ architectural or interior design services
720 to the public through such licensees ~~under this part~~ as agents,
721 employees, officers, or partners, ~~is permitted, subject to the~~
722 ~~provisions of this section.~~

723 (2) If a licensee or an applicant proposes to engage in the
724 practice of architecture or interior design as a business
725 organization, the licensee or applicant must apply to qualify
726 the business organization ~~For the purposes of this section, a~~
727 ~~certificate of authorization shall be required for a~~
728 ~~corporation, limited liability company, partnership, or person~~
729 ~~practicing under a fictitious name, offering architectural~~
730 ~~services to the public jointly or separately. However, when an~~
731 ~~individual is practicing architecture in her or his own name,~~
732 ~~she or he shall not be required to be certified under this~~
733 ~~section. Certification under this subsection to offer~~
734 ~~architectural services shall include all the rights and~~
735 ~~privileges of certification under subsection (3) to offer~~



753714

736 ~~interior design services.~~

737 (a) An application to qualify a business organization must:

738 1. If the business is a partnership, state the names of the
739 partnership and its partners.

740 2. If the business is a corporation, state the names of the
741 corporation and its officers and directors and the name of each
742 of its stockholders who is also an officer or a director.

743 3. If the business is operating under a fictitious name,
744 state the fictitious name under which it is doing business.

745 4. If the business is not a partnership, a corporation, or
746 operating under a fictitious name, state the name of such other
747 legal entity and its members.

748 (b) The board may deny an application to qualify a business
749 organization if the applicant or any person required to be named
750 pursuant to paragraph (a) has been involved in past disciplinary
751 actions or on any grounds for which an individual registration
752 may be denied.

753 (3) (a) A business organization may not engage in the
754 practice of architecture unless its qualifying agent is a
755 registered architect under this part. A business organization
756 may not engage in the practice of interior design unless its
757 qualifying agent is a registered architect or a registered
758 interior designer under this part. A qualifying agent who
759 terminates her or his affiliation with a business organization
760 shall immediately notify the department of such termination. If
761 the qualifying agent who terminates her or his affiliation is
762 the only qualifying agent for a business organization, the
763 business organization must be qualified by another qualifying
764 agent within 60 days after the termination. Except as provided



753714

765 in paragraph (b), the business organization may not engage in
766 the practice of architecture or interior design until it is
767 qualified by a qualifying agent.

768 (b) In the event a qualifying architect or interior
769 designer ceases employment with the business organization, the
770 executive director or the chair of the board may authorize
771 another registered architect or interior designer employed by
772 the business organization to temporarily serve as its qualifying
773 agent for a period of no more than 60 days. The business
774 organization is not authorized to operate beyond such period
775 under this chapter absent replacement of the qualifying
776 architect or interior designer who has ceased employment.

777 (c) A qualifying agent shall notify the department in
778 writing before engaging in the practice of architecture or
779 interior design in her or his own name or in affiliation with a
780 different business organization, and she or he or such business
781 organization shall supply the same information to the department
782 as required of applicants under this part ~~For the purposes of~~
783 ~~this section, a certificate of authorization shall be required~~
784 ~~for a corporation, limited liability company, partnership, or~~
785 ~~person operating under a fictitious name, offering interior~~
786 ~~design services to the public jointly or separately. However,~~
787 ~~when an individual is practicing interior design in her or his~~
788 ~~own name, she or he shall not be required to be certified under~~
789 ~~this section.~~

790 (4) All final construction documents and instruments of
791 service which include drawings, specifications, plans, reports,
792 or other papers or documents that involve ~~involving~~ the practice
793 of architecture which are prepared or approved for the use of



753714

794 the business organization ~~corporation, limited liability~~
795 ~~company, or partnership~~ and filed for public record within the
796 state must ~~shall~~ bear the signature and seal of the licensee who
797 prepared or approved them and the date on which they were
798 sealed.

799 (5) All drawings, specifications, plans, reports, or other
800 papers or documents prepared or approved for the use of the
801 business organization ~~corporation, limited liability company, or~~
802 ~~partnership~~ by an interior designer in her or his professional
803 capacity and filed for public record within the state must ~~shall~~
804 bear the signature and seal of the licensee who prepared or
805 approved them and the date on which they were sealed.

806 ~~(6) The department shall issue a certificate of~~
807 ~~authorization to any applicant who the board certifies as~~
808 ~~qualified for a certificate of authorization and who has paid~~
809 ~~the fee set in s. 481.207.~~

810 (6)(7) The board shall allow ~~certify~~ an applicant to
811 qualify one or more business organizations ~~as qualified for a~~
812 ~~certificate of authorization~~ to offer architectural or interior
813 design services, or to use a fictitious name to offer such
814 services, if provided that:

815 (a) One or more of the principal officers of the
816 corporation or limited liability company, or one or more
817 partners of the partnership, and all personnel of the
818 corporation, limited liability company, or partnership who act
819 in its behalf in this state as architects, are registered as
820 provided by this part; or

821 (b) One or more of the principal officers of the
822 corporation or one or more partners of the partnership, and all



753714

823 personnel of the corporation, limited liability company, or
824 partnership who act in its behalf in this state as interior
825 designers, are registered as provided by this part.

826 ~~(8) The department shall adopt rules establishing a~~
827 ~~procedure for the biennial renewal of certificates of~~
828 ~~authorization.~~

829 ~~(9) The department shall renew a certificate of~~
830 ~~authorization upon receipt of the renewal application and~~
831 ~~biennial renewal fee.~~

832 (7)~~(10)~~ Each qualifying agent approved to qualify a
833 business organization partnership, limited liability company,
834 and corporation certified under this section shall notify the
835 department within 30 days after ~~of~~ any change in the information
836 contained in the application upon which the qualification
837 ~~certification~~ is based. Any registered architect or interior
838 designer who qualifies the business organization shall ensure
839 ~~corporation, limited liability company, or partnership as~~
840 ~~provided in subsection (7) shall be responsible for ensuring~~
841 responsible supervising control of projects of the business
842 organization entity and shall notify the department of the ~~upon~~
843 termination of her or his employment with a business
844 organization qualified partnership, limited liability company,
845 ~~or corporation certified~~ under this section shall notify the
846 department of the termination within 30 days after such
847 termination.

848 ~~(8)~~~~(11)~~ A business organization is not ~~No corporation,~~
849 ~~limited liability company, or partnership shall be relieved of~~
850 responsibility for the conduct or acts of its agents, employees,
851 or officers by reason of its compliance with this section.



753714

852 However, except as provided in s. 558.0035, the architect who
853 signs and seals the construction documents and instruments of
854 service is ~~shall be~~ liable for the professional services
855 performed, and the interior designer who signs and seals the
856 interior design drawings, plans, or specifications is ~~shall be~~
857 liable for the professional services performed.

858 ~~(12) Disciplinary action against a corporation, limited~~
859 ~~liability company, or partnership shall be administered in the~~
860 ~~same manner and on the same grounds as disciplinary action~~
861 ~~against a registered architect or interior designer,~~
862 ~~respectively.~~

863 ~~(9) (13) Nothing in~~ This section may not shall be construed
864 to mean that a certificate of registration to practice
865 architecture or interior design must shall be held by a business
866 organization ~~corporation, limited liability company, or~~
867 ~~partnership. Nothing in~~ This section does not prohibit a
868 business organization from offering ~~prohibits corporations,~~
869 ~~limited liability companies, and partnerships from joining~~
870 ~~together to offer~~ architectural, engineering, interior design,
871 surveying and mapping, and landscape architectural services, or
872 any combination of such services, to the public if the business
873 organization, ~~provided that each corporation, limited liability~~
874 ~~company, or partnership~~ otherwise meets the requirements of law.

875 ~~(10) (14) A business organization that is qualified by a~~
876 registered architect may use ~~Corporations, limited liability~~
877 ~~companies, or partnerships holding a valid certificate of~~
878 ~~authorization to practice architecture shall be permitted to use~~
879 ~~in their title~~ the term "interior designer" or "registered
880 interior designer" in its title. ~~designer."~~



753714

881 Section 33. Subsection (10) of section 481.221, Florida
882 Statutes, is amended to read:

883 481.221 Seals; display of certificate number.—

884 (10) Each registered architect or interior designer must,
885 ~~and each corporation, limited liability company, or partnership~~
886 ~~holding a certificate of authorization, shall~~ include her or his
887 license its certificate number in any newspaper, telephone
888 directory, or other advertising medium used by the registered
889 licensee. Each business organization must include the license
890 number of the registered architect or interior designer who
891 serves as the qualifying agent for that business organization in
892 any newspaper, telephone directory, or other advertising medium
893 used by the business organization, but is not required to
894 display the license numbers of other registered architects or
895 interior designers employed by the business organization
896 ~~architect, interior designer, corporation, limited liability~~
897 ~~company, or partnership. A corporation, limited liability~~
898 ~~company, or partnership is not required to display the~~
899 ~~certificate number of individual registered architects or~~
900 ~~interior designers employed by or working within the~~
901 ~~corporation, limited liability company, or partnership.~~

902 Section 34. Paragraphs (a) and (c) of subsection (5) of
903 section 481.229, Florida Statutes, are amended to read:

904 481.229 Exceptions; exemptions from licensure.—

905 (5) (a) ~~Nothing contained in This part~~ does not prohibit
906 shall prevent a registered architect or a qualified business
907 organization partnership, limited liability company, or
908 ~~corporation holding a valid certificate of authorization to~~
909 ~~provide architectural services from performing any interior~~



753714

910 design service or from using the title "interior designer" or
911 "registered interior designer."

912 (c) Notwithstanding any other provision of this part, a
913 registered architect or business organization qualified any
914 corporation, partnership, or person operating under a fictitious
915 name which holds a certificate of authorization to provide
916 architectural services must shall be qualified, without fee, for
917 a certificate of authorization to provide interior design
918 services upon submission of a completed application for
919 qualification therefor. For corporations, partnerships, and
920 persons operating under a fictitious name which hold a
921 certificate of authorization to provide interior design
922 services, satisfaction of the requirements for renewal of the
923 certificate of authorization to provide architectural services
924 under s. 481.219 shall be deemed to satisfy the requirements for
925 renewal of the certificate of authorization to provide interior
926 design services under that section.

927 Section 35. Section 481.303, Florida Statutes, is reordered
928 and amended to read:

929 481.303 Definitions.—As used in this chapter, the term:

930 (1) "Board" means the Board of Landscape Architecture.

931 (2) "Business organization" means any partnership, limited
932 liability company, corporation, or individual operating under a
933 fictitious name.

934 (4)-(2) "Department" means the Department of Business and
935 Professional Regulation.

936 (7)-(3) "Registered landscape architect" means a person who
937 holds a license to practice landscape architecture in this state
938 under the authority of this act.



753714

939 (3)~~(4)~~ "Certificate of registration" means a license issued
940 by the department to a natural person to engage in the practice
941 of landscape architecture.

942 ~~(5) "Certificate of authorization" means a license issued~~
943 ~~by the department to a corporation or partnership to engage in~~
944 ~~the practice of landscape architecture.~~

945 (5)~~(6)~~ "Landscape architecture" means professional
946 services, including, but not limited to, the following:

947 (a) Consultation, investigation, research, planning,
948 design, preparation of drawings, specifications, contract
949 documents and reports, responsible construction supervision, or
950 landscape management in connection with the planning and
951 development of land and incidental water areas, including the
952 use of Florida-friendly landscaping as defined in s. 373.185,
953 where, and to the extent that, the dominant purpose of such
954 services or creative works is the preservation, conservation,
955 enhancement, or determination of proper land uses, natural land
956 features, ground cover and plantings, or naturalistic and
957 aesthetic values;

958 (b) The determination of settings, grounds, and approaches
959 for and the siting of buildings and structures, outdoor areas,
960 or other improvements;

961 (c) The setting of grades, shaping and contouring of land
962 and water forms, determination of drainage, and provision for
963 storm drainage and irrigation systems where such systems are
964 necessary to the purposes outlined herein; and

965 (d) The design of such tangible objects and features as are
966 necessary to the purpose outlined herein.

967 (6)~~(7)~~ "Landscape design" means consultation for and



753714

968 preparation of planting plans drawn for compensation, including
969 specifications and installation details for plant materials,
970 soil amendments, mulches, edging, gravel, and other similar
971 materials. Such plans may include only recommendations for the
972 conceptual placement of tangible objects for landscape design
973 projects. Construction documents, details, and specifications
974 for tangible objects and irrigation systems shall be designed or
975 approved by licensed professionals as required by law.

976 Section 36. Subsection (4) of section 481.311, Florida
977 Statutes, is amended to read:

978 481.311 Licensure.—

979 ~~(4) The board shall certify as qualified for a certificate~~
980 ~~of authorization any applicant corporation or partnership who~~
981 ~~satisfies the requirements of s. 481.319.~~

982 Section 37. Subsection (2) of section 481.317, Florida
983 Statutes, is amended to read:

984 481.317 Temporary certificates.—

985 ~~(2) Upon approval by the board and payment of the fee set~~
986 ~~in s. 481.307, the department shall grant a temporary~~
987 ~~certificate of authorization for work on one specified project~~
988 ~~in this state for a period not to exceed 1 year to an out-of-~~
989 ~~state corporation, partnership, or firm, provided one of the~~
990 ~~principal officers of the corporation, one of the partners of~~
991 ~~the partnership, or one of the principals in the fictitiously~~
992 ~~named firm has obtained a temporary certificate of registration~~
993 ~~in accordance with subsection (1).~~

994 Section 38. Section 481.319, Florida Statutes, is amended
995 to read:

996 481.319 Corporate and partnership practice of landscape



753714

997 ~~architecture; certificate of authorization.-~~

998 (1) The practice of or offer to practice landscape
999 architecture by registered landscape architects registered under
1000 this part through a corporation or partnership offering
1001 landscape architectural services to the public, or through a
1002 corporation or partnership offering landscape architectural
1003 services to the public through individual registered landscape
1004 architects as agents, employees, officers, or partners, is
1005 permitted, subject to the provisions of this section, if:

1006 (a) One or more of the principal officers of the
1007 corporation, or partners of the partnership, and all personnel
1008 of the corporation or partnership who act in its behalf as
1009 landscape architects in this state are registered landscape
1010 architects; and

1011 (b) One or more of the officers, one or more of the
1012 directors, one or more of the owners of the corporation, or one
1013 or more of the partners of the partnership is a registered
1014 landscape architect and has applied to be the qualifying agent
1015 for the business organization; ~~and~~

1016 ~~(c) The corporation or partnership has been issued a~~
1017 ~~certificate of authorization by the board as provided herein.~~

1018 (2) All documents involving the practice of landscape
1019 architecture which are prepared for the use of the corporation
1020 or partnership shall bear the signature and seal of a registered
1021 landscape architect.

1022 (3) A landscape architect applying to practice in the name
1023 of a An applicant corporation must shall file with the
1024 department the names and addresses of all officers and board
1025 members of the corporation, including the principal officer or



753714

1026 officers, duly registered to practice landscape architecture in
1027 this state and, also, of all individuals duly registered to
1028 practice landscape architecture in this state who shall be in
1029 responsible charge of the practice of landscape architecture by
1030 the corporation in this state. A landscape architect applying to
1031 practice in the name of a ~~An applicant~~ partnership must shall
1032 file with the department the names and addresses of all partners
1033 of the partnership, including the partner or partners duly
1034 registered to practice landscape architecture in this state and,
1035 also, of an individual or individuals duly registered to
1036 practice landscape architecture in this state who shall be in
1037 responsible charge of the practice of landscape architecture by
1038 said partnership in this state.

1039 (4) Each landscape architect qualifying a partnership or
1040 ~~and corporation licensed~~ under this part must shall notify the
1041 department within 1 month after ~~of~~ any change in the information
1042 contained in the application upon which the license is based.
1043 Any landscape architect who terminates her or his ~~or her~~
1044 employment with a partnership or corporation licensed under this
1045 part shall notify the department of the termination within 1
1046 month after such termination.

1047 ~~(5) Disciplinary action against a corporation or~~
1048 ~~partnership shall be administered in the same manner and on the~~
1049 ~~same grounds as disciplinary action against a registered~~
1050 ~~landscape architect.~~

1051 (5) ~~(6)~~ Except as provided in s. 558.0035, the fact that a
1052 registered landscape architect practices landscape architecture
1053 through a corporation or partnership as provided in this section
1054 does not relieve the landscape architect from personal liability



753714

1055 for her or his ~~or her~~ professional acts.

1056 Section 39. Subsection (5) of section 481.321, Florida
1057 Statutes, is amended to read:

1058 481.321 Seals; display of certificate number.—

1059 (5) Each registered landscape architect must ~~and each~~
1060 ~~corporation or partnership holding a certificate of~~
1061 ~~authorization shall~~ include her or his ~~its~~ certificate number in
1062 any newspaper, telephone directory, or other advertising medium
1063 used by the registered landscape architect, corporation, or
1064 partnership. A corporation or partnership must ~~is not required~~
1065 ~~to~~ display the certificate number ~~numbers~~ of at least one
1066 officer, director, owner, or partner who is a individual
1067 registered landscape architect ~~architects~~ employed by or
1068 practicing with the corporation or partnership.

1069 Section 40. Subsection (5) of section 481.329, Florida
1070 Statutes, is amended to read:

1071 481.329 Exceptions; exemptions from licensure.—

1072 (5) This part does not prohibit any person from engaging in
1073 the practice of landscape design, as defined in s. 481.303(6)
1074 ~~481.303(7)~~, or from submitting for approval to a governmental
1075 agency planting plans that are independent of, or a component
1076 of, construction documents that are prepared by a Florida-
1077 registered professional. Persons providing landscape design
1078 services may ~~shall~~ not use the title, term, or designation
1079 "landscape architect," "landscape architectural," "landscape
1080 architecture," "L.A.," "landscape engineering," or any
1081 description tending to convey the impression that she or he is a
1082 landscape architect unless she or he is registered as provided
1083 in this part.



753714

1084 Section 41. Paragraph (h) of subsection (2) of section
1085 287.055, Florida Statutes, is amended to read:

1086 287.055 Acquisition of professional architectural,
1087 engineering, landscape architectural, or surveying and mapping
1088 services; definitions; procedures; contingent fees prohibited;
1089 penalties.—

1090 (2) DEFINITIONS.—For purposes of this section:

1091 (h) A “design-build firm” means a partnership, corporation,
1092 or other legal entity that:

1093 1. Is certified under s. 489.119 to engage in contracting
1094 through a certified or registered general contractor or a
1095 certified or registered building contractor as the qualifying
1096 agent; or

1097 2. Is certified under s. 471.023 to practice or to offer to
1098 practice engineering; qualified ~~certified~~ under s. 481.219 to
1099 practice or to offer to practice architecture; or qualified
1100 ~~certified~~ under s. 481.319 to practice or to offer to practice
1101 landscape architecture.

1102 Section 42. Present paragraphs (j) and (k) of subsection
1103 (2) of section 548.003, Florida Statutes, are redesignated as
1104 paragraphs (i) and (j), respectively, and present paragraph (i)
1105 of that subsection is amended, to read:

1106 548.003 Florida State Boxing Commission.—

1107 (2) The Florida State Boxing Commission, as created by
1108 subsection (1), shall administer the provisions of this chapter.
1109 The commission has authority to adopt rules pursuant to ss.
1110 120.536(1) and 120.54 to implement the provisions of this
1111 chapter and to implement each of the duties and responsibilities
1112 conferred upon the commission, including, but not limited to:



753714

1113 ~~(i) Designation and duties of a knockdown timekeeper.~~

1114 Section 43. Subsection (1) of section 548.017, Florida
1115 Statutes, is amended to read:

1116 548.017 Participants, managers, and other persons required
1117 to have licenses.—

1118 (1) A participant, manager, trainer, second, ~~timekeeper,~~
1119 referee, judge, ~~announcer,~~ physician, matchmaker, or promoter
1120 must be licensed before directly or indirectly acting in such
1121 capacity in connection with any match involving a participant. A
1122 physician approved by the commission must be licensed pursuant
1123 to chapter 458 or chapter 459, must maintain an unencumbered
1124 license in good standing, and must demonstrate satisfactory
1125 medical training or experience in boxing, or a combination of
1126 both, to the executive director before working as the ringside
1127 physician.

1128
1129 ===== T I T L E A M E N D M E N T =====

1130 And the title is amended as follows:

1131 Delete lines 2 - 12

1132 and insert:

1133 An act relating to licensing and training; amending s.
1134 944.801, F.S.; authorizing the Department of
1135 Corrections to contract with certain entities to
1136 provide educational services for the Correctional
1137 Education Program; amending s. 951.176, F.S. ;
1138 authorizing each county to contract with certain
1139 entities to provide educational services for county
1140 inmates; amending s. 1011.80, F.S.; removing a
1141 provision prohibiting state funds for the operation of



753714

1142 postsecondary workforce programs from being used for
1143 the education of certain state inmates; amending s.
1144 120.565, F.S.; authorizing a person to seek a
1145 declaratory statement from an agency as to the effect
1146 of the person's criminal background on his or her
1147 eligibility for certain licenses, registrations, or
1148 certificates; specifying that a person may seek a
1149 declaratory statement before meeting any prerequisites
1150 for the license, registration, or certification;
1151 requiring that an agency's conclusion in the
1152 declaratory statement contain certain statements;
1153 providing that the agency's conclusion is binding
1154 except under certain circumstances; requiring a person
1155 seeking a declaratory statement to submit certain
1156 items to the agency and pay certain fees and costs;
1157 providing requirements for the processing of the
1158 fingerprints; requiring the petitioner to pay the
1159 actual cost of processing the fingerprints; amending
1160 s. 326.004, F.S.; deleting the requirement for a yacht
1161 broker to maintain a separate license for each branch
1162 office; deleting the requirement for the Division of
1163 Florida Condominiums, Timeshares, and Mobile Homes to
1164 establish a fee; amending s. 447.02, F.S.; conforming
1165 provisions; repealing s. 447.04, F.S., relating to
1166 licensure and permit requirements for business agents;
1167 repealing s. 447.041, F.S., relating to hearings for
1168 persons or labor organizations denied licensure as
1169 business agents; repealing s. 447.045, F.S., relating
1170 to confidential information obtained during the



753714

1171 application process; repealing s. 447.06, F.S.,
1172 relating to required registration of labor
1173 organizations; amending s. 447.09, F.S.; deleting
1174 certain prohibited actions relating to the right of
1175 franchise of a member of a labor organization;
1176 repealing s. 447.12, F.S., relating to registration
1177 fees; repealing s. 447.16, F.S., relating to
1178 applicability; amending s. 447.305, F.S.; deleting a
1179 provision that requires notification of registrations
1180 and renewals to the Department of Business and
1181 Professional Regulation; amending s. 455.213, F.S.;
1182 conforming a cross-reference; requiring the board to
1183 use a specified process for the review of an
1184 applicant's criminal record to determine the
1185 applicant's eligibility for certain licenses;
1186 prohibiting the conviction of a crime before a
1187 specified date from being grounds for the denial of
1188 certain licenses; defining the term "conviction";
1189 authorizing a person to apply for a license before his
1190 or her lawful release from confinement or supervision;
1191 prohibiting additional fees for an applicant confined
1192 or under supervision; prohibiting the board from
1193 basing a denial of a license application solely on the
1194 applicant's current confinement or supervision;
1195 authorizing the board to stay the issuance of an
1196 approved license under certain circumstances;
1197 requiring the board to verify an applicant's release
1198 with the Department of Corrections; providing
1199 requirements for the appearance of certain applicants



753714

1200 at certain meetings; requiring the board to adopt
1201 rules specifying how certain crimes affect an
1202 applicant's eligibility for licensure; amending s.
1203 464.203, F.S.; prohibiting the conviction of a crime
1204 before a specified date from being grounds for the
1205 denial of a certification under certain circumstances;
1206 prohibiting the conviction of a crime before a
1207 specified date from being grounds for the failure of a
1208 background screening; defining the term "conviction";
1209 authorizing a person to apply for certification before
1210 his or her lawful release from confinement or
1211 supervision; prohibiting additional fees for an
1212 applicant confined or under supervision; prohibiting
1213 the board from basing the denial of a certification
1214 solely on the applicant's current confinement or
1215 supervision; authorizing the board to stay the
1216 issuance of an approved certificate under certain
1217 circumstances; requiring the board to verify an
1218 applicant's release with the Department of
1219 Corrections; providing requirements for the appearance
1220 of certain applicants at certain meetings; requiring
1221 the board to adopt rules specifying how certain crimes
1222 may affect an applicant's eligibility for
1223 certification; amending s. 400.211, F.S.; conforming a
1224 cross-reference; amending s. 469.006, F.S.; revising
1225 licensure requirements for asbestos abatement
1226 consulting or contracting as a partnership,
1227 corporation, business trust, or other legal entity;
1228 amending s. 469.009, F.S.; conforming provisions;



753714

1229 amending s. 476.034, F.S.; defining the terms
1230 "restricted barber" and "restricted barbering";
1231 amending s. 476.114, F.S.; providing requirements for
1232 licensure by examination as a restricted barber;
1233 amending s. 476.144, F.S.; requiring the Department of
1234 Business and Professional Regulation to license an
1235 applicant who the board certifies is qualified to
1236 practice restricted barbering; amending s. 477.013,
1237 F.S.; revising and providing definitions; repealing s.
1238 477.0132, F.S., relating to registration for hair
1239 braiding, hair wrapping, and body wrapping; amending
1240 s. 477.0135, F.S.; providing that licensure or
1241 registration is not required for persons whose
1242 occupation or practice is confined solely to hair
1243 braiding, hair wrapping, body wrapping, nail
1244 polishing, and makeup application; amending s.
1245 477.019, F.S.; conforming provisions; amending s.
1246 477.0201, F.S.; providing requirements for
1247 registration as a nail specialist, facial specialist,
1248 or full specialist; amending ss. 477.026, 477.0265,
1249 and 477.029, F.S.; conforming provisions; amending s.
1250 481.203, F.S.; revising a definition; amending s.
1251 481.219, F.S.; revising the process by which a
1252 business organization obtains the requisite license to
1253 perform architectural services or interior design;
1254 requiring that a licensee or an applicant apply to
1255 qualify a business organization to practice
1256 architecture or interior design; providing application
1257 requirements; authorizing the Board of Architecture



753714

1258 and Interior Design to deny an application under
1259 certain circumstances; providing notice requirements;
1260 prohibiting a business organization from engaging in
1261 certain practices until it is qualified by a
1262 qualifying agent; authorizing the executive director
1263 or the chair of the board to authorize a temporary
1264 qualifying agent for a specified timeframe under
1265 certain circumstances; requiring the board to allow an
1266 applicant to qualify one or more business
1267 organizations or to operate using a fictitious name
1268 under certain circumstances; deleting a requirement
1269 for the administration of disciplinary action against
1270 a corporation, limited liability company, or
1271 partnership; conforming provisions to changes made by
1272 the act; amending s. 481.221, F.S.; requiring a
1273 business organization to include the license number of
1274 a certain registered architect or interior designer in
1275 any advertising; providing an exception; conforming
1276 provisions to changes made by the act; amending s.
1277 481.229, F.S.; conforming provisions to changes made
1278 by the act; amending s. 481.303, F.S.; revising
1279 definitions; amending ss. 481.311 and 481.317, F.S.;
1280 conforming provisions; amending s. 481.319, F.S.;
1281 deleting the requirement for a certificate of
1282 authorization; authorizing landscape architects to
1283 practice through a corporation or partnership;
1284 amending s. 481.321, F.S.; revising requirements
1285 related to the display of a certificate number;
1286 amending s. 481.329, F.S.; conforming a cross-



753714

1287 reference; amending s. 287.055, F.S.; conforming a
1288 provision; amending s. 548.003, F.S.; deleting the
1289 requirement that the Florida State Boxing Commission
1290 adopt rules relating to a knockdown timekeeper;
1291 amending s. 548.017, F.S.; deleting the licensure
1292 requirement for a timekeeper or announcer; providing
1293 an



516598

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
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	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Brandes) recommended the following:

1 **Senate Substitute for Amendment (753714) (with title**
2 **amendment)**

3
4 Before line 17
5 insert:

6 Section 1. Subsection (4) is added to section 120.565,
7 Florida Statutes, to read:

8 120.565 Declaratory statement by agencies.—

9 (4) (a) Any person may seek a declaratory statement
10 regarding an agency's opinion as to the effect of the



516598

11 petitioner's criminal background on his or her eligibility for a
12 specific occupational or professional license, registration, or
13 certificate issued by the agency based on the applicable
14 statutes and rules for the occupation or profession. The
15 petition may include mitigating factors or other information the
16 petitioner believes relevant to establish the petitioner's
17 eligibility, including, but not limited to, the time elapsed
18 since completion of or lawful release from confinement,
19 supervision, or nonmonetary condition imposed by the court for a
20 disqualifying offense, and the petitioner's standing in his or
21 her community. A person may seek a declaratory statement under
22 this subsection before attaining any education, training,
23 experience, or other prerequisites for the license,
24 registration, or certification.

25 (b) The agency's conclusion in the declaratory statement
26 must indicate whether:

27 1. The petitioner is disqualified from obtaining the
28 license, registration, or certification due to the petitioner's
29 criminal background, regardless of the petitioner's education,
30 training, experience, or other prerequisites required for the
31 license, registration, or certification.

32 2. The petitioner is not eligible for a specified
33 occupational or professional license, registration, or
34 certification because of his or her criminal background, but
35 that the conclusion may be reversed upon the petitioner's
36 presentation of evidence of rehabilitation or mitigation
37 identified by the agency in the declaratory statement at any
38 time subsequent to the issuance of the declaratory statement.

39 3. Federal laws or regulations may impede the petitioner's



516598

40 licensure, registration, or certification in the profession or
41 occupation.

42 4. Conditions or restrictions imposed by the court on the
43 petitioner for a disqualifying offense may impede the
44 petitioner's licensure, registration, or certification in the
45 profession or occupation.

46 (c) The agency's conclusion in the declaratory statement
47 shall be binding on the agency as to the petitioner, unless the
48 petitioner's subsequent criminal history constitutes an
49 independent basis for denial of the petitioner's application for
50 a license, registration, or certification in the profession or
51 occupation. The agency's conclusion is subject to judicial
52 review pursuant to s. 120.68.

53 (d) A person seeking a declaratory statement under this
54 subsection must submit to the agency, in addition to the
55 petition for a declaratory statement:

- 56 1. A fee set by the agency not to exceed \$100;
57 2. A certified copy of each criminal judgment rendered
58 against the petitioner; and
59 3. A complete set of electronic fingerprints.

60 (e) The agency shall submit the fingerprints to the
61 Department of Law Enforcement for a state criminal history
62 record check and the Department of Law Enforcement shall forward
63 them to the Federal Bureau of Investigation for a national
64 criminal history record check. The agency shall review the
65 criminal history record results to determine if the petitioner
66 meets licensure, registration, or certification requirements.
67 The petitioner shall pay the actual cost of state and federal
68 processing in addition to the fee in subparagraph (d)1.



69 Section 2. Present subsections (3) through (12) of section
70 455.213, Florida Statutes, are redesignated as subsections (4)
71 through (13), respectively, subsection (2) of that section is
72 amended, and a new subsection (3) is added to that section, to
73 read:

74 455.213 General licensing provisions.—

75 (2) Before the issuance of any license, the department may
76 charge an initial license fee as determined by rule of the
77 applicable board or, if no such board exists, by rule of the
78 department. Upon receipt of the appropriate license fee, except
79 as provided in subsection (4) ~~(3)~~, the department shall issue a
80 license to any person certified by the appropriate board, or its
81 designee, or the department when there is no board, as having
82 met the applicable requirements imposed by law or rule. However,
83 an applicant who is not otherwise qualified for licensure is not
84 entitled to licensure solely based on a passing score on a
85 required examination. Upon a determination by the department
86 that it erroneously issued a license, or upon the revocation of
87 a license by the applicable board, or by the department when
88 there is no board, the licensee must surrender his or her
89 license to the department.

90 (3) (a) Notwithstanding any other provision of law, the
91 board shall use the process in this subsection for review of an
92 applicant's criminal record to determine his or her eligibility
93 for licensure as a:

- 94 1. Barber under chapter 476;
95 2. Cosmetologist or cosmetology specialist under chapter
96 477; or
97 3. Any of the following construction professions under



516598

98 chapter 489:

99 a. Air-conditioning contractor;

100 b. Electrical contractor;

101 c. Mechanical contractor;

102 d. Plumbing contractor;

103 e. Pollutant storage systems contractor;

104 f. Roofing contractor;

105 g. Septic tank contractor;

106 h. Sheet metal contractor;

107 i. Solar contractor;

108 j. Swimming pool and spa contractor;

109 k. Underground utility and excavation contractor; and

110 l. Other specialty contractors.

111 (b) A conviction for a crime more than 5 years before the

112 date of the application may not be grounds for denial of a

113 license specified in paragraph (a). For purposes of this

114 paragraph, the term "conviction" means a determination of guilt

115 that is the result of a plea or trial, regardless of whether

116 adjudication is withheld.

117 (c)1. A person may apply for a license before his or her

118 lawful release from confinement or supervision. The department

119 may not charge an applicant an additional fee for being confined

120 or under supervision. The board may not deny an application for

121 a license solely on the basis of the applicant's current

122 confinement or supervision.

123 2. After a license application is approved, the board may

124 stay the issuance of a license until the applicant is lawfully

125 released from confinement or supervision and the applicant

126 notifies the board of such release. The board must verify the



516598

127 applicant's release with the Department of Corrections before it
128 issues a license.

129 3. If an applicant is unable to appear in person due to his
130 or her confinement or supervision, the board must permit the
131 applicant to appear by teleconference or video conference, as
132 appropriate, at any meeting of the board or other hearing by the
133 agency concerning his or her application.

134 4. If an applicant is confined or under supervision, the
135 Department of Corrections and the board shall cooperate and
136 coordinate to facilitate the appearance of the applicant at a
137 board meeting or agency hearing in person, by teleconference, or
138 by video conference, as appropriate.

139 (d) The board shall adopt rules specifying the crimes that,
140 if committed, and regardless of adjudication, do not relate to
141 the practice of the profession or the ability to practice the
142 profession and do not constitute grounds for denial of a
143 license.

144 (e) The board shall adopt rules specifying the crimes that,
145 if committed, and regardless of adjudication, relate to the
146 practice of the profession or the ability to practice the
147 profession and may constitute grounds for denial of a license.

148 Section 3. Present subsections (2) through (8) of section
149 464.203, Florida Statutes, are redesignated as subsections (3)
150 through (9), respectively, and a new subsection (2) is added to
151 that section, to read:

152 464.203 Certified nursing assistants; certification
153 requirement.—

154 (2) (a) 1. Except as provided in s. 435.07(4), a conviction
155 for a crime more than 7 years before the date of the application



516598

156 may not be grounds for denial of a certificate to practice as a
157 certified nursing assistant.

158 2. Except as provided in s. 435.07(4), a conviction for a
159 crime more than 7 years before the date of the application may
160 not be grounds for failure of a required background screening.

161 3. For purposes of this paragraph, the term "conviction"
162 means a determination of guilt that is the result of a plea or
163 trial, regardless of whether adjudication is withheld.

164 (b)1. A person may apply for a certificate to practice as a
165 certified nursing assistant before his or her lawful release
166 from confinement or supervision. The department may not charge
167 an applicant an additional fee for being confined or under
168 supervision. The board may not deny an application for a
169 certificate solely on the basis of the person's current
170 confinement or supervision.

171 2. After a certification application is approved, the board
172 may stay the issuance of a certificate until the applicant
173 notifies the board of his or her lawful release from confinement
174 or supervision. The board must verify the applicant's release
175 with the Department of Corrections before it issues a license.

176 3. If an applicant is unable to appear in person due to his
177 or her confinement or supervision, the board must permit the
178 applicant to appear by teleconference or video conference, as
179 appropriate, at any meeting of the board or other hearing by the
180 agency concerning his or her application.

181 4. If an applicant is confined or under supervision, the
182 Department of Corrections and the board shall cooperate and
183 coordinate to facilitate the appearance of the applicant at a
184 board meeting or agency hearing in person, by teleconference, or



516598

185 by video conference, as appropriate.

186 (c) The board shall adopt rules specifying the crimes that,
187 if committed, and regardless of adjudication, do not relate to
188 the practice of the profession or the ability to practice the
189 profession and do not constitute grounds for denial of a
190 certification.

191 (d) The board shall adopt rules specifying the crimes that,
192 if committed, and regardless of adjudication, relate to the
193 practice of the profession or the ability to practice the
194 profession and may constitute grounds for denial of a
195 certification.

196 Section 4. Subsection (4) of section 400.211, Florida
197 Statutes, is amended to read:

198 400.211 Persons employed as nursing assistants;
199 certification requirement.—

200 (4) When employed by a nursing home facility for a 12-month
201 period or longer, a nursing assistant, to maintain
202 certification, shall submit to a performance review every 12
203 months and must receive regular inservice education based on the
204 outcome of such reviews. The inservice training must meet all of
205 the following requirements:

206 (a) Be sufficient to ensure the continuing competence of
207 nursing assistants and must meet the standard specified in s.
208 464.203(8). ~~s. 464.203(7);~~

209 (b) Include, at a minimum:

- 210 1. Techniques for assisting with eating and proper feeding;
211 2. Principles of adequate nutrition and hydration;
212 3. Techniques for assisting and responding to the
213 cognitively impaired resident or the resident with difficult



516598

214 behaviors;

215 4. Techniques for caring for the resident at the end-of-
216 life; and

217 5. Recognizing changes that place a resident at risk for
218 pressure ulcers and falls. ~~and~~

219 (c) Address areas of weakness as determined in nursing
220 assistant performance reviews and may address the special needs
221 of residents as determined by the nursing home facility staff.

222

223 Costs associated with this training may not be reimbursed from
224 additional Medicaid funding through interim rate adjustments.

225

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

227 And the title is amended as follows:

228 Delete line 2

229 and insert:

230 An act relating to licensing and training; amending s.
231 120.565, F.S.; authorizing a person to seek a
232 declaratory statement from an agency as to the effect
233 of the person's criminal background on his or her
234 eligibility for certain licenses, registrations, or
235 certificates; specifying that a person may seek a
236 declaratory statement before meeting any prerequisites
237 for the license, registration, or certification;
238 requiring that an agency's conclusion in the
239 declaratory statement contain certain statements;
240 providing that the agency's conclusion is binding,
241 except under certain circumstances; requiring a person
242 seeking a declaratory statement to submit certain



516598

243 items to the agency and pay certain fees and costs;
244 providing requirements for the processing of
245 fingerprints; requiring the petitioner to pay the
246 actual cost of processing the fingerprints; amending
247 s. 455.213, F.S.; requiring the board to use a
248 specified process for the review of an applicant's
249 criminal record to determine the applicant's
250 eligibility for certain licenses; prohibiting the
251 conviction of a crime before a specified date from
252 being grounds for the denial of certain licenses;
253 defining the term "conviction"; authorizing a person
254 to apply for a license before his or her lawful
255 release from confinement or supervision; prohibiting
256 additional fees for an applicant confined or under
257 supervision; prohibiting the board from basing a
258 denial of a license application solely on the
259 applicant's current confinement or supervision;
260 authorizing the board to stay the issuance of an
261 approved license under certain circumstances;
262 requiring the board to verify an applicant's release
263 with the Department of Corrections; providing
264 requirements for the appearance of certain applicants
265 at certain meetings; requiring the board to adopt
266 rules specifying how certain crimes affect an
267 applicant's eligibility for licensure; conforming a
268 cross-reference; amending s. 464.203, F.S.; providing
269 that the conviction of a crime before a specified date
270 may not serve as grounds for the denial of a
271 certification under certain circumstances; providing



516598

272 that the conviction of a crime before a specified date
273 may not serve as grounds for the failure of a
274 background screening; defining the term "conviction";
275 authorizing a person to apply for certification before
276 his or her lawful release from confinement or
277 supervision; prohibiting additional fees for an
278 applicant confined or under supervision; prohibiting
279 the board from basing the denial of a certification
280 solely on the applicant's current confinement or
281 supervision; authorizing the board to stay the
282 issuance of an approved certificate under certain
283 circumstances; requiring the board to verify an
284 applicant's release with the Department of
285 Corrections; providing requirements for the appearance
286 of certain applicants at certain meetings; requiring
287 the board to adopt rules specifying how certain crimes
288 may affect an applicant's eligibility for
289 certification; amending s. 400.211, F.S.; conforming a
290 cross-reference; amending

By Senator Rouson

19-00514D-18

20181318__

1 A bill to be entitled
2 An act relating to education for prisoners; amending
3 s. 944.801, F.S.; authorizing the Department of
4 Corrections to contract with certain entities to
5 provide educational services for the Correctional
6 Education Program; amending s. 951.176, F.S.;
7 authorizing each county to contract with certain
8 entities to provide educational services for county
9 inmates; amending s. 1011.80, F.S.; removing a
10 provision prohibiting state funds for the operation of
11 postsecondary workforce programs from being used for
12 the education of certain state inmates; providing an
13 effective date.

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

16
17 Section 1. Present subsections (4) and (5) of section
18 944.801, Florida Statutes, are renumbered as subsections (5) and
19 (6), respectively, and a new subsection (4) is added to that
20 section, to read:

21 944.801 Education for state prisoners.—

22 (4) The department may contract with a district school
23 board, the Florida Virtual School, or a charter school
24 authorized to operate under s. 1002.33 to provide educational
25 services for the Correctional Education Program. The educational
26 services may include any educational, career, or vocational
27 training that is authorized by the department.

28 Section 2. Section 951.176, Florida Statutes, is amended to
29 read:

19-00514D-18

20181318__

30 951.176 Provision of education ~~programs for youth.~~

31 (1) Each county may contract with a district school board,
32 the Florida Virtual School, or a charter school authorized to
33 operate under s. 1002.33 to provide educational services for
34 inmates at county detention facilities. The educational services
35 may include any educational, career, or vocational training that
36 is authorized by the sheriff or chief correctional officer, or
37 his or her designee.

38 (2) Minors who have not graduated from high school and
39 eligible students with disabilities under the age of 22 who have
40 not graduated with a standard diploma or its equivalent who are
41 detained in a county or municipal detention facility as defined
42 in s. 951.23 shall be offered educational services by the local
43 school district in which the facility is located. These
44 educational services shall be based upon the estimated length of
45 time the youth will be in the facility and the youth's current
46 level of functioning. School district superintendents or their
47 designees shall be notified by the county sheriff or chief
48 correctional officer, or his or her designee, upon the
49 assignment of a youth under the age of 21 to the facility. A
50 cooperative agreement with the local school district and
51 applicable law enforcement units shall be developed to address
52 the notification requirement and the provision of educational
53 services to these youth.

54 Section 3. Paragraph (b) of subsection (7) of section
55 1011.80, Florida Statutes, is amended to read:

56 1011.80 Funds for operation of workforce education
57 programs.—

58 (7)

19-00514D-18

20181318__

59 (b) State funds provided for the operation of postsecondary
60 workforce programs may not be expended for the education of
61 state inmates with more than 24 months of time remaining to
62 serve on their sentence or federal inmates.

63 Section 4. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair

Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that **Senate Bill #1318**, relating to Education for Prisoners, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink that reads "Darryl Rouson".

Senator Darryl Rouson
Florida Senate, District 19

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.14.18

Meeting Date

753714

Bill Number (if applicable)

1318

Amendment Barcode (if applicable)

Topic _____

Name Barney Bishop

Job Title CEO

Address 204 S. Monroe

Street

Tall

City

FL

State

32301

Zip

Phone 510.9922

Email barney@barneybishop.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1318

Bill Number (if applicable)

Topic Educ.

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr

Phone

Street

Largo FL 33773

Email

City

State

Zip

Speaking: [] For [] Against [X] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Saving Families 7@gmail.com

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.14.18

Meeting Date

1318

Bill Number (if applicable)

Topic Education for Prisoners

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

2/14/18
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1318
Bill Number (if applicable)
753714
Amendment Barcode (if applicable)

Topic De-reg

Name JAKE FARMER

Job Title Legislative Coordinator

Address 227 S Adams Street

City Tallahassee State FL Zip 32301

Phone 352 359 6835

Email Jake@frf.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1332

INTRODUCER: Criminal Justice Committee and Senator Perry and others

SUBJECT: Restoration of Civil Rights

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.	Forbes	Sadberry	ACJ	Recommend: Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1332 requires priority processing of applications for the restoration of civil rights cases by applicants that have never been convicted of specified offenses. The bill defines a “priority application” as an application for the restoration of civil rights submitted by an applicant who has never been convicted of a violent offense. A violent offense is defined as the commission of, an attempt to commit, or a conspiracy to commit any of the offenses enumerated in the bill.

The bill requires the Florida Commission on Offender Review (FCOR) to complete investigations for priority applications submitted prior to July 1, 2018, before a priority application submitted after such date, or any nonpriority application. The FCOR must complete an investigation by:

- July 1, 2022, for a priority application that is submitted before July 1, 2018;
- July 1, 2023, for a priority application submitted on or after July 1, 2018, but before July 1, 2021;
- July 1, 2024, for a priority application submitted on or after July 1, 2021, but before July 1, 2023.

Beginning July 1, 2023, the bill requires the FCOR to complete the investigation for a priority application within one year after its submission. The bill does not impose deadlines on the completion of an investigation for an application that is not designated as a priority application.

The bill also provides various provisions to any application for the restoration of civil rights, regardless of whether such application is designated a priority application or not, which are designed to enhance communication between an applicant and the FCOR.

To complete the priority applications within time limits mandated by the bill, the FCOR is likely to incur additional costs. The magnitude of these costs is indeterminate. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

II. Present Situation:

Restoration of Civil Rights

A person convicted of a felony forfeits specified rights as a result of the conviction. The Florida Constitution requires the loss of the right to vote and the right to hold public office as consequences of a felony conviction.¹ Additional civil rights are lost in accordance with statute, including the right to serve on a jury² and possess a firearm.³ The civil rights of a convicted felon are suspended until restored by a pardon⁴ or restoration of civil rights.⁵ The restoration of civil rights restores to an applicant all of the rights of citizenship in the State of Florida enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms.

The Florida Constitution, in part, grants the power of restoring civil rights to the Governor with the consent of at least two Cabinet members.⁶ The Governor and Cabinet sit as the Executive Board of Clemency (Clemency Board).⁷ The rules of Executive Clemency (rules) which outline the eligibility criteria for the process of restoration of civil rights, are adopted by the Governor with the approval of two members of the Clemency Board.⁸ The Rules provide, in part, that the unfettered discretion to:

- Deny the restoration of civil rights at any time, for any reason, rests with the Governor; and
- Grant the restoration of civil rights at any time, for any reason, rests with the Governor, provided at least two members of the Clemency Board also approve.⁹

¹ FLA. CONST. Article VI, s. 4. The Florida Constitution defines the term “felony” to mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary. FLA. CONST. Article X, s. 10.

² Section 40.013, F.S.

³ Section 790.23, F.S. *See also* s. 790.06(2)(d) and (k), F.S.

⁴ Florida provides for several types of pardons applicable to felony convictions. A full pardon unconditionally releases a person from punishment and forgives guilt for any Florida convictions. It restores to an applicant all of the rights of citizenship possessed by the person before his or her conviction, including the right to own, possess, or use firearms. A pardon without firearm authority releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess, or use firearms. FCOR, *Clemency Overview*, available at <https://www.fcor.state.fl.us/clemencyOverview.shtml> (last visited January 19, 2018).

⁵ Section 944.292, F.S.

⁶ FLA. CONST. Article IV, s. 8(a). This authority is also codified in s. 940.01, F.S.

⁷ Rules of Executive Clemency (2017), Rule 1., available at https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf (last visited January 16, 2018) (hereinafter cited as “Rule”).

⁸ Section 940.03, F.S. *See also* Rule 2.A.

⁹ Rule 4.

Section 940.05, F.S., provides that any person convicted of a felony may be entitled to the restoration of all the rights of citizenship enjoyed by him or her before conviction if the person has:

- Received a full pardon from the Clemency Board;
- Served the maximum term of the sentence imposed upon him or her; or
- Been granted his or her final release by the FCOR.¹⁰

The current rules define the restoration of civil rights as a process that restores all of the applicant's rights of citizenship enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms.¹¹ The rules further provide the specific authority to own, possess, or use a firearm must be restored through the separate process for such rights.¹²

Role of Specified Entities in the Restoration of Civil Rights Process

The FCOR's Office of Executive Clemency, in part, assists in the acceptance, review, and recommendation of applications for restoration of civil rights, as well as the agenda for Clemency Board meetings.¹³ A coordinator must be appointed by the Clemency Board and serves as the official custodian of the records.¹⁴ The FCOR's Office of Clemency Investigations, in part, conducts comprehensive, confidential investigations of persons that have applied for restoration of civil rights.¹⁵ An individual seeking restoration of civil rights submits an application to the Office of Executive Clemency and the application is forwarded to the FCOR for investigation, report, and recommendation.¹⁶

The Department of Corrections (DOC) is required to inform inmates and offenders on community supervision about the restoration of civil rights. Additionally, DOC is required to electronically send to the FCOR a list of the names of inmates who have been released from incarceration and offenders who have been terminated from supervision that may be eligible for restoration of civil rights.¹⁷

¹⁰ Article IV, s. 8, of the Florida Constitution, authorizes the creation of a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime. The qualifications, method of selection and terms, not to exceed six years, of members of the commission shall be proscribed by law. The FCOR, previously known as the Parole Commission, was created in 1941 and renamed in 2014, to perform these functions. *See s. 1, ch. 20519, 1941, L.O.F., and ch. 2014-191, L.O.F.*

¹¹ Rule 4.I.G. Restoration of civil rights in accordance with the Rules does not relieve an applicant from the registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.

¹² *See* Rule 4.I.F.

¹³ Rule 2.B. *See also* FCOR, *Executive Clemency Timeline: 1991-2015*, p. 2 (on file with the Senate Committee on Criminal Justice) (hereinafter cited as "Clemency Timeline").

¹⁴ Clemency Timeline, p. 2.

¹⁵ Section 947.13(1)(d), F.S., requires the FCOR to conduct investigations as may be necessary. *See also* Clemency Timeline, p. 2.

¹⁶ Section 940.03, F.S. *See also* Rules 6 and 7.

¹⁷ Section 940.061, F.S.

Restoration of Civil Rights Under Governor Scott's Administration

The current rules became effective March 9, 2011, after being amended and adopted by the Clemency Board subsequent to Governor Scott taking office.¹⁸ Eligibility for restoration of civil rights is separated out between applications that require a hearing in front of the Clemency Board for approval and those that do not. The investigations for the applications requiring a hearing are more intensive than applications that do not require a hearing.¹⁹

Any applicant, regardless of whether he or she requires a hearing with the Clemency Board, which is submitting an application for the restoration of his or her civil rights to be considered must:

- Have had five years pass since the date of completion of all sentences and conditions of supervision imposed without any new criminal charges;
- Not have any outstanding detainers or pending criminal charges;
- Have paid all restitution in full; and
- Be a citizen of the United States, and, if convicted in a court other than a Florida court, be a legal resident of Florida.²⁰

However, to be eligible for a restoration of civil rights to be granted without a hearing before the Clemency Board, the applicant must also:

- Have never been convicted of an enumerated offense;²¹ and
- Have never been declared to be a specified designation.²²

A person that intends to apply for the restoration of his or her civil rights must either request an application form from the FCOR or download it from the FCOR's website.²³ The current rules require the application to include a certified copy of the applicant's indictment or information, the judgment adjudicating the applicant to be guilty, and the sentence.²⁴

Upon receipt of a person's application for the restoration of civil rights, the FCOR date stamps the application and this date controls the placement of the application in the backlog of pending applications. Staff then performs a cursory review of the application to ensure that all required

¹⁸ Clemency Timeline, p. 5.

¹⁹ See FCOR, *Annual Report 2016-17*, p. 15, available at <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201617.pdf> (last visited January 19, 2018) (hereinafter cited as "Annual Report").

²⁰ Rules 9.A and 10.A.

²¹ Rule 9.A.4., provides an extensive list of offenses that include, but are not limited to, DUI manslaughter, any violation of ch. 800, F.S., aggravated child abuse, robbery, carjacking, home invasion robbery, and exploitation of the elderly.

²² Rule 9.A.5., prohibits an applicant who has ever been designated as a habitual violent felony offender, three-time violent felony offender, violent career criminal, prison release reoffender, or sexual predator from being eligible for restoration of civil rights without a hearing.

²³ Rule 6.A. Section 940.03, F.S., also provides that an application for executive clemency for a person who is sentenced to death must be filed within one year after the date the Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later.

²⁴ An applicant seeking the restoration of civil rights is currently required to include with the application a list of all convictions and provide court documents. See *Application for Clemency*, available at <https://www.fcor.state.fl.us/docs/clemency/ClemencyApplication.pdf> (last visited January 19, 2018). Section 940.04, F.S., provides that such required court documents must be furnished by the clerk of court to the applicant free of charge and without delay.

documents have been submitted and filled out completely. The FCOR reports that an applicant is notified by letter regarding whether the application submission was complete and if not, the applicant is provided an opportunity to make the application whole. Staff then conducts an initial prescreening of the applicant to ensure he or she meets the eligibility criteria proscribed in the rules. If the applicant is determined to be eligible under the rules, his or her application is forwarded for the full investigation to be conducted. The FCOR reports that a quick eligibility review is periodically conducted on the applicant during the waiting period to ensure that he or she remains eligible under the Rules.²⁵

Investigative Duties of the Florida Commission on Offender Review

As mentioned above, the investigations for applications requiring a hearing are more intensive than applications not requiring a hearing. For the investigation of a case that requires a hearing, the FCOR must provide a broad picture of the applicant's history and activities. The FCOR conducts an interview of the applicant and investigates factors including, but not limited to:

- Information related to the felony conviction that led to the revocation of civil rights, including the offense, any co-defendants associated with the case, applicant's acceptance of a plea (if applicable), sentence imposed, and status on the payment of fines, court costs, fees, and victim restitution;
- An applicant-reported narrative of the offense that led to the revocation of civil rights;
- The applicant's entire criminal history record;
- History of:
 - Adjustment to incarceration or supervision;
 - Domestic violence, if applicable;
 - Alcohol and substance abuse, if applicable;
 - Employment; and
 - Military service;
- Traffic record, if applicable;
- Voter registration information;
- Citizenship verification; and
- Input from the court, state attorney, and victim.²⁶

An investigation for an application that does not require a hearing reviews more limited factors, similar to such information that is obtained through a criminal or employment background search performed by the FDLE, such as:

- Felony convictions;
- Circumstances of the offense;
- Criminal record;
- Domestic violence information; and
- Confidential victim memorandum, if deemed necessary by the investigator.²⁷

²⁵ *Id.*

²⁶ *Id.* and Annual Report, p. 15.

²⁷ Electronic mail from Alec Yarger, Director of Legislative Affairs, FCOR, (January 18, 2018) (on file with the Senate Criminal Justice Committee).

The FCOR reports that it cannot accurately estimate how long it takes to complete an investigation for either type of restoration of civil rights case because it does not capture this data.²⁸

When an investigation is complete, an additional quality assurance review is conducted to ensure the investigation is accurate and the FCOR's advisory recommendation is obtained for submission to the Clemency Board.²⁹ A confidential case analysis, which summarizes the findings of the investigation and the advisory recommendation, is prepared for any investigation conducted on a case that requires a hearing. Clemency applicants are mailed a copy of their investigative reports prior to each scheduled Clemency Board meeting.³⁰ The FCOR states that it sends the case analysis to both the Clemency Board and the applicant at the same time.³¹ It does not appear that there is an opportunity for the applicant to dispute any information included in the report.

The FCOR reports it has a total of 53 investigators on its staff including:

- 32 investigators that conduct investigations for each of the various types of cases that fall under the purview of the FCOR, including investigations required for conditional medical release, parole, pardons, commutations, and clemency cases; and
- 21 investigators that solely perform clemency investigations, which includes restoration of civil rights.³²

Further, the FCOR reports that investigators who handle all the various types of cases must give priority to cases that have statutorily mandated time frames, such as parole or conditional medical release, and therefore an investigation for a restoration of civil rights case may get delayed if a time sensitive case is assigned to the investigator.³³ Currently, there are no statutorily imposed time frames imposed on any portion of the restoration of civil rights investigation process.

Resolution of an Application that Does Not Require a Hearing

The FCOR must review the application of an individual who has applied for restoration of civil rights. For a restoration of civil rights application that does not require a hearing, the FCOR Office of Executive Clemency coordinator must issue a preliminary review list of all individuals who meet the eligibility requirements and submit it to the Clemency Board.³⁴ If the Governor, plus two members, approve an individual's restoration of civil rights without a hearing within 60 days of issuance of the preliminary review list, the FCOR coordinator must issue a certificate that grants the individual restoration of civil rights upon signature of the Governor and two

²⁸ *Id.*

²⁹ *Id.*

³⁰ Annual Report, p. 15.

³¹ Electronic mail from Alec Yarger, Director of Legislative Affairs, FCOR, (January 18, 2018) (on file with the Senate Criminal Justice Committee).

³² Electronic mail from Alec Yarger, Director of Legislative Affairs, FCOR, (January 18, 2018) (on file with the Senate Criminal Justice Committee).

³³ *Id.*

³⁴ Rule 9.B.

Clemency Board members.³⁵ If approval is not granted, that candidate will be notified and may pursue restoration of civil rights with a hearing.³⁶

Resolution of an Application that Requires a Hearing

Once the investigation, report, and recommendation has been complete, the FCOR Office of Executive Clemency coordinator may place an application on the agenda for the next scheduled meeting of the Clemency Board.³⁷ The Clemency Board met four times in 2017, and heard approximately 85-95 hearings each agenda, with approximately 56 percent of the hearings being for restoration of civil rights cases.³⁸

Current Backlog for Restoration of Civil Rights Investigations

As of January 1, 2018, the FCOR reports that there are 10,264 restoration of civil rights cases awaiting an investigation and hearing, of which 391 are applications that do not require a hearing with the Clemency Board and 9,873 applications that do require a hearing. This number does not include cases that are specific to the restoration of the specific authority to own, possess, or use firearms.³⁹

On November 1, 2017, the Ethics and Elections Committee of the Constitutional Revision Commission heard presentations on the process and existing backlog for restoration of civil rights applications in Florida. Julia McCall, Coordinator of the Office of Executive Clemency, stated at the meeting that about 300 cases are scheduled for a hearing with the Clemency Board each year from the 6,000 applications received annually and the average wait for a hearing is 9.2 years.⁴⁰

III. Effect of Proposed Changes:

The bill creates s. 947.131, F.S., to require priority processing of applications for the restoration of civil rights cases by applicants that have never been convicted of a “violent felony.” The bill also specifies deadlines for processing the backlog of cases designated under the bill as “priority applications.”

A “priority application” means an application for the restoration of civil rights submitted by an applicant who has never been convicted of a violent offense.

³⁵ *Id.* The coordinator issues these certificates pursuant to executive order and the certificate must specifically exclude the authority to own, possess, or use firearms, unless otherwise separately approved by the Clemency Board. FLA. CONST. Article IV, s. 8, requires such signatures.

³⁶ Rule 9.B.

³⁷ Rule 11.A.1.

³⁸ FCOR reports that in last year’s Clemency Board meetings there were a total of 363 cases set for hearing, with 205 of those cases being for restoration of civil rights applicants. *See* Electronic mail from Alec Yarger, Director of Legislative Affairs, FCOR, (January 18, 2018) (on file with the Senate Criminal Justice Committee).

³⁹ Electronic mail from Alec Yarger, Director of Legislative Affairs, FCOR, (January 17, 2018) (on file with the Senate Criminal Justice Committee).

⁴⁰ The Florida Times-Union, *Restoration of rights backlog highlights need for change, CRC committee says*, Tia Mitchell, (November 1, 2017), available at <http://jacksonville.com/news/florida/2017-11-01/restoration-rights-backlog-highlights-need-change-crc-committee-says> (last visited January 17, 2018).

A violent offense is defined to mean the commission of, an attempt to commit, or a conspiracy to commit any of the following:

- Leaving the scene of a crash involving death or serious bodily injury in violation of s. 316.027, F.S.;
- Driving under the influence resulting in death or serious bodily injury in violation of s. 316.193, F.S.;
- An offense enumerated in s. 775.084(1)(d), F.S.,⁴¹ excluding burglary as defined in s. 810.02(4), F.S.;⁴²
- Failure to register as a sexual predator in violation of s. 775.21, F.S., or as a sexual offender in violation of s. 943.0435, F.S.;
- Facilitating or furthering terrorism in violation of s. 775.31, F.S.;
- False imprisonment in violation of s. 787.02, F.S.;
- Abuse, aggravated abuse, and neglect of an elderly person or disabled adult in violation of s. 825.102, F.S.;
- An offense in violation of ch. 847, F.S.;
- Poisoning of food or water in violation of s. 859.01, F.S.;
- Abuse of a dead human body in violation of s. 872.06, F.S.;
- A first or second degree felony in violation of ch. 893, F.S.; or
- An offense which requires a person to register as a sexual offender in accordance with s. 943.0435, F.S.⁴³

⁴¹ Section 775.084(1)(d), F.S., includes the following offenses: treason (s. 876.32, F.S.); murder (s. 782.04, F.S., or s. 782.065, F.S.); manslaughter (s. 782.07, F.S.); sexual battery (s. 794.011, F.S.); carjacking (s. 812.133, F.S.); home-invasion robbery (s. 812.135, F.S.); robbery (s. 812.13, F.S.); burglary (s. 810.02, F.S.); arson (s. 806.01, F.S., or s. 806.031, F.S.); kidnapping (s. 910.14, F.S.); aggravated assault (s. 784.021, F.S.); aggravated battery (s. 784.045, F.S.); aggravated stalking (s. 784.048, F.S.); aircraft piracy (s. 860.16, F.S.); unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.1615, F.S.); aggravated child abuse (s. 827.03(2)(a), F.S.); aggravated abuse of an elderly person or disabled adult (s. 825.102(2), F.S.); lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition (s. 800.04, F.S., or s. 847.0135(5), F.S.); escape (s. 944.40, F.S.); a felony violation of ch. 790, F.S., involving the use or possession of a firearm, or any other felony which involves the use or threat of physical force or violence against any individual.

⁴² Therefore, the unoccupied burglary of a structure or conveyance will be eligible to be designated as a priority application under the bill.

⁴³ Section 943.0435, F.S., includes the following offenses: sexual misconduct by a covered person (s. 393.135(2), F.S.); sexual misconduct by an employee (s. 394.4593(2), F.S.); kidnapping (s. 787.01, F.S.), false imprisonment (s. 787.02, F.S.), or luring or enticing a child (s. 787.025(2)(c), F.S.), where the victim is a minor; human trafficking (s. 787.06(3)(b), (d), (f), or (g), F.S., or former s. 787.06(3)(h), F.S.); sexual battery (s. 794.011, F.S., excluding s. 794.011(10), F.S.); unlawful sexual activity with certain minors (s. 794.05, F.S.); former procuring person under age of 18 for prostitution [s. 796.03, F.S. (2014)]; former selling or buying of minors into prostitution [s. 796.035, F.S. (2014)]; lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age (s. 800.04, F.S.); video voyeurism (s. 810.145(8), F.S.); lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person (s. 825.1025, F.S.); sexual performance by a child (s. 827.071, F.S.); prohibition of certain acts in connection with obscenity (s. 847.0133, F.S.); computer pornography (s. 847.0135, F.S., excluding s. 847.0135(6), F.S.); transmission of pornography by electronic device or equipment prohibited (s. 847.0137, F.S.); transmission of material harmful to minors to a minor by electronic device or equipment prohibited (s. 847.0138, F.S.); selling or buying of minors (s. 847.0145, F.S.); prohibited activities/RICO (s. 895.03, F.S., if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in s. 943.0435(1)(h)1.a.(I), F.S., or at least one offense listed in s. 943.0435(1)(h)1.a.(I), F.S., with sexual intent or motive); sexual misconduct prohibited (s. 916.1075(2), F.S.); or sexual misconduct prohibited (s. 985.701(1), F.S.); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in s. 943.0435(1)(h)1.a.(I), F.S.

Priority applications submitted prior to July 1, 2018, must be processed and investigated completely before a priority application submitted after such date, or a nonpriority application, regardless of the submission date. Deadlines for processing and completing the investigation of a priority application specified, including by:

- July 1, 2022, for a priority application that is submitted before July 1, 2018;
- July 1, 2023, for a priority application submitted on or after July 1, 2018, but before July 1, 2021;
- July 1, 2024, for a priority application submitted on or after July 1, 2021, but before July 1, 2023.

Beginning July 1, 2023, the bill requires the FCOR to complete the investigation for a priority application within one year after the submission of the application. The bill does not impose deadlines on the completion of investigations for applications that are not designated priority applications.

Various guidelines for the processing of any application for the restoration of civil rights are established, regardless of whether such application is designated a priority application or not.

The bill requires:

- An applicant to keep the FCOR updated with correct contact information, including mailing address and email address throughout the clemency process.
- The FCOR to provide written notification to the applicant annually regarding the status of the pending application, which must include the number of applications pending in front of the applicant's application.⁴⁴
- The FCOR to notify an applicant within 30 days of completing the prescreening review of any incomplete portions of the application or any facts that are determined in the prescreening review⁴⁵ to deem the applicant ineligible for restoration of civil rights. The applicant is provided 45 days to remedy any incomplete portions or discrepancies.
- The FCOR to provide a copy of the confidential case analysis⁴⁶ prepared for any restoration of civil rights case to the applicant immediately upon completion, which must be no less than 45 days prior to the FCOR submitting the analysis to the Clemency Board. An applicant is given 45 days to dispute and remedy any discrepancies in the confidential case analysis report before the FCOR submits the report to the Clemency Board.

The bill requires the FCOR to provide specified information on the status of the application if a member of the Senate or House of Representatives submits a written request on behalf of his or her constituent.⁴⁷ The information that must be submitted by the FCOR includes, but is not limited to:

- Whether the submission of the application at issue is deemed complete or incomplete;
- How many applications are pending before the application at issue;

⁴⁴ The bill authorizes the annual status notification to be sent via email.

⁴⁵ The bill defines the term "prescreening review" to mean the initial review to determine eligibility which is conducted by the FCOR upon receipt of an application for restoration of civil rights.

⁴⁶ The bill defines "confidential case analysis report" to mean the final report prepared by the commission which details the findings of the restoration of civil rights investigation and the FCOR's recommendation.

⁴⁷ Section 14.28, F.S., provides that all records developed or received by any state entity pursuant to a Clemency Board investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such records may be released upon the approval of the Governor.

- Whether the application at issue has been assigned to an investigator; and
- Whether the investigative process has been initiated.

The bill provides the FCOR rulemaking authority to implement the provisions of the act.

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The FCOR cannot provide data on how many of the approximately 10,000 backlog cases will qualify as priority applications. Although the workload of the FCOR does not increase, the rate at which the FCOR must complete its work must increase. To meet the time requirements mandated by the bill, the FCOR is likely to incur additional costs. The magnitude of these costs is indeterminate.

According to FDLE, the bill will likely have no fiscal impact on the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 947.131 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 22, 2018:

The committee substitute:

- Modifies the list of offenses that prohibit an application from being designated as a priority application;
- Deletes the provision requiring the Florida Department of Law Enforcement to run the criminal history for the FCOR;
- Maintains the confidential and exempt status of records collected in a restoration of civil rights investigation; and
- Clarifies the information that must be released by the FCOR when requested by a member of the Legislature.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senators Perry and Rouson

591-02330-18

20181332c1

1 A bill to be entitled
2 An act relating to the restoration of civil rights;
3 creating s. 947.131, F.S.; defining terms; requiring
4 that an application for the restoration of civil
5 rights which has been submitted before a specified
6 date and which qualifies as a priority application be
7 processed and the investigation be completed before
8 certain other applications; specifying deadlines to
9 complete investigations for certain priority
10 applications; requiring the applicant to keep the
11 Florida Commission on Offender Review informed of his
12 or her correct address, including his or her e-mail
13 address, throughout the clemency process; requiring
14 the commission to provide annual written notification
15 to the applicant on the status of the application
16 review process; providing requirements for such
17 notification; requiring the commission to notify an
18 applicant within a specified time of any incomplete
19 portions of the application or any facts that are
20 determined in the prescreening review to deem the
21 applicant ineligible for restoration of civil rights;
22 requiring an applicant to be given a specified time to
23 remedy any incomplete portions or discrepancies in the
24 application; requiring a confidential case analysis
25 report prepared by the commission to be submitted to
26 the applicant immediately upon completion, subject to
27 certain requirements; requiring an applicant to be
28 given a specified time to dispute and remedy any
29 discrepancies in the confidential case analysis

591-02330-18

20181332c1

30 report; requiring the commission to provide
31 information on the status of an application if a
32 member of the Senate or the House of Representatives
33 submits any written request to the commission for such
34 information on behalf of the member's constituent;
35 providing rulemaking authority; providing an effective
36 date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Section 947.131, Florida Statutes, is created to
41 read:

42 947.131 Restoration of civil rights; investigations
43 conducted by the commission.-

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

45 (a) "Applicant" means a person applying to the commission
46 for the restoration of his or her civil rights.

47 (b) "Confidential case analysis report" means the final
48 report prepared by the commission which details the findings of
49 the restoration of civil rights investigation and the
50 commission's recommendation.

51 (c) "Prescreening review" means the initial review to
52 determine eligibility which is conducted by the commission upon
53 receipt of an application for restoration of civil rights.

54 (d) "Priority application" means an application for the
55 restoration of civil rights submitted by an applicant who has
56 never been convicted of a violent felony offense.

57 (e) "Violent felony offense" means the commission of, an
58 attempt to commit, or a conspiracy to commit any of the

591-02330-18

20181332c1

59 following:

60 1. Leaving the scene of a crash involving death or serious
61 bodily injury in violation of s. 316.027;

62 2. Driving under the influence resulting in death or
63 serious bodily injury in violation of s. 316.193;

64 3. An offense enumerated in s. 775.084(1)(d), excluding
65 burglary as defined in s. 810.02(4);

66 4. Failure to register as a sexual predator in violation of
67 s. 775.21 or as a sexual offender in violation of s. 943.0435;

68 5. Facilitating or furthering terrorism in violation of s.
69 775.31;

70 6. False imprisonment in violation of s. 787.02;

71 7. Abuse, aggravated abuse, and neglect of an elderly
72 person or disabled adult in violation of s. 825.102;

73 8. An offense in violation of chapter 847;

74 9. Poisoning of food or water in violation of s. 859.01;

75 10. Abuse of a dead human body in violation of s. 872.06;

76 11. A first or second degree felony in violation of chapter
77 893; or

78 12. An offense which requires a person to register as a
79 sexual offender in accordance with s. 943.0435.

80 (2)(a) An application that has been submitted before July
81 1, 2018, which qualifies as a priority application pursuant to
82 this section must be processed and the investigation completed
83 before an application that:

84 1. Is submitted on or after July 1, 2018, which qualifies
85 as a priority application; or

86 2. Does not qualify as a priority application, regardless
87 of the submission date.

591-02330-18

20181332c1

88 (b) An investigation for a priority application that is
89 submitted before July 1, 2018, must be completed by July 1,
90 2022.

91 (c) An investigation for a priority application that is
92 submitted on or after July 1, 2018, but before July 1, 2021,
93 must be completed by July 1, 2023.

94 (d) An investigation for a priority application that is
95 submitted on or after July 1, 2021, but before July 1, 2023,
96 must be completed by July 1, 2024.

97 (e) Beginning July 1, 2023, the commission shall complete
98 the investigation for a priority application within 1 year after
99 the submission of the application.

100 (3) (a) The applicant shall keep the commission informed of
101 his or her correct address, including his or her e-mail address,
102 throughout the clemency process.

103 (b)1. The commission shall provide annual written
104 notification to the applicant on the status of the application
105 review process. Notification may be made by e-mail if such
106 address is provided by the applicant.

107 2. The written notification must include the number of
108 applications which are pending and which will be handled before
109 the applicant's application will begin being reviewed.

110 (c) The commission shall notify an applicant within 30 days
111 after completion of the prescreening review of any incomplete
112 portions of the application or any facts that are determined in
113 the prescreening review to deem the applicant ineligible for
114 restoration of civil rights. An applicant shall be given 45 days
115 to remedy any incomplete portions or discrepancies in the
116 application.

591-02330-18

20181332c1

117 (4) The confidential case analysis report prepared by the
118 commission shall be submitted to the applicant immediately upon
119 completion, which must be no less than 45 days before the
120 commission is scheduled to submit the report to the Board of
121 Executive Clemency. An applicant shall be given 45 days to
122 dispute and remedy any discrepancies in the confidential case
123 analysis report before the commission submits the report to the
124 Board of Executive Clemency.

125 (5) If a member of the Senate or the House of
126 Representatives submits any written request to the commission
127 regarding the status of an application on behalf of his or her
128 constituent, the commission must provide such information,
129 including, but not limited to, whether submission of the
130 application at issue is deemed complete or incomplete, how many
131 applications are pending before the application at issue,
132 whether the application at issue has been assigned to an
133 investigator, and whether the investigative process has been
134 initiated.

135 (6) The commission may adopt rules pursuant to chapter 120
136 to implement this section.

137 Section 2. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request


To: Senator Jeff Brandes, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: January 22, 2018

I respectfully request that **Senate Bill #1332**, relating to Restoration of Civil Rights, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.14.18

Meeting Date

1332

Bill Number (if applicable)

Topic Restoration of Civil Rights

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-14-18

Meeting Date

1332

Bill Number (if applicable)

Topic RESOLUTION OF CIVIL RIGHTS

Amendment Barcode (if applicable)

Name Bill Cervone

Job Title STATE ATTORNEY - 8 COR

Address 120 W UNIVERSITY AVE

Phone 352-374-3686

Street

Gainesville FL 32601

Email CERVONEW@SFO8.ORG

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA PROSECUTING ATTORNEYS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1332

Bill Number (if applicable)

Topic RESTORATION OF CIVIL RIGHTS

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title POLICY ADVISOR

Address 115 S. ANDREWS AVE.

Phone 954-253-7320

Street

FT. LAUDERDALE

FL

33301

Email dsainvil@broward.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing BROWARD COUNTY GOVT

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-14-18

Meeting Date

SB 1332

Bill Number (if applicable)

Topic Restoration of Civil rights

Amendment Barcode (if applicable)

Name Brett Farrell

Job Title Electrician

Address 7018 SW 46th Avenue

Street

Phone _____

Gainesville

City

FL

State

32608

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1332

Bill Number (if applicable)

Topic Restoration of civil rights

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 824 N Duval

Phone

Street

24 FL 32303

Email

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing Right on Crime

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1392

INTRODUCER: Criminal Justice Committee and Senator Brandes

SUBJECT: Prearrest Diversion Programs

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1392 requires the state attorney, the public defender, the clerk of the circuit court, and law enforcement agencies to establish a prearrest diversion program for adults and a civil citation or similar diversion program for juveniles in each judicial circuit.

Each judicial circuit's prearrest and civil citation or similar diversion program must specify:

- The misdemeanor offenses that qualify an offender for participation in the program;
- The eligibility criteria for the program;
- The program's implementation and operation;
- The program's requirements, including, but not limited to:
 - The completion of community service hours;
 - Payment of restitution, if applicable; and
 - Intervention services indicated by a needs assessment of the offender; and
- A program fee, if any, to be paid by a participant of the program.

The bill requires the Florida Department of Law Enforcement (FDLE) to adopt rules to provide for the expunction of a nonjudicial record of the arrest of a juvenile who has successfully completed a diversion program for a misdemeanor offense.

The bill requires the civil citation or similar diversion programs to submit certain information to the FDLE and the Department of Juvenile Justice (DJJ) regarding a juvenile's participation in the program. The bill also requires each law enforcement agency to submit to the DJJ certain

information relating to each juvenile who is eligible for the diversion program but is instead referred to the DJJ, provided a notice to appear, or is arrested.

The bill requires the DJJ to compile such data relating to juvenile civil citation or similar diversion programs and publish it on the DJJ's website.

The bill's expunction and data collection provisions may have an impact on state expenditures. The creation of a prearrest diversion program could result in cost savings for local governments. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2018.

II. Present Situation:

The civil citation process is designed to provide an alternative to formal judicial handling for first time misdemeanor offenses.¹ The term "diversion" has been used broadly through the years to refer to programs that permit an individual to avoid incarceration, but still result in a criminal conviction. In recent years, the term diversion has also begun to refer to programs that address an individual's behavior but do not result in a conviction. An example of diversion is prearrest diversion.² One form of prearrest diversion is a civil citation program where a law enforcement officer has discretion to issue a civil citation to an individual who commits an eligible misdemeanor offense, meets other eligibility requirements, and agrees to participate in a diversion program. If the individual successfully completes the program, he or she does not have an arrest record.³

Adult prearrest diversion programs and juvenile civil citation programs are handled differently in Florida. Juvenile civil citation programs are encouraged by Florida law⁴ and are in operation throughout the state. Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults. However, sheriffs and counties across the state have implemented their own prearrest diversion programs for adults.

Adult Prearrest Diversion Programs

Leon County has established an adult civil citation program for first-time misdemeanants. Citations are issued by law enforcement based on the officer's discretion, the qualifying offense, and the individual's eligibility. The chief judge, state attorney, and public defender for the

¹ Civil Citation Network, *About Civil Citation*, available at <http://civilcitationnetwork.com/home.html#about> (last visited January 17, 2018).

² Center for Health and Justice at TASC, No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives, (December 2013), pg. 6 and 8, available at http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report_web.pdf (last visited January 18, 2018).

³ Civil Citation Network, *Adult Civil Citation Program*, pg. 2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited January 17, 2018).

⁴ Section 985.12, F.S.

Second Judicial Circuit cooperate in the program, along with the Leon County Commission and Sheriff's Office, and the City of Tallahassee Commission and Police Department.⁵

Pinellas County Sheriff's Office has also established a prearrest diversion program for adults. The Adult Pre-Arrest Diversion Program (APAD) is designed to help adults who commit low-level crimes avoid a criminal record. Rather than going to jail, the adults are required to complete community service, along with counseling or drug treatment.⁶ The program was created as a way to prevent adults from getting a criminal record, while simultaneously lessening the burden on the Pinellas County court system. Since the APAD's launch in October 2016, there have been 1,851 adults who have participated in the program, resulting in the completion of nearly 25,000 community service hours and more than \$17,000 paid in restitution.⁷

Juvenile Civil Citation

Section 985.12, F.S., encourages local entities to establish juvenile civil citation programs that provide law enforcement an alternative to arresting juveniles for nonserious delinquent acts. The DJJ is required to assist in the implementation of civil citation or other similar diversion programs. The DJJ must also develop guidelines for these programs that include intervention services based upon proven civil citation or similar diversion programs within the state.⁸

The civil citation process is designed to divert juveniles prior to arrest and prevent the juvenile's further involvement in the juvenile justice system.⁹ A civil citation or similar diversion program has been implemented in 61 counties in Florida, with Taylor County in the process of implementation.¹⁰ The following counties have not established a civil citation program: Bradford, Calhoun, Gulf, Hardee, and Washington.¹¹

If established at the local level, the program must be created with the concurrence of the chief judge of the circuit, state attorney, public defender, and the head of each local law enforcement agency. The program may be operated by a law enforcement agency, the DJJ, a juvenile assessment center, the county or municipality, or another entity selected by the county or municipality.¹²

⁵ Civil Citation Network, *Adult Civil Citation Program*, pg. 2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited January 17, 2018).

⁶ Laura C. Morel, *Pinellas sheriff leads effort for second chance program for low-level offenders*, TAMPA BAY TIMES, August 5, 2016, available at <http://www.tampabay.com/news/publicsafety/pinellas-sheriff-leads-effort-for-second-chance-program-for-low-level/2288358> (last visited January 18, 2018).

⁷ Laura C. Morel, *Pinellas sheriff calls pre-arrest diversion program a success amid challenges by St. Petersburg lawyer*, TBO, January 12, 2018, available at http://tbo.com/news/courts/criminal/Pinellas-Sheriff-calls-pre-arrest-diversion-program-a-success-amid-challenges-by-St-Petersburg-lawyer_164377717 (last visited January 18, 2018).

⁸ Section 985.12(1) and (2), F.S.

⁹ Florida Department of Juvenile Justice 2014-15, *Civil Citation*, [http://www.djj.state.fl.us/docs/car-reports/\(2014-15-car\)-civil-citation-\(12-21-2015\)-mg-final.pdf?sfvrsn=2](http://www.djj.state.fl.us/docs/car-reports/(2014-15-car)-civil-citation-(12-21-2015)-mg-final.pdf?sfvrsn=2) (last visited January 18, 2018).

¹⁰ Florida Department of Juvenile Justice, *Civil Citation Implementation by County as of July 21, 2017*, <http://www.djj.state.fl.us/docs/probation-policy-memos/counties-with-cc-as-of-may-09-2016.pdf?Status=Master&sfvrsn=25> (last visited January 18, 2018).

¹¹ *Id.*

¹² Section 985.12(1), F.S.

Currently, a law enforcement officer who makes contact with a juvenile who admits to having committed a misdemeanor¹³ has the discretion to:

- Issue a warning or inform the juvenile's parent or guardian of the child's infraction;
- Issue a civil citation or require participation in a similar diversion program; or
- Arrest the juvenile.¹⁴

A copy of each civil citation issued is provided to the DJJ, the county sheriff, state attorney, the appropriate intake office of the DJJ, or the community service performance monitor designated by the DJJ, the parent or guardian of the child, and the victim.¹⁵

From December 2016 to November 2017, there were 18,101 juveniles eligible to receive a civil citation. Of those eligible, 10,335 juveniles were issued a civil citation and the remaining 7,766 were arrested.¹⁶

A law enforcement officer can issue a civil citation to any juvenile who admits to committing a first-time, second-time, or third-time misdemeanor.¹⁷ The officer must advise the juvenile of the option to refuse the civil citation and instead be referred to the DJJ. The juvenile may exercise that option at any time prior to completion of the program.¹⁸ An officer who issues a civil citation or requires participation in a similar diversion program may also assess up to 50 hours of community service and require participation in intervention services.¹⁹

The juvenile must report to the community service performance monitor within seven business days after being issued the civil citation and complete at least five hours of work per week. The monitor must inform the DJJ intake office when the juvenile has reported to them and the expected date that the work assignment will be completed.²⁰

The issuance of a civil citation is not considered a referral to the DJJ. However, the law enforcement officer must issue a report alleging the juvenile has committed a delinquent act, resulting in the juvenile probation officer processing the act as a referral to the DJJ, if:

- The child fails to report on time for a work assignment or fails to complete a work assignment;
- The child fails to comply with assigned intervention services within the prescribed time; or
- The child commits a subsequent misdemeanor.²¹

¹³ Misdemeanors involving sex or firearm offenses are currently ineligible for civil citations. Florida Department of Juvenile Justice, *Civil Citation Model Plan: A Guide to Implementation*, <http://www.djj.state.fl.us/docs/probation-policy-memos/civil-citation-model-plan.pdf?Status=Master&sfvrsn=4> (last visited January, 2018).

¹⁴ An officer who elects to arrest the juvenile must provide written documentation explaining why the arrest was warranted. Section 985.12(1), F.S.

¹⁵ Section 985.12(1), F.S.

¹⁶ Florida Department of Juvenile Justice, *Civil Citation & Other Similar Diversion Program Dashboard*, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/civil-citation-dashboard/cc-dashboard> (last visited January 18, 2018).

¹⁷ Section 985.12(1), F.S.

¹⁸ Section 985.12(6), F.S.

¹⁹ Section 985.12(1), F.S.

²⁰ Section 985.12(4), F.S.

²¹ Section 985.12(5), F.S.

Expunction of Juvenile Criminal History Record

Expunction is the physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order.²² Section 943.0582(1), F.S., authorizes the FDLE to adopt rules to provide for the expunction of a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program.²³

The FDLE must expunge the nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if that juvenile:

- Submits an application for prearrest or postarrest diversion expunction, on a form prescribed by the FDLE, signed by the juvenile's parent or legal guardian, or by the juvenile if he or she has reached the age of majority at the time of applying;
- Submits to the FDLE, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that:
 - He or she has successfully completed that county's prearrest or postarrest diversion program;
 - His or her participation in the program was based on an arrest for a nonviolent misdemeanor; and
 - He or she has not otherwise been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction;
- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence;²⁴ and
- Has never been, before filing the application for expunction, charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.²⁵

The FDLE is authorized to charge a \$75 processing fee for each request received for prearrest or postarrest diversion program expunction. The fee may be waived by the executive director.²⁶

Generally, a person who has his or her nonjudicial arrest record expunged by the FDLE may lawfully deny or fail to acknowledge the arrest and the charge covered by the expunged record.²⁷ However, the expunged nonjudicial arrest record will be made available to criminal justice agencies for the following purposes:

- Determining eligibility for prearrest, postarrest, or teen court diversion programs;
- When the record is sought as part of a criminal investigation; or

²² Section 943.045(16), F.S.

²³ Section 943.0582(1), F.S.

²⁴ Section 741.287, F.S., defines domestic violence to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

²⁵ Section 943.0582(3)(a)-(e), F.S.

²⁶ Section 943.0582(4), F.S.

²⁷ *Id.*

- When the subject of the record is a candidate for employment with a criminal justice agency.²⁸

The nonjudicial arrest record eligible for expunction by the FDLE is not expunged by the local criminal justice agencies in the county in which the arrest occurred.²⁹ Section 943.0582(2)(a)2., F.S., requires that the records maintained by these local criminal justice agencies be sealed.³⁰

Expunction or sealing granted pursuant to s. 943.0582, F.S., does not prevent a juvenile from petitioning for the expunction or sealing of a later criminal history record as provided for in other provisions of Florida law, if the juvenile is otherwise eligible.³¹

III. Effect of Proposed Changes:

Prearrest Diversion Programs (Adults and Juveniles)

The Legislature finds that the creation and implementation of a prearrest diversion program for adults and a civil citation or similar diversion program for juveniles (collectively referred to as prearrest diversion programs) at the judicial circuit level promotes public safety, aids interagency cooperation, and provides the greatest chance of success for prearrest diversion programs. Further, the Legislature finds that the widespread use of prearrest diversion programs has a positive effect on the criminal justice system and contributes to an overall reduction in the crime rate and recidivism in the state. The Legislature encourages counties, municipalities, and public or private educational institutions to participate in the prearrest diversion programs created by their judicial circuits.

The bill requires the establishment of two prearrest diversion programs in each judicial circuit in the state, one for adults and one for juveniles. The bill requires the programs to be created with the collaboration of the public defender, the state attorney, the clerk of the court for each county in the circuit, and representatives of participating law enforcement agencies in the circuit. The bill requires the DJJ to develop and provide guidelines for best practice models for civil citation or similar diversion programs to the judicial circuits to use as a resource in developing and refining the circuit-wide programs.

The bill provides that each judicial circuit's prearrest diversion program must specify:

- The misdemeanor offenses that qualify an adult or juvenile for participation in the program;
- The eligibility criteria for the program;
- The program's implementation and operation;
- The program's requirements, including, but not limited to:
 - The completion of community service hours;
 - Payment of restitution, if applicable; and
 - Intervention services indicated by a needs assessment of the adult or juvenile; and

²⁸ Section 943.0582(2)(a)1., F.S.

²⁹ Section 943.0582(2)(a)2., F.S.

³⁰ Sealing of a record means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record of the information contained and preserved therein. *See* s. 943.054(19), F.S.

³¹ Section 943.0582(5), F.S. *See* ss. 943.0583, 943.0585, and 943.059, F.S.

- A program fee, if any, to be paid by an adult or juvenile participating in the program.³²

The bill requires the state attorney of each circuit to operate both prearrest diversion programs. A sheriff, police department, county, municipality, or public or private educational institution may continue to operate an independent prearrest diversion program if it is in operation as of October 1, 2018, and is determined by the state attorney of that circuit to be substantially similar to the prearrest diversion program developed by the circuit. If the independent program is not substantially similar to the program developed by the circuit, the operator of the independent program may revise the program and the state attorney may conduct an additional review of the independent program.

The bill provides that a judicial circuit may look to model the circuit's programs after an existing sheriff, police department, county, municipality or public or private educational institution's prearrest diversion program.

The bill provides that if an adult or juvenile does not successfully complete the prearrest diversion program, the arresting law enforcement officer must determine if there is good cause to arrest the adult or juvenile for the original misdemeanor offense and refer the case to the state attorney to determine if prosecution is appropriate or rather, allow the adult or juvenile to continue in the prearrest diversion program.

The bill handles an adult participant's personal identifying information differently than that of a juvenile participant. Upon intake of an adult participating in the program, the state attorney or the person operating the independent program must electronically provide the adult's personal identifying information to the clerk of the court for the county in which the adult is participating in the program. This personal identifying information is not considered a court record and the confidentiality of the information must be maintained. The bill requires the clerk of the court to maintain this information in the Comprehensive Case Information System, which provides a single point of access for all such statewide information.

Whereas, when a juvenile participates in a prearrest diversion program, the DJJ receives a copy of the civil citation or similar diversion program notice and enters the appropriate information into the juvenile offender information system. The notice of a juvenile's civil citation or similar diversion program is also sent to the juvenile's parent or guardian and the victim. At the conclusion of a juvenile's participation in a civil citation or similar diversion program, the state attorney operating the program must report the outcome to the DJJ.

Expunction of Juvenile Criminal History Record

The bill amends s. 943.0582, F.S., to require the FDLE to adopt rules to provide for the expunction of a nonjudicial record of the arrest of a juvenile who has successfully completed a diversion program for a misdemeanor offense. The bill specifies that an expunction under this section is limited to misdemeanor offenses.

³² If the program imposes a fee, the clerk of the court of the applicable county must receive a reasonable portion of the fee.

The bill defines “diversion program” as a program under s. 985.12, F.S. (civil citation), s. 985.125, F.S. (prearrest or postarrest diversion programs), s. 985.155, F.S. (neighborhood restorative justice), or s. 985.16, F.S. (community arbitration), or a program to which a referral is made by a state attorney under s. 985.15(1)(g), F.S.

The bill requires the FDLE to expunge the nonjudicial arrest record of a juvenile if the juvenile has never previously received an expunction under s. 943.0582, F.S. The bill also requires the diversion program to submit a certification for expunction to the FDLE as a prerequisite to expunging the juvenile’s nonjudicial arrest record under this section.

The bill removes the requirements for the juvenile to submit an application and official written statement from the state attorney to the FDLE prior to obtaining an expunction of his or her nonjudicial arrest record. The bill also removes the authority granted to the FDLE to charge a \$75 processing fee for seeking an expunction under this section.

The bill maintains that “expunction” has the same meaning and effect as in s. 943.0585, F.S., providing that a person who has his or her nonjudicial arrest record expunged may lawfully deny or fail to acknowledge the arrest and the charge covered by the expunged record. However, the bill limits the purposes in which an expunged nonjudicial arrest record will be made available to criminal justice agencies to the following:

- Determining eligibility for diversion programs;
- A criminal investigation; or
- Making a prosecutorial decision under s. 985.15, F.S.

Thus, the bill provides that the nonjudicial arrest record of a person whose record is expunged under this section will no longer be made available when the subject of the record is a candidate for employment with a criminal justice agency.

Diversion Program Data Collection

The bill provides that the term “diversion program” has the same meaning as provided in s. 943.0582, F.S.³³

The bill requires each diversion program to submit the following:

- A certification for expunction to the FDLE of the juvenile’s nonjudicial arrest record under s. 943.0582, F.S., if the juvenile:
 - Successfully completes the diversion program for a first-time misdemeanor offense; and
 - Has not otherwise been charged by the state attorney with, or been found to have committed, a criminal offense or comparable ordinance violation.
- Data to the DJJ in a form prescribed by the DJJ which identifies the following for each juvenile who participates in the diversion program:
 - The race, ethnicity, gender, and age of the juvenile;
 - The offense committed, with citation to the specific law establishing the offense; and

³³ The bill defines “diversion program” as a program under s. 985.12, F.S. (civil citation), s. 985.125, F.S. (prearrest or postarrest diversion programs), s. 985.155, F.S. (neighborhood restorative justice), or s. 985.16, F.S. (community arbitration), or a program to which a referral is made by a state attorney under s. 985.15(1)(g), F.S.

- The judicial circuit and county in which the offense was committed and the law enforcement agency that had contact with the juvenile for the offense.³⁴

Additionally, each law enforcement agency must submit the following data to the DJJ for each juvenile who is eligible for the diversion program, but who is instead referred to the DJJ, provided a notice to appear, or arrested:

- Whether the juvenile was offered the opportunity to participate in the diversion program. If the juvenile was:
 - Not offered such opportunity, the reason such offer was not made.
 - Offered such opportunity, whether juvenile or his or her parent or legal guardian declined to participate in the diversion program.

The DJJ must compile the data listed above and publish it on the DJJ's website in a format that is, at a minimum, sortable by:

- Judicial circuit;
- County;
- Law enforcement agency;
- Race or ethnicity;
- Gender;
- Age; and
- Offense committed.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁴ Each law enforcement agency is also required to collect and submit this data to the DJJ for each juvenile who was eligible for a diversion program, but was instead referred to the DJJ, provided a notice to appear, or arrested.

B. Private Sector Impact:

Adults and juveniles who wish to participate in a prearrest diversion program may have to pay a fee, depending on the guidelines established by each individual judicial circuit. The participant may also have to pay restitution as part of the prearrest diversion program, depending on what is indicated by the assessment of the adult or juvenile.

C. Government Sector Impact:

The bill provides that if there is a fee imposed, a reasonable portion of the fee must be given to the clerk of the court of the applicable county. The amount of fee revenue the clerks will collect from this provision is indeterminate.

The Florida Department of Law Enforcement will experience an increase in workload related to the implementation of the expunction processing. The magnitude of the costs associated with this additional workload, along with costs for computer programming, are indeterminate. The department will also experience a reduction in revenue associated with the removal of its authority to charge a \$75 processing fee for those seeking a prearrest or postarrest diversion program expunction. The magnitude of the revenue loss is indeterminate.

In addition, the Department of Juvenile Justice will experience an increase in workload relating to data collection and website publishing requirements. The costs associated with this workload is indeterminate.

Creation of a prearrest diversion program for adults may result in cost savings for local government (reduced booking/arrest-processing costs), depending on the number of eligible offenses, other eligibility criteria chosen, the pool of eligible adults, the number of participating law enforcement agencies, the use of the prearrest diversion program, and any impact the program may have in reducing arrests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.0582, 985.12, and 985.125.

This bill creates the following sections of the Florida Statutes: 901.40 and 985.126.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 22, 2018:

The Committee Substitute:

- Requires the DJJ to develop and provide guidelines for best practice models for civil citation or similar diversion programs to the judicial circuits as a resource;
- Clarifies that the state attorney will be required to operate the prearrest diversion programs for the circuit;
- Clarifies that an independent prearrest diversion program may continue to operate in addition to the circuit-wide program;
- Specifies that the clerk of the court will store an adult’s personal identifying information in the Comprehensive Case Information System; and
- Requires each law enforcement agency to submit certain information to the DJJ relating to a juvenile who is eligible to participate in a civil citation or similar diversion program, but was instead referred to the DJJ, provided a notice to appear, or arrested.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Brandes

591-02326-18

20181392c1

1 A bill to be entitled
2 An act relating to prearrest diversion programs;
3 creating s. 901.40, F.S.; providing legislative
4 findings and intent; encouraging counties,
5 municipalities, and public or private educational
6 institutions to implement prearrest diversion
7 programs; requiring that in each judicial circuit the
8 public defender, the state attorney, the clerks of the
9 court, and representatives of participating law
10 enforcement agencies create a prearrest diversion
11 program and develop its policies and procedures;
12 authorizing such entities to solicit stakeholders for
13 input in developing the program's policies and
14 procedures; providing requirements for the prearrest
15 diversion program; requiring the state attorney of
16 each circuit to operate the prearrest diversion
17 program; providing an exception; providing
18 construction; requiring the arresting law enforcement
19 officer to make a determination if an adult does not
20 successfully complete the prearrest diversion program;
21 requiring the state attorney or the person operating
22 an independent prearrest diversion program to
23 electronically provide certain information to the
24 clerk of the court; requiring the clerk of the court
25 to maintain the confidentiality of such information;
26 requiring the clerk of the court to maintain that
27 information in a statewide database; amending s.
28 943.0582, F.S.; requiring, rather than authorizing,
29 the Department of Law Enforcement to adopt rules for

591-02326-18

20181392c1

30 the expunction of certain nonjudicial records of the
31 arrest of a minor upon his or her successful
32 completion of a certain diversion program; authorizing
33 such expunctions for certain first-time misdemeanor
34 offenses; defining and revising terms; revising the
35 circumstances under which the department must expunge
36 certain nonjudicial arrest records; deleting the
37 department's authority to charge a processing fee for
38 the expunction; amending s. 985.12, F.S.; providing
39 legislative findings and intent; deleting provisions
40 establishing a juvenile civil citation process with a
41 certain purpose; establishing a civil citation or
42 similar diversion program in each judicial circuit,
43 rather than at the local level with the concurrence of
44 specified persons; requiring that the state attorney
45 and public defender of each circuit, the clerk of the
46 court for each county in the circuit, and
47 representatives of participating law enforcement
48 agencies create a civil citation or similar diversion
49 program and develop its policies and procedures;
50 authorizing such entities to solicit stakeholders for
51 input in developing the program's policies and
52 procedures; requiring the Department of Juvenile
53 Justice to annually develop and provide guidelines on
54 civil citation or similar diversion programs to the
55 judicial circuits; providing requirements for the
56 civil citation or similar diversion program; requiring
57 the state attorney of each judicial circuit to operate
58 the civil citation or similar diversion program;

591-02326-18

20181392c1

59 providing an exception; providing construction;
60 requiring the arresting law enforcement officer to
61 make a determination if a juvenile does not
62 successfully complete the civil citation or similar
63 diversion program; deleting provisions relating to the
64 operation of and requirements for a civil citation or
65 similar diversion program; requiring that a copy of
66 each civil citation or similar diversion program
67 notice be provided to the Department of Juvenile
68 Justice; conforming provisions to changes made by the
69 act; deleting provisions relating to requirements for
70 a civil citation or similar diversion program;
71 amending s. 985.125, F.S.; conforming a provision to
72 changes made by the act; creating s. 985.126, F.S.;
73 defining the term "diversion program"; requiring a
74 diversion program to submit to the Department of Law
75 Enforcement a certification for expunction of the
76 nonjudicial arrest record of a juvenile under
77 specified circumstances; requiring a diversion program
78 to submit to the Department of Juvenile Justice
79 specified data relating to diversion programs;
80 requiring each law enforcement agency to submit to the
81 Department of Juvenile Justice specified data about
82 juveniles eligible to participate in diversion
83 programs; requiring the Department of Juvenile Justice
84 to compile and publish the data in a specified manner;
85 authorizing a juvenile under certain circumstances to
86 deny or fail to acknowledge his or her participation
87 in a diversion program or the expunction of a certain

591-02326-18

20181392c1

88 nonjudicial arrest record unless an exception applies;
89 providing an effective date.

90

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

92

93 Section 1. Section 901.40, Florida Statutes, is created to
94 read:

95 901.40 Prearrest diversion programs.—

96 (1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
97 that the creation and implementation of prearrest diversion
98 programs at the judicial circuit level promotes public safety,
99 aids interagency cooperation, and provides the greatest chance
100 of success for prearrest diversion programs. The Legislature
101 further finds that the widespread use of prearrest diversion
102 programs has a positive effect on the criminal justice system
103 and contributes to an overall reduction in the crime rate and
104 recidivism in the state. The Legislature encourages but does not
105 mandate that counties, municipalities, and public or private
106 educational institutions participate in a prearrest diversion
107 program created by their judicial circuit under this section.

108 (2) JUDICIAL CIRCUIT PREARREST DIVERSION PROGRAM
109 DEVELOPMENT, IMPLEMENTATION, OPERATION.—

110 (a) In each judicial circuit in the state, the public
111 defender, the state attorney, the clerk of the court for each
112 county in the circuit, and representatives of participating law
113 enforcement agencies in the circuit shall create a prearrest
114 diversion program and develop its policies and procedures. In
115 developing the program's policies and procedures, input from
116 other interested stakeholders may be solicited.

591-02326-18

20181392c1

117 (b) Each judicial circuit's prearrest diversion program
118 must specify:

119 1. The misdemeanor offenses that qualify an adult for
120 participation in the program;

121 2. The eligibility criteria for the program;

122 3. The program's implementation and operation;

123 4. The program's requirements, including, but not limited
124 to, the completion of community service hours, payment of
125 restitution, if applicable, and intervention services indicated
126 by a needs assessment of the adult, such as urinalysis
127 monitoring and substance abuse and mental health treatment
128 services; and

129 5. A program fee, if any, to be paid by an adult
130 participating in the program. If the program imposes a fee, the
131 clerk of the court of the applicable county must receive a
132 reasonable portion of the fee.

133 (c) The state attorney of each circuit shall operate a
134 prearrest diversion program in each circuit. A sheriff, police
135 department, county, municipality, or public or private
136 educational institution may continue to operate an independent
137 prearrest diversion program that is in operation as of October
138 1, 2018, if the independent program is reviewed by the state
139 attorney of the applicable circuit and he or she determines that
140 the independent program is substantially similar to the
141 prearrest diversion program developed by the circuit. If the
142 state attorney determines that the independent program is not
143 substantially similar to the prearrest diversion program
144 developed by the circuit, the operator of the independent
145 diversion program may revise the program and the state attorney

591-02326-18

20181392c1

146 may conduct an additional review of the independent program.

147 (d) A judicial circuit may model an existing sheriff,
148 police department, county, municipality, or public or private
149 educational institution's independent prearrest diversion
150 program in developing the prearrest diversion program for the
151 circuit.

152 (e) If an adult does not successfully complete the
153 prearrest diversion program, the arresting law enforcement
154 officer shall determine if there is good cause to arrest the
155 adult for the original misdemeanor offense and refer the case to
156 the state attorney to determine if prosecution is appropriate or
157 allow the adult to continue in the program.

158 (f) Upon intake of an adult participating in the prearrest
159 diversion program, the state attorney or the person operating
160 the independent prearrest diversion program shall electronically
161 provide the adult's personal identifying information to the
162 clerk of the court for the county in which the adult is
163 participating in the prearrest diversion program. Such
164 information is not a court record, and the clerk of the court
165 shall maintain the confidentiality of the adult's personal
166 identifying information as provided in subsection (3). The clerk
167 of the court shall maintain such information as a separate
168 component of the Comprehensive Case Information System created
169 and operated pursuant to s. 28.24, which must provide a single
170 point of access for all such statewide information.

171 Section 2. Section 943.0582, Florida Statutes, is amended
172 to read:

173 943.0582 Prearrest, postarrest, or teen court diversion
174 program expunction.—

591-02326-18

20181392c1

175 (1) Notwithstanding any law dealing generally with the
176 preservation and destruction of public records, the department
177 shall adopt rules to ~~may provide, by rule adopted pursuant to~~
178 ~~chapter 120,~~ for the expunction of a ~~any~~ nonjudicial record of
179 the arrest of a minor who has successfully completed a ~~prearrest~~
180 ~~or postarrest~~ diversion program for a misdemeanor offense ~~minors~~
181 as ~~authorized by s. 985.125.~~

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

183 (a) "Diversion program" means a program under s. 985.12, s.
184 985.125, s. 985.155, or s. 985.16 or a program to which a
185 referral is made by a state attorney under s. 985.15(1)(g).

186 (b) "Expunction" has the same meaning ascribed in and has
187 the same effect as in s. 943.0585, except that:

188 1. Section ~~The provisions of s. 943.0585(4) (a) does de~~ not
189 apply, except that the criminal history record of a person whose
190 record is expunged pursuant to this section shall be made
191 available only to criminal justice agencies for the purpose of:

192 a. Determining eligibility for ~~prearrest, postarrest, or~~
193 ~~teen court~~ diversion programs;

194 b. ~~when the record is sought as part of A criminal~~
195 ~~investigation; or~~

196 c. Making a prosecutorial decision under s. 985.15; ~~or when~~
197 ~~the subject of the record is a candidate for employment with a~~
198 ~~riminal justice agency. For all other purposes, a person whose~~
199 ~~record is expunged under this section may lawfully deny or fail~~
200 ~~to acknowledge the arrest and the charge covered by the expunged~~
201 ~~record.~~

202 2. Records maintained by local criminal justice agencies in
203 the county in which the arrest occurred that are eligible for

591-02326-18

20181392c1

204 expunction pursuant to this section shall be sealed as the term
205 is used in s. 943.059.

206 ~~(b) As used in this section, the term "nonviolent~~
207 ~~misdemeanor" includes simple assault or battery when prearrest~~
208 ~~or postarrest diversion expunction is approved in writing by the~~
209 ~~state attorney for the county in which the arrest occurred.~~

210 (3) The department shall expunge the nonjudicial arrest
211 record of a minor ~~who has successfully completed a prearrest or~~
212 ~~postarrest diversion program~~ if the minor has never previously
213 received an expunction under this section and the diversion
214 program submits a certification for expunction that minor:

215 ~~(a) Submits an application for prearrest or postarrest~~
216 ~~diversion expunction, on a form prescribed by the department,~~
217 ~~signed by the minor's parent or legal guardian, or by the minor~~
218 ~~if he or she has reached the age of majority at the time of~~
219 ~~applying.~~

220 ~~(b) Submits to the department, with the application, an~~
221 ~~official written statement from the state attorney for the~~
222 ~~county in which the arrest occurred certifying that he or she~~
223 ~~has successfully completed that county's prearrest or postarrest~~
224 ~~diversion program, that his or her participation in the program~~
225 ~~was based on an arrest for a nonviolent misdemeanor, and~~
226 ~~that he or she has not otherwise been charged by the state~~
227 ~~attorney with, or found to have committed, any criminal offense~~
228 ~~or comparable ordinance violation.~~

229 ~~(c) Participated in a prearrest or postarrest diversion~~
230 ~~program that expressly authorizes or permits such expunction.~~

231 ~~(d) Participated in a prearrest or postarrest diversion~~
232 ~~program based on an arrest for a nonviolent misdemeanor that~~

591-02326-18

20181392c1

233 ~~would not qualify as an act of domestic violence as that term is~~
234 ~~defined in s. 741.28.~~

235 ~~(c) Has never been, before filing the application for~~
236 ~~expunction, charged by the state attorney with, or found to have~~
237 ~~committed, any criminal offense or comparable ordinance~~
238 ~~violation.~~

239 ~~(4) The department is authorized to charge a \$75 processing~~
240 ~~fee for each request received for prearrest or postarrest~~
241 ~~diversion program expunction, for placement in the Department of~~
242 ~~Law Enforcement Operating Trust Fund, unless such fee is waived~~
243 ~~by the executive director.~~

244 ~~(5) Expunction or sealing granted under this section does~~
245 ~~not prevent the minor who receives such relief from petitioning~~
246 ~~for the expunction or sealing of a later criminal history record~~
247 ~~as provided for in ss. 943.0583, 943.0585, and 943.059, if the~~
248 ~~minor is otherwise eligible under those sections.~~

249 Section 3. Section 985.12, Florida Statutes, is amended to
250 read:

251 985.12 Civil citation or similar diversion programs.-

252 (1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds
253 that the creation and implementation of civil citation or
254 similar diversion programs at the judicial circuit level
255 promotes public safety, aids interagency cooperation, and
256 provides the greatest chance of success for civil citation and
257 similar diversion programs. The Legislature further finds that
258 the widespread use of civil citation and similar diversion
259 programs has a positive effect on the criminal justice system
260 and contributes to an overall reduction in the crime rate and
261 recidivism in the state. The Legislature encourages but does not

591-02326-18

20181392c1

262 mandate that counties, municipalities, and public or private
263 educational institutions participate in a civil citation or
264 similar diversion program created by their judicial circuit
265 under this section. ~~There is established a juvenile civil~~
266 ~~citation process for the purpose of providing an efficient and~~
267 ~~innovative alternative to custody by the Department of Juvenile~~
268 ~~Justice for children who commit nonserious delinquent acts and~~
269 ~~to ensure swift and appropriate consequences. The department~~
270 ~~shall encourage and assist in the implementation and improvement~~
271 ~~of civil citation programs or other similar diversion programs~~
272 ~~around the state.~~

273 (2) JUDICIAL CIRCUIT CIVIL CITATION OR SIMILAR DIVERSION
274 PROGRAM DEVELOPMENT, IMPLEMENTATION AND OPERATION.—

275 (a) A ~~The~~ civil citation or similar diversion program shall be
276 established in each judicial circuit in the state. The ~~at the~~
277 ~~local level with the concurrence of the chief judge of the~~
278 ~~circuit,~~ state attorney and, public defender of each circuit,
279 the clerk of the court for each county in the circuit, and
280 representatives of participating law enforcement agencies in the
281 circuit shall create a civil citation or similar diversion
282 program and develop its policies and procedures. In developing
283 the program's policies and procedures, input from other
284 interested stakeholders may be solicited. The department shall
285 annually develop and provide guidelines on best practice models
286 for civil citation or similar diversion programs to the judicial
287 circuits as a resource.

288 (b) Each judicial circuit's civil citation or similar
289 diversion program must specify:

290 1. The misdemeanor offenses that qualify a juvenile for

591-02326-18

20181392c1

291 participation in the program;

292 2. The eligibility criteria for the program;

293 3. The program's implementation and operation;

294 4. The program's requirements, including, but not limited
295 to, the completion of community service hours, payment of
296 restitution, if applicable, and intervention services indicated
297 by a needs assessment of the juvenile, approved by the
298 department, such as family counseling, urinalysis monitoring,
299 and substance abuse and mental health treatment services; and

300 5. A program fee, if any, to be paid by a juvenile
301 participating in the program. If the program imposes a fee, the
302 clerk of the court of the applicable county must receive a
303 reasonable portion of the fee.

304 (c) The state attorney of each circuit shall operate a
305 civil citation or similar diversion program in each circuit. A
306 sheriff, police department, county, municipality, or public or
307 private educational institution may continue to operate an
308 independent civil citation or similar diversion program that is
309 in operation as of October 1, 2018, if the independent program
310 is reviewed by the state attorney of the applicable circuit and
311 he or she determines that the independent program is
312 substantially similar to the civil citation or similar diversion
313 program developed by the circuit. If the state attorney
314 determines that the independent program is not substantially
315 similar to the civil citation or similar diversion program
316 developed by the circuit, the operator of the independent
317 diversion program may revise the program and the state attorney
318 may conduct an additional review of the independent program.

319 (d) A judicial circuit may model an existing sheriff,

591-02326-18

20181392c1

320 police department, county, municipality, or public or private
321 educational institution's independent civil citation or similar
322 diversion program in developing the civil citation or similar
323 diversion program for the circuit.

324 (e) If a juvenile does not successfully complete the civil
325 citation or similar diversion program, the arresting law
326 enforcement officer shall determine if there is good cause to
327 arrest the juvenile for the original misdemeanor offense and
328 refer the case to the state attorney to determine if prosecution
329 is appropriate or allow the juvenile to continue in the program
330 ~~and the head of each local law enforcement agency involved. The~~
331 ~~program may be operated by an entity such as a law enforcement~~
332 ~~agency, the department, a juvenile assessment center, the county~~
333 ~~or municipality, or another entity selected by the county or~~
334 ~~municipality. An entity operating the civil citation or similar~~
335 ~~diversion program must do so in consultation and agreement with~~
336 ~~the state attorney and local law enforcement agencies. Under~~
337 ~~such a juvenile civil citation or similar diversion program, a~~
338 ~~law enforcement officer, upon making contact with a juvenile who~~
339 ~~admits having committed a misdemeanor, may choose to issue a~~
340 ~~simple warning or inform the child's guardian or parent of the~~
341 ~~child's infraction, or may issue a civil citation or require~~
342 ~~participation in a similar diversion program, and assess up to~~
343 ~~50 community service hours, and require participation in~~
344 ~~intervention services as indicated by an assessment of the needs~~
345 ~~of the juvenile, including family counseling, urinalysis~~
346 ~~monitoring, and substance abuse and mental health treatment~~
347 ~~services.~~

348 (f) A copy of each civil citation or similar diversion

591-02326-18

20181392c1

349 program notice issued under this section shall be provided to
350 the department, and the department shall enter appropriate
351 information into the juvenile offender information system. ~~Use~~
352 ~~of the civil citation or similar diversion program is not~~
353 ~~limited to first-time misdemeanors and may be used in up to two~~
354 ~~subsequent misdemeanors. If an arrest is made, a law enforcement~~
355 ~~officer must provide written documentation as to why an arrest~~
356 ~~was warranted.~~

357 (g) At the conclusion of a juvenile's civil citation
358 ~~program~~ or similar diversion program, the state attorney or
359 operator of the independent program agency operating the program
360 shall report the outcome to the department. The issuance of a
361 civil citation or similar diversion program notice is not
362 considered a referral to the department.

363 ~~(2) The department shall develop guidelines for the civil~~
364 ~~citation program which include intervention services that are~~
365 ~~based upon proven civil citation or similar diversion programs~~
366 ~~within the state.~~

367 (h) ~~(3)~~ Upon issuing such a civil citation or similar
368 diversion program notice, the law enforcement officer shall send
369 a copy of ~~to~~ the civil citation or similar diversion program
370 notice to county sheriff, state attorney, the appropriate intake
371 office of the department, or the community service performance
372 monitor designated by the department, the parent or guardian of
373 the child, and to the victim.

374 ~~(4) The child shall report to the community service~~
375 ~~performance monitor within 7 working days after the date of~~
376 ~~issuance of the citation. The work assignment shall be~~
377 ~~accomplished at a rate of not less than 5 hours per week. The~~

591-02326-18

20181392c1

378 ~~monitor shall advise the intake office immediately upon~~
379 ~~reporting by the child to the monitor, that the child has in~~
380 ~~fact reported and the expected date upon which completion of the~~
381 ~~work assignment will be accomplished.~~

382 ~~(5) If the child fails to report timely for a work~~
383 ~~assignment, complete a work assignment, or comply with assigned~~
384 ~~intervention services within the prescribed time, or if the~~
385 ~~juvenile commits a subsequent misdemeanor, the law enforcement~~
386 ~~officer shall issue a report alleging the child has committed a~~
387 ~~delinquent act, at which point a juvenile probation officer~~
388 ~~shall process the original delinquent act as a referral to the~~
389 ~~department and refer the report to the state attorney for~~
390 ~~review.~~

391 ~~(6) At the time of issuance of the citation by the law~~
392 ~~enforcement officer, such officer shall advise the child that~~
393 ~~the child has the option to refuse the citation and to be~~
394 ~~referred to the intake office of the department. That option may~~
395 ~~be exercised at any time before completion of the work~~
396 ~~assignment.~~

397 Section 4. Subsection (3) of section 985.125, Florida
398 Statutes, is amended to read:

399 985.125 Prearrest or postarrest diversion programs.—

400 ~~(3) The prearrest or postarrest diversion program may, upon~~
401 ~~agreement of the agencies that establish the program, provide~~
402 ~~for the expunction of the nonjudicial arrest record of a minor~~
403 ~~who successfully completes such a program pursuant to s.~~
404 ~~943.0582.~~

405 Section 5. Section 985.126, Florida Statutes, is created to
406 read:

591-02326-18

20181392c1

407 985.126 Diversion programs; data collection; denial of
408 participation or expunged record.-

409 (1) As used in this section, the term "diversion program"
410 has the same meaning as in s. 943.0582.

411 (2) Each diversion program shall submit:

412 (a) A certification for expunction to the Department of Law
413 Enforcement of the juvenile's nonjudicial arrest record under s.
414 943.0582 if the juvenile:

415 1. Successfully completes the diversion program for a
416 first-time misdemeanor offense; and

417 2. Has not otherwise been charged by the state attorney
418 with, or been found to have committed, a criminal offense or
419 comparable ordinance violation.

420 (b) Data to the department in a form prescribed by the
421 department which identifies for each juvenile who participates
422 in the diversion program:

423 1. The race, ethnicity, gender, and age of the juvenile;

424 2. The offense committed, with citation to the specific law
425 establishing the offense; and

426 3. The judicial circuit and county in which the offense was
427 committed and the law enforcement agency that had contact with
428 the juvenile for the offense.

429 (3) Each law enforcement agency shall submit to the
430 department data that identifies for each juvenile who was
431 eligible for a diversion program, but was instead referred to
432 the department, provided a notice to appear, or arrested:

433 (a) The data required under paragraph (2) (b).

434 (b) Whether the juvenile was offered the opportunity to
435 participate in the diversion program. If the juvenile was:

591-02326-18

20181392c1

436 1. Not offered such opportunity, the reason such offer was
437 not made.

438 2. Offered such opportunity, whether the juvenile or his or
439 her parent or legal guardian declined to participate in the
440 diversion program.

441 (4) The department shall compile the data required under
442 subsections (2) and (3) and publish it on the department's
443 website in a format that is, at a minimum, sortable by judicial
444 circuit, county, law enforcement agency, race or ethnicity,
445 gender, age, and offense committed.

446 (5) A juvenile who successfully completes a diversion
447 program for a first-time misdemeanor offense may lawfully deny
448 or fail to acknowledge his or her participation in the program
449 and an expunction of a nonjudicial arrest record under s.
450 943.0582, unless the inquiry is made by a criminal justice
451 agency, as defined in s. 943.045, for a purpose described in s.
452 943.0582(2)(a)1.

453 Section 6. This act shall take effect October 1, 2018.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18
Meeting Date

1392
Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name NANCY DANIELS

Job Title Legislative Consultant

Address 103 N. Gadsden St.

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1392

Bill Number (if applicable)

Topic PREARREST DIVERSION PROGRAMS

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title POLICY ADVISOR

Address 115 S. ANDREWS AVE.
Street

Phone 954-253-7320

FT. LAUDERDALE FL 33301
City State Zip

Email dsainvil@broward.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing BROWARD COUNTY GOVT

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1392

Bill Number (if applicable)

Topic CS/SB 1392 - Juvenile Civil Citations

Amendment Barcode (if applicable)

Name William Coale

Job Title Retired

Address 111 26th Ave NE
Street

Phone 727-204-4699

St. Petersburg, FL 33704
City State Zip

Email dcoale628@icloud.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FAST Pinellas County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.14.18

Meeting Date

1392

Bill Number (if applicable)

Topic Florida Smart Justice Alliance

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18
Meeting Date

SB 1392
Bill Number (if applicable)

Topic Civil Citation

Amendment Barcode (if applicable)

Name Jacob Fuller

Job Title Retired

Address 6700 22nd Way S.
Street

Phone 727-657-0750

St. Pete FL
City State Zip

Email butahfuller@yahoo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing East Pinellas County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18
Meeting Date

1392
Bill Number (if applicable)

Topic Pro-Against Diversion Programs

Amendment Barcode (if applicable)

Name Shawn Foster

Job Title Lobbyist

Address 5957 Riviera Lane
Street

Phone 77-808-4131

New Port Richey, FL 34655
City State Zip

Email foster@scgcorp.us

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Bail Agents Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-14-18

Meeting Date

1392

Bill Number (if applicable)



Topic Precarrest Diversion Programs

Amendment Barcode (if applicable)

Name Matthew Jones

Job Title President

Address 312 Mary St

Phone 239-896-2811

Street

Punta Gorda FL 33950

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Bail Agents Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-14-18

Meeting Date

SB1392

Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name Mrs. Logan Padgett

Job Title Director of Public Affairs

Address 100 N Duval Street

Phone 850-386-3131

Street

Tallahassee

FL

32301

Email lpadgett@jamesmadison.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing The James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18
Meeting Date

1392
Bill Number (if applicable)

Topic Pre arrest Diversion

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 124 Duval St
Street

Phone _____

2H FL 32303
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Right on Crime

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

SB 1392

Bill Number (if applicable)

Topic Pre-Arrest Diversion

Amendment Barcode (if applicable)

Name Mia Diaz

Job Title _____

Address _____

Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Tax Watch

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-14-18
Meeting Date

1392
Bill Number (if applicable)

Topic Prearrest Diversion

Amendment Barcode (if applicable)

Name DAWN STEWARD

Job Title _____

Address 2130 Blossom Lane

Phone _____

Winter Park, FL 32789

Email _____

Street
City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1392

Bill Number (if applicable)

Topic PREARREST DIVERSION

Amendment Barcode (if applicable)

Name Fred Baggett

Job Title _____

Address 101 E. College Ave

Street

Phone 591 0915

City

State

Zip

Email BaggettF@GTLaw.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fl. Clerks of Court

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1392

Bill Number (if applicable)

Topic Diversion

Amendment Barcode (if applicable)

Name Ingrid Delgado

Job Title Associate for Social Concerns & Respect Life

Address 201 W Park

Phone _____

Street

Tallahassee

State

32301

Zip

Email _____

City

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

14 Feb 2018

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1392

Bill Number (if applicable)

Topic Pre Arrest Diversion

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Sr Policy Director

Address 2868 Mahan Dr

Phone 878 2196

Street
City Tallahassee State FL Zip 32308

Email jgranmy@fla.gov

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Behavioral Health Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/CS/SB 1396 (535720)

INTRODUCER: Judiciary Committee and Senator Steube

SUBJECT: Judgeships

DATE: February 16, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1396 increases the number of trial court judgeships authorized by statute by two circuit court judgeships and five county court judgeships. The bill also permits Supreme Court justices permanently residing outside of Leon County to be paid subsistence and travel expenses when conducting business at the headquarters of the Supreme Court in Tallahassee. In addition, the bill increases the jurisdiction of county court to include actions at law with an amount in which the matter in controversy does not exceed \$50,000, rather than the current limit of \$15,000.

The bill's provisions increasing trial court judgeships and reimbursing justices' subsistence and travel expenses will increase state expenditures by \$2.5 million in Fiscal Year 2018-2019. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2018.

II. Present Situation:

Headquarters of the Supreme Court

Article II, section 2 of the Florida Constitution designates Tallahassee as the seat of state government "where the *offices* of the governor, lieutenant governor, cabinet members and *the*

supreme court shall be maintained and the sessions of the legislature shall be held[.]”¹ Article V, section 3 of the Florida Constitution provides that the Supreme Court will consist of seven justices, and that each of the five appellate districts “shall have at least one justice elected or appointed from the district at the time of the original appointment or election.” The chambers of all seven justices are on the fourth floor of the Florida Supreme Court building,² and all official Supreme Court business is conducted in Tallahassee.³ The justices are not required to move from their residences in the appellate districts to Tallahassee.

Headquarters for Purposes of Travel Reimbursement

Section 112.061, F.S., concerns the reimbursement of travel expenses to public employees and officers. To that end, s. 112.061(4), F.S., provides that while “[t]he official headquarters of an officer or employee assigned to an office shall be the city or town in which the office is located,” there are some exceptions:

- (a) The official headquarters of a person located in the field shall be the city or town nearest to the area where the majority of the person’s work is performed, or such other city, town, or area as may be designated by the agency head provided that in all cases such designation must be in the best interests of the agency and not for the convenience of the person.
- (b) When any state employee is stationed in any city or town for a period of over 30 continuous workdays, such city or town shall be deemed to be the employee’s official headquarters, and he or she shall not be allowed per diem or subsistence, as provided in this section, after the said period of 30 continuous workdays has elapsed, unless this period of time is extended by the express approval of the agency head or his or her designee.
- (c) A traveler may leave his or her assigned post to return home overnight, over a weekend, or during a holiday, but any time lost from regular duties shall be taken as annual leave and authorized in the usual manner. The traveler shall not be reimbursed for travel expenses in excess of the established rate for per diem allowable had he or she remained at his or her assigned post. However, when a traveler has been temporarily assigned away from his or her official headquarters for an approved period extending beyond 30 days,

¹ FLA. CONST. art. II, s. 2 (emphasis added).

² Florida Supreme Court, Manual of Internal Operating Procedures, *Section 1. Court Structure*, p. 1 (Rev. Sept. 21, 2016), http://www.floridasupremecourt.org/pub_info/documents/IOPs.pdf (last visited Feb. 14, 2018).

³ “[T]he Florida Supreme Court, comprised of its Justices, has only one “office” — the Supreme Court Building, located in the Northern District.” *Castro v. Labarga*, 16-22297-CIV, 2016 WL 6565946, at *5 (S.D. Fla. Nov. 3, 2016) (citing FLA. CONST. art. II, s. 2). “In my view, the mere fact that a Florida Supreme Court justice may periodically travel outside of the Northern District of Florida to attend bar functions or educational seminars and obtains travel reimbursements does not translate the trip into an ‘official duty’ trip sufficient to generate venue in the other districts.” *Id.* “If the Florida Supreme Court maintained major offices, courtrooms or staff in other districts, then the result about venue and venue discovery might be different. But those significant facts, which Castro relies on when citing other cases, are absent here.” *Id.* (holding the proper venue of a disgruntled bar candidate suing the Florida Supreme Court is the northern district of Florida). *See also Uberoi v. Labarga*, 8:16-CV-1821-T-33JSS, 2016 WL 5914922, at *2 (M.D. Fla. Oct. 11, 2016) (transferring another disgruntled bar candidate’s case to the Northern District based a motion to dismiss filed by Justice Labarga noting that official acts by the Florida Supreme Court concerning the candidate’s admission to the bar are done in Tallahassee; citing FLA. CONST. art. II, s. 2, noting that Tallahassee “is where the offices of the Florida Supreme Court shall be maintained.”).

he or she shall be entitled to reimbursement for travel expenses at the established rate of one round trip for each 30-day period actually taken to his or her home in addition to pay and allowances otherwise provided.⁴

Additionally, s. 112.061(1)(b)1., F.S., provides that

To preserve the standardization established by this law . . . [t]he provisions of this section shall prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; but if any such general law contains a specific exemption from this section, including a specific reference to this section, such general law shall prevail, but only to the extent of the exemption.

Section 112.061, F.S. applies to the court system. In particular, a district court of appeal—the headquarters of which is defined by the Legislature, not the Constitution⁵—is authorized by the current version of s. 35.05(2), F.S. to “designate other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061.”⁶ However, a prior version of s. 35.05, F.S. contained no such authorization and designated one city as the headquarters for each district court of appeal.⁷

On the other hand, prior versions of s. 112.061(4), in particular the 1973 version, is substantially similar if not identical to the current version of the statute.⁸ The reason this matters is that the 1973 version of s. 112.061(4) was interpreted by the Attorney General’s office to mean that a district court of appeal judge could *not* designate the city of his or her residence as his or her official headquarters for purposes of travel expenses.⁹ As explained by the AG opinion:

Section 112.061, F.S., has been uniformly interpreted by this office as authorizing reimbursement for travel expense only from the official headquarters of the public officer or employee; and, as defined in subsection 112.061(4), the official headquarters “of an officer or employee assigned to an office shall be the city or town in which the office is located” (The provisions of paragraphs (4)(a), (b), and (c), relating to public officers or employees “located in the field” or “stationed” in another city or town, are not applicable her for obvious reasons.) The official headquarters of each district court of appeal is designated by statute, s. 35.05, F.S., and that is where the majority of the work of the court is performed.¹⁰

Notably, the AG Opinion relied on the fact that s. 35.05, F.S., designated the official headquarters of each district court of appeal in specific cities. However, as already noted, s. 35.05, F.S., has since been amended and now permits a district court of appeal to “designate

⁴ Section 112.061(4)(a)-(c), F.S.

⁵ Section 35.05(1), F.S. (designating the city in which the headquarters for each appellate district must be located).

⁶ Section 35.05(2), F.S.

⁷ See s. 35.05, F.S., <http://fall.law.fsu.edu/FIStatutes/docs/1973/1973TVC35.pdf> (last visited Feb. 15, 2018).

⁸ See s. 112.061, F.S., <http://fall.law.fsu.edu/FIStatutes/docs/1973/1973TXC112.pdf> (last visited Feb. 15, 2018).

⁹ Op. Att’y Gen. Fla. 74-132 (1974).

¹⁰ *Id.*

other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061.”¹¹

Currently, it appears that only the Second District Court of Appeal has designated a second branch office, in Tampa on the Stetson University campus.¹² However, the Second District’s clerk’s office is at the official headquarters in Lakeland.¹³

Neither justices of the Supreme Court nor judges for the district courts of appeal residing outside the city where their respective courts are headquartered receive travel and subsistence reimbursement.

Certification of Need for Additional Judges

Article V, section 9 of the Florida Constitution requires the Florida Supreme Court to submit recommendations to the Legislature when there is a need to increase or decrease the number of judges.¹⁴ The constitutional provision further directs the Court to base its recommendations on uniform criteria adopted by court rule.

The Court’s rule setting forth criteria for assessing judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics.¹⁵ These weights are a quantified measure of judicial time spent on case-related activity. The judicial workload is then based on judicial caseloads adjusted in the relative complexity of various case types.

In addition to the statistical information, the Court, in weighing the need for trial court judges, will also consider the factors below which primarily relate to the resources available to a judicial circuit:

- (i) The availability and use of county court judges in circuit court.

¹¹ Section 35.05(2), F.S.

¹² Florida Second District Court of Appeal, <http://www.2dca.org/Directions/tampa.shtml> (last visited Feb. 15, 2018).

¹³ *Id.*

¹⁴ FLA. CONST. art. V, s. 9. states:

Determination of number of judges.—The supreme court shall establish by rule uniform criteria for the determination of the need for additional judges except supreme court justices, the necessity for decreasing the number of judges and for increasing, decreasing or redefining appellate districts and judicial circuits. If the supreme court finds that a need exists for increasing or decreasing the number of judges or increasing, decreasing or redefining appellate districts and judicial circuits, it shall, prior to the next regular session of the legislature, certify to the legislature its findings and recommendations concerning such need. Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

¹⁵ Fla. R. Jud. Adm. 2.240(b)(1)(A).

- (ii) The availability and use of senior judges to serve on a particular court.
- (iii) The availability and use of magistrates and hearing officers.
- (iv) The extent of use of alternative dispute resolution.
- (v) The number of jury trials.
- (vi) Foreign language interpretations.
- (vii) The geographic size of a circuit, including travel times between courthouses in a particular jurisdiction.
- (viii) Law enforcement activities in the court's jurisdiction, including any substantial commitment of additional resources for state attorneys, public defenders, and local law enforcement.
- (ix) The availability and use of case-related support staff and case management policies and practices.
- (x) Caseload trends.¹⁶

In addition to the weighted caseload statistics, the Court will also consider the time to perform other judicial activities, such as reviewing appellate decisions, reviewing petitions and motions for post-conviction relief, hearing and disposing motions, and participating in meetings with those involved in the justice system.¹⁷ Finally, the Court will consider any request for an increase or decrease in the number of judges that the chief judge of the circuit “feels are required.”¹⁸

Certification of Need for Additional Judges for FY 2018-2019

Following its criteria for determining the need for judges, the Florida Supreme Court recently issued an order certifying the need for additional judges for the 2018-2019 fiscal year.¹⁹ In the order, the Court requested two additional judgeships for the Ninth Judicial Circuit, which encompasses Orange and Osceola Counties, and two additional county court judgeships in Hillsborough County.²⁰ The Court also decertified the need for 13 county court judgeships as follows: one from Escambia County, two from Pasco County, one from Putnam County, one from Alachua County, one from Polk County, one from Monroe County, three from Brevard County, one from Charlotte County, and one from Collier County.²¹

Judicial Nominating Commissions

Unless otherwise provided by law, the Governor fills a newly created judgeship by appointing a judge from among three to six persons nominated by a judicial nominating commission.²² Once a vacancy occurs, a judicial nominating commission must submit its nominations to the Governor within 30 days, but the Governor may grant an extension to the commission of up to 30 days.²³

¹⁶ Fla. R. Jud. Admin. 2.240(b)(1)(B).

¹⁷ Fla. R. Jud. Admin. 2.240(c).

¹⁸ Fla. R. Jud. Admin. 2.240(d).

¹⁹ *In Re: Certification of Need for Additional Judges*, 2017 WL 5623576 (Fla. 2017).

²⁰ *Id.* at *3.

²¹ *Id.* at *4.

²² FLA. CONST. art. V, s. 11; *Hoy v. Firestone*, 453 So. 2d 814 (Fla. 1984) (recognizing that the Legislature may provide for newly created judgeships to be filled by election or appointment).

²³ Fla. Const. art. V, s. 11(c). The judicial vacancies created by the bill do not occur until its effective date of July 1, 2018. However, “nothing in the Florida Constitution prevents the relevant judicial nominating commission (“JNC”) from beginning

Within 60 days after receiving the nominations, the Governor must make an appointment to fill the vacancy.²⁴

The appointee's term will end "on the first Tuesday after the first Monday in January of the year following the next primary and general election occurring at least one year after the date of appointment." Thus, the initial term of a judgeship created during the 2018 Session will end on January 12, 2021. At the end of the appointed term, the judicial offices will be filled by election.²⁵

Legislative Powers Concerning Court Jurisdiction

The Constitution confers some authority over the jurisdiction of the courts to the Legislature. Although the territorial and subject matter jurisdiction of the Florida Supreme Court is primarily defined by the Constitution, the Legislature has constitutional authority to provide for the territorial jurisdiction and the subject matter jurisdiction of the courts.²⁶ For example, the Legislature is granted broad authority to define the jurisdiction²⁷ of the county courts: "The county courts shall exercise the jurisdiction *prescribed by general law*. Such jurisdiction shall be uniform throughout the state."²⁸

Because the jurisdiction of the circuit court is limited by the jurisdiction of the county courts under the Constitution, the Legislature's authority to define the jurisdiction of the circuit courts is also fairly broad:

The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals *when provided by general law*. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action *prescribed by general law*.²⁹

the process of nominating ... before the vacancy actually occurs." *Advisory Opinion to the Governor re Judicial Vacancy Due to Mandatory Retirement*, 940 So. 2d 1090, 1095 (Fla. 2006) (Cantero, J., concurring).

²⁴ *Id.*

²⁵ FLA. CONST. art V, s. 11(b).

²⁶ "Jurisdiction" is defined as "[a] government's general power to exercise authority over all persons and things within its territory; esp., a state's power to create interests that will be recognized under common-law principles as valid in other states <New Jersey's jurisdiction>." BLACK'S LAW DICTIONARY (10th ed. 2014). For courts, jurisdiction is defined as "[a] court's power to decide a case or issue a decree <the constitutional grant of federal-question jurisdiction>." *Id.* Additionally, jurisdiction is defined geographically: "A geographic area within which political or judicial authority may be exercised <the accused fled to another jurisdiction>." *Id.*

²⁷ *See Alexdex Corp. v. Nachon Enterprises, Inc.*, 641 So. 2d 858, 861 (Fla. 1994) ("The jurisdiction of the courts of the state is broadly defined by our State Constitution; however, the legislature may further define a court's jurisdiction so long as the jurisdiction, as redefined, is not in conflict with the Constitution. . . . Absent a constitutional prohibition or restriction, the legislature is free to vest courts with exclusive, concurrent, original, appellate, or final jurisdiction.") (citing *State v. Sullivan*, 95 Fla. 191, 116 So. 255 (1928)).

²⁸ FLA. CONST. art. V, s. 6(b) (emphasis added). Additionally, the Legislature establishes the number of judges to serve in each county. *Id.* at s. 6(a).

²⁹ FLA. CONST. art. V, s. 5(b) (emphasis added).

County Court Jurisdiction

As provided by the Legislature in s. 34.01, F.S., the county court is a trial court that has jurisdiction over the following subject matters within its jurisdictional (monetary) amount of \$15,000:

- All criminal misdemeanor cases not cognizable by the circuit courts;
- All violations of municipal and county ordinances;
- All actions at law involving damages up to \$15,000, not including interest, costs, and attorney's fees, unless the cause of action is within the exclusive jurisdiction of the circuit courts;
- Concurrent jurisdiction with the circuit courts over disputes between homeowners' associations and parcel owners;
- Concurrent jurisdiction with circuit courts to hear uncontested dissolution of marriage petitions under the simplified dissolution procedures;
- Any subject matter jurisdiction previously exercised by the county courts prior to the adoption of the 1968 Constitution, including that of the small claims courts; and
- Any matter in equity (such as an eviction)³⁰ that is within the jurisdictional amount of the county court, \$15,000.

The Legislature has increased the jurisdictional amount of county court three times since 1980. Before July 1, 1980, the amount was \$2,500; on July 1, 1980, it changed to \$5,000; on July 1, 1990, to \$10,000; and on July 1, 1992, to \$15,000. According to the Consumer Price Index, \$15,000 in July 1992 had the same buying power as \$26,319 in December 2017.

The National Center for State Courts reports that jurisdictional amounts for courts comparable to Florida's county courts range from \$5,000 to \$200,000.³¹ Florida is one of four states with a limit of \$15,000. Four states have a jurisdictional limit of \$25,000; 22 states use \$30,000 or less; one uses \$40,000; and five use more than \$40,000, with four of those greater than \$50,000.³²

Circuit Court Jurisdiction

Because the circuit courts have exclusive jurisdiction over "all actions at law not cognizable by the county courts," the circuit court's current jurisdictional amount is \$15,000 or above for cases demanding money judgments.³³

Additionally, with two exceptions, the circuit court has appellate jurisdiction over county court cases. Under the two exceptions, the district court of appeal has appellate jurisdiction over a county court case when a county court either declares a statute or constitutional provision invalid

³⁰ Section 34.011, F.S. (providing that county and circuit courts generally have concurrent jurisdiction over landlord tenant cases, although county court will have exclusive jurisdiction over proceedings relating to the right of possession so long as matter is under \$15,000.).

³¹ National Center for State Courts, *Civil Jurisdiction Thresholds*, available at <http://www.ncsc.org/~media/files/pdf/topics/civil%20procedure/civil%20jurisdiction%20thresholds%20history.ashx> (last visited Feb. 9, 2018).

³² Not all states provided data to the National Center for State Courts and some states have a single-tier trial court or threshold ranges.

³³ Section 26.012(2)(a), F.S.

or certifies a question of great public importance.³⁴ Additionally, if the law applied by the circuit court sitting in its appellate capacity is in question, a party may seek review by the appropriate district court of appeal by filing a petition of writ of certiorari.³⁵

Notably, foreclosure cases, which are cases in equity, are not one of the subject areas statutorily defined as being within the exclusive jurisdiction of the circuit court.³⁶ Rather, the Florida Supreme Court in *Alexdex Corp. v. Nachon Enterprises, Inc.*, concluded in resolving a conflict between the statutes setting forth the county court's and the circuit court's equity jurisdiction in foreclosure cases, "the legislature intended to provide concurrent equity jurisdiction in circuit and county courts, except that equity cases filed in county courts must fall within the county court's monetary jurisdiction, as set by statute."³⁷

III. Effect of Proposed Changes:

Section 1 creates s. 25.025, F.S., to permit a Supreme Court justice permanently residing outside of Leon County to be paid subsistence and travel expenses, at a rate established by the Chief Justice, when conducting business at the headquarters of the Supreme Court in Tallahassee. A justice who resides outside of Leon County is authorized to designate an official headquarters in the District Court of Appeal district in which he or she resides, located in a district court of appeal courthouse, county courthouse or other appropriate facility. A justice will be paid travel expenses when travelling between his or her official headquarters and Tallahassee on official business and reimbursed subsistence for each day or partial day he or she is in Tallahassee. The Supreme Court may not use state funds to lease space in a facility to establish an official headquarters for a justice.

Section 2 amends s. 26.031, Florida Statutes, to add two circuit court judgeships to the Ninth Judicial Circuit Court, which includes Orange and Osceola Counties. The newly created judgeships will be filled by the Governor from among nominees by the Ninth Circuit Judicial Nominating Commission.

Section 3 amends s. 34.01, Florida Statutes, to expand the jurisdiction of county court to include actions at law with an amount in which the matter in controversy does not exceed \$50,000, rather than the current limit of \$15,000. The new limit applies to actions filed on or after January 1, 2020. The bill requires that the Legislature adjust the limit every 5 years to reflect the rate of inflation or deflation as indicated in the Consumer Price Index.

The bill also provides that parties shall pay the filing fees in the same amounts and in the same manner as current law. In other words, if the amount in controversy exceeds \$15,000 but is less than the new limit of \$50,000, the party would pay the filing fees associated with circuit court

³⁴ Section 26.012(1), F.S.

³⁵ FLA. CONST. art. V, s. 4(b)(3) (authorizing district courts of appeal to issue writs of certiorari among others). Philip J. Padovano, *Appellate Practice*, 2 Fla. Prac., § 30:5 (2017 ed.) ("A party may file a petition for writ of certiorari to review . . . an appellate decision of a lower court[.]"). On petition for writ of certiorari, the district court reviews for whether the circuit court departed from the essential requirements of the law; or, put another way, whether the circuit court "(1) afforded the parties due process of law[,] and (2) applied the correct law." *Id.*

³⁶ Section 26.012(2), F.S.

³⁷ 641 So. 2d 858, 862 (Fla. 1994).

even though the case would now reside in county court. This provision ensures that there will be no change to state revenues resulting from the bill.

Section 4 amends s. 34.002, Florida Statutes, to add five new county judgeships – two in Hillsborough County, and one each in Citrus, Columbia and Flagler counties. The newly created judgeships will be filled by the Governor from among nominees by the appropriate judicial nominating commissions.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Addition of Judges Not Certified by the Florida Supreme Court- In order to create the three additional county court judgeships in Citrus, Columbia, and Flagler Counties, article V, section 9 of the Florida Constitution requires that these additions be approved by a two-thirds vote of each house.

Headquarters of the Florida Supreme Court Justices- It is unclear whether the Legislature has the authority to authorize the Chief Justice of the Florida Supreme Court to establish “headquarters” under s. 112.061, F.S., for any justice outside of Tallahassee, even if it is within the justice’s district.

Article II, section 2 of the Florida Constitution designates Tallahassee as the seat of state government “where the *offices* of the governor, lieutenant governor, cabinet members and *the supreme court shall be maintained* and the sessions of the legislature shall be held[.]”³⁸ Under the rule of construction, “*expressio unius est exclusio alterius*” (the expression of one thing is the exclusion of the other), it appears by excluding the word “offices” for the legislature and only requiring that session be held in Tallahassee, the drafters of article II, section 2 understood that legislators must have offices within their districts around the state. However, the word “offices” is specifically used in reference to the governor, lieutenant governor, cabinet members, and the Florida Supreme Court in

³⁸ FLA. CONST. art. II, s. 2 (emphasis added).

article II, section 2, and specifically requires that those offices be located at the seat of government in Tallahassee.

While permitting a justice to work remotely or establish a private chamber in another courthouse in the state does not appear to be problematic, it appears that another “headquarters” outside of Tallahassee may not be constitutionally permissible.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

In the jurisdictions where the bill creates new judgeships, litigants may have their cases resolved more quickly.

C. Government Sector Impact:

State Government

Supreme Court Travel Expenses (Section 1)

According to the Office of the State Court Administrator, the travel and subsistence provisions have an annual fiscal impact of \$209,930 in recurring general revenue funds. Supreme Court travel costs are based on official state mileage, assuming 40 round trips yearly per justice between Tallahassee and the DCA headquarters in the justice’s home appellate district. Subsistence costs assume 77 meeting days at \$131 per day and 80 travel days at \$98.25 per day, or \$17,947 per justice.³⁹

New Circuit Court Judgeships (Section 2)

When circuit court judgeships are created, other costs must be incurred in addition to the salary and benefits for each new judge. The largest of these costs are for the salary and benefits of a judicial assistant and a law clerk for each judge. According to the Office of the State Courts Administrator, the total costs to fund the addition of the two circuit court judgeships created by the bill are \$815,862 from the General Revenue Fund, of which \$14,394 are non-recurring costs.⁴⁰

New County Court Judgeships (Section 4)

When county court judgeships are created, the state must incur other costs in addition to the salary and benefits of each new judge. The largest of these costs are for the salary and benefits for a judicial assistant for each judge. Based on figures from the Office of the State Courts Administrator, the total costs to fund the addition of the five county court

³⁹ Office of the State Court Administrator, *Supreme Court Headquarter Travel Analysis* (on file with the Senate Appropriations Subcommittee on Criminal and Civil Justice).

⁴⁰ Office of the State Courts Administrator, *Judicial Impact Statement* (Nov. 22, 2017) (on file with the Senate Committee on Judiciary).

judgeships created by the bill are \$1,556,890 from the General Revenue Fund, of which \$23,990 are non-recurring costs.

Local Government

Under article V section 14(c) of the Florida Constitution and s. 29.008, F.S., counties are required to provide the court system, including the state attorney and the public defender, with facilities, security, and communication services, including information technology. Under the bill, the counties will incur an indeterminate amount of costs associated with providing those services to the new judges and judicial staff. The clerks of the court will also be required to provide additional services to the new judges.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 25.025, Florida Statutes, and substantially amends the following sections of the Florida Statutes: 26.031, 34.01, and 34.022.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 14, 2018:

The committee substitute:

- Permits Supreme Court justices permanently residing outside of Leon County to be paid subsistence and travel expenses;
- Increases the jurisdiction of county court to include actions at law with an amount in which the matter in controversy does not exceed \$50,000, rather than the current limit of \$15,000; and,
- Increases the number of county judgeships in the bill from two judgeships to five judgeships.

CS by Judiciary on January 25, 2018:

The committee substitute no longer includes a provision that would have reduced the number of county court judges in Monroe County.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



343172

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 25.025, Florida Statutes, is created to
read:

25.025 Headquarters.—

(1) (a) A Supreme Court justice who permanently resides
outside Leon County shall, if he or she so requests, have a
district court of appeal courthouse, a county courthouse, or



343172

11 other appropriate facility in his or her district of residence
12 designated as his or her official headquarters pursuant to s.
13 112.061. This official headquarters may serve only as the
14 justice's private chambers.

15 (b) A justice for whom an official headquarters is
16 designated in his or her district of residence under this
17 subsection is eligible for subsistence at a rate to be
18 established by the Chief Justice for each day or partial day
19 that the justice is at the headquarters of the Supreme Court for
20 the conduct of the business of the court. In addition to the
21 subsistence allowance, a justice is eligible for reimbursement
22 for transportation expenses as provided in s. 112.061(7) for
23 travel between the justice's official headquarters and the
24 headquarters of the Supreme Court for the conduct of the
25 business of the court.

26 (c) Payment of subsistence and reimbursement for
27 transportation expenses relating to travel between a justice's
28 official headquarters and the headquarters of the Supreme Court
29 shall be made to the extent appropriated funds are available, as
30 determined by the Chief Justice.

31 (2) The Chief Justice shall coordinate with each affected
32 justice and other state and local officials as necessary to
33 implement paragraph (1) (a).

34 (3) (a) This section does not require a county to provide
35 space in a county courthouse for a justice. A county may enter
36 into an agreement with the Supreme Court governing the use of
37 space in a county courthouse.

38 (b) The Supreme Court may not use state funds to lease
39 space in a district court of appeal courthouse, county



343172

40 courthouse, or other facility to allow a justice to establish an
41 official headquarters pursuant to subsection (1).

42 Section 2. Subsection (9) of section 26.031, Florida
43 Statutes, is amended to read:

44 26.031 Judicial circuits; number of judges.—The number of
45 circuit judges in each circuit shall be as follows:

JUDICIAL CIRCUIT	TOTAL
(9) Ninth.....	45 43

49 Section 3. Section 34.01, Florida Statutes, is amended to
50 read:

51 34.01 Jurisdiction of county court.—

52 (1) County courts shall have original jurisdiction:

53 (a) In all misdemeanor cases not cognizable by the circuit
54 courts.~~†~~

55 (b) Of all violations of municipal and county ordinances.~~†~~

56 (c) 1. Of all actions at law filed on or before December 31,
57 2019, in which the matter in controversy does not exceed the sum
58 of \$15,000, exclusive of interest, costs, and attorney
59 attorney's fees, except those within the exclusive jurisdiction
60 of the circuit courts.~~†~~ and

61 2. Of all actions at law filed on or after January 1, 2020,
62 in which the matter in controversy does not exceed the sum of
63 \$50,000, exclusive of interest, costs, and attorney fees, except
64 those within the exclusive jurisdiction of the circuit courts.
65 This limit must be adjusted every 5 years after January 1, 2020,
66 to reflect the rate of inflation or deflation as indicated in
67 the Consumer Price Index for All Urban Consumers, U.S. City
68 Average, All Items, or successor reports as reported by the



343172

69 United States Department of Labor, Bureau of Labor Statistics,
70 or its successor. Such adjustments must be rounded to the
71 nearest \$5,000.

72 (d) Of disputes occurring in the homeowners' associations
73 as described in s. 720.311(2)(a), which shall be concurrent with
74 jurisdiction of the circuit courts.

75
76 The party instituting an action at law under subparagraph (c)2.
77 in which the amount in controversy exceeds \$15,000 shall pay the
78 filing fees and service charges in the same amounts and in the
79 same manner as provided in s. 28.241, and the party appealing
80 any judgment on such action shall pay the filing fees and
81 service charges in the same amounts and in the same manner as
82 provided in s. 35.22. The clerk of court shall remit the fees as
83 provided in those sections.

84 (2) The county courts shall have jurisdiction previously
85 exercised by county judges' courts other than that vested in the
86 circuit court by s. 26.012, except that county court judges may
87 hear matters involving dissolution of marriage under the
88 simplified dissolution procedure pursuant to the Florida Family
89 Law Rules of Procedure or may issue a final order for
90 dissolution in cases where the matter is uncontested, and the
91 jurisdiction previously exercised by county courts, the claims
92 court, small claims courts, small claims magistrates courts,
93 magistrates courts, justice of the peace courts, municipal
94 courts, and courts of chartered counties, including but not
95 limited to the counties referred to in ss. 9, 10, 11, and 24,
96 Art. VIII of the State Constitution of 1885, as preserved by s.
97 (6)(e), Art. VIII of the State Constitution of 1968.



343172

98 (3) Judges of county courts shall also be committing trial
99 court judges. Judges of county courts shall be coroners unless
100 otherwise provided by law or by rule of the Supreme Court.

101 (4) Judges of county courts may hear all matters in equity
102 involved in any case within the jurisdictional amount of the
103 county court, except as otherwise restricted by the State
104 Constitution or the laws of Florida.

105 (5) A county court is a trial court.

106 Section 4. Subsections (9), (12), (17), and (28) of section
107 34.022, Florida Statutes, are amended to read:

108 34.022 Number of county court judges for each county.—The
109 number of county court judges in each county shall be as
110 follows:

112 COUNTY	TOTAL
113 (9) Citrus.....	<u>2</u> ±
114 (12) Columbia.....	<u>2</u> ±
115 (17) Flagler.....	<u>2</u> ±
116 (28) Hillsborough.....	<u>19</u> ±7

117 Section 5. This act shall take effect July 1, 2018.

118
119 ===== T I T L E A M E N D M E N T =====

120 And the title is amended as follows:

121 Delete everything before the enacting clause
122 and insert:

123 A bill to be entitled
124 An act relating to courts; creating s. 25.025, F.S.;
125 authorizing certain Supreme Court Justices to have an
126 appropriate facility in their district of residence



343172

127 designated as their official headquarters; providing
128 that an official headquarters may serve only as a
129 justice's private chambers; providing that such
130 justices are eligible for a certain subsistence
131 allowance and reimbursement for certain transportation
132 expenses; requiring that such allowance and
133 reimbursement be made to the extent appropriated funds
134 are available, as determined by the Chief Justice;
135 requiring the Chief Justice to coordinate with certain
136 persons in implementing designations of official
137 headquarters; providing that a county is not required
138 to provide space for a justice in a county courthouse;
139 authorizing counties to enter into agreements with the
140 Supreme Court for the use of county courthouse space;
141 prohibiting the Supreme Court from using state funds
142 to lease space in a facility to allow a justice to
143 establish an official headquarters; amending s.
144 26.031, F.S.; adding judges to the Ninth Judicial
145 Circuit Court; amending s. 34.01, F.S.; increasing the
146 limit of the amount in controversy in certain actions
147 at law under which the county court has original
148 jurisdiction of such actions; providing for
149 adjustments to the limit at specified intervals due to
150 inflation or deflation; specifying filing fees,
151 services charges, and a requirement for the clerk of
152 court's remittal of such fees in actions in which the
153 amount in controversy exceeds a specified amount;
154 amending s. 34.022, F.S.; adding judges to certain
155 county courts; providing an effective date.

By the Committee on Judiciary; and Senator Steube

590-02451-18

20181396c1

1 A bill to be entitled
 2 An act relating to judgeships; amending s. 26.031,
 3 F.S.; adding judges to the Ninth Judicial Circuit
 4 Court; amending s. 34.022, F.S.; adding and removing
 5 judges from certain county courts; providing an
 6 effective date.

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

9
 10 Section 1. Subsection (9) of section 26.031, Florida
 11 Statutes, is amended to read:

12 26.031 Judicial circuits; number of judges.—The number of
 13 circuit judges in each circuit shall be as follows:

JUDICIAL CIRCUIT	TOTAL
(9) Ninth.....	<u>45</u> 43

17 Section 2. Subsections (1), (5), (8), (11), (16), (28),
 18 (36), (51), (53), and (54) of section 34.022, Florida Statutes,
 19 are amended to read:

20 34.022 Number of county court judges for each county.—The
 21 number of county court judges in each county shall be as
 22 follows:

COUNTY	TOTAL
(1) Alachua.....	<u>4</u> 5
(5) Brevard.....	<u>8</u> 11
(8) Charlotte.....	<u>2</u> 3
(11) Collier.....	<u>5</u> 6
(16) Escambia.....	<u>4</u> 5

590-02451-18

20181396c1

30 (28) Hillsborough.....19 ~~17~~

31 (36) Leon.....4 ~~5~~

32 (51) Pasco.....5 ~~7~~

33 (53) Polk.....9 ~~10~~

34 (54) Putnam.....1 ~~2~~

35 Section 3. This act shall take effect July 1, 2018.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

January 25, 2018

The Honorable Jeff Brandes
Florida Senate
416 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Brandes,

I am writing this letter because my bill, SB 1396 - Judgeships, has been referred to the Senate Appropriations Subcommittee on Criminal and Civil Justice. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: PCS/SB 1552 (517024)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice and Senator Bracy

SUBJECT: Juvenile Justice

DATE: February 16, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/SB 1552 makes numerous changes relating to juvenile justice.

The bill makes the following changes, effective July 1, 2018:

- Removes the requirement that the proceeds from the “Invest in Children” license plate must be allocated based on each county’s proportionate share of the license plate annual use fee;
- Requires a prolific juvenile offender (PJO) who violates conditions of his or her nonsecure detention to be held in secure detention until a detention hearing is held; and
- Changes the minimum age in which a juvenile qualifies for transfer to adult court by discretionary direct file to 15 or 16 years of age (currently 14 or 15) if he or she is charged with an enumerated felony.

The bill also reenacts statutory authority (s. 985.672, F.S.) for the Department of Juvenile Justice (DJJ) to establish a direct-support organization (DSO) to provide assistance, funding, and support to assist the DJJ in furthering its goals. The bill removes a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted. The bill requires the secretary of DJJ to appoint members to the DSO’s board of directors according to the DSO’s bylaws.

The bill also makes the following changes, effective July 1, 2019:

- Revises the Detention Risk Assessment Instrument (DRAI) used to determine placement of a juvenile in detention care; and

- Replaces the term “nonsecure” with “supervised release” and makes conforming changes throughout ch. 985, F.S., to be consistent with terminology and operation of the revised DRAI.

The Criminal Justice Impact Conference has not reviewed this bill but its provisions related to juveniles transferred to the adult system will likely increase DJJ’s expenditures and reduce the Department of Corrections’ expenditures. See Section V. Fiscal Impact Statement.

II. Present Situation:

“Invest in Children” License Plates

Section 320.08058(11)(a), F.S., establishes that the Department of Highway Safety and Motor Vehicles (DHSMV) must develop an “Invest in Children” license plate that is approved by the DHSMV. In 2017, there were 10,260 “Invest in Children” license plates sold.¹

The proceeds of the license plate annual use fee² must be deposited into the Juvenile Crime Prevention and Early Intervention Trust Fund within the DJJ. Based on recommendations of the juvenile justice councils, the DHSMV must use the proceeds of the fee to fund programs and services that are designed to prevent juvenile delinquency. The DHSMV must allocate money within each county based on each county’s proportionate share of the annual use fee collected by the county.³

Proceeds from the annual use fee for the “Invest in Children” license plate assist in funding:

- After-school activities;
- Mentoring;
- Tutoring;
- Job internships;
- Youth summits;
- Learning to live violence-free;
- Parent-child relationship building;
- Summer camp scholarships;
- Recreational programs for girls and boys; and
- Substance abuse prevention.⁴

Juvenile Intake and Detention

When a juvenile is taken into custody by law enforcement or the court, the intake process begins, with the purpose of assessing the juvenile’s needs and risks to determine the most appropriate

¹ Florida Department of Highway Safety and Motor Vehicles, *2017 Specialty License Plate Rankings*, available at <http://www.flhsmv.gov/specialtytags/tag-sales.pdf> (last visited February 15, 2018).

² The annual use fee is \$20. See Florida Department of Highway Safety and Motor Vehicles, *Invest in Children*, available at http://www.flhsmv.gov/dmv/specialtytags/miscellaneous/invest_in_children.html (last visited February 14, 2018).

³ Section 320.08058(11)(b), F.S.

⁴ Florida Department of Juvenile Justice, *Invest in Children*, available at <http://www.djj.state.fl.us/get-involved/license-plate> (last visited February 14, 2018).

treatment plan and setting for the juvenile.⁵ Each juvenile undergoes an individualized assessment that begins with the standardized DRAI.⁶

The DRAI must indicate whether detention care is warranted.⁷ Detention care is the temporary care of a child in secure or nonsecure detention, pending a court adjudication or disposition or execution of a court order.⁸

The DRAI must take into consideration, but need not be limited to:

- Prior history of failure to appear;
- Prior offenses;
- Offenses committed pending adjudication;
- Any unlawful possession of a firearm;
- Theft of a motor vehicle or possession of a stolen motor vehicle;
- Probation status at the time the child is taken into custody;
- Aggravating and mitigating circumstances;
- Targeting a narrower population of juveniles than s. 985.255, F.S.;⁹ and
- The juvenile's history of abuse and neglect.¹⁰

The DRAI must indicate whether the juvenile should be placed into secure or nonsecure detention care.¹¹ Secure detention is the temporary custody of the juvenile while the juvenile is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.¹²

Nonsecure detention is the temporary, nonsecure custody of the juvenile while the juvenile is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment while under the supervision of the DJJ staff pending adjudication, disposition, or placement.¹³ Forms of nonsecure detention include, but are not limited to:

- Home detention;
- Electronic monitoring;
- Day reporting centers;
- Evening reporting centers; and
- Nonsecure shelters.¹⁴

⁵ Section 985.14(2), F.S.

⁶ Section 985.14(3)(a), F.S.

⁷ Section 985.245(2)(b), F.S.

⁸ Section 985.03(18), F.S.

⁹ Section 985.255, F.S., provides for the continued detention for a juvenile who has committed a specific offense or is a repeat offender.

¹⁰ Section 985.245(2)(b), F.S.

¹¹ *Id.*

¹² Section 985.03(18)(a), F.S.

¹³ Section 985.03(18)(b), F.S.

¹⁴ Nonsecure detention may include other requirements imposed by the court. *See* s. 985.03(18)(b), F.S.

The DJJ must ensure that a DRAI establishing the juvenile's eligibility for detention has been accurately completed and that the appropriate recommendation was made to the court.¹⁵

A juvenile taken into custody and placed into detention care must be given a hearing within 24 hours after being taken into custody.¹⁶ The court may order continued detention status at the hearing if:

- The juvenile is alleged to be an escapee from a residential commitment program; or an absconder from a nonresidential commitment program, a probation program, or conditional release supervision; or is alleged to have escaped while being lawfully transported to or from a residential commitment program;
- The juvenile is wanted in another jurisdiction for an offense which, if committed by an adult, would be a felony;
- The juvenile is charged with a delinquent act or violation of law and requests in writing through legal counsel to be detained for protection from an imminent physical threat to his or her personal safety;
- The juvenile is charged with committing an offense of domestic violence;
- The juvenile is charged with possession of or discharging a firearm on school property or illegal possession of a firearm;
- The juvenile is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., or a felony of the third degree that is also a crime of violence;
- The juvenile is alleged to have violated the conditions of the child's probation or conditional release supervision;
- The juvenile is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:
 - For an adjudicatory hearing on the same case regardless of the results of the DRAI; or
 - At two or more court hearings of any nature on the same case regardless of the results of the DRAI; or
- The juvenile is charged with any second degree or third degree felony involving a violation of ch. 893, F.S., or any third degree felony that is not also a crime of violence, and the juvenile:
 - Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
 - Has a record of law violations prior to court hearings;
 - Has already been detained or has been released and is awaiting final disposition of the case;
 - Has a record of violent conduct resulting in physical injury to others; or
 - Is found to have been in possession of a firearm.¹⁷

¹⁵ Section 985.145(1)(d), F.S.

¹⁶ Section 985.255(1), F.S.

¹⁷ Section 985.255(1)(a)-(i), F.S.

While the initial decision as to the juvenile's placement into detention care is made by the DJJ and is based on the DRAI, a juvenile must be placed in secure detention until the detention hearing if the juvenile:

- Is classified as a PJO pursuant to s. 985.255(1)(j), F.S.;
- Is charged with possessing or discharging a firearm on school property in violation of s. 790.115, F.S.; or
- Has been taken into custody on three or more separate occasions within a 60-day period.¹⁸

A juvenile may not be placed into or held in detention care for longer than 24 hours unless the court determines there is a need for continued detention and subsequently makes a special detention order.¹⁹

A juvenile may not be held in detention care under a special detention order for more than 21 days unless:

- An adjudicatory hearing for the case has been commenced in good faith by the court;
- Good cause is shown that the nature of the charge requires additional time for the prosecution or defense of the case; or
- The juvenile is classified as a PJO.²⁰

Prolific Juvenile Offender

The PJO designation was established to apply to youth with excessively high recidivism.²¹ A juvenile is classified as a PJO if he or she:

- Is charged with a delinquent act that would be a felony if committed by an adult;
- Has been adjudicated or had adjudication withheld for a felony offense, or delinquent act that would be a felony if committed by an adult, prior to the charge for which they are currently appearing; and
- Has five or more of any of the following, three of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult:
 - An arrest event²² for which a disposition²³ has not been entered;
 - An adjudication; or
 - An adjudication withheld.²⁴

A juvenile who has been classified as a PJO is treated differently for purposes of detention care while awaiting disposition. While awaiting disposition, a PJO must be placed on nonsecure

¹⁸ Section 985.25(1)(a)-(b), F.S.

¹⁹ Section 985.26(1), F.S.

²⁰ Section 985.26(2)(a)-(c), F.S.

²¹ Section 985.255(1)(j), F.S., was created in 2017 by ch. 2017-164, L.O.F.

²² "Arrest event" is an arrest or referral for one or more criminal offenses or delinquent acts arising out of the same episode, act, or transaction. Section 985.255(1)(j), F.S.

²³ "Disposition" is a declination to file under s. 985.15(1)(h), F.S.; the entry of nolle prosequi for the charges; the filing of an indictment under s. 985.56, F.S., or an information under s. 985.557, F.S.; a dismissal of the case; or an order of final disposition by the court. Section 985.26(2)(c), F.S.

²⁴ Section 985.255(1)(j), F.S.

detention care with electronic monitoring or in secure detention care under a special detention order.²⁵

If the court orders secure detention care, it must not exceed:

- 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to s. 985.26(2)(b), F.S.;²⁶ or
- 15 days after the entry of an order of adjudication.²⁷

Transferring of a Juvenile to Adult Court

There are three methods of transferring a juvenile to adult court for prosecution: judicial waiver, indictment by a grand jury, or direct filing an information.

Judicial Waiver

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by-case basis. To transfer a juvenile pursuant to judicial waiver, the state attorney must file a motion and the court must approve of the transfer.²⁸ Section 985.556, F.S., provides three types of judicial waivers: voluntary waiver, involuntary discretionary waiver, and involuntary mandatory waiver.

Indictment by a Grand Jury

Section 985.56, F.S., specifies that a juvenile of any age who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment by a grand jury. If the grand jury returns an indictment on the charge, the juvenile's case must be transferred to adult court.²⁹

Direct File

Direct file is when a state attorney files an information charging a juvenile in adult court. Direct file under s. 985.557, F.S., can be either discretionary or mandatory and is accomplished exclusively by the state attorney without requiring the court's approval.³⁰ Direct file is the predominant transfer method to adult court, accounting for 97.7 percent of the transfers in 2016-17.³¹

Discretionary Direct File

²⁵ Section 985.26(2)(c), F.S.

²⁶ Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case, the court may extend the length of detention for an additional nine days if the juvenile is charged with an offense that would be, if committed by an adult, a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual. Section 985.26(2)(b), F.S.

²⁷ Section 985.26(2)(c)1. and 2., F.S.

²⁸ Section 985.556, F.S.

²⁹ Section 985.56(1), F.S.

³⁰ Section 985.557, F.S.

³¹ Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

Section 985.557(1), F.S., provides the state attorney with discretion to file a case in adult court for certain cases when he or she believes the offense requires that adult sanctions be considered or imposed. Specifically, the state attorney may file an information (direct file a juvenile) in adult court when a juvenile is:

- 14 or 15 years of age and is charged with one of the following felony offenses:
 - Arson;
 - Sexual battery;
 - Robbery;
 - Kidnapping;
 - Aggravated juvenile abuse;
 - Aggravated assault;
 - Aggravated stalking;
 - Murder;
 - Manslaughter;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Armed burglary in violation of s. 810.02(2)(b), F.S.;
 - Burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.;
 - Burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.;
 - Aggravated battery;
 - Any lewd or lascivious offense committed upon or in the presence of a person less than 16;
 - Carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony;
 - Grand theft in violation of s. 812.014(2)(a), F.S.;
 - Possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.;
 - Home invasion robbery;
 - Carjacking;
 - Grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or
 - Grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the juvenile has a previous adjudication for grand theft of a motor vehicle in violation of s. 812.014(2)(c)6. or (2)(b), F.S.³²

Department of Juvenile Justice Direct-Support Organization

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily-created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The purpose and functions of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

Florida Juvenile Justice Foundation, Inc.

From 1994-1999, the DJJ had an ongoing partnership with the Florida Business Partners for Prevention (FBPP). At the time, the DJJ lacked statutory authority to have a DSO. In 1999, the

³² Section 985.557(1)(a)1.-19., F.S.

Legislature created s. 985.672, F.S., authorizing the DJJ to establish a DSO to provide assistance, funding, and support for the DJJ in carrying out its mission.³³ In 2000, the FBPP incorporated by the name of Florida Business Partners for Juvenile Justice, Inc., to provide such assistance, funding, and support to the DJJ.³⁴ The name was changed to the Florida Juvenile Justice Foundation, Inc. (Foundation) in 2006.³⁵

Repeal of s. 985.672, F.S., and DSO Compliance Review

Section 20.058(5), F.S., provides that laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. This subsection further provides that CSOs or DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019. Section 985.672, F.S., provides that the section is repealed October 1, 2018, unless reviewed and saved from repeal by the Legislature.

Staff of the Senate Committee on Criminal Justice reviewed relevant materials to determine if the DJJ and the Foundation comply with the requirements of s. 985.672, F.S., and with other statutory requirements for DSOs: s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements); s. 215.981, F.S. (CSO/DSO Audit Requirements); and s. 112.3251, F.S. (CSO/DSO Ethics Code Requirements). Staff finds that the DJJ and the Foundation are in compliance with most of the relevant DSO statutory requirements.

Staff Review of Compliance with s. 985.672, F.S. (DSO to Florida Department of Juvenile Justice)

Establishment of DSO

Section 985.672, F.S., authorizes the DJJ to establish a DSO whose sole purpose is to support the juvenile justice system. For purposes of s. 985.672, F.S., “direct-support organization” means an organization that is:

- A corporation not-for-profit incorporated under ch. 617, F.S., and approved by the Department of State;
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the DJJ or the juvenile justice system operated by a county commission or a circuit board; and
- Determined by the DJJ to be consistent with the goals of the juvenile justice system, in the best interest of the state, and in accordance with the adopted goals and mission of the DJJ.³⁶

³³ Section 985.672, F.S., was created in 1999 by ch. 1999-284, L.O.F.

³⁴ Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Approved and filed January 28, 2000) (on file with the Senate Criminal Justice Committee).

³⁵ Articles of Amendment to Articles of Incorporation of Florida Business Partners for Juvenile Justice, Inc. (Filed February 8, 2006) (on file with the Senate Criminal Justice Committee).

³⁶ Section 985.672(1)(a)-(c), F.S.

Staff Finding: Compliance. The Foundation meets the definition of “direct-support organization.” In 2000, the Foundation was established.³⁷ The Foundation is a Florida non-profit corporation under ch. 617, F.S., and is approved by the Department of State.³⁸ The DJJ’s mission is, “to increase public safety by reducing juvenile delinquency through effective prevention, intervention and treatment services that strengthen families and turn around the lives of troubled youth.”³⁹ The Foundation works toward advancing the DJJ’s mission by funding programs such as the Youth Investment Award program, which provides financial assistance designed to further the education and employability of juvenile justice-involved youth. Additionally, the Foundation funds back-to-school drives, Youth Success Week, the Human Trafficking Summit, in addition to running a national grant to support the Juvenile Detention Alternatives initiative.⁴⁰

Expenditures of the Foundation

Section 985.672(1), F.S., provides that expenditures of the DSO shall be used for the prevention and amelioration of juvenile delinquency and may not be used for the purpose of lobbying as defined in s. 11.045, F.S.

Staff findings: Compliance. The Foundation’s IRS Form 990 for 2015-16 shows that the majority of expenditures were for conferences, conventions, meetings, and youth programs. Additionally, the form shows that there were no expenditures made for the purposes of lobbying.⁴¹

Contractual Agreement Between the DJJ and the Foundation

Section 985.672(2), F.S., provides that the DSO must operate under a written contract with the DJJ and the contract must include certain provisions.

Approval of the Articles of Incorporation and Bylaws

The contract must provide for approval of the articles of incorporation and bylaws of the DSO by the DJJ.⁴²

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the approval of the Foundation’s articles of incorporation and bylaws by the DJJ prior to adoption by the Foundation.⁴³

³⁷ *Supra*, n. 34.

³⁸ The Foundation’s information is available at <http://search.sunbiz.org/Inquiry/CorporationSearch/ByName> by searching Florida Juvenile Justice Foundation, Inc. (last visited February 15, 2018).

³⁹ Florida Department of Juvenile Justice, *Mission*, available at <http://www.djj.state.fl.us/about-us/mission> (last visited February 15, 2018).

⁴⁰ Transmittal letter dated August 15, 2017, from the DJJ Secretary Christina K. Daly to Senate President Joe Negron, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF> (last visited February 15, 2018).

⁴¹ The IRS Form 990 for 2015-16 is the most recent tax form provided by the DJJ and the Foundation. According to DJJ staff, this is because the deadline for the submission of the tax form is in September, while the deadline to report information pursuant to DSO requirements found in s. 20.058, F.S. (described *infra*) is August. E-mail from DJJ staff to staff of the Senate Criminal Justice Committee, dated August 17, 2017 (on file with the Senate Criminal Justice Committee). *See also* IRS Form 990 for the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

⁴² Section 985.672(2)(a), F.S.

⁴³ Contract between the Florida Department of Juvenile Justice and the Florida Juvenile Justice Foundation, Inc. (executed June 4, 2009) (on file with the Senate Criminal Justice Committee).

Submission of an Annual Budget

The contract must provide for the DSO to submit an annual budget for the approval of the DJJ.⁴⁴

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for the review and approval of the Foundation's annual budget prior to adoption by the Foundation.⁴⁵

Certification by the DJJ that the DSO is in Compliance

The contract must provide for certification by the DJJ that the DSO is complying with the terms of the contract and in a manner consistent with the goals and purposes of the DJJ and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the DSO.⁴⁶

Staff findings: Not in compliance. The contract between the DJJ and the Foundation provides for such annual certification of the Foundation by the DJJ. However, the contract does not provide for the annual certification to be reported in the official minutes of a meeting of the Foundation and such certification has not been made in the minutes of a meeting as prescribed.⁴⁷

Staff recommendation: The contract between the DJJ and the Foundation should be amended to provide for such annual certification to be reported in the official minutes of a meeting of the Foundation. Subsequently, the board of directors must report such annual certification in the official minutes of a meeting of the Foundation.

Reversion of Moneys and Property

The contract must provide for the reversion of moneys and property held in trust by the DSO for the benefit of the juvenile justice system to the state if the DJJ ceases to exist or to the DJJ if the DSO is no longer approved to operate for the DJJ, a county commission, or a circuit board or if the DSO ceases to exist.⁴⁸

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such reversion of moneys and property.⁴⁹

Fiscal Year of the DSO

The contract must provide for the fiscal year of the DSO to begin July 1 of each year and end June 30 of the following year.⁵⁰

⁴⁴ Section 985.672(2)(b), F.S.

⁴⁵ *Supra*, n. 43.

⁴⁶ Section 985.672(2)(c), F.S.

⁴⁷ *Supra*, n. 43. Board meeting minutes of the Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

⁴⁸ Section 985.672(2)(d), F.S.

⁴⁹ *Supra*, n. 43.

⁵⁰ Section 985.672(2)(e), F.S.

Staff findings: Compliance. The contract between the DJJ and the Foundation provides for such information.⁵¹

Disclosure Made to Donors

The contract must provide for the disclosure of material provisions of the contract, and the distinction between the DJJ and the DSO, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.⁵²

Staff findings: Compliance. The contract provides that the Foundation must distinguish itself as “the 501(c)(3) direct-support organization for the Florida Department of Juvenile Justice” to all donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications. The contract further provides for the disclosure of material provisions of the contract to donors of gifts, contributions, or bequests.⁵³

Board of Directors

Section 985.672(3), F.S., requires the Secretary of the DJJ to appoint a board of directors for the DSO. The board’s membership must consist of representatives from businesses, representatives from each of the juvenile justice service districts, and one representative appointed at large.⁵⁴

Staff findings: Not in compliance. The board’s membership is not in compliance with the statute’s requirements because the juvenile justice system no longer utilizes service districts. Thus, the membership is not made up of representatives from each district.

Staff recommendation: Section 985.672(3), F.S., should be amended to reflect the current organization of the DJJ in order for the board membership to comply. Alternatively, the statute could be amended to provide the DJJ with broad discretion to appoint members to the board, without regard to specific representation as the statute currently prescribes.

Use of Property

Section 985.672(4), F.S., provides that the DJJ may permit, without charge, appropriate use by the DSO of fixed property, facilities, and personnel services of the juvenile justice system. The DJJ may prescribe any condition with which the DSO must comply in order to use such fixed property or facilities of the juvenile justice system. The DJJ may not permit the use of any fixed property or facilities of the juvenile justice system by the DSO if it does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. The DJJ must adopt rules prescribing the procedures by which the DSO is governed and any conditions with which a DSO must comply to use property or facilities of the DJJ.⁵⁵

⁵¹ *Supra*, n. 43.

⁵² Section 985.672(2)(f), F.S.

⁵³ *Supra*, n. 43.

⁵⁴ Section 985.672(3), F.S.

⁵⁵ Section 985.672(4)(a)-(c), F.S.

Staff findings: Compliance. The contract between the DJJ and the Foundation provides permission for the Foundation's use of the DJJ's property, facilities, and personnel services. However, the contract is silent on prohibiting the Foundation's use of the DJJ's property and facilities if the Foundation does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.⁵⁶ Further, the DJJ adopted rules prescribing the conditions in which the Foundation may use the DJJ's property, facilities, and personnel services.⁵⁷

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include language that prohibits the Foundation's use of the DJJ's fixed property or facilities if the Foundation does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin. This language is not required to be in the contract, but its inclusion would enable the DJJ and the Foundation to be in compliance with s. 985.672(4)(b), F.S., because it would apply broadly to the required practices of the Foundation.

Deposit of Funds

Section 985.672(5), F.S., provides that money may be held in a separate depository account in the name of the DSO and subject to the provisions of the contract with the DJJ.⁵⁸

Staff findings: Not in compliance. The Foundation has a separate depository account in their name.⁵⁹ However, the contract between the DJJ and the Foundation does not include any provisions regarding the separate depository account.⁶⁰

Staff recommendation: The contract between the DJJ and the Foundation should be amended to include provisions addressing the separate depository account.

Annual Financial Audit

Section 985.672(6), F.S., requires the DSO to provide for an annual financial audit in accordance with s. 215.981, F.S.

Staff findings: Not currently applicable. Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.⁶¹ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report

⁵⁶ *Supra*, n. 43.

⁵⁷ Fla. Admin. Code R. 63J-1.002 (2007).

⁵⁸ Section 985.672(5), F.S.

⁵⁹ E-mail from the DJJ staff to staff of the Senate Criminal Justice Committee, dated January 16, 2017 (on file with the Senate Criminal Justice Committee).

⁶⁰ *Supra*, n. 43.

⁶¹ The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Section 215.981(1), F.S. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services. Section 215.981(2), F.S.

must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.⁶²

The Foundation does not have annual expenditures in excess of \$100,000.⁶³ Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.⁶⁴

Staff Review of Compliance with s. 20.058, F.S. (CSO/DSO Transparency and Reporting Requirements)

Section 20.058, F.S., establishes a comprehensive set of transparency and reporting requirements for CSOs and DSOs.

Reporting Requirements

Section 20.058(1), F.S., requires each CSO and DSO to annually submit, by August 1, the following information to the agency it supports:

- The CSO or DSO's name, mailing address, telephone number, and website address;
- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission and results obtained by the CSO or DSO;
- A brief description of the CSO or DSO's plans for the next three fiscal years;
- A copy of the CSO or DSO's code of ethics; and
- A copy of the CSO or DSO's most recent Internal Revenue Service (IRS) Form 990.⁶⁵

Staff findings: Compliance. In 2017, the Foundation reported all of the information required by s. 20.058(1), F.S.⁶⁶

Transparency of Reported CSO or DSO Information

Section 20.058(2), F.S., provides that each agency receiving information from a CSO or DSO pursuant to s. 20.058(1), F.S., shall make such information available to the public through the agency's website. If the organization maintains a website, the agency's website must provide a link to the organization's website.

⁶² Section 11.45(3)(d), F.S.

⁶³ Total expenditures for 2015-16 were \$97,254. IRS Form 990 for Florida Juvenile Justice Foundation, Inc. (on file with the Senate Criminal Justice Committee).

⁶⁴ While the Foundation's expenditures do not currently exceed \$100,000 and thus, the Foundation is not currently subjected to an annual financial audit pursuant to s. 215.981, F.S., the contract between the DJJ and the Foundation provides that the Foundation must provide a copy of its annual financial audit to the DJJ. *Supra*, n. 43.

⁶⁵ The IRS Form 990 is the annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. s. 501. The most recent Form 990 provided by the Foundation is from 2015-16 because the deadline for the form is September, while the deadline for the submission of the required information is August.

⁶⁶ Transmittal letter dated August 1, 2017, from Foundation Executive Director Caroline Ray to the DJJ Secretary Christina K. Daly, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=16596&DocType=PDF> (last visited February 15, 2018).

Staff findings: Compliance. The information required in s. 20.058(1), F.S., is available to the public through the DJJ’s website.⁶⁷ Additionally, the DJJ provides a link to the Foundation’s website.⁶⁸

Section 20.058(3), F.S., provides that, by August 15 of each year, each agency shall report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by each CSO and DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency’s association with each organization.

Staff findings: Compliance. The DJJ submitted its report by August 15, 2017, and the DJJ Secretary Daly expressed her strong recommendation for the continued collaboration and association between the DJJ and the Foundation. The letter explained that the DJJ and the Foundation share a long history of working together to improve the lives of at-risk juveniles and their families. The Foundation promotes delinquency prevention, intervention, and educational opportunities for youth, in addition to stewarding all funds raised to enhance the activities of the DJJ. “The Foundation is an integral part of the Department of Juvenile Justice and shares a long and collaborative relationship that is rare amongst direct-support organizations.”⁶⁹

Contract Requirements

Section 20.058(4), F.S., provides that any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting information pursuant to s. 20.058(1) and (2), F.S. The contract must also include a provision for the orderly cessation of operations and reversion to the state of state funds held in trust by the organization within 30 days after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. If an organization fails to submit the required information for two consecutive years, the agency head shall terminate any contract between the agency and the organization.

Staff findings: Not in compliance. The contract between the DJJ and the Foundation is not contingent upon the Foundation’s submission and posting of the information pursuant to s. 20.058(1) and (2), F.S. The contract also does not provide for the orderly cessation of operations and reversion to the state of state funds held in trust by the Foundation *within 30 days* after its authorizing statute is repealed, the contract is terminated, or the organization is dissolved. The contract also does not provide for the DJJ Secretary to terminate the contract between the DJJ and the Foundation in the event that the Foundation fails to submit the required information for two consecutive years.⁷⁰

⁶⁷ Florida Juvenile Justice Foundation, *2017 Annual Report*, available at <http://www.djj.state.fl.us/fjjf/resources> (last visited February 15, 2018).

⁶⁸ Florida Department of Juvenile Justice, “Get Involved” available at <http://www.djj.state.fl.us/fjjf/foundation> (last visited February 15, 2018).

⁶⁹ *Supra*, n. 40.

⁷⁰ *Supra*, n. 43.

Staff recommendation: The DJJ and the Foundation should execute a revised contract that includes the requirements prescribed by s. 20.058(4), F.S. The contract between the DJJ and the Foundation was executed in 2009, while s. 20.058, F.S., was enacted by the Legislature in 2014.⁷¹ Additionally, the contract provides that, “The parties agree to renegotiate this agreement and any affected agreements if revisions of any applicable laws or regulations make changes in this agreement necessary.”⁷²

Staff Review of Compliance with s. 215.981, F.S. (CSO/DSO Audit Requirements)

As previously noted, s. 215.981(1), F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records. (For a full description of the statute, see discussion, *supra*, of s. 985.672(6), F.S. (annual financial audit)).

Staff findings: Not currently applicable. As previously noted, the Foundation does not have annual expenditures in excess of \$100,000. Therefore, the Foundation is not currently subject to the auditing requirements of s. 215.981, F.S.⁷³

Staff Review of Compliance with s. 112.3251, F.S. (CSO/DSO Ethics Code Requirement)

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.⁷⁴ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.⁷⁵

Staff findings: Not in compliance. The Foundation has a code of ethics which is conspicuously posted on its website.⁷⁶ However, the Foundation’s code of ethics is not in compliance with s. 112.313(2), (4), (5), and (8), F.S.

Staff recommendation: The Foundation should adopt a revised code of ethics to include requirements prescribed by s. 112.3251, F.S.

III. Effect of Proposed Changes:

The following provisions in the bill go into effect July 1, 2018

“Invest in Children” License Plates (Section 1, amending s. 320.08058, F.S.)

Current law requires proceeds from the sale of the “Invest in Children” license plate to be allocated within each county based on that county’s proportionate share of the license plate fee collected by the county. The bill removes this requirement, and instead, permits the DHMSV to

⁷¹ Section 20.058, F.S., was created in 2014 by ch. 2014-96, L.O.F.

⁷² *Supra*, n. 43.

⁷³ *Supra*, n. 63.

⁷⁴ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

⁷⁵ Section 112.3251, F.S.

⁷⁶ *Supra*, n. 67.

have discretion in determining how the proceeds from the license plate sales will be allocated, without regard to contributions based on county.

Prolific Juvenile Offender Violations of Nonsecure Detention (Section 10, amending s. 985.26, F.S.)

Current law contemplates the general treatment of a PJO awaiting a disposition hearing. However, the law does not address the treatment of a PJO who violates the terms of nonsecure detention. The bill provides that a PJO who is taken into custody for a violation of the conditions of his or her nonsecure detention must be held in secure detention until a detention hearing is held.⁷⁷

Discretionary Direct File (Section 15, amending s. 985.557, F.S.)

Current law provides a state attorney with discretion to direct file a juvenile who was 14 or 15 years of age at the time an enumerated offense was allegedly committed.⁷⁸ The bill changes the age in which a juvenile can be transferred to adult court by discretionary direct file for committing an enumerated offense from 14 or 15 years of age to 15 or 16 years of age.

Department of Juvenile Justice DSO (Section 17, amending s. 985.672, F.S.)

The bill removes a provision that repeals s. 985.672, F.S., on October 1, 2018, unless the repeal date is removed and the statute is reenacted.

Current law requires the DSO's board of directors to consist of representatives from businesses, each juvenile justice service district, and one representative appointed at large. The bill amends the requirements relating to the DSO's board representation to require the DJJ to appoint members to the DSO's board of directors pursuant to the DSO's bylaws.

All changes related to the revised DRAI go into effect July 1, 2019

Supervised Release (Section 2, amending s. 985.03, F.S.)

The bill replaces the term "nonsecure" with "supervised release" and retains the definition of the term, defined as temporary, nonsecure custody of the child while the child is released to the custody of the parent, guardian, or custodian in a physically nonrestrictive environment under the

⁷⁷ The PJO would be held in secure detention for up to 24 hours until his or her detention hearing when the judge would decide whether the PJO will be released back to nonsecure detention or rather placed in secure detention. Section 985.255, F.S. See also Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

⁷⁸ The enumerated felonies are arson; sexual battery; robbery; kidnapping; aggravated juvenile abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary in violation of s. 810.02(2)(b), F.S.; burglary of a dwelling or structure in violation of s. 810.02(2)(c), F.S.; burglary with an assault or battery in violation of s. 810.02(2)(a), F.S.; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft in violation of s. 812.014(2)(a), F.S.; possessing or discharging any weapon or firearm on school property in violation of s. 790.115, F.S.; home invasion robbery; carjacking; grand theft of a motor vehicle in violation of s. 812.014(2)(c)6., F.S.; or grand theft of a motor vehicle valued at \$20,000 or more in violation of s. 812.014(2)(b), F.S., if the juvenile has a previous adjudication for grand theft of a motor vehicle in violation of ss. 812.014(2)(c)6., or 812.014(2)(b), F.S. See s. 985.557(1)(a)1.-19., F.S.

supervision of the DJJ staff pending adjudication or disposition, through programs that include, but are not limited to:

- Electronic monitoring;
- Day reporting centers; and
- Nonsecure shelters.

The bill removes home detention and evening reporting centers from this definition.

Risk Assessment Instrument (Section 7, amending s. 985.245, F.S.)

Current law requires the DRAI used by the DJJ in assessing whether a juvenile should be placed in detention care to take certain factors into consideration in making that determination. The bill requires the DRAI to take into consideration the following factors:

- Pending felony and misdemeanor offenses;
- Offenses committed pending adjudication;
- Prior offenses;
- Unlawful possession of a firearm;
- Violations of supervision;
- Supervision status at the time the child is taken into custody; and
- All statutory mandates for detention care.

The bill removes several requirements for the DRAI to take into consideration including theft of a motor vehicle and possession of a stolen motor vehicle.

For a juvenile who is under the supervision of the DJJ and is charged with committing a new offense, the bill removes consideration of the new offense from the scoring to be used in the DRAI.

Detention Intake (Section 8, amending s. 985.25, F.S.)

Current law provides that a juvenile who has been taken into custody on three or more separate occasions within a 60-day period must be placed in secure detention until the juvenile's detention hearing. The bill removes this criteria from the statute.

Detention Criteria (Section 9, amending s. 985.255, F.S.)

Current law provides for certain circumstances in which a court may order a continued detention status for a juvenile at the initial detention hearing. The bill adds an additional circumstance, providing that continued detention may be ordered at the hearing if the result of the DRAI indicates secure or supervised release detention.

The bill removes the following circumstances in which a court was permitted to order a continued detention status for a juvenile at the detention hearing:

- If the juvenile is charged with committing an offense of domestic violence;
- If the juvenile is charged with possession of or discharging a firearm on school property;
- If the juvenile is charged with a capital felony, a life felony, a felony of the first degree, a felony of the second degree that does not involve a violation of ch. 893, F.S., or a felony of

the third degree that is also a crime of violence, including any such offense involving the use or possession of a firearm;

- If the juvenile is alleged to have violated the conditions of the child’s probation or conditional release supervision;
- If the juvenile is detained on a judicial order for failure to appear and has previously willfully failed to appear, after proper notice:
 - For an adjudicatory hearing on the same case regardless of the results of the DRAI; or
 - At two or more court hearings of any nature on the same case regardless of the results of the DRAI; or
- If the juvenile is charged with any second degree or third degree felony involving a violation of ch. 893, F.S., or any third degree felony that is not also a crime of violence, and the juvenile:
 - Has a record of failure to appear at court hearings after being properly notified in accordance with the Rules of Juvenile Procedure;
 - Has a record of law violations prior to court hearings;
 - Has already been detained or has been released and is awaiting final disposition of the case;
 - Has a record of violent conduct resulting in physical injury to others; or
 - Is found to have been in possession of a firearm.

Violation of Probation or Postcommitment Probation (Section 14, amending s. 985.439, F.S.)

The bill provides that a juvenile taken into custody pursuant to s. 985.101, F.S.,⁷⁹ for violating conditions of probation must be screened and detained or released based on his or her DRAI score. The bill eliminates the term “consequence unit” and references therein because consequence units are no longer in operation.

Revised Detention Risk Assessment Instrument (Sections 2-9, 11-14, 16)

The bill makes several changes throughout ch. 985, F.S., including replacing the term “nonsecure” with “supervised release,” to be consistent with modifications being implemented with the DJJ’s forthcoming use of the revised DRAI.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷⁹ Section 985.101, F.S., provides circumstances in which a juvenile may be taken into custody.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The removal of the provision that repeals s. 985.672, F.S., enables the DJJ's DSO to sustain a source of financial and other direct assistance for advancing the DJJ's mission to increase public safety by reducing juvenile delinquency.

C. Government Sector Impact:**Prolific Juvenile Offender Costs for Violations Secure Detention**

The Criminal Justice Impact Conference has not provided an estimate of the bill's impact. The department estimates that, while the requirement for requiring PJOs who violate non-secure detention to be held in secure detention overnight could result in increased utilization of secure detention, this change is not expected to have a substantive fiscal impact.⁸⁰ Of the 256 PJOs throughout the state, 86 are in nonsecure detention.⁸¹ In the event that every PJO in nonsecure detention violated his or her conditions of detention, the DJJ will be able to provide accommodations to such juveniles and absorb such costs with existing resources.⁸²

Reduction in Juveniles Transferred to Adult Court

Additionally, the bill is likely to reduce the number of juveniles transferred to the adult system, thus increasing the DJJ's population and reducing the DOC's prison population. The DJJ estimates that there will be an additional 19 juveniles in the care of the DJJ due to the juveniles no longer being eligible for transfer to adult court pursuant to the bill. The DJJ estimates that the detention and treatment cost for these additional juveniles would cost \$1,355,086.⁸³ Additional facility costs to care for these additional juveniles is indeterminate.⁸⁴ The impact on the DOC's prison population is indeterminate.

Funding and Support to the DJJ from the DSO

The removal of the provision that repeals s. 985.672, F.S., enables the DSO to continue to provide assistance, funding, and support for activities authorized by the DJJ.

⁸⁰ Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

⁸¹ Department of Juvenile Justice, *PJO Statewide Report*, (last updated January 22, 2018) (on file with the Senate Criminal Justice Committee).

⁸² Department of Juvenile Justice, *2018 Bill Analysis for CS/SB 1552*, (February 14, 2018) (on file with the Senate Criminal Justice Committee).

⁸³ *Id.*

⁸⁴ *Id.*

Implementing the Revised DRAI

All costs associated with the implementation of the modified DRAI have been or will be absorbed by the DJJ and this bill will not result in a fiscal impact on the DJJ with regards to such operational changes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 320.08058(11), F.S., currently authorizes the DHSMV to allocate the proceeds from the “Invest in Children” license plate annual use fee, while the DJJ allocates the proceeds in practice. Replacing the word “department” in statute with “Department of Juvenile Justice” would rectify this discrepancy.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 320.08058, 985.03, 985.037, 985.039, 985.101, 985.24, 985.245, 985.25, 985.255, 985.26, 985.265, 985.35, 985.439, 985.557, 985.601, and 985.672.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Criminal and Civil Justice on February 14, 2018:

The committee substitute:

- Removes the requirement that the proceeds from the “Invest in Children” license plate must be allocated based on each county’s proportionate share of the license plate annual use fee;
- Revises the DRAI used to determine placement of a juvenile in detention care;
- Replaces the term “nonsecure” with “supervised release” and makes other conforming changes throughout ch. 985, F.S., to be consistent with terminology and operation of the revised DRAI;
- Changes the minimum age in which a juvenile qualifies for transfer to adult court by discretionary direct file to 15 or 16 years of age (currently 14 or 15) if he or she is charged with an enumerated felony;
- Removes provisions related to modifying the minimum age in which a juvenile can be transferred to adult court by judicial waiver, discretionary waiver for 16 and 17 year olds, and mandatory direct file; and
- Removes the repeal date for statutory authority (s. 985.672, F.S.) for the DJJ’s DSO.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



378810

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/15/2018	.	
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	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (11) of section
320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.—

(11) INVEST IN CHILDREN LICENSE PLATES.—

(b) The proceeds of the Invest in Children license plate
annual use fee must be deposited into the Juvenile Crime



378810

11 Prevention and Early Intervention Trust Fund within the
12 Department of Juvenile Justice. Based on the recommendations of
13 the juvenile justice councils, the department shall use the
14 proceeds of the fee to fund programs and services that are
15 designed to prevent juvenile delinquency. ~~The department shall~~
16 ~~allocate moneys for programs and services within each county~~
17 ~~based on that county's proportionate share of the license plate~~
18 ~~annual use fee collected by the county.~~

19 Section 2. Effective July 1, 2019, subsection (18) of
20 section 985.03, Florida Statutes, is amended to read:

21 985.03 Definitions.—As used in this chapter, the term:

22 (18) "Detention care" means the temporary care of a child
23 in secure or supervised release ~~nonsecure~~ detention, pending a
24 court adjudication or disposition or execution of a court order.
25 There are two types of detention care, as follows:

26 (a) "Secure detention" means temporary custody of the child
27 while the child is under the physical restriction of a secure
28 detention center or facility pending adjudication, disposition,
29 or placement.

30 (b) "Supervised release ~~Nonsecure~~ detention" means
31 temporary, nonsecure custody of the child while the child is
32 released to the custody of the parent, guardian, or custodian in
33 a physically nonrestrictive environment under the supervision of
34 the department staff pending adjudication, ~~or~~ or disposition,
35 through programs that ~~or placement. Forms of nonsecure detention~~
36 include, but are not limited to, ~~home detention,~~ electronic
37 monitoring, day reporting centers, ~~evening reporting centers,~~
38 and nonsecure shelters. Supervised release ~~Nonsecure~~ detention
39 may include other requirements imposed by the court.



378810

40 Section 3. Effective July 1, 2019, subsection (5) of
41 section 985.037, Florida Statutes, is amended to read:

42 985.037 Punishment for contempt of court; alternative
43 sanctions.—

44 (5) ALTERNATIVE SANCTIONS COORDINATOR.—There is created the
45 position of alternative sanctions coordinator within each
46 judicial circuit, pursuant to subsection (3). Each alternative
47 sanctions coordinator shall serve under the direction of the
48 chief administrative judge of the juvenile division as directed
49 by the chief judge of the circuit. The alternative sanctions
50 coordinator shall act as the liaison between the judiciary,
51 local department officials, district school board employees, and
52 local law enforcement agencies. The alternative sanctions
53 coordinator shall coordinate within the circuit community-based
54 alternative sanctions, including supervised release ~~nonsecure~~
55 detention programs, community service projects, and other
56 juvenile sanctions, in conjunction with the circuit plan
57 implemented in accordance with s. 790.22(4)(c).

58 Section 4. Effective July 1, 2019, paragraph (a) of
59 subsection (1) of section 985.039, Florida Statutes, is amended
60 to read:

61 985.039 Cost of supervision; cost of care.—

62 (1) Except as provided in subsection (3) or subsection (4):

63 (a) When any child is placed into supervised release
64 ~~nonsecure~~ detention, probation, or other supervision status with
65 the department, or is committed to the minimum-risk
66 nonresidential restrictiveness level, the court shall order the
67 parent of such child to pay to the department a fee for the cost
68 of the supervision of such child in the amount of \$1 per day for



378810

69 each day that the child is in such status.

70 Section 5. Effective July 1, 2019, paragraph (d) of
71 subsection (1) of section 985.101, Florida Statutes, is amended
72 to read:

73 985.101 Taking a child into custody.—

74 (1) A child may be taken into custody under the following
75 circumstances:

76 (d) By a law enforcement officer who has probable cause to
77 believe that the child is in violation of the conditions of the
78 child's probation, supervised release ~~nonsecure~~ detention,
79 postcommitment probation, or conditional release supervision;
80 has absconded from nonresidential commitment; or has escaped
81 from residential commitment.

82
83 Nothing in this subsection shall be construed to allow the
84 detention of a child who does not meet the detention criteria in
85 part V.

86 Section 6. Effective July 1, 2019, subsections (2), (4),
87 and (5) of section 985.24, Florida Statutes, are amended to
88 read:

89 985.24 Use of detention; prohibitions.—

90 (2) A child alleged to have committed a delinquent act or
91 violation of law may not be placed into secure or supervised
92 release ~~nonsecure~~ detention care for any of the following
93 reasons:

94 (a) To allow a parent to avoid his or her legal
95 responsibility.

96 (b) To permit more convenient administrative access to the
97 child.



378810

98 (c) To facilitate further interrogation or investigation.

99 (d) Due to a lack of more appropriate facilities.

100 ~~(4) The department may, within its existing resources,~~
101 ~~develop nonsecure, nonresidential evening reporting centers as~~
102 ~~an alternative to placing a child in secure detention. Evening~~
103 ~~reporting centers may be collocated with a juvenile assessment~~
104 ~~center. If established, evening reporting centers shall serve~~
105 ~~children and families who are awaiting a child's court hearing~~
106 ~~and, at a minimum, operate during the afternoon and evening~~
107 ~~hours to provide a highly structured program of supervision.~~
108 ~~Evening reporting centers may also provide academic tutoring,~~
109 ~~counseling, family engagement programs, and other activities.~~

110 (4) ~~(5)~~ The department shall continue to identify and
111 develop supervised release detention options ~~alternatives to~~
112 ~~secure detention care and shall develop such alternatives and~~
113 annually submit them to the Legislature for authorization and
114 appropriation.

115 Section 7. Effective July 1, 2019, paragraph (b) of
116 subsection (2) and subsection (4) of section 985.245, Florida
117 Statutes, are amended to read:

118 985.245 Risk assessment instrument.—

119 (2)

120 (b) The risk assessment instrument shall take into
121 consideration, but need not be limited to, pending felony and
122 misdemeanor offenses, offenses committed pending adjudication,
123 prior offenses, unlawful possession of a firearm, prior history
124 of failure to appear, violations of supervision ~~prior offenses,~~
125 ~~offenses committed pending adjudication, any unlawful possession~~
126 ~~of a firearm, theft of a motor vehicle or possession of a stolen~~



378810

127 ~~motor vehicle~~, and supervision probation status at the time the
128 child is taken into custody. The risk assessment instrument
129 shall also take into consideration all statutory mandates for
130 detention care ~~appropriate aggravating and mitigating~~
131 ~~circumstances, and shall be designed to target a narrower~~
132 ~~population of children than s. 985.255~~. The risk assessment
133 instrument shall also include any information concerning the
134 child's history of abuse and neglect. The risk assessment shall
135 indicate whether detention care is warranted, and, if detention
136 care is warranted, whether the child should be placed into
137 secure or supervised release ~~nonsecure~~ detention care.

138 (4) For a child who is under the supervision of the
139 department through probation, supervised release ~~nonsecure~~
140 detention, conditional release, postcommitment probation, or
141 commitment and who is charged with committing a new offense, the
142 risk assessment instrument may be completed and scored based on
143 the underlying charge for which the child was placed under the
144 supervision of the department ~~and the new offense~~.

145 Section 8. Effective July 1, 2019, paragraph (b) of
146 subsection (1) of section 985.25, Florida Statutes, is amended
147 to read:

148 985.25 Detention intake.—

149 (1) The department shall receive custody of a child who has
150 been taken into custody from the law enforcement agency or court
151 and shall review the facts in the law enforcement report or
152 probable cause affidavit and make such further inquiry as may be
153 necessary to determine whether detention care is appropriate.

154 (b) The department shall base the decision whether to place
155 the child into detention care on an assessment of risk in



378810

156 accordance with the risk assessment instrument and procedures
157 developed by the department under s. 985.245, except that a
158 child shall be placed in secure detention care until the child's
159 detention hearing if the child meets the criteria specified in
160 s. 985.255(1)(f) or ~~985.255(1)(j)~~, is charged with possessing or
161 discharging a firearm on school property in violation of s.
162 790.115, ~~or has been taken into custody on three or more~~
163 ~~separate occasions within a 60-day period.~~

164
165 Under no circumstances shall the department or the state
166 attorney or law enforcement officer authorize the detention of
167 any child in a jail or other facility intended or used for the
168 detention of adults, without an order of the court.

169 Section 9. Effective July 1, 2019, subsection (1) and
170 paragraph (a) of subsection (3) of section 985.255, Florida
171 Statutes, are amended to read:

172 985.255 Detention criteria; detention hearing.—

173 (1) Subject to s. 985.25(1), a child taken into custody and
174 placed into detention care shall be given a hearing within 24
175 hours after being taken into custody. At the hearing, the court
176 may order a continued detention status if:

177 (a) The result of the risk assessment instrument pursuant
178 to s. 985.245 indicates secure or supervised release detention.

179 (b) The child is alleged to be an escapee from a
180 residential commitment program; or an absconder from a
181 nonresidential commitment program, a probation program, or
182 conditional release supervision; or is alleged to have escaped
183 while being lawfully transported to or from a residential
184 commitment program.



378810

185 ~~(c)-(b)~~ The child is wanted in another jurisdiction for an
186 offense which, if committed by an adult, would be a felony.

187 ~~(d)-(e)~~ The child is charged with a delinquent act or
188 violation of law and requests in writing through legal counsel
189 to be detained for protection from an imminent physical threat
190 to his or her personal safety.

191 ~~(d) The child is charged with committing an offense of~~
192 ~~domestic violence as defined in s. 741.28 and is detained as~~
193 ~~provided in subsection (2).~~

194 ~~(e) The child is charged with possession of or discharging~~
195 ~~a firearm on school property in violation of s. 790.115 or the~~
196 ~~illegal possession of a firearm.~~

197 ~~(f) The child is charged with a capital felony, a life~~
198 ~~felony, a felony of the first degree, a felony of the second~~
199 ~~degree that does not involve a violation of chapter 893, or a~~
200 ~~felony of the third degree that is also a crime of violence,~~
201 ~~including any such offense involving the use or possession of a~~
202 ~~firearm.~~

203 ~~(g) The child is charged with any second degree or third~~
204 ~~degree felony involving a violation of chapter 893 or any third~~
205 ~~degree felony that is not also a crime of violence, and the~~
206 ~~child:~~

207 ~~1. Has a record of failure to appear at court hearings~~
208 ~~after being properly notified in accordance with the Rules of~~
209 ~~Juvenile Procedure;~~

210 ~~2. Has a record of law violations prior to court hearings;~~

211 ~~3. Has already been detained or has been released and is~~
212 ~~awaiting final disposition of the case;~~

213 ~~4. Has a record of violent conduct resulting in physical~~



378810

214 ~~injury to others; or~~

215 ~~5. Is found to have been in possession of a firearm.~~

216 ~~(h) The child is alleged to have violated the conditions of~~
217 ~~the child's probation or conditional release supervision.~~

218 ~~However, a child detained under this paragraph may be held only~~
219 ~~in a consequence unit as provided in s. 985.439. If a~~

220 ~~consequence unit is not available, the child shall be placed on~~
221 ~~nonsecure detention with electronic monitoring.~~

222 ~~(e)-(i)~~ The child is detained on a judicial order for
223 failure to appear and has previously willfully failed to appear,
224 after proper notice:

225 1. For an adjudicatory hearing on the same case regardless
226 of the results of the risk assessment instrument; or

227 2. At two or more court hearings of any nature on the same
228 case regardless of the results of the risk assessment
229 instrument.

230

231 A child may be held in secure detention for up to 72 hours in
232 advance of the next scheduled court hearing pursuant to this
233 paragraph. The child's failure to keep the clerk of court and
234 defense counsel informed of a current and valid mailing address
235 where the child will receive notice to appear at court
236 proceedings does not provide an adequate ground for excusal of
237 the child's nonappearance at the hearings.

238 ~~(f)-(j)~~ The child is a prolific juvenile offender. A child
239 is a prolific juvenile offender if the child:

240 1. Is charged with a delinquent act that would be a felony
241 if committed by an adult;

242 2. Has been adjudicated or had adjudication withheld for a



378810

243 felony offense, or delinquent act that would be a felony if
244 committed by an adult, before the charge under subparagraph 1.;
245 and

246 3. In addition to meeting the requirements of subparagraphs
247 1. and 2., has five or more of any of the following, at least
248 three of which must have been for felony offenses or delinquent
249 acts that would have been felonies if committed by an adult:

250 a. An arrest event for which a disposition, as defined in
251 s. 985.26, has not been entered;

252 b. An adjudication; or

253 c. An adjudication withheld.

254

255 As used in this subparagraph, the term "arrest event" means an
256 arrest or referral for one or more criminal offenses or
257 delinquent acts arising out of the same episode, act, or
258 transaction.

259 (3) (a) The purpose of the detention hearing required under
260 subsection (1) is to determine the existence of probable cause
261 that the child has committed the delinquent act or violation of
262 law that he or she is charged with and the need for continued
263 detention. ~~Unless a child is detained under paragraph (1) (d) or~~
264 ~~paragraph (1) (e),~~ The court shall use the results of the risk
265 assessment performed by the department and, based on the
266 criteria in subsection (1), shall determine the need for
267 continued detention. If the child is a prolific juvenile
268 offender who is detained under s. 985.26(2) (c), the court shall
269 use the results of the risk assessment performed by the
270 department and the criteria in subsection (1) or subsection (2)
271 only to determine whether the prolific juvenile offender should



378810

272 be held in secure detention.

273 Section 10. Paragraph (d) is added to subsection (2) of
274 section 985.26, Florida Statutes, to read:

275 985.26 Length of detention.—

276 (2)

277 (d) A prolific juvenile offender under s. 985.255(1)(j) who
278 is taken into custody for a violation of the conditions of his
279 or her nonsecure detention must be held in secure detention
280 until a detention hearing is held.

281 Section 11. Effective July 1, 2019, paragraphs (c) and (d)
282 of subsection (2) and paragraph (b) of subsection (4) of section
283 985.26, Florida Statutes, as amended by this act, are amended to
284 read:

285 985.26 Length of detention.—

286 (2)

287 (c) A prolific juvenile offender under s. 985.255(1)(f)
288 ~~985.255(1)(j)~~ shall be placed on supervised release ~~nonsecure~~
289 detention care with electronic monitoring or in secure detention
290 care under a special detention order until disposition. If
291 secure detention care is ordered by the court, it must be
292 authorized under this part and may not exceed:

293 1. Twenty-one days unless an adjudicatory hearing for the
294 case has been commenced in good faith by the court or the period
295 is extended by the court pursuant to paragraph (b); or

296 2. Fifteen days after the entry of an order of
297 adjudication.

298

299 As used in this paragraph, the term "disposition" means a
300 declination to file under s. 985.15(1)(h), the entry of nolle



378810

301 | prosecute for the charges, the filing of an indictment under s.
302 | 985.56 or an information under s. 985.557, a dismissal of the
303 | case, or an order of final disposition by the court.

304 | (d) A prolific juvenile offender under s. 985.255(1)(f)
305 | ~~985.255(1)(j)~~ who is taken into custody for a violation of the
306 | conditions of his or her supervised release ~~nonsecure~~ detention
307 | must be held in secure detention until a detention hearing is
308 | held.

309 | (4)

310 | (b) The period for supervised release ~~nonsecure~~ detention
311 | care under this section is tolled on the date that the
312 | department or a law enforcement officer alleges that the child
313 | has violated a condition of the child's supervised release
314 | ~~nonsecure~~ detention care until the court enters a ruling on the
315 | violation. Notwithstanding the tolling of supervised release
316 | ~~nonsecure~~ detention care, the court retains jurisdiction over
317 | the child for a violation of a condition of supervised release
318 | ~~nonsecure~~ detention care during the tolling period. If the court
319 | finds that a child has violated his or her supervised release
320 | ~~nonsecure~~ detention care, the number of days that the child
321 | served in any type of detention care before commission of the
322 | violation shall be excluded from the time limits under
323 | subsections (2) and (3).

324 | Section 12. Effective July 1, 2019, subsection (1),
325 | paragraph (b) of subsection (3), and paragraph (a) of subsection
326 | (4) of section 985.265, Florida Statutes, are amended to read:

327 | 985.265 Detention transfer and release; education; adult
328 | jails.—

329 | (1) If a child is detained under this part, the department



378810

330 may transfer the child from supervised release ~~nonsecure~~
331 detention care to secure detention care only if significantly
332 changed circumstances warrant such transfer.

333 (3)

334 (b) When a juvenile is released from secure detention or
335 transferred to supervised release ~~nonsecure~~ detention, detention
336 staff shall immediately notify the appropriate law enforcement
337 agency, school personnel, and victim if the juvenile is charged
338 with committing any of the following offenses or attempting to
339 commit any of the following offenses:

- 340 1. Murder, under s. 782.04;
341 2. Sexual battery, under chapter 794;
342 3. Stalking, under s. 784.048; or
343 4. Domestic violence, as defined in s. 741.28.

344 (4) (a) While a child who is currently enrolled in school is
345 in supervised release ~~nonsecure~~ detention care, the child shall
346 continue to attend school unless otherwise ordered by the court.

347 Section 13. Effective July 1, 2019, paragraph (b) of
348 subsection (1) of section 985.35, Florida Statutes, is amended
349 to read:

350 985.35 Adjudicatory hearings; withheld adjudications;
351 orders of adjudication.-

352 (1)

353 (b) If the child is a prolific juvenile offender under s.
354 985.255(1)(f) ~~985.255(1)(j)~~, the adjudicatory hearing must be
355 held within 45 days after the child is taken into custody unless
356 a delay is requested by the child.

357 Section 14. Effective July 1, 2019, subsections (2) and (4)
358 of section 985.439, Florida Statutes, are amended to read:



378810

359 985.439 Violation of probation or postcommitment
360 probation.—

361 (2) A child taken into custody under s. 985.101 for
362 violating the conditions of probation shall be screened and
363 detained or released based on his or her risk assessment
364 instrument score ~~or postcommitment probation shall be held in a~~
365 ~~consequence unit if such a unit is available. The child shall be~~
366 ~~afforded a hearing within 24 hours after being taken into~~
367 ~~eustody to determine the existence of probable cause that the~~
368 ~~child violated the conditions of probation or postcommitment~~
369 ~~probation. A consequence unit is a secure facility specifically~~
370 ~~designated by the department for children who are taken into~~
371 ~~eustody under s. 985.101 for violating probation or~~
372 ~~postcommitment probation, or who have been found by the court to~~
373 ~~have violated the conditions of probation or postcommitment~~
374 ~~probation. If the violation involves a new charge of~~
375 ~~delinquency, the child may be detained under part V in a~~
376 ~~facility other than a consequence unit. If the child is not~~
377 ~~eligible for detention for the new charge of delinquency, the~~
378 ~~child may be held in the consequence unit pending a hearing and~~
379 ~~is subject to the time limitations specified in part V.~~

380 (4) Upon the child's admission, or if the court finds after
381 a hearing that the child has violated the conditions of
382 probation or postcommitment probation, the court shall enter an
383 order revoking, modifying, or continuing probation or
384 postcommitment probation. In each such case, the court shall
385 enter a new disposition order and, in addition to the sanctions
386 set forth in this section, may impose any sanction the court
387 could have imposed at the original disposition hearing. If the



378810

388 child is found to have violated the conditions of probation or
389 postcommitment probation, the court may:

390 ~~(a) Place the child in a consequence unit in that judicial~~
391 ~~circuit, if available, for up to 5 days for a first violation~~
392 ~~and up to 15 days for a second or subsequent violation.~~

393 ~~(a)~~~~(b)~~ Place the child in supervised release ~~nonsecure~~
394 detention with electronic monitoring. ~~However, this sanction may~~
395 ~~be used only if a residential consequence unit is not available.~~

396 ~~(b)~~~~(c)~~ If the violation of probation is technical in nature
397 and not a new violation of law, place the child in an
398 alternative consequence program designed to provide swift and
399 appropriate consequences to any further violations of probation.

400 1. Alternative consequence programs shall be established,
401 within existing resources, at the local level in coordination
402 with law enforcement agencies, the chief judge of the circuit,
403 the state attorney, and the public defender.

404 2. Alternative consequence programs may be operated by an
405 entity such as a law enforcement agency, the department, a
406 juvenile assessment center, a county or municipality, or another
407 entity selected by the department.

408 3. Upon placing a child in an alternative consequence
409 program, the court must approve specific consequences for
410 specific violations of the conditions of probation.

411 ~~(c)~~~~(d)~~ Modify or continue the child's probation program or
412 postcommitment probation program.

413 ~~(d)~~~~(e)~~ Revoke probation or postcommitment probation and
414 commit the child to the department.

415 Section 15. Effective July 1, 2019, paragraph (a) of
416 subsection (9) of section 985.601, Florida Statutes, is amended



378810

417 to read:

418 985.601 Administering the juvenile justice continuum.—

419 (9) (a) The department shall operate a statewide, regionally
420 administered system of detention services for children, in
421 accordance with a comprehensive plan for the regional
422 administration of all detention services in the state. The plan
423 must provide for the maintenance of adequate availability of
424 detention services for all counties. The plan must cover all the
425 department's operating circuits, with each operating circuit
426 having access to a secure facility and supervised release
427 ~~nonsecure~~ detention programs, and the plan may be altered or
428 modified by the Department of Juvenile Justice as necessary.

429 Section 16. Subsections (3) and (7) of section 985.672,
430 Florida Statutes, are amended to read:

431 985.672 Direct-support organization; definition; use of
432 property; board of directors; audit.—

433 (3) BOARD OF DIRECTORS.—The Secretary of Juvenile Justice
434 shall appoint a board of directors of the direct-support
435 organization. The board members shall be appointed according to
436 the organization's bylaws ~~Members of the organization must~~
437 ~~include representatives from businesses, representatives from~~
438 ~~each of the juvenile justice service districts, and one~~
439 ~~representative appointed at large.~~

440 ~~(7) REPEAL.—This section is repealed October 1, 2018,~~
441 ~~unless reviewed and saved from repeal by the Legislature.~~

442 Section 17. Except as otherwise expressly provided in this
443 act, this act shall take effect July 1, 2018.

444
445 ===== T I T L E A M E N D M E N T =====



378810

446 And the title is amended as follows:

447 Delete everything before the enacting clause
448 and insert:

449 A bill to be entitled

450 An act relating to juvenile justice; amending s.
451 320.08058, F.S.; allowing the Department of Highway
452 Safety and Motor Vehicles to distribute proceeds from
453 the Invest in Children license plate annual use fee on
454 a statewide basis; amending s. 985.03, F.S.; replacing
455 the term "nonsecure detention" with the term
456 "supervised release"; defining the term "supervised
457 release detention"; amending ss. 985.037, 985.039, and
458 985.101, F.S.; conforming provisions to changes made
459 by the act; amending s. 985.24, F.S.; deleting
460 provisions authorizing the Department of Juvenile
461 Justice to develop evening reporting centers;
462 conforming provisions to changes made by the act;
463 amending s. 985.245, F.S.; revising risk assessment
464 instrument considerations; conforming provisions to
465 changes made by the act; amending s. 985.25, F.S.;
466 deleting a provision requiring mandatory detention for
467 children taken into custody on three or more separate
468 occasions within a 60-day period; amending s. 985.255,
469 F.S.; revising the circumstances under which a
470 continued detention status may be ordered; amending s.
471 985.26, F.S.; requiring the department to hold a
472 prolific juvenile offender in secure detention pending
473 a detention hearing following a violation of nonsecure
474 detention; amending s. 985.26, F.S.; revising the



378810

475 definition of the term "disposition"; conforming
476 provisions to changes made by the act; amending ss.
477 985.265 and 985.35, F.S.; conforming provisions to
478 changes made by the act; amending s. 985.439, F.S.;
479 deleting authorization for placement of a child in a
480 consequence unit in certain circumstances; allowing a
481 child who violates conditions of probation to be
482 detained or released based on the results of the
483 detention risk assessment instrument; conforming
484 provisions to changes made by the act; amending s.
485 985.601, F.S.; conforming provisions to changes made
486 by the act; amending s. 985.672, F.S.; requiring the
487 board of directors of the department's direct-support
488 organization to be appointed according to the
489 organization's bylaws; deleting the scheduled repeal
490 of provisions governing a direct-support organization
491 established by the department; providing effective
492 dates.



659892

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice
(Bracy) recommended the following:

1 **Senate Substitute for Amendment (378810) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Paragraph (b) of subsection (11) of section
7 320.08058, Florida Statutes, is amended to read:

8 320.08058 Specialty license plates.—

9 (11) INVEST IN CHILDREN LICENSE PLATES.—

10 (b) The proceeds of the Invest in Children license plate



659892

11 annual use fee must be deposited into the Juvenile Crime
12 Prevention and Early Intervention Trust Fund within the
13 Department of Juvenile Justice. Based on the recommendations of
14 the juvenile justice councils, the department shall use the
15 proceeds of the fee to fund programs and services that are
16 designed to prevent juvenile delinquency. ~~The department shall~~
17 ~~allocate moneys for programs and services within each county~~
18 ~~based on that county's proportionate share of the license plate~~
19 ~~annual use fee collected by the county.~~

20 Section 2. Effective July 1, 2019, subsection (18) of
21 section 985.03, Florida Statutes, is amended to read:

22 985.03 Definitions.—As used in this chapter, the term:

23 (18) "Detention care" means the temporary care of a child
24 in secure or supervised release ~~nonsecure~~ detention, pending a
25 court adjudication or disposition or execution of a court order.
26 There are two types of detention care, as follows:

27 (a) "Secure detention" means temporary custody of the child
28 while the child is under the physical restriction of a secure
29 detention center or facility pending adjudication, disposition,
30 or placement.

31 (b) "Supervised release ~~Nonsecure~~ detention" means
32 temporary, nonsecure custody of the child while the child is
33 released to the custody of the parent, guardian, or custodian in
34 a physically nonrestrictive environment under the supervision of
35 the department staff pending adjudication, or ~~or~~ disposition,
36 through programs that ~~or placement. Forms of nonsecure detention~~
37 ~~include, but are not limited to, home detention,~~ electronic
38 monitoring, day reporting centers, ~~evening reporting centers,~~
39 and nonsecure shelters. Supervised release ~~Nonsecure~~ detention



659892

40 may include other requirements imposed by the court.

41 Section 3. Effective July 1, 2019, subsection (5) of
42 section 985.037, Florida Statutes, is amended to read:

43 985.037 Punishment for contempt of court; alternative
44 sanctions.—

45 (5) ALTERNATIVE SANCTIONS COORDINATOR.—There is created the
46 position of alternative sanctions coordinator within each
47 judicial circuit, pursuant to subsection (3). Each alternative
48 sanctions coordinator shall serve under the direction of the
49 chief administrative judge of the juvenile division as directed
50 by the chief judge of the circuit. The alternative sanctions
51 coordinator shall act as the liaison between the judiciary,
52 local department officials, district school board employees, and
53 local law enforcement agencies. The alternative sanctions
54 coordinator shall coordinate within the circuit community-based
55 alternative sanctions, including supervised release ~~nonsecure~~
56 detention programs, community service projects, and other
57 juvenile sanctions, in conjunction with the circuit plan
58 implemented in accordance with s. 790.22(4)(c).

59 Section 4. Effective July 1, 2019, paragraph (a) of
60 subsection (1) of section 985.039, Florida Statutes, is amended
61 to read:

62 985.039 Cost of supervision; cost of care.—

63 (1) Except as provided in subsection (3) or subsection (4):

64 (a) When any child is placed into supervised release
65 ~~nonsecure~~ detention, probation, or other supervision status with
66 the department, or is committed to the minimum-risk
67 nonresidential restrictiveness level, the court shall order the
68 parent of such child to pay to the department a fee for the cost



659892

69 of the supervision of such child in the amount of \$1 per day for
70 each day that the child is in such status.

71 Section 5. Effective July 1, 2019, paragraph (d) of
72 subsection (1) of section 985.101, Florida Statutes, is amended
73 to read:

74 985.101 Taking a child into custody.—

75 (1) A child may be taken into custody under the following
76 circumstances:

77 (d) By a law enforcement officer who has probable cause to
78 believe that the child is in violation of the conditions of the
79 child's probation, supervised release ~~nonsecure~~ detention,
80 postcommitment probation, or conditional release supervision;
81 has absconded from nonresidential commitment; or has escaped
82 from residential commitment.

83
84 Nothing in this subsection shall be construed to allow the
85 detention of a child who does not meet the detention criteria in
86 part V.

87 Section 6. Effective July 1, 2019, subsections (2), (4),
88 and (5) of section 985.24, Florida Statutes, are amended to
89 read:

90 985.24 Use of detention; prohibitions.—

91 (2) A child alleged to have committed a delinquent act or
92 violation of law may not be placed into secure or supervised
93 release ~~nonsecure~~ detention care for any of the following
94 reasons:

95 (a) To allow a parent to avoid his or her legal
96 responsibility.

97 (b) To permit more convenient administrative access to the



659892

98 child.

99 (c) To facilitate further interrogation or investigation.

100 (d) Due to a lack of more appropriate facilities.

101 ~~(4) The department may, within its existing resources,~~
102 ~~develop nonsecure, nonresidential evening reporting centers as~~
103 ~~an alternative to placing a child in secure detention. Evening~~
104 ~~reporting centers may be collocated with a juvenile assessment~~
105 ~~center. If established, evening reporting centers shall serve~~
106 ~~children and families who are awaiting a child's court hearing~~
107 ~~and, at a minimum, operate during the afternoon and evening~~
108 ~~hours to provide a highly structured program of supervision.~~
109 ~~Evening reporting centers may also provide academic tutoring,~~
110 ~~counseling, family engagement programs, and other activities.~~

111 (4) ~~(5)~~ The department shall continue to identify and
112 develop supervised release detention options ~~alternatives to~~
113 ~~secure detention care and shall develop such alternatives and~~
114 ~~annually submit them to the Legislature for authorization and~~
115 ~~appropriation.~~

116 Section 7. Effective July 1, 2019, paragraph (b) of
117 subsection (2) and subsection (4) of section 985.245, Florida
118 Statutes, are amended to read:

119 985.245 Risk assessment instrument.—

120 (2)

121 (b) The risk assessment instrument shall take into
122 consideration, but need not be limited to, pending felony and
123 misdemeanor offenses, offenses committed pending adjudication,
124 prior offenses, unlawful possession of a firearm, prior history
125 of failure to appear, violations of supervision ~~prior offenses,~~
126 ~~offenses committed pending adjudication, any unlawful possession~~



659892

127 ~~of a firearm, theft of a motor vehicle or possession of a stolen~~
128 ~~motor vehicle, and supervision probation~~ status at the time the
129 child is taken into custody. The risk assessment instrument
130 shall also take into consideration all statutory mandates for
131 detention care ~~appropriate aggravating and mitigating~~
132 ~~circumstances, and shall be designed to target a narrower~~
133 ~~population of children than s. 985.255.~~ The risk assessment
134 instrument shall also include any information concerning the
135 child's history of abuse and neglect. The risk assessment shall
136 indicate whether detention care is warranted, and, if detention
137 care is warranted, whether the child should be placed into
138 secure or supervised release ~~nonsecure~~ detention care.

139 (4) For a child who is under the supervision of the
140 department through probation, supervised release ~~nonsecure~~
141 detention, conditional release, postcommitment probation, or
142 commitment and who is charged with committing a new offense, the
143 risk assessment instrument may be completed and scored based on
144 the underlying charge for which the child was placed under the
145 supervision of the department ~~and the new offense.~~

146 Section 8. Effective July 1, 2019, paragraph (b) of
147 subsection (1) of section 985.25, Florida Statutes, is amended
148 to read:

149 985.25 Detention intake.—

150 (1) The department shall receive custody of a child who has
151 been taken into custody from the law enforcement agency or court
152 and shall review the facts in the law enforcement report or
153 probable cause affidavit and make such further inquiry as may be
154 necessary to determine whether detention care is appropriate.

155 (b) The department shall base the decision whether to place



659892

156 the child into detention care on an assessment of risk in
157 accordance with the risk assessment instrument and procedures
158 developed by the department under s. 985.245, except that a
159 child shall be placed in secure detention care until the child's
160 detention hearing if the child meets the criteria specified in
161 s. 985.255(1)(f) or ~~985.255(1)(j)~~, is charged with possessing or
162 discharging a firearm on school property in violation of s.
163 790.115, ~~or has been taken into custody on three or more~~
164 ~~separate occasions within a 60-day period.~~

165
166 Under no circumstances shall the department or the state
167 attorney or law enforcement officer authorize the detention of
168 any child in a jail or other facility intended or used for the
169 detention of adults, without an order of the court.

170 Section 9. Effective July 1, 2019, subsection (1) and
171 paragraph (a) of subsection (3) of section 985.255, Florida
172 Statutes, are amended to read:

173 985.255 Detention criteria; detention hearing.-

174 (1) Subject to s. 985.25(1), a child taken into custody and
175 placed into detention care shall be given a hearing within 24
176 hours after being taken into custody. At the hearing, the court
177 may order a continued detention status if:

178 (a) The result of the risk assessment instrument pursuant
179 to s. 985.245 indicates secure or supervised release detention.

180 (b) The child is alleged to be an escapee from a
181 residential commitment program; or an absconder from a
182 nonresidential commitment program, a probation program, or
183 conditional release supervision; or is alleged to have escaped
184 while being lawfully transported to or from a residential



659892

185 commitment program.

186 ~~(c)(b)~~ The child is wanted in another jurisdiction for an
187 offense which, if committed by an adult, would be a felony.

188 ~~(d)(e)~~ The child is charged with a delinquent act or
189 violation of law and requests in writing through legal counsel
190 to be detained for protection from an imminent physical threat
191 to his or her personal safety.

192 ~~(d) The child is charged with committing an offense of~~
193 ~~domestic violence as defined in s. 741.28 and is detained as~~
194 ~~provided in subsection (2).~~

195 ~~(e) The child is charged with possession of or discharging~~
196 ~~a firearm on school property in violation of s. 790.115 or the~~
197 ~~illegal possession of a firearm.~~

198 ~~(f) The child is charged with a capital felony, a life~~
199 ~~felony, a felony of the first degree, a felony of the second~~
200 ~~degree that does not involve a violation of chapter 893, or a~~
201 ~~felony of the third degree that is also a crime of violence,~~
202 ~~including any such offense involving the use or possession of a~~
203 ~~firearm.~~

204 ~~(g) The child is charged with any second degree or third~~
205 ~~degree felony involving a violation of chapter 893 or any third~~
206 ~~degree felony that is not also a crime of violence, and the~~
207 ~~child:~~

208 ~~1. Has a record of failure to appear at court hearings~~
209 ~~after being properly notified in accordance with the Rules of~~
210 ~~Juvenile Procedure;~~

211 ~~2. Has a record of law violations prior to court hearings;~~

212 ~~3. Has already been detained or has been released and is~~
213 ~~awaiting final disposition of the case;~~



659892

214 ~~4. Has a record of violent conduct resulting in physical~~
215 ~~injury to others; or~~

216 ~~5. Is found to have been in possession of a firearm.~~

217 ~~(h) The child is alleged to have violated the conditions of~~
218 ~~the child's probation or conditional release supervision.~~

219 ~~However, a child detained under this paragraph may be held only~~
220 ~~in a consequence unit as provided in s. 985.439. If a~~
221 ~~consequence unit is not available, the child shall be placed on~~
222 ~~nonsecure detention with electronic monitoring.~~

223 ~~(e)(i)~~ The child is detained on a judicial order for
224 failure to appear and has previously willfully failed to appear,
225 after proper notice:

226 1. For an adjudicatory hearing on the same case regardless
227 of the results of the risk assessment instrument; or

228 2. At two or more court hearings of any nature on the same
229 case regardless of the results of the risk assessment
230 instrument.

231
232 A child may be held in secure detention for up to 72 hours in
233 advance of the next scheduled court hearing pursuant to this
234 paragraph. The child's failure to keep the clerk of court and
235 defense counsel informed of a current and valid mailing address
236 where the child will receive notice to appear at court
237 proceedings does not provide an adequate ground for excusal of
238 the child's nonappearance at the hearings.

239 ~~(f)(j)~~ The child is a prolific juvenile offender. A child
240 is a prolific juvenile offender if the child:

241 1. Is charged with a delinquent act that would be a felony
242 if committed by an adult;



659892

243 2. Has been adjudicated or had adjudication withheld for a
244 felony offense, or delinquent act that would be a felony if
245 committed by an adult, before the charge under subparagraph 1.;
246 and

247 3. In addition to meeting the requirements of subparagraphs
248 1. and 2., has five or more of any of the following, at least
249 three of which must have been for felony offenses or delinquent
250 acts that would have been felonies if committed by an adult:

251 a. An arrest event for which a disposition, as defined in
252 s. 985.26, has not been entered;

253 b. An adjudication; or

254 c. An adjudication withheld.

255

256 As used in this subparagraph, the term "arrest event" means an
257 arrest or referral for one or more criminal offenses or
258 delinquent acts arising out of the same episode, act, or
259 transaction.

260 (3) (a) The purpose of the detention hearing required under
261 subsection (1) is to determine the existence of probable cause
262 that the child has committed the delinquent act or violation of
263 law that he or she is charged with and the need for continued
264 detention. ~~Unless a child is detained under paragraph (1) (d) or~~
265 ~~paragraph (1) (e),~~ The court shall use the results of the risk
266 assessment performed by the department and, based on the
267 criteria in subsection (1), shall determine the need for
268 continued detention. If the child is a prolific juvenile
269 offender who is detained under s. 985.26(2) (c), the court shall
270 use the results of the risk assessment performed by the
271 department and the criteria in subsection (1) or subsection (2)



659892

272 only to determine whether the prolific juvenile offender should
273 be held in secure detention.

274 Section 10. Paragraph (d) is added to subsection (2) of
275 section 985.26, Florida Statutes, to read:

276 985.26 Length of detention.—

277 (2)

278 (d) A prolific juvenile offender under s. 985.255(1)(j) who
279 is taken into custody for a violation of the conditions of his
280 or her nonsecure detention must be held in secure detention
281 until a detention hearing is held.

282 Section 11. Effective July 1, 2019, paragraphs (c) and (d)
283 of subsection (2) and paragraph (b) of subsection (4) of section
284 985.26, Florida Statutes, as amended by this act, are amended to
285 read:

286 985.26 Length of detention.—

287 (2)

288 (c) A prolific juvenile offender under s. 985.255(1)(f)
289 ~~985.255(1)(j)~~ shall be placed on supervised release ~~nonsecure~~
290 detention care with electronic monitoring or in secure detention
291 care under a special detention order until disposition. If
292 secure detention care is ordered by the court, it must be
293 authorized under this part and may not exceed:

294 1. Twenty-one days unless an adjudicatory hearing for the
295 case has been commenced in good faith by the court or the period
296 is extended by the court pursuant to paragraph (b); or

297 2. Fifteen days after the entry of an order of
298 adjudication.

299
300 As used in this paragraph, the term "disposition" means a



659892

301 declination to file under s. 985.15(1)(h), the entry of nolle
302 prosequi for the charges, the filing of an indictment under s.
303 985.56 or an information under s. 985.557, a dismissal of the
304 case, or an order of final disposition by the court.

305 (d) A prolific juvenile offender under s. 985.255(1)(f)
306 ~~985.255(1)(j)~~ who is taken into custody for a violation of the
307 conditions of his or her supervised release ~~nonsecure~~ detention
308 must be held in secure detention until a detention hearing is
309 held.

310 (4)

311 (b) The period for supervised release ~~nonsecure~~ detention
312 care under this section is tolled on the date that the
313 department or a law enforcement officer alleges that the child
314 has violated a condition of the child's supervised release
315 ~~nonsecure~~ detention care until the court enters a ruling on the
316 violation. Notwithstanding the tolling of supervised release
317 ~~nonsecure~~ detention care, the court retains jurisdiction over
318 the child for a violation of a condition of supervised release
319 ~~nonsecure~~ detention care during the tolling period. If the court
320 finds that a child has violated his or her supervised release
321 ~~nonsecure~~ detention care, the number of days that the child
322 served in any type of detention care before commission of the
323 violation shall be excluded from the time limits under
324 subsections (2) and (3).

325 Section 12. Effective July 1, 2019, subsection (1),
326 paragraph (b) of subsection (3), and paragraph (a) of subsection
327 (4) of section 985.265, Florida Statutes, are amended to read:

328 985.265 Detention transfer and release; education; adult
329 jails.-



659892

330 (1) If a child is detained under this part, the department
331 may transfer the child from supervised release ~~nonsecure~~
332 detention care to secure detention care only if significantly
333 changed circumstances warrant such transfer.

334 (3)

335 (b) When a juvenile is released from secure detention or
336 transferred to supervised release ~~nonsecure~~ detention, detention
337 staff shall immediately notify the appropriate law enforcement
338 agency, school personnel, and victim if the juvenile is charged
339 with committing any of the following offenses or attempting to
340 commit any of the following offenses:

- 341 1. Murder, under s. 782.04;
- 342 2. Sexual battery, under chapter 794;
- 343 3. Stalking, under s. 784.048; or
- 344 4. Domestic violence, as defined in s. 741.28.

345 (4) (a) While a child who is currently enrolled in school is
346 in supervised release ~~nonsecure~~ detention care, the child shall
347 continue to attend school unless otherwise ordered by the court.

348 Section 13. Effective July 1, 2019, paragraph (b) of
349 subsection (1) of section 985.35, Florida Statutes, is amended
350 to read:

351 985.35 Adjudicatory hearings; withheld adjudications;
352 orders of adjudication.—

353 (1)

354 (b) If the child is a prolific juvenile offender under s.
355 985.255(1)(f) ~~985.255(1)(j)~~, the adjudicatory hearing must be
356 held within 45 days after the child is taken into custody unless
357 a delay is requested by the child.

358 Section 14. Effective July 1, 2019, subsections (2) and (4)



659892

359 of section 985.439, Florida Statutes, are amended to read:

360 985.439 Violation of probation or postcommitment
361 probation.—

362 (2) A child taken into custody under s. 985.101 for
363 violating the conditions of probation shall be screened and
364 detained or released based on his or her risk assessment
365 instrument score ~~or postcommitment probation shall be held in a~~
366 ~~consequence unit if such a unit is available. The child shall be~~
367 ~~afforded a hearing within 24 hours after being taken into~~
368 ~~custody to determine the existence of probable cause that the~~
369 ~~child violated the conditions of probation or postcommitment~~
370 ~~probation. A consequence unit is a secure facility specifically~~
371 ~~designated by the department for children who are taken into~~
372 ~~custody under s. 985.101 for violating probation or~~
373 ~~postcommitment probation, or who have been found by the court to~~
374 ~~have violated the conditions of probation or postcommitment~~
375 ~~probation. If the violation involves a new charge of~~
376 ~~delinquency, the child may be detained under part V in a~~
377 ~~facility other than a consequence unit. If the child is not~~
378 ~~eligible for detention for the new charge of delinquency, the~~
379 ~~child may be held in the consequence unit pending a hearing and~~
380 ~~is subject to the time limitations specified in part V.~~

381 (4) Upon the child's admission, or if the court finds after
382 a hearing that the child has violated the conditions of
383 probation or postcommitment probation, the court shall enter an
384 order revoking, modifying, or continuing probation or
385 postcommitment probation. In each such case, the court shall
386 enter a new disposition order and, in addition to the sanctions
387 set forth in this section, may impose any sanction the court



659892

388 could have imposed at the original disposition hearing. If the
389 child is found to have violated the conditions of probation or
390 postcommitment probation, the court may:

391 ~~(a) Place the child in a consequence unit in that judicial~~
392 ~~circuit, if available, for up to 5 days for a first violation~~
393 ~~and up to 15 days for a second or subsequent violation.~~

394 ~~(a)(b)~~ Place the child in supervised release nonsecure
395 detention with electronic monitoring. ~~However, this sanction may~~
396 ~~be used only if a residential consequence unit is not available.~~

397 ~~(b)(e)~~ If the violation of probation is technical in nature
398 and not a new violation of law, place the child in an
399 alternative consequence program designed to provide swift and
400 appropriate consequences to any further violations of probation.

401 1. Alternative consequence programs shall be established,
402 within existing resources, at the local level in coordination
403 with law enforcement agencies, the chief judge of the circuit,
404 the state attorney, and the public defender.

405 2. Alternative consequence programs may be operated by an
406 entity such as a law enforcement agency, the department, a
407 juvenile assessment center, a county or municipality, or another
408 entity selected by the department.

409 3. Upon placing a child in an alternative consequence
410 program, the court must approve specific consequences for
411 specific violations of the conditions of probation.

412 ~~(c)(d)~~ Modify or continue the child's probation program or
413 postcommitment probation program.

414 ~~(d)(e)~~ Revoke probation or postcommitment probation and
415 commit the child to the department.

416 Section 15. Paragraph (a) of subsection (1) of section



659892

417 985.557, Florida Statutes, is amended to read:

418 985.557 Direct filing of an information; discretionary and
419 mandatory criteria.—

420 (1) DISCRETIONARY DIRECT FILE.—

421 (a) With respect to any child who was ~~14 or~~ 15 or 16 years
422 of age at the time the alleged offense was committed, the state
423 attorney may file an information when in the state attorney's
424 judgment and discretion the public interest requires that adult
425 sanctions be considered or imposed and when the offense charged
426 is for the commission of, attempt to commit, or conspiracy to
427 commit:

428 1. Arson;

429 2. Sexual battery;

430 3. Robbery;

431 4. Kidnapping;

432 5. Aggravated child abuse;

433 6. Aggravated assault;

434 7. Aggravated stalking;

435 8. Murder;

436 9. Manslaughter;

437 10. Unlawful throwing, placing, or discharging of a
438 destructive device or bomb;

439 11. Armed burglary in violation of s. 810.02(2)(b) or
440 specified burglary of a dwelling or structure in violation of s.
441 810.02(2)(c), or burglary with an assault or battery in
442 violation of s. 810.02(2)(a);

443 12. Aggravated battery;

444 13. Any lewd or lascivious offense committed upon or in the
445 presence of a person less than 16 years of age;



659892

446 14. Carrying, displaying, using, threatening, or attempting
447 to use a weapon or firearm during the commission of a felony;

448 15. Grand theft in violation of s. 812.014(2) (a);

449 16. Possessing or discharging any weapon or firearm on
450 school property in violation of s. 790.115;

451 17. Home invasion robbery;

452 18. Carjacking; or

453 19. Grand theft of a motor vehicle in violation of s.
454 812.014(2) (c) 6. or grand theft of a motor vehicle valued at
455 \$20,000 or more in violation of s. 812.014(2) (b) if the child
456 has a previous adjudication for grand theft of a motor vehicle
457 in violation of s. 812.014(2) (c) 6. or s. 812.014(2) (b).

458 Section 16. Effective July 1, 2019, paragraph (a) of
459 subsection (9) of section 985.601, Florida Statutes, is amended
460 to read:

461 985.601 Administering the juvenile justice continuum.—

462 (9) (a) The department shall operate a statewide, regionally
463 administered system of detention services for children, in
464 accordance with a comprehensive plan for the regional
465 administration of all detention services in the state. The plan
466 must provide for the maintenance of adequate availability of
467 detention services for all counties. The plan must cover all the
468 department's operating circuits, with each operating circuit
469 having access to a secure facility and supervised release
470 ~~nonsecure~~ detention programs, and the plan may be altered or
471 modified by the Department of Juvenile Justice as necessary.

472 Section 17. Subsections (3) and (7) of section 985.672,
473 Florida Statutes, are amended to read:

474 985.672 Direct-support organization; definition; use of



659892

475 property; board of directors; audit.-

476 (3) BOARD OF DIRECTORS.—The Secretary of Juvenile Justice
477 shall appoint a board of directors of the direct-support
478 organization. The board members shall be appointed according to
479 the organization's bylaws ~~Members of the organization must~~
480 ~~include representatives from businesses, representatives from~~
481 ~~each of the juvenile justice service districts, and one~~
482 ~~representative appointed at large.~~

483 ~~(7) REPEAL.—This section is repealed October 1, 2018,~~
484 ~~unless reviewed and saved from repeal by the Legislature.~~

485 Section 18. Except as otherwise expressly provided in this
486 act, this act shall take effect July 1, 2018.

487
488 ===== T I T L E A M E N D M E N T =====

489 And the title is amended as follows:

490 Delete everything before the enacting clause
491 and insert:

492 A bill to be entitled
493 An act relating to juvenile justice; amending s.
494 320.08058, F.S.; allowing the Department of Highway
495 Safety and Motor Vehicles to distribute proceeds from
496 the Invest in Children license plate annual use fee on
497 a statewide basis; amending s. 985.03, F.S.; replacing
498 the term "nonsecure detention" with the term
499 "supervised release"; defining the term "supervised
500 release detention"; amending ss. 985.037, 985.039, and
501 985.101, F.S.; conforming provisions to changes made
502 by the act; amending s. 985.24, F.S.; deleting
503 provisions authorizing the Department of Juvenile



659892

504 Justice to develop evening reporting centers;
505 conforming provisions to changes made by the act;
506 amending s. 985.245, F.S.; revising risk assessment
507 instrument considerations; conforming provisions to
508 changes made by the act; amending s. 985.25, F.S.;
509 deleting a provision requiring mandatory detention for
510 children taken into custody on three or more separate
511 occasions within a 60-day period; amending s. 985.255,
512 F.S.; revising the circumstances under which a
513 continued detention status may be ordered; amending s.
514 985.26, F.S.; requiring the department to hold a
515 prolific juvenile offender in secure detention pending
516 a detention hearing following a violation of nonsecure
517 detention; amending s. 985.26, F.S.; revising the
518 definition of the term "disposition"; conforming
519 provisions to changes made by the act; amending ss.
520 985.265 and 985.35, F.S.; conforming provisions to
521 changes made by the act; amending s. 985.439, F.S.;
522 deleting authorization for placement of a child in a
523 consequence unit in certain circumstances; allowing a
524 child who violates conditions of probation to be
525 detained or released based on the results of the
526 detention risk assessment instrument; conforming
527 provisions to changes made by the act; amending s.
528 985.557, F.S.; increasing the age of a child at which
529 a state attorney may file an information against the
530 child for prosecution as an adult; amending s.
531 985.601, F.S.; conforming provisions to changes made
532 by the act; amending s. 985.672, F.S.; requiring the



659892

533 board of directors of the department's direct-support
534 organization to be appointed according to the
535 organization's bylaws; deleting the scheduled repeal
536 of provisions governing a direct-support organization
537 established by the department; providing effective
538 dates.

By Senator Bracy

11-00904A-18

20181552__

1 A bill to be entitled
2 An act relating to juvenile justice; amending s.
3 985.26, F.S.; requiring that a prolific juvenile
4 offender be held in secure detention until a detention
5 hearing is held if the juvenile violated the
6 conditions of nonsecure detention; amending s.
7 985.433, F.S.; requiring a court to receive and
8 consider a predisposition report before committing a
9 child if the court determines that adjudication and
10 commitment to the Department of Juvenile Justice is
11 appropriate; conforming a cross-reference; amending s.
12 985.556, F.S.; increasing the age of a child at which
13 a state attorney may, or is required to, request a
14 court to transfer the child to adult court for
15 criminal prosecution; amending s. 985.557, F.S.;
16 increasing the age of a child at which a state
17 attorney may, or is required to, file an information
18 against the child for prosecution as an adult; making
19 a technical change; requiring the department to begin
20 collecting on a certain date specified information
21 relating to children who qualify for prosecution as
22 adults and for children who are transferred to adult
23 court for criminal prosecution; requiring the
24 department to work with the Office of Program Policy
25 Analysis and Government Accountability (OPPAGA) to
26 generate a report analyzing the data on juveniles
27 transferred for criminal prosecution as adults during
28 a certain period; requiring the department to provide
29 the report to the Governor and the Legislature by a

11-00904A-18

20181552__

30 certain date; requiring the department to work with
31 OPPAGA to generate an annual report that includes
32 certain information, and to provide the report to the
33 Governor and the Legislature by a specified date;
34 amending s. 985.672, F.S.; requiring that a board of
35 directors for the department's direct-support
36 organization be appointed according to the
37 organization's established bylaws; deleting a
38 provision relating to membership of the organization;
39 extending the date of a future repeal; reenacting ss.
40 790.22(8), 985.115(2), 985.13(2), 985.255(2) and
41 (3)(a) and (c), and 985.35(1)(a), F.S., relating to
42 detention of a minor for committing a crime and using
43 or possessing a firearm, releasing and delivery of a
44 child from custody, probable cause affidavits,
45 detention criteria and detention hearings, and
46 adjudicatory hearings, respectively, to incorporate
47 the amendment made to s. 985.26, F.S., in references
48 thereto; reenacting s. 985.15(1), F.S., relating to
49 filing decisions, to incorporate the amendment made to
50 s. 985.556, F.S., in a reference thereto; reenacting
51 ss. 985.265(5) and 985.565(4), F.S., relating to
52 children in adult jails and sentencing alternatives
53 for juveniles prosecuted as adults, respectively, to
54 incorporate the amendments made to ss. 985.556 and
55 985.557, F.S., in references thereto; reenacting s.
56 985.26(2)(c), F.S., relating to the length of
57 detention, to incorporate the amendment made to s.
58 985.557, F.S., in a reference thereto; providing an

11-00904A-18

20181552__

59 effective date.

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. Subsection (2) of section 985.26, Florida
64 Statutes, is amended, and subsections (3) and (4) of that
65 section are republished, to read:

66 985.26 Length of detention.—

67 (2) (a) Except as provided in paragraph (b) or paragraph
68 (c), a child may not be held in detention care under a special
69 detention order for more than 21 days unless an adjudicatory
70 hearing for the case has been commenced in good faith by the
71 court.

72 (b) Upon good cause being shown that the nature of the
73 charge requires additional time for the prosecution or defense
74 of the case, the court may extend the length of detention for an
75 additional 9 days if the child is charged with an offense that
76 would be, if committed by an adult, a capital felony, a life
77 felony, a felony of the first degree, or a felony of the second
78 degree involving violence against any individual.

79 (c) 1. A prolific juvenile offender under s. 985.255(1)(j)
80 shall be placed on nonsecure detention care with electronic
81 monitoring or in secure detention care under a special detention
82 order until disposition. If secure detention care is ordered by
83 the court, it must be authorized under this part and may not
84 exceed:

85 a.1. ~~Twenty-one~~ days unless an adjudicatory hearing for the
86 case has been commenced in good faith by the court or the period
87 is extended by the court pursuant to paragraph (b); or

11-00904A-18

20181552__

88 ~~b.2.~~ Fifteen days after the entry of an order of
89 adjudication.

90 2. A prolific juvenile offender who is taken into custody
91 for a violation of the conditions of his or her nonsecure
92 detention must be held in secure detention until a detention
93 hearing is held.

94
95 As used in this paragraph, the term "disposition" means a
96 declination to file under s. 985.15(1)(h), the entry of nolle
97 prosequi for the charges, the filing of an indictment under s.
98 985.56 or an information under s. 985.557, a dismissal of the
99 case, or an order of final disposition by the court.

100 (3) Except as provided in subsection (2), a child may not
101 be held in detention care for more than 15 days following the
102 entry of an order of adjudication.

103 (4)(a) The time limits in subsections (2) and (3) do not
104 include periods of delay resulting from a continuance granted by
105 the court for cause on motion of the child or his or her counsel
106 or of the state. Upon the issuance of an order granting a
107 continuance for cause on a motion by either the child, the
108 child's counsel, or the state, the court shall conduct a hearing
109 at the end of each 72-hour period, excluding Saturdays, Sundays,
110 and legal holidays, to determine the need for continued
111 detention of the child and the need for further continuance of
112 proceedings for the child or the state.

113 (b) The period for nonsecure detention care under this
114 section is tolled on the date that the department or a law
115 enforcement officer alleges that the child has violated a
116 condition of the child's nonsecure detention care until the

11-00904A-18

20181552__

117 court enters a ruling on the violation. Notwithstanding the
118 tolling of nonsecure detention care, the court retains
119 jurisdiction over the child for a violation of a condition of
120 nonsecure detention care during the tolling period. If the court
121 finds that a child has violated his or her nonsecure detention
122 care, the number of days that the child served in any type of
123 detention care before commission of the violation shall be
124 excluded from the time limits under subsections (2) and (3).

125 Section 2. Present subsections (7) through (10) of section
126 985.433, Florida Statutes, are redesignated as subsections (8)
127 through (11), respectively, a new subsection (7) is added to
128 that section, and paragraph (c) of present subsection (7) is
129 amended, to read:

130 985.433 Disposition hearings in delinquency cases.—When a
131 child has been found to have committed a delinquent act, the
132 following procedures shall be applicable to the disposition of
133 the case:

134 (7) If the court determines that adjudication and
135 commitment to the department are suitable, the court must
136 receive and consider a predisposition report, including the
137 department's recommendation, before committing the child. The
138 predisposition report is an indispensable prerequisite to
139 commitment which cannot be waived by any party or by agreement
140 of the parties.

141 ~~(8)~~ ~~(7)~~ If the court determines that the child should be
142 adjudicated as having committed a delinquent act and should be
143 committed to the department, such determination shall be in
144 writing or on the record of the hearing. The determination shall
145 include a specific finding of the reasons for the decision to

11-00904A-18

20181552__

146 adjudicate and to commit the child to the department, including
147 any determination that the child was a member of a criminal
148 gang.

149 (c) The court may also require that the child be placed in
150 a probation program following the child's discharge from
151 commitment. Community-based sanctions under subsection (9) ~~(8)~~
152 may be imposed by the court at the disposition hearing or at any
153 time before ~~prior to~~ the child's release from commitment.

154 Section 3. Subsections (2) and (3) of section 985.556,
155 Florida Statutes, are amended to read:

156 985.556 Waiver of juvenile court jurisdiction; hearing.—

157 (2) INVOLUNTARY DISCRETIONARY WAIVER.—Except as provided in
158 subsection (3), the state attorney may file a motion requesting
159 the court to transfer the child for criminal prosecution if the
160 child was 15 ~~14~~ years of age or older at the time the alleged
161 delinquent act or violation of law was committed.

162 (3) INVOLUNTARY MANDATORY WAIVER.—

163 (a) If the child was 15 ~~14~~ years of age or older, and if
164 the child has been previously adjudicated delinquent for an act
165 classified as a felony, which adjudication was for the
166 commission of, attempt to commit, or conspiracy to commit
167 murder, sexual battery, armed or strong-armed robbery,
168 carjacking, home-invasion robbery, aggravated battery,
169 aggravated assault, or burglary with an assault or battery, and
170 the child is currently charged with a second or subsequent
171 violent crime against a person; or

172 (b) If the child was 15 ~~14~~ years of age or older at the
173 time of commission of a fourth or subsequent alleged felony
174 offense and the child was previously adjudicated delinquent or

11-00904A-18

20181552__

175 had adjudication withheld for or was found to have committed, or
176 to have attempted or conspired to commit, three offenses that
177 are felony offenses if committed by an adult, and one or more of
178 such felony offenses involved the use or possession of a firearm
179 or violence against a person;

180

181 the state attorney shall request the court to transfer and
182 certify the child for prosecution as an adult or shall provide
183 written reasons to the court for not making such request, or
184 proceed under s. 985.557(1). Upon the state attorney's request,
185 the court shall either enter an order transferring the case and
186 certifying the case for trial as if the child were an adult or
187 provide written reasons for not issuing such an order.

188 Section 4. Subsection (1) and paragraphs (a), (b), and (d)
189 of subsection (2) of section 985.557, Florida Statutes, are
190 amended, and subsection (5) is added to that section, to read:

191 985.557 Direct filing of an information; discretionary and
192 mandatory criteria.—

193 (1) DISCRETIONARY DIRECT FILE.—

194 (a) With respect to any child who was ~~14 or 15~~ or 16 years
195 of age at the time the alleged offense was committed, the state
196 attorney may file an information when in the state attorney's
197 judgment and discretion the public interest requires that adult
198 sanctions be considered or imposed and when the offense charged
199 is for the commission of, attempt to commit, or conspiracy to
200 commit:

201 1. Arson;

202 2. Sexual battery;

203 3. Robbery;

11-00904A-18

20181552__

- 204 4. Kidnapping;
- 205 5. Aggravated child abuse;
- 206 6. Aggravated assault;
- 207 7. Aggravated stalking;
- 208 8. Murder;
- 209 9. Manslaughter;
- 210 10. Unlawful throwing, placing, or discharging of a
- 211 destructive device or bomb;
- 212 11. Armed burglary in violation of s. 810.02(2)(b) or
- 213 specified burglary of a dwelling or structure in violation of s.
- 214 810.02(2)(c), or burglary with an assault or battery in
- 215 violation of s. 810.02(2)(a);
- 216 12. Aggravated battery;
- 217 13. Any lewd or lascivious offense committed upon or in the
- 218 presence of a person less than 16 years of age;
- 219 14. Carrying, displaying, using, threatening, or attempting
- 220 to use a weapon or firearm during the commission of a felony;
- 221 15. Grand theft in violation of s. 812.014(2)(a);
- 222 16. Possessing or discharging any weapon or firearm on
- 223 school property in violation of s. 790.115;
- 224 17. Home invasion robbery;
- 225 18. Carjacking; or
- 226 19. Grand theft of a motor vehicle in violation of s.
- 227 812.014(2)(c)6. or grand theft of a motor vehicle valued at
- 228 \$20,000 or more in violation of s. 812.014(2)(b) if the child
- 229 has a previous adjudication for grand theft of a motor vehicle
- 230 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).
- 231 (b) With respect to any child who was ~~16 or~~ 17 years of age
- 232 at the time the alleged offense was committed, the state

11-00904A-18

20181552__

233 attorney may file an information when in the state attorney's
234 judgment and discretion the public interest requires that adult
235 sanctions be considered or imposed. However, the state attorney
236 may not file an information on a child charged with a
237 misdemeanor, unless the child has had at least two previous
238 adjudications or adjudications withheld for delinquent acts, one
239 of which involved an offense classified as a felony under state
240 law.

241 (2) MANDATORY DIRECT FILE.—

242 (a) With respect to any child who was ~~16 or~~ 17 years of age
243 at the time the alleged offense was committed, the state
244 attorney shall file an information if the child has been
245 previously adjudicated delinquent for an act classified as a
246 felony, which adjudication was for the commission of, attempt to
247 commit, or conspiracy to commit murder, sexual battery, armed or
248 strong-armed robbery, carjacking, home-invasion robbery,
249 aggravated battery, or aggravated assault, and the child is
250 currently charged with a second or subsequent violent crime
251 against a person.

252 (b) With respect to any child ~~16 or~~ 17 years of age at the
253 time an offense classified as a forcible felony, as defined in
254 s. 776.08, was committed, the state attorney shall file an
255 information if the child has previously been adjudicated
256 delinquent or had adjudication withheld for three acts
257 classified as felonies each of which occurred at least 45 days
258 apart from each other. This paragraph does not apply when the
259 state attorney has good cause to believe that exceptional
260 circumstances exist which preclude the just prosecution of the
261 juvenile in adult court.

11-00904A-18

20181552__

262 (d)1. With respect to any child who was ~~16 or~~ 17 years of
263 age at the time the alleged offense was committed, the state
264 attorney shall file an information if the child has been charged
265 with committing or attempting to commit an offense listed in s.
266 775.087(2)(a)1.a.-p., and, during the commission of or attempt
267 to commit the offense, the child:

268 a. Actually possessed a firearm or destructive device, as
269 those terms are defined in s. 790.001.

270 b. Discharged a firearm or destructive device, as described
271 in s. 775.087(2)(a)2.

272 c. Discharged a firearm or destructive device, as described
273 in s. 775.087(2)(a)3., and, as a result of the discharge, death
274 or great bodily harm was inflicted upon any person.

275 2. Upon transfer, any child who is:

276 a. Charged under sub-subparagraph 1.a. and who has been
277 previously adjudicated or had adjudication withheld for a
278 forcible felony offense or any offense involving a firearm, or
279 who has been previously placed in a residential commitment
280 program, shall be subject to sentencing under s. 775.087(2)(a),
281 notwithstanding s. 985.565.

282 b. Charged under sub-subparagraph 1.b. or sub-subparagraph
283 1.c., shall be subject to sentencing under s. 775.087(2)(a),
284 notwithstanding s. 985.565.

285 3. Upon transfer, any child who is charged under this
286 paragraph, but who does not meet the requirements specified in
287 subparagraph 2., shall be sentenced under s. 985.565; however,
288 if the court imposes a juvenile sanction, the court must commit
289 the child to a high-risk or maximum-risk juvenile facility.

290 4. This paragraph shall not apply if the state attorney has

11-00904A-18

20181552__

291 good cause to believe that exceptional circumstances exist that
 292 preclude the just prosecution of the child in adult court.

293 5. The Department of Corrections shall make every
 294 reasonable effort to ensure that any child ~~16 or 17 years of age~~
 295 who is convicted and sentenced under this paragraph be
 296 completely separated such that there is no physical contact with
 297 adult offenders in the facility, to the extent that it is
 298 consistent with chapter 958.

299 (5) DATA COLLECTION RELATING TO DIRECT FILE.-

300 (a) Beginning March 1, 2019, the department shall collect
 301 data relating to children who qualify to be prosecuted as adults
 302 under s. 985.556 and this section, regardless of the outcome of
 303 the case, including, but not limited to:

- 304 1. Age.
- 305 2. Race and ethnicity.
- 306 3. Gender.
- 307 4. Circuit and county of residence.
- 308 5. Circuit and county where the offense was committed.
- 309 6. Prior adjudications or adjudications withheld.
- 310 7. Prior periods of probation, including any violations of
 311 probation.
- 312 8. Previous contacts with law enforcement agencies or the
 313 court which resulted in a civil citation, arrest, or charges
 314 being filed with the state.
- 315 9. Initial charges.
- 316 10. Charges at disposition.
- 317 11. Whether child codefendants were involved who were
 318 transferred to adult court.
- 319 12. Whether the child was represented by counsel or whether

11-00904A-18

20181552__

320 the child waived counsel.

321 13. Risk assessment instrument score.

322 14. The child's medical, mental health, substance abuse,
323 and trauma history.

324 15. The child's history of mental impairment or disability-
325 related accommodations.

326 16. The child's history of abuse or neglect.

327 17. The child's history of foster care placements,
328 including the number of prior placements.

329 18. Whether the child has below-average intellectual
330 functioning.

331 19. Whether the child has received mental health services
332 or treatment.

333 20. Whether the child has been the subject of a child-in-
334 need-of-services or families-in-need-of-services petition or a
335 dependency petition.

336 21. Whether the child was transferred for criminal
337 prosecution as an adult and, if transferred, the provision of
338 this section under which the prosecution is proceeding or
339 proceeded.

340 22. The case resolution in juvenile court.

341 23. The case resolution in adult court.

342 (b) Beginning March 1, 2019, for a child transferred for
343 criminal prosecution as an adult, the department shall also
344 collect:

345 1. Disposition data, including, but not limited to, whether
346 the child received adult sanctions, juvenile sanctions, or
347 diversion and, if sentenced to prison, the length of the prison
348 sentence or the enhanced sentence; and

11-00904A-18

20181552__

349 2. Whether the child was previously found incompetent to
350 proceed in juvenile court.

351 (c) For every juvenile case transferred to adult court
352 between July 1, 2017, and June 30, 2018, the department shall
353 work with the Office of Program Policy Analysis and Government
354 Accountability to generate a report analyzing the data in
355 paragraphs (a) and (b). The department must provide this report
356 to the Governor, the President of the Senate, and the Speaker of
357 the House of Representatives by January 31, 2019.

358 (d) The department shall work with the Office of Program
359 Policy Analysis and Government Accountability to generate a
360 report analyzing the aggregated data collected under paragraphs
361 (a) and (b) on an annual basis. The department must provide this
362 report annually to the Governor, the President of the Senate,
363 and the Speaker of the House of Representatives no later than
364 January 31 of the following calendar year.

365 Section 5. Subsections (3) and (7) of section 985.672,
366 Florida Statutes, are amended to read:

367 985.672 Direct-support organization; definition; use of
368 property; board of directors; audit.—

369 (3) BOARD OF DIRECTORS.—The Secretary of Juvenile Justice
370 shall appoint a board of directors of the direct-support
371 organization according to the direct-support organization's
372 established bylaws. ~~Members of the organization must include~~
373 ~~representatives from businesses, representatives from each of~~
374 ~~the juvenile justice service districts, and one representative~~
375 ~~appointed at large.~~

376 (7) REPEAL.—This section is repealed October 1, 2028 ~~2018~~,
377 unless reviewed and saved from repeal by the Legislature.

11-00904A-18

20181552__

378 Section 6. For the purpose of incorporating the amendment
379 made by this act to section 985.26, Florida Statutes, in a
380 reference thereto, subsection (8) of section 790.22, Florida
381 Statutes, is reenacted to read:

382 790.22 Use of BB guns, air or gas-operated guns, or
383 electric weapons or devices by minor under 16; limitation;
384 possession of firearms by minor under 18 prohibited; penalties.-

385 (8) Notwithstanding s. 985.24 or s. 985.25(1), if a minor
386 is charged with an offense that involves the use or possession
387 of a firearm, including a violation of subsection (3), or is
388 charged for any offense during the commission of which the minor
389 possessed a firearm, the minor shall be detained in secure
390 detention, unless the state attorney authorizes the release of
391 the minor, and shall be given a hearing within 24 hours after
392 being taken into custody. At the hearing, the court may order
393 that the minor continue to be held in secure detention in
394 accordance with the applicable time periods specified in s.
395 985.26(1)-(5), if the court finds that the minor meets the
396 criteria specified in s. 985.255, or if the court finds by clear
397 and convincing evidence that the minor is a clear and present
398 danger to himself or herself or the community. The Department of
399 Juvenile Justice shall prepare a form for all minors charged
400 under this subsection which states the period of detention and
401 the relevant demographic information, including, but not limited
402 to, the gender, age, and race of the minor; whether or not the
403 minor was represented by private counsel or a public defender;
404 the current offense; and the minor's complete prior record,
405 including any pending cases. The form shall be provided to the
406 judge for determining whether the minor should be continued in

11-00904A-18

20181552__

407 secure detention under this subsection. An order placing a minor
408 in secure detention because the minor is a clear and present
409 danger to himself or herself or the community must be in
410 writing, must specify the need for detention and the benefits
411 derived by the minor or the community by placing the minor in
412 secure detention, and must include a copy of the form provided
413 by the department.

414 Section 7. For the purpose of incorporating the amendment
415 made by this act to section 985.26, Florida Statutes, in a
416 reference thereto, subsection (2) of section 985.115, Florida
417 Statutes, is reenacted to read:

418 985.115 Release or delivery from custody.—

419 (2) Unless otherwise ordered by the court under s. 985.255
420 or s. 985.26, and unless there is a need to hold the child, a
421 person taking a child into custody shall attempt to release the
422 child as follows:

423 (a) To the child's parent, guardian, or legal custodian or,
424 if the child's parent, guardian, or legal custodian is
425 unavailable, unwilling, or unable to provide supervision for the
426 child, to any responsible adult. Prior to releasing the child to
427 a responsible adult, other than the parent, guardian, or legal
428 custodian, the person taking the child into custody may conduct
429 a criminal history background check of the person to whom the
430 child is to be released. If the person has a prior felony
431 conviction, or a conviction for child abuse, drug trafficking,
432 or prostitution, that person is not a responsible adult for the
433 purposes of this section. The person to whom the child is
434 released shall agree to inform the department or the person
435 releasing the child of the child's subsequent change of address

11-00904A-18

20181552__

436 and to produce the child in court at such time as the court may
437 direct, and the child shall join in the agreement.

438 (b) Contingent upon specific appropriation, to a shelter
439 approved by the department or to an authorized agent.

440 (c) If the child is believed to be suffering from a serious
441 physical condition which requires either prompt diagnosis or
442 prompt treatment, to a law enforcement officer who shall deliver
443 the child to a hospital for necessary evaluation and treatment.

444 (d) If the child is believed to be mentally ill as defined
445 in s. 394.463(1), to a law enforcement officer who shall take
446 the child to a designated public receiving facility as defined
447 in s. 394.455 for examination under s. 394.463.

448 (e) If the child appears to be intoxicated and has
449 threatened, attempted, or inflicted physical harm on himself or
450 herself or another, or is incapacitated by substance abuse, to a
451 law enforcement officer who shall deliver the child to a
452 hospital, addictions receiving facility, or treatment resource.

453 (f) If available, to a juvenile assessment center equipped
454 and staffed to assume custody of the child for the purpose of
455 assessing the needs of the child in custody. The center may then
456 release or deliver the child under this section with a copy of
457 the assessment.

458 Section 8. For the purpose of incorporating the amendment
459 made by this act to section 985.26, Florida Statutes, in a
460 reference thereto, subsection (2) of section 985.13, Florida
461 Statutes, is reenacted to read:

462 985.13 Probable cause affidavits.—

463 (2) A person taking a child into custody who determines,
464 under part V, that the child should be detained or released to a

11-00904A-18

20181552__

465 shelter designated by the department, shall make a reasonable
466 effort to immediately notify the parent, guardian, or legal
467 custodian of the child and shall, without unreasonable delay,
468 deliver the child to the appropriate juvenile probation officer
469 or, if the court has so ordered under s. 985.255 or s. 985.26,
470 to a detention center or facility. Upon delivery of the child,
471 the person taking the child into custody shall make a written
472 report or probable cause affidavit to the appropriate juvenile
473 probation officer. Such written report or probable cause
474 affidavit must:

475 (a) Identify the child and, if known, the parents,
476 guardian, or legal custodian.

477 (b) Establish that the child was legally taken into
478 custody, with sufficient information to establish the
479 jurisdiction of the court and to make a prima facie showing that
480 the child has committed a violation of law.

481 Section 9. For the purpose of incorporating the amendment
482 made by this act to section 985.26, Florida Statutes, in a
483 reference thereto, subsection (2) and paragraphs (a) and (c) of
484 subsection (3) of section 985.255, Florida Statutes, are
485 reenacted to read:

486 985.255 Detention criteria; detention hearing.—

487 (2) A child who is charged with committing an offense that
488 is classified as an act of domestic violence as defined in s.
489 741.28 and whose risk assessment instrument indicates secure
490 detention is not appropriate may be held in secure detention if
491 the court makes specific written findings that:

492 (a) Respite care for the child is not available.

493 (b) It is necessary to place the child in secure detention

11-00904A-18

20181552__

494 in order to protect the victim from injury.

495

496 The child may not be held in secure detention under this
497 subsection for more than 48 hours unless ordered by the court.
498 After 48 hours, the court shall hold a hearing if the state
499 attorney or victim requests that secure detention be continued.
500 The child may continue to be held in detention care if the court
501 makes a specific, written finding that detention care is
502 necessary to protect the victim from injury. However, the child
503 may not be held in detention care beyond the time limits set
504 forth in this section or s. 985.26.

505 (3) (a) The purpose of the detention hearing required under
506 subsection (1) is to determine the existence of probable cause
507 that the child has committed the delinquent act or violation of
508 law that he or she is charged with and the need for continued
509 detention. Unless a child is detained under paragraph (1) (d) or
510 paragraph (1) (e), the court shall use the results of the risk
511 assessment performed by the department and, based on the
512 criteria in subsection (1), shall determine the need for
513 continued detention. If the child is a prolific juvenile
514 offender who is detained under s. 985.26(2) (c), the court shall
515 use the results of the risk assessment performed by the
516 department and the criteria in subsection (1) or subsection (2)
517 only to determine whether the prolific juvenile offender should
518 be held in secure detention.

519 (c) Except as provided in s. 790.22(8) or s. 985.27, when a
520 child is placed into detention care, or into a respite home or
521 other placement pursuant to a court order following a hearing,
522 the court order must include specific instructions that direct

11-00904A-18

20181552__

523 the release of the child from such placement no later than 5
524 p.m. on the last day of the detention period specified in s.
525 985.26 or s. 985.27, whichever is applicable, unless the
526 requirements of such applicable provision have been met or an
527 order of continuance has been granted under s. 985.26(4). If the
528 court order does not include a release date, the release date
529 shall be requested from the court on the same date that the
530 child is placed in detention care. If a subsequent hearing is
531 needed to provide additional information to the court for safety
532 planning, the initial order placing the child in detention care
533 shall reflect the next detention review hearing, which shall be
534 held within 3 calendar days after the child's initial detention
535 placement.

536 Section 10. For the purpose of incorporating the amendment
537 made by this act to section 985.26, Florida Statutes, in a
538 reference thereto, paragraph (a) of subsection (1) of section
539 985.35, Florida Statutes, is reenacted to read:

540 985.35 Adjudicatory hearings; withheld adjudications;
541 orders of adjudication.—

542 (1)(a) Except as provided in paragraph (b), the
543 adjudicatory hearing must be held as soon as practicable after
544 the petition alleging that a child has committed a delinquent
545 act or violation of law is filed and in accordance with the
546 Florida Rules of Juvenile Procedure; but reasonable delay for
547 the purpose of investigation, discovery, or procuring counsel or
548 witnesses shall be granted. If the child is being detained, the
549 time limitations in s. 985.26(2) and (3) apply.

550 Section 11. For the purpose of incorporating the amendment
551 made by this act to section 985.556, Florida Statutes, in a

11-00904A-18

20181552__

552 reference thereto, subsection (1) of section 985.15, Florida
553 Statutes, is reenacted to read:

554 985.15 Filing decisions.—

555 (1) The state attorney may in all cases take action
556 independent of the action or lack of action of the juvenile
557 probation officer and shall determine the action that is in the
558 best interest of the public and the child. If the child meets
559 the criteria requiring prosecution as an adult under s. 985.556,
560 the state attorney shall request the court to transfer and
561 certify the child for prosecution as an adult or shall provide
562 written reasons to the court for not making such a request. In
563 all other cases, the state attorney may:

564 (a) File a petition for dependency;

565 (b) File a petition under chapter 984;

566 (c) File a petition for delinquency;

567 (d) File a petition for delinquency with a motion to
568 transfer and certify the child for prosecution as an adult;

569 (e) File an information under s. 985.557;

570 (f) Refer the case to a grand jury;

571 (g) Refer the child to a diversionary, pretrial
572 intervention, arbitration, or mediation program, or to some
573 other treatment or care program if such program commitment is
574 voluntarily accepted by the child or the child's parents or
575 legal guardian; or

576 (h) Decline to file.

577 Section 12. For the purpose of incorporating the amendments
578 made by this act to sections 985.556 and 985.557, Florida
579 Statutes, in references thereto, subsection (5) of section
580 985.265, Florida Statutes, is reenacted to read:

11-00904A-18

20181552__

581 985.265 Detention transfer and release; education; adult
582 jails.—

583 (5) The court shall order the delivery of a child to a jail
584 or other facility intended or used for the detention of adults:

585 (a) When the child has been transferred or indicted for
586 criminal prosecution as an adult under part X, except that the
587 court may not order or allow a child alleged to have committed a
588 misdemeanor who is being transferred for criminal prosecution
589 pursuant to either s. 985.556 or s. 985.557 to be detained or
590 held in a jail or other facility intended or used for the
591 detention of adults; however, such child may be held temporarily
592 in a detention facility; or

593 (b) When a child taken into custody in this state is wanted
594 by another jurisdiction for prosecution as an adult.

595

596 The child shall be housed separately from adult inmates to
597 prohibit a child from having regular contact with incarcerated
598 adults, including trustees. "Regular contact" means sight and
599 sound contact. Separation of children from adults shall permit
600 no more than haphazard or accidental contact. The receiving jail
601 or other facility shall contain a separate section for children
602 and shall have an adequate staff to supervise and monitor the
603 child's activities at all times. Supervision and monitoring of
604 children includes physical observation and documented checks by
605 jail or receiving facility supervisory personnel at intervals
606 not to exceed 10 minutes. This subsection does not prohibit
607 placing two or more children in the same cell. Under no
608 circumstances shall a child be placed in the same cell with an
609 adult.

11-00904A-18

20181552__

610 Section 13. For the purpose of incorporating the amendments
611 made by this act to sections 985.556 and 985.557, Florida
612 Statutes, in references thereto, subsection (4) of section
613 985.565, Florida Statutes, is reenacted to read:

614 985.565 Sentencing powers; procedures; alternatives for
615 juveniles prosecuted as adults.—

616 (4) SENTENCING ALTERNATIVES.—

617 (a) *Adult sanctions*.—

618 1. Cases prosecuted on indictment.—If the child is found to
619 have committed the offense punishable by death or life
620 imprisonment, the child shall be sentenced as an adult. If the
621 juvenile is not found to have committed the indictable offense
622 but is found to have committed a lesser included offense or any
623 other offense for which he or she was indicted as a part of the
624 criminal episode, the court may sentence as follows:

625 a. As an adult;

626 b. Under chapter 958; or

627 c. As a juvenile under this section.

628 2. Other cases.—If a child who has been transferred for
629 criminal prosecution pursuant to information or waiver of
630 juvenile court jurisdiction is found to have committed a
631 violation of state law or a lesser included offense for which he
632 or she was charged as a part of the criminal episode, the court
633 may sentence as follows:

634 a. As an adult;

635 b. Under chapter 958; or

636 c. As a juvenile under this section.

637 3. Notwithstanding any other provision to the contrary, if
638 the state attorney is required to file a motion to transfer and

11-00904A-18

20181552__

639 certify the juvenile for prosecution as an adult under s.
640 985.556(3) and that motion is granted, or if the state attorney
641 is required to file an information under s. 985.557(2)(a) or
642 (b), the court must impose adult sanctions.

643 4. Any sentence imposing adult sanctions is presumed
644 appropriate, and the court is not required to set forth specific
645 findings or enumerate the criteria in this subsection as any
646 basis for its decision to impose adult sanctions.

647 5. When a child has been transferred for criminal
648 prosecution as an adult and has been found to have committed a
649 violation of state law, the disposition of the case may include
650 the enforcement of any restitution ordered in any juvenile
651 proceeding.

652 (b) *Juvenile sanctions.*—For juveniles transferred to adult
653 court but who do not qualify for such transfer under s.
654 985.556(3) or s. 985.557(2)(a) or (b), the court may impose
655 juvenile sanctions under this paragraph. If juvenile sentences
656 are imposed, the court shall, under this paragraph, adjudge the
657 child to have committed a delinquent act. Adjudication of
658 delinquency shall not be deemed a conviction, nor shall it
659 operate to impose any of the civil disabilities ordinarily
660 resulting from a conviction. The court shall impose an adult
661 sanction or a juvenile sanction and may not sentence the child
662 to a combination of adult and juvenile punishments. An adult
663 sanction or a juvenile sanction may include enforcement of an
664 order of restitution or probation previously ordered in any
665 juvenile proceeding. However, if the court imposes a juvenile
666 sanction and the department determines that the sanction is
667 unsuitable for the child, the department shall return custody of

11-00904A-18

20181552__

668 the child to the sentencing court for further proceedings,
669 including the imposition of adult sanctions. Upon adjudicating a
670 child delinquent under subsection (1), the court may:

671 1. Place the child in a probation program under the
672 supervision of the department for an indeterminate period of
673 time until the child reaches the age of 19 years or sooner if
674 discharged by order of the court.

675 2. Commit the child to the department for treatment in an
676 appropriate program for children for an indeterminate period of
677 time until the child is 21 or sooner if discharged by the
678 department. The department shall notify the court of its intent
679 to discharge no later than 14 days prior to discharge. Failure
680 of the court to timely respond to the department's notice shall
681 be considered approval for discharge.

682 3. Order disposition under ss. 985.435, 985.437, 985.439,
683 985.441, 985.45, and 985.455 as an alternative to youthful
684 offender or adult sentencing if the court determines not to
685 impose youthful offender or adult sanctions.

686 (c) *Adult sanctions upon failure of juvenile sanctions.*—If
687 a child proves not to be suitable to a commitment program,
688 juvenile probation program, or treatment program under paragraph
689 (b), the department shall provide the sentencing court with a
690 written report outlining the basis for its objections to the
691 juvenile sanction and shall simultaneously provide a copy of the
692 report to the state attorney and the defense counsel. The
693 department shall schedule a hearing within 30 days. Upon
694 hearing, the court may revoke the previous adjudication, impose
695 an adjudication of guilt, and impose any sentence which it may
696 lawfully impose, giving credit for all time spent by the child

11-00904A-18

20181552__

697 in the department. The court may also classify the child as a
698 youthful offender under s. 958.04, if appropriate. For purposes
699 of this paragraph, a child may be found not suitable to a
700 commitment program, community control program, or treatment
701 program under paragraph (b) if the child commits a new violation
702 of law while under juvenile sanctions, if the child commits any
703 other violation of the conditions of juvenile sanctions, or if
704 the child's actions are otherwise determined by the court to
705 demonstrate a failure of juvenile sanctions.

706 (d) *Further proceedings heard in adult court.*—When a child
707 is sentenced to juvenile sanctions, further proceedings
708 involving those sanctions shall continue to be heard in the
709 adult court.

710 (e) *School attendance.*—If the child is attending or is
711 eligible to attend public school and the court finds that the
712 victim or a sibling of the victim in the case is attending or
713 may attend the same school as the child, the court placement
714 order shall include a finding pursuant to the proceeding
715 described in s. 985.455(2), regardless of whether adjudication
716 is withheld.

717
718 It is the intent of the Legislature that the criteria and
719 guidelines in this subsection are mandatory and that a
720 determination of disposition under this subsection is subject to
721 the right of the child to appellate review under s. 985.534.

722 Section 14. For the purpose of incorporating the amendment
723 made by this act to section 985.557, Florida Statutes, in a
724 reference thereto, paragraph (c) of subsection (2) of section
725 985.26, Florida Statutes, is reenacted to read:

11-00904A-18

20181552__

726 985.26 Length of detention.—

727 (2)

728 (c) A prolific juvenile offender under s. 985.255(1)(j)
729 shall be placed on nonsecure detention care with electronic
730 monitoring or in secure detention care under a special detention
731 order until disposition. If secure detention care is ordered by
732 the court, it must be authorized under this part and may not
733 exceed:

734 1. Twenty-one days unless an adjudicatory hearing for the
735 case has been commenced in good faith by the court or the period
736 is extended by the court pursuant to paragraph (b); or

737 2. Fifteen days after the entry of an order of
738 adjudication.

739

740 As used in this paragraph, the term "disposition" means a
741 declination to file under s. 985.15(1)(h), the entry of nolle
742 prosequi for the charges, the filing of an indictment under s.
743 985.56 or an information under s. 985.557, a dismissal of the
744 case, or an order of final disposition by the court.

745 Section 15. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: February 6, 2018

I respectfully request that **Senate Bill #1552**, relating to Juvenile Justice, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, reading "Randolph Bracy".

Senator Randolph Bracy
Florida Senate, District 11

THE FLORIDA SENATE

APPEARANCE RECORD

2/14/18

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1552

Bill Number (if applicable)

378810

Amendment Barcode (if applicable)

Topic SB1552

Name Christina K. Daly

Job Title Secretary

Address 2737 Centerview Dr.

Phone 850-717-2716

Street

Tallahassee

FL

32399

City

State

Zip

Email

Speaking: For Against Information.

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Dept of Juvenile Justice

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1552

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name NANCY DANIELS

Job Title Legislative Consultant

Address 103 N. Gadsden St.

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Public Defender Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.14.18

Meeting Date

1552

Bill Number (if applicable)

Topic Juvenile Justice

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

1552

Bill Number (if applicable)

Topic JUVENILE JUSTICE

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title POLICY ADVISOR

Address 115 S. ANDREWS AVE.

Phone 954-253-7320

Street

FT. LAUDERDALE FL 33301

Email dsainvil@broward.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing BROWARD COUNTY GOV'T

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1780

INTRODUCER: Criminal Justice Committee and Senator Rouson

SUBJECT: Victims of Reform School Abuse

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1780 creates the “Arthur G. Dozier School and Okeechobee School Abuse Victim Certification Act.”

The bill defines the term “victim of Florida reform school abuse.” The bill requires a person seeking to be certified as a victim of Florida reform school abuse to submit an application to the Department of Juvenile Justice (DJJ) by October 1, 2018.

The bill requires the DJJ to notify the applicant of its determination within five business days after processing and reviewing the application. If the DJJ determines that an application meets the requirements of the act, the DJJ must certify the applicant as a victim of Florida reform school abuse.

The bill requires the DJJ to process and review all applications that were submitted by October 1, 2018, and submit a list of all certified victims to the President of the Senate and the Speaker of the House of Representatives by March 1, 2019.

The Department of Juvenile Justice will incur costs in implementing the bill. Such costs can be absorbed within its existing resources.

This act is effective upon becoming law.

II. Present Situation:

The Dozier School

From January 1, 1900, to June 30, 2011, the state operated the Florida State Reform School in Marianna.¹ Over the years, the school has operated under several different names: Florida State Reform School, Florida Industrial School for Boys, Florida School for Boys, and Arthur G. Dozier School for Boys (hereinafter, Dozier School). The school originally housed children as young as five years old, who had committed minor criminal offenses, such as incorrigibility and truancy. Additionally, many children who were wards of the state and orphans were also committed to the school, despite not having been charged with a crime.²

As early as 1901, reports surfaced of children being chained to walls in irons, brutal whippings, and peonage (involuntary servitude).³ In the first 13 years of operation, six state-led investigations took place. Those investigations found that children as young as five years old were being hired out for labor, unjustly beaten, and were without education or proper food and clothing.⁴

In 1955, the state opened a new reform school in Okeechobee to address overcrowding at the Dozier School.⁵ Staff members of the Dozier School were transferred to the Florida School for Boys at Okeechobee (hereinafter, Okeechobee School), where they instituted the same degrading policies and abusive practices as those implemented at the Dozier School.⁶

In 2005, former students of the Dozier School began to publish accounts of the abuse they experienced at the school.⁷ These stories prompted Governor Charlie Crist to direct the Florida Department of Law Enforcement to investigate the Dozier School and the deaths that were alleged and occurred at the school.⁸

University of South Florida Forensic Investigation

From 2013-2016, the University of South Florida conducted a forensic investigation, funded by the Legislature, into the deaths and burials at the Dozier School.⁹ The purpose of the investigation was to determine the location of the missing children buried at the Dozier School.¹⁰

¹ Erin H. Kimmerle, Ph.D.; E. Christian Wells, Ph.D.; and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 22 (January 24, 2018) (on file with the Senate Committee on Criminal Justice).

² *Id.*

³ *Id.* at 12.

⁴ *Id.* at 27.

⁵ *Id.* at 22.

⁶ *Id.*

⁷ *Id.* at 30.

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Id.* at 11.

The investigation found records of nearly 100 deaths from 1900-1973.¹¹ Of those 100 deaths recorded in documents maintained by the school, two deaths were staff members, and the remaining were boys ranging in age from 6 to 18 years old. The investigation noted that the historical records are incomplete and the causes and manners of death for the majority of cases are unknown. The investigation also found that there are at least 22 deaths in the records for which no burial location is documented.¹²

The investigation noted that while other state-run institutions kept detailed records of burials made on the property of the institution, the Dozier School did not keep any records showing the location of specific graves, nor did the school mark the graves.¹³ The investigation implied that this lack of record keeping suggests an intent to cloud the true number of burials located at the school and potentially hinder later investigations into the true causes of individual's deaths.¹⁴

Additionally, the investigation revealed that the Dozier School consistently underreported the number of deaths that occurred in their bi-annual reports to the state.¹⁵

Legislative Resolutions Addressing Florida Reform School Abuse at the Dozier School and the Okeechobee School

During the 2017 Legislative Session, the Legislature unanimously issued a formal apology to the victims of reform school abuse and their families with the passage of CS/HR 1335 and CS/SR 1440. In those resolutions, the Legislature acknowledged that the treatment of boys who were sent to the Dozier School and the Okeechobee School was cruel, unjust, and a violation of human decency. The resolutions expressed regret for the treatment of boys at the schools and apologized to the victims for the wrongs committed against them by state employees. The resolutions also expressed commitment to ensuring that children who have been placed in the state's care will be protected from abuse and violations of fundamental human decency.¹⁶

III. Effect of Proposed Changes:

The bill creates the "Arthur G. Dozier School and Okeechobee School Abuse Victim Certification Act."

The bill defines a "victim of Florida reform school abuse" as a living person who was confined at the Dozier School or the Okeechobee School at any time between 1940 and 1975 and who was subjected to physical or sexual abuse perpetrated by personnel of the school during the period of confinement.

¹¹ *Id.* at 14.

¹² *Id.*

¹³ *Id.* at 15.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See* CS/HR 1335 and CS/SR 1440 (2017).

The bill requires a person seeking to be certified as a victim of Florida reform school abuse to submit an application to the DJJ by October 1, 2018. The application must include:

- An affidavit stating:
 - That the applicant was confined at the Dozier School or the Okeechobee School;
 - The beginning and ending days of the confinement; and
 - That the applicant was subjected to physical or sexual abuse perpetrated by school personnel during the confinement.
- Documentation from the State Archives of Florida, the Dozier School, or the Okeechobee School, demonstrating that the applicant was confined at the school for any length of time between 1940 and 1975; and
- Proof of identification, including a current form of photo ID.

The bill requires the DJJ to examine an application within 30 days of receipt and notify the applicant of any errors or omissions or request any additional information relevant to the review of the application. Should the DJJ need additional information from the applicant to process the application, the applicant will have 15 days after receiving such notification from the DJJ to complete or modify the application.

The bill prohibits the DJJ from denying an application due to the applicant's failure to correct an error or submit additional information requested by the DJJ if the DJJ failed to timely notify the applicant of the error.

The bill requires the DJJ to notify the applicant of its determination within five business days after processing and reviewing the application. If the DJJ determines that an application meets the requirements of the act, the DJJ must certify the applicant as a victim of Florida reform school abuse.

The bill requires the DJJ to process and review all applications that were submitted by October 1, 2018, and submit a list of all certified victims to the President of the Senate and the Speaker of the House of Representatives by March 1, 2019.

The act is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Juvenile Justice will experience additional workload to process and review applications to determine if an applicant is a “victim of Florida reform school abuse” as provided under the act. The costs associated with this workload and any other costs expected to be incurred in implementing this bill are indeterminate. The DJJ estimates that an additional full-time employee may be needed to process applications,¹⁷ but the DJJ has sufficient existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of the Florida statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on January 29, 2018:

The Committee Substitute corrects a reference to the House resolution made in the bill.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁷ Florida Department of Juvenile Justice, *2018 Legislative Bill Analysis for SB 1780*, (January 17, 2018) (on file with the Senate Criminal Justice Committee).

By the Committee on Criminal Justice; and Senator Rouson

591-02586-18

20181780c1

1 A bill to be entitled
2 An act relating to victims of reform school abuse;
3 providing a short title; defining the term "victim of
4 Florida reform school abuse"; requiring a person
5 seeking certification under this act to apply to the
6 Department of Juvenile Justice by a certain date;
7 prohibiting the estate of a decedent or the personal
8 representative of a decedent from submitting an
9 application on behalf of the decedent; requiring that
10 the application include certain information and
11 documents; requiring the department to examine the
12 application, notify the applicant of any errors or
13 omissions, and request any additional information
14 within a certain timeframe; providing that the
15 applicant has 15 days after notification to complete
16 the application; requiring the department to process
17 and review a completed application within a certain
18 timeframe; prohibiting the department from denying an
19 application for specified reasons and under certain
20 circumstances; requiring the department to notify the
21 applicant of its determination within a certain
22 timeframe; requiring the department to certify an
23 applicant as a victim of Florida reform school abuse
24 if the department determines his application meets the
25 requirements of this act; requiring the department to
26 submit a list of all certified victims to the
27 President of the Senate and the Speaker of the House
28 of Representatives; providing an effective date.
29

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30 WHEREAS, the Florida State Reform School, also known as the
31 "Florida Industrial School for Boys," the "Florida School for
32 Boys," the "Arthur G. Dozier School for Boys," and the "Dozier
33 School," was opened by the state in 1900 in Marianna to house
34 children who had committed minor criminal offenses, such as
35 incorrigibility, truancy, and smoking, as well as more serious
36 offenses, such as theft and murder, and

37 WHEREAS, throughout the Dozier School's history, reports of
38 abuse, suspicious deaths, and threats of closure plagued the
39 school, and

40 WHEREAS, many former students of the Dozier School have
41 sworn under oath that they were beaten at a facility located on
42 the school grounds known as the "White House," and

43 WHEREAS, a psychologist employed at the Dozier School
44 testified under oath at a 1958 United States Senate Judiciary
45 Committee hearing that boys at the school were beaten by an
46 administrator, that the blows were severe and dealt with great
47 force with a full arm swing over the head and down, that a
48 leather strap approximately 10 inches long was used, and that
49 the beatings were "brutality," and

50 WHEREAS, a former Dozier School employee stated in
51 interviews with law enforcement that, in 1962, several employees
52 of the school were removed from the facility based upon
53 allegations that they made sexual advances toward boys at the
54 facility, and

55 WHEREAS, a forensic investigation funded by the Legislature
56 and conducted from 2013 to 2016 by the University of South
57 Florida found incomplete records regarding deaths and 45 burials
58 that occurred at the Dozier School between 1900 and 1960 and

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59 found that families were often notified of the death after the
60 child was buried or were denied access to their child's remains
61 at the time of burial, and

62 WHEREAS, the excavations conducted as part of the forensic
63 investigation revealed more burials than reported in official
64 records, and

65 WHEREAS, in 1955, this state opened a new reform school in
66 Okeechobee called the Florida School for Boys at Okeechobee,
67 referred to in this act as "the Okeechobee School," to address
68 overcrowding at the Dozier School, and staff members of the
69 Dozier School were transferred to the Okeechobee School, where
70 similar disciplinary practices were implemented, and

71 WHEREAS, many former students of the Okeechobee School have
72 sworn under oath that they were beaten at a facility on school
73 grounds known as the "Adjustment Unit," and

74 WHEREAS, more than 500 former students of the Dozier School
75 and the Okeechobee School have come forward with reports of
76 physical, mental, and sexual abuse by school staff during the
77 1940s, 1950s, and 1960s and the resulting trauma that has
78 endured throughout their lives, and

79 WHEREAS, during the 2017 legislative session, the
80 Legislature unanimously issued a formal apology to the victims
81 of abuse with the passage of CS/SR 1440 and CS/HR 1335,
82 expressing regret for the treatment of boys who were sent to the
83 Dozier School and the Okeechobee School; acknowledging that the
84 treatment was cruel, unjust, and a violation of human decency;
85 and expressing its commitment to ensure that children who have
86 been placed in this state's care will be protected from abuse
87 and violations of human decency, NOW, THEREFORE,

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

Section 1. (1) This act may be known and cited as the "Arthur G. Dozier School and Okeechobee School Abuse Victim Certification Act."

(2) As used in this act, the term "victim of Florida reform school abuse" means a living person who was confined at the Arthur G. Dozier School for Boys or the Okeechobee School at any time between 1940 and 1975 and who was subjected to physical or sexual abuse perpetrated by personnel of the school during the period of confinement.

(3) (a) A person seeking to be certified as a victim of Florida reform school abuse must submit an application to the Department of Juvenile Justice no later than October 1, 2018. The estate of a decedent or the personal representative for a decedent may not submit an application on behalf of the decedent.

(b) The application must include:

1. An affidavit stating that the applicant was confined at the Arthur G. Dozier School for Boys or the Okeechobee School, the beginning and ending dates of the confinement, and that the applicant was subjected to physical or sexual abuse perpetrated by school personnel during the confinement;

2. Documentation from the State Archives of Florida, the Arthur G. Dozier School for Boys, or the Okeechobee School which shows that the applicant was confined at the schools for any length of time between 1940 and 1975; and

3. Positive proof of identification, including a current

591-02586-18

20181780c1

117 form of photo identification.

118 (c) Within 30 calendar days after receipt of an
119 application, the Department of Juvenile Justice shall examine
120 the application and notify the applicant of any errors or
121 omissions or request any additional information relevant to the
122 review of the application. The applicant has 15 calendar days
123 after receiving such notification to complete the application by
124 correcting any errors or omissions or submitting any additional
125 information requested by the department. The department shall
126 review and process each completed application within 90 calendar
127 days after receipt of the application.

128 (d) The Department of Juvenile Justice may not deny an
129 application due to the applicant failing to correct an error or
130 omission or failing to submit additional information the
131 department requested unless the department timely notified the
132 applicant of such error or omission or timely requested
133 additional information as provided in paragraph (c).

134 (e) The Department of Juvenile Justice shall notify the
135 applicant of its determination within 5 business days after
136 processing and reviewing the application. If the department
137 determines that an application meets the requirements of this
138 act, the department must certify the applicant as a victim of
139 Florida reform school abuse.

140 (f) No later than March 1, 2019, the Department of Juvenile
141 Justice must process and review all applications that were
142 submitted by October 1, 2018, and must submit a list of all
143 certified victims to the President of the Senate and the Speaker
144 of the House of Representatives.

145 Section 2. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair

Appropriations Subcommittee on Criminal and Civil Justice

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that **Senate Bill #1780**, relating to Victims of Reform School Abuse, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink that reads "Darryl Rouson".

Senator Darryl Rouson
Florida Senate, District 19

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2.14.18

Meeting Date

1780

Bill Number (if applicable)

Topic Victims of Reform School ABuse

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

Feb. 14, 2018

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 1780

Meeting Date

Bill Number (if applicable)

Topic Reform School Abuse

Amendment Barcode (if applicable)

Name Kimberly Case

Job Title Sr. Policy Advisor, Holland & Knight

Address 315 S. Calhoun

Phone (850) 425-5603

Tallahassee, FL 32303

Email kimberly.case@hklaw

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing White House Boys Organization

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/14/18

Meeting Date

SB 1392

Bill Number (if applicable)

Topic Civil Citations

Amendment Barcode (if applicable)

Name Ron Smith

Job Title EXECUTIVE DIRECTOR, OPERATIONS

GLOBAL ENGINEERED SOLUTIONS GROUP, LLC

Address 813 E 25TH AVE

Street

Phone 770-633-7810

NEW SMYRNA BEACH, FL

City

State

32169

Zip

Email ronsmith@smithtot.net

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FAITH VOLUSIA COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on General
Government
Commerce and Tourism
Community Affairs
Ethics and Elections
Appropriations Subcommittee on Civil and Criminal
Justice
Rules

SENATOR JOSE JAVIER RODRIGUEZ

Deputy Democratic Whip
37th District

February 13th, 2018

Chairman Jeff Brandes
Appropriations Subcommittee on Criminal and Civil Justice
404 S. Monroe St.
Tallahassee, FL 32399-1100
Sent via email to brandes.jeff@flsenate.gov

Chair Brandes,

I respectfully request to be excused from the February 14th, 2018 meeting of the Appropriations Subcommittee on Criminal and Civil Justice. I have a commitment in the district that which I must attend to.

Please let me or my staff know if you have any questions.

Thank you,

Regards,

A handwritten signature in blue ink, appearing to read "JJR", written in a cursive style.

Senator José Javier Rodríguez
District 37, Miami

CC: Tim Sadberry, Staff Director
Lisa Roberts, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 854-0365
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5037

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Appropriations Subcommittee on Criminal and Civil Justice

Judge:

Started: 2/14/2018 1:37:00 PM

Ends: 2/14/2018 2:50:17 PM

Length: 01:13:18

1:37:23 PM Sen. Brandes (Chair)
1:37:33 PM S 1396
1:37:41 PM Sen. Steube
1:37:56 PM Am. 343172
1:38:35 PM Sen. Bean
1:38:50 PM Sen. Steube
1:39:14 PM S 1396 (cont.)
1:39:25 PM Sen. Brandes
1:39:54 PM Sen. Perry
1:40:07 PM S 694
1:40:12 PM Sen. Brandes
1:40:37 PM Am. 108784
1:40:46 PM Sen. Brandes
1:41:03 PM Sen. Perry
1:41:26 PM S. 694 (cont.)
1:41:34 PM Barney Bishop, Chief Executive Officer, Florida Smart Justice Alliance
1:45:13 PM David Sleeth, Florida Legislation and Policy Director, Emgage (waives in support)
1:45:17 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Association (waives in support)
1:45:20 PM Amy Bisceglia, Campaign for Criminal Justice Reform (waives in support)
1:45:25 PM Mrs. Logan Padgett, Director of Public Affairs, The James Madison Institute (waives in support)
1:45:31 PM Mia Diaz, Executive Assistant and Office Manager, Florida Tax Watch (waives in support)
1:45:35 PM Marc Levin, Vice President of Right on Crime, Right on Crime
1:48:33 PM Greg Newburn, State Policy Director, Families Against Mandatory Minimums (waives in support)
1:48:34 PM Sen. Perry
1:48:44 PM Sen. Bean
1:49:44 PM Sen. Baxley
1:50:15 PM Sen. Brandes
1:53:12 PM Sen. Perry
1:53:43 PM S1270
1:53:51 PM Sen. Brandes
1:54:53 PM Sen. Perry
1:55:06 PM Am. 601144
1:55:12 PM Sen. Brandes
1:55:30 PM Sen. Perry
1:56:29 PM Fred Baggett, Florida Clerks of Courts
1:57:00 PM Sen. Perry
1:57:25 PM S 1270 (cont.)
1:57:29 PM Barney Bishop, Chief Executive Officer, Florida Smart Justice Alliance (waives in support)
1:57:32 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Association (waives in support)
1:57:47 PM Chelsea Murphy, State Director, Right on Crime (waives in support)
1:57:51 PM Jennifer Wilson, Lobbyist, The Florida Collectors Association (waives in support)
1:58:00 PM Greg Pound
1:59:04 PM Sen. Baxley
1:59:44 PM Sen. Perry
2:00:19 PM S 1318
2:00:34 PM Sen. Rouson
2:01:15 PM Am. 979286
2:01:35 PM Am. 774644
2:01:44 PM Sen. Rouson
2:02:22 PM Sen. Perry
2:03:06 PM Sen. Brandes
2:03:34 PM Am. 753714

2:03:55 PM Am. 516598
2:04:03 PM Sen. Brandes
2:05:26 PM Sen. Perry
2:05:31 PM Sen. Flores
2:05:59 PM Sen. Brandes
2:06:09 PM Sen. Perry
2:06:32 PM Barney Bishop, Chief Executive Officer, Florida Smart Justice Alliance (waives in support)
2:06:56 PM S 1318 (cont.)
2:07:10 PM Jake Farmer, Legislative Coordinator, Florida Retail Federation (waives against)
2:07:19 PM Greg Pound (waives in support)
2:07:29 PM Sen. Brandes
2:08:23 PM Sen. Rouson
2:08:52 PM Sen. Perry
2:09:46 PM S 1780
2:09:54 PM Sen. Rouson
2:11:09 PM Barney Bishop, Chief Executive Officer, Florida Smart Justice Alliance (waives in support)
2:11:14 PM Kimberly Case, Senior Policy Advisor, Holland and Knight, White House Boys Organization (waives in support)
2:11:29 PM Sen. Perry
2:12:16 PM S 1392
2:12:19 PM Sen. Brandes
2:13:07 PM Sen. Perry
2:13:11 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Association (waives in support)
2:13:17 PM Ron Smith, Executive Director Operations, Global Engineered Solutions Group, LLC, Faith Volusia County
2:16:40 PM Jacob Fuller, Retired, FAST of Pinellas County (waives against)
2:16:47 PM Barney Bishop, Chief Executive Officer, Florida Smart Justice Alliance (waives in support)
2:17:01 PM William Coale, Retired, FAST of Pinellas County (waives in support)
2:17:12 PM Daphnee Sainvil, Policy Advisor, Broward County Government
2:19:12 PM Shawn Foster, Lobbyist, Florida Bail Agents Association
2:21:08 PM Matthew Jones, President, Florida Bail Agents Association
2:24:14 PM Mrs. Logan Padgett, Director of Public Affairs, The James Madison Institute (waives in support)
2:24:14 PM Chelsea Murphy, State Director, Right on Crime (waives in support)
2:24:29 PM Fred Baggett, Florida Clerks of Court (waives in support)
2:24:37 PM Dawn Steward, Florida Parent Teachers Association (waives in support)
2:24:42 PM Ingrid Delgado, Associate for Social Concerns and Respect Life, Florida Conference of Catholic Bishops (waives in support)
2:24:48 PM Jill Gran , Senior Policy Director, Florida Behavioral Health Association (waives in support)
2:24:52 PM Sen. Perry
2:25:02 PM Sen. Flores
2:28:50 PM Sen. Baxley
2:31:05 PM Sen. Brandes
2:32:58 PM Sen. Perry
2:33:36 PM Sen. Bracy
2:33:42 PM S 1552
2:34:50 PM Am. 378810
2:34:52 PM Am. 659892
2:35:14 PM Sen. Baxley
2:35:29 PM Sen. Perry
2:36:20 PM Sen. Bracy
2:37:06 PM Sen. Perry
2:37:34 PM Sen. Bracy
2:38:32 PM Sen. Baxley
2:38:36 PM Sen. Bracy
2:39:17 PM Sen. Perry
2:39:24 PM Sen. Bracy
2:40:12 PM S 1552 (cont.)
2:40:17 PM Nancy Daniels, Legislative Consultant, Florida Public Defender Association, (waives in support)
2:40:22 PM Barney Bishop, Chief Financial Officer, Florida Smart Justice Alliance (waives in support)
2:40:32 PM Daphnee Sainvil, Policy Advisor, Broward County Government (waives in support)
2:40:39 PM Sen. Bean
2:41:17 PM Bill Cervone, State Attorney, Gainesville, Florida

2:41:54 PM Sen. Perry
2:41:59 PM Sen. Baxley
2:43:37 PM Sen. Perry
2:43:42 PM Sen. Bracy
2:43:59 PM Sen. Perry
2:44:27 PM Sen. Baxley
2:44:42 PM S 1332
2:44:48 PM Sen. Perry
2:46:15 PM Sen. Baxley
2:46:22 PM Barney Bishop, Chief Financial Officer, Florida Smart Justice Alliance
2:47:55 PM Bill Cervone, State Attorney, Eighth Circuit, Florida Prosecuting Attorney's Association (waives in support)
2:48:00 PM Daphnee Sainvil, Policy Advisor, Broward County Government (waives in support)
2:48:05 PM Brett Ferrell (waives in support)
2:48:20 PM Sen. Perry
2:48:35 PM Sen. Baxley
2:49:34 PM Sen. Flores
2:49:39 PM Sen. Baxley