

Tab 1 CS/SB 118 by JU, Steube; (Identical to H 00857) Criminal History Records

240462	D	S	RS	CJ, Steube	Delete everything after	03/06 06:48 PM
756200	SD	S	RCS	CJ, Steube	Delete everything after	03/06 06:48 PM
371480	ASA	S	RCS	CJ, Brandes	Delete L.36 - 134:	03/06 06:48 PM
671508	ASA	S	WD	CJ, Brandes	btw L.88 - 89:	03/06 12:44 PM

Tab 2 SJR 270 by Thurston; (Identical to H 00051) Restoration of Civil Rights

Tab 3 SB 382 by Gibson; (Similar to H 00255) Judicial Accountability

971442	A	S	FAV	CJ, Gibson	Delete L.30 - 59:	03/06 06:48 PM
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Tab 4 SB 624 by Steube; (Similar to H 00305) Body Cameras

837386	A	S	RCS	CJ, Steube	Delete L.27 - 31:	03/06 06:48 PM
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Tab 5 SCR 920 by Farmer; (Similar to H 00631) Groveland Four

Tab 6 SB 934 by Thurston; (Similar to H 00053) Restoration of Civil Rights

962638	A	S		CJ, Brandes	Delete L.55 - 96:	03/03 01:23 PM
329812	SA	S		CJ, Brandes	Delete L.54 - 96:	03/06 09:23 AM
836862	A	S		CJ, Thurston	Delete L.79 - 80:	03/03 01:24 PM
352694	A	S		CJ, Thurston	Delete L.105 - 109:	03/03 01:24 PM

Tab 7 SB 448 by Brandes; (Similar to CS/H 00367) Prearrest Diversion Programs

353442	A	S		CJ, Brandes	Delete L.51 - 91:	03/03 01:24 PM
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Tab 8 SB 450 by Brandes; (Similar to CS/H 00369) Public Records

576030	D	S		CJ, Brandes	Delete everything after	03/03 01:24 PM
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Tab 9 SB 608 by Clemens; (Compare to H 00693) Decreasing Penalties for Certain Criminal Acts

913354	D	S	RCS	CJ, Brandes	Delete everything after	03/06 06:48 PM
541938	A	S	WD	CJ, Clemens	Delete L.155 - 162:	03/06 06:48 PM
502536	A	S	WD	CJ, Clemens	Delete L.445 - 449:	03/06 06:48 PM

Tab 10 SB 788 by Clemens; (Similar to H 00807) Marketing Practices for Substance Abuse Services

870674	A	S	RCS	CJ, Clemens	Delete L.107 - 123:	03/06 06:48 PM
340588	A	S	RCS	CJ, Clemens	Delete L.167 - 220:	03/06 06:48 PM
352472	A	S	RCS	CJ, Clemens	Delete L.272 - 289:	03/06 06:48 PM
187014	A	S	RCS	CJ, Clemens	btw L.394 - 395:	03/06 06:48 PM

Tab 11 SB 552 by Bracy; (Identical to H 00313) Child Support

675038	D	S		CJ, Bracy	Delete everything after	03/03 01:26 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CRIMINAL JUSTICE
Senator Bracy, Chair
Senator Baxley, Vice Chair

MEETING DATE: Monday, March 6, 2017
TIME: 1:30—3:30 p.m.
PLACE: Mallory Horne Committee Room, 37 Senate Office Building

MEMBERS: Senator Bracy, Chair; Senator Baxley, Vice Chair; Senators Bean, Bradley, Brandes, Clemens, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 118 Judiciary / Steube (Identical H 857, Compare H 395)	Criminal History Records; Prohibiting a person or entity engaged in publishing or disseminating arrest booking photographs from soliciting or accepting a fee or other payment to remove, correct, or modify such photograph; revising the eligibility requirements for expunction of criminal history records to include instances in which a judgment of acquittal or a verdict of not guilty is rendered, etc. JU 01/24/2017 Fav/CS CJ 03/06/2017 Fav/CS AP	Fav/CS Yeas 5 Nays 2
2	SJR 270 Thurston (Identical HJR 51, Compare H 53, Linked S 934)	Restoration of Civil Rights; Proposing an amendment to the State Constitution, relating to restoration of civil rights, to authorize the Legislature to prescribe additional circumstances under which certain fines and forfeitures may be suspended or remitted, reprieves may be granted, civil rights may be restored, and punishments may be commuted, etc. CJ 03/06/2017 Favorable JU RC	Favorable Yeas 7 Nays 0
3	SB 382 Gibson (Similar H 255)	Judicial Accountability; Requiring the Office of Program Policy Analysis and Government Accountability to collect specified information and prepare a report on the sentences imposed by each circuit judge and county judge in criminal and juvenile cases; requiring the office to post the report annually by a specified date to its website; requiring disqualification of a judge from a case involving a member of a certain demographic group for which there is evidence of disparity in sentencing by that judge with regard to that demographic group, etc. CJ 03/06/2017 Amendment Adopted - Temporarily Postponed JU AP RC	Amendment Adopted - Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 6, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 624 Steube (Similar H 305)	Body Cameras; Requiring law enforcement agencies that permit law enforcement officers to wear body cameras to establish policies and procedures that include general guidelines for the law enforcement officers to review relevant audio and video recordings before taking certain actions, etc. CJ 03/06/2017 Fav/CS JU RC	Fav/CS Yeas 7 Nays 0
5	SCR 920 Farmer (Similar HCR 631)	Groveland Four; Acknowledging the grave injustice perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, who came to be known as the "Groveland Four," exonerating the four men, offering a formal and heartfelt apology to these victims of racial hatred and to their families; and urging the Governor and Cabinet to pardon Walter Irvin and Charles Greenlee, etc. CJ 03/06/2017 Favorable JU RC	Favorable Yeas 7 Nays 0
6	SB 934 Thurston (Similar H 53, Compare HJR 51, Linked SJR 270)	Restoration of Civil Rights; Citing this act as the "Restoration of Civil Rights Act"; providing for automatic restoration of a former felon's civil rights, other than the right to own, possess, or use firearms, after completion of his or her sentence of incarceration and conditions of supervision; requiring the Secretary of State to develop and implement a program to educate the public about the civil rights of people who have felony convictions, etc. CJ 03/06/2017 Temporarily Postponed JU RC	Temporarily Postponed
7	SB 448 Brandes (Similar CS/H 367, Compare CS/H 369, Linked S 450)	Prearrest Diversion Programs; Encouraging local communities and public or private educational institutions to implement prearrest diversion programs for certain offenders; authorizing law enforcement officers, at their sole discretion, to issue a civil citation to adults under specified circumstances; requiring an adult who is issued a civil citation by a participating law enforcement agency to report for intake as required by the prearrest diversion program, etc. CJ 03/06/2017 Temporarily Postponed ACJ AP	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 6, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 450 Brandes (Similar CS/H 369, Compare CS/H 367, Linked S 448)	Public Records; Requiring that a civil citation, documentation of a prearrest diversion program, and any other reports or documents concerning a civil citation or a prearrest diversion program which are held by a law enforcement agency, a public or private educational institution, or a program service provider are exempt from public record requirements; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 03/06/2017 Temporarily Postponed GO AP RC	Temporarily Postponed
9	SB 608 Clemens (Compare H 693, S 1102)	Decreasing Penalties for Certain Criminal Acts; Decreasing the penalty for a driver of a vehicle involved in a crash resulting only in damage to a vehicle or other property if such driver does not stop; decreasing the penalty for selling, giving away, disposing of, exchanging, or bartering certain beverages or articles with a habitual drunkard after receiving notice from a family member about such person's condition; decreasing the penalty for stealing property or a stop sign, etc. CJ 03/06/2017 Fav/CS TR ACJ AP	Fav/CS Yeas 7 Nays 0
10	SB 788 Clemens (Similar H 807)	Marketing Practices for Substance Abuse Services; Authorizing the Office of Statewide Prosecution in the Department of Legal Affairs to investigate and prosecute patient brokering offenses; providing that an application for the disclosure of an individual's records may be filed as part of an active criminal investigation; requiring a person or entity to obtain a license from the Department of Business and Professional Regulation before attempting to generate referrals or leads for the placement of patients with a service provider or in a recovery residence; providing that it is unlawful for a person to offer or pay, or solicit or receive, benefits under certain circumstances, etc. CJ 03/06/2017 Fav/CS RI AP RC	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Criminal Justice

Monday, March 6, 2017, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 552 Bracy (Identical H 313)	Child Support; Citing this act as the "Florida Responsible Parent Act"; providing additional circumstances under which an obligor who fails to pay child support may avoid suspension of his or her driver license and motor vehicle registration; requiring a court to deny an order for contempt if an obligor demonstrates that he or she is unable to pay child support due to specified circumstances, etc. CJ 03/06/2017 Temporarily Postponed CF AP	Temporarily Postponed

Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate Committee page on the Senate's website, www.flsenate.gov.

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 Committee on Criminal Justice

BILL: CS/CS/SB 118

INTRODUCER: Criminal Justice Committee; Judiciary Committee; and Senator Steube

SUBJECT: Criminal History Records

DATE: March 7, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 118 prohibits any person or entity that publishes arrest booking photographs to solicit or accept a fee to remove the photographs. Within ten calendar days of receiving a written request by the person in the photograph or his or her legal representative, the publisher of the photograph must remove the photograph.

If the publisher does not remove the photograph, the person whose arrest booking photograph was published or otherwise disseminated may bring a civil action to have the court issue an injunction. The court may also impose a civil penalty of \$1,000 per day for noncompliance with the injunction and must award reasonable attorney fees and court costs related to issuing and enforcing the injunction. Any money recovered for the civil penalties must be deposited into the General Revenue Fund.

Refusal to remove an arrest booking photograph after a written request constitutes an unfair or deceptive trade practice and subjects the publisher to additional penalties under the Florida Deceptive and Unfair Trade Practices Act.

Currently, criminal history records relating to charges disposed of by a trial are ineligible for expunction, regardless of the verdict in the case. Under the bill, a case resolved by a judgment of acquittal or a not guilty verdict is eligible for expunction.

The bill also allows a person to seek expunction of a criminal history record if he or she has not been adjudicated guilty for a misdemeanor offense or been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b), F.S., in the past ten years.

The provisions of the bill related to expunction will have minimal fiscal impact on the Florida Department of Law Enforcement (FDLE) and an indeterminate impact on the court system. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

Public Disclosure of Criminal Record Information

All “materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge” are public records and open for public inspection, unless a specific exemption applies.¹

Criminal record information may be obtained and published by non-governmental publishers. This information includes booking photographs, arrest reports, charging documents, sentencing orders, and criminal history information.² Like all other records prepared by Florida government agencies, criminal record information is subject to public disclosure unless specifically exempted.³

Arrest Record Information

Public record information pertaining to a person’s arrest for the alleged commission of a crime includes the arrest report and booking photograph (“mugshot”). With few exceptions, arrest record information (including booking photographs) must be disclosed pursuant to a public records request.⁴

Arrest record information is requested by many persons and entities, including members of the public, traditional news companies, companies that provide criminal history or criminal record information for a service or subscriber fee (e.g., so that a private employer may determine if a job applicant has a criminal history), and companies that are often referred to as “mugshot” companies.

¹ Office of the Attorney General (Florida), *Public Records: A Guide for Law Enforcement Agencies* (2012 Edition), at p. 1. and endnote 1 (citing *Shevin v. Byron, Harless, Schaffer, Reid and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980)) and endnote 2 (citing *Wait v. Fla. Power & Light Co.*, 372 So. 2d 420 (Fla. 1979)), available at [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-935PV5/\\$file/2012LEGuide.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-935PV5/$file/2012LEGuide.pdf) (last visited on February 13, 2017).

² The Florida Department of Law Enforcement is the central repository of criminal history information for the State of Florida. For a fee, a search of Florida criminal history information regarding a person may be performed. Excluded from the search is sealed or expunged information. Florida Department of Law Enforcement, Criminal History Information, *Search Florida’s Criminal Histories*, available at <https://web.fdle.state.fl.us/search/app/default> (last visited on February 13, 2017).

³ Office of the Attorney General, *Public Records: A Guide for Law Enforcement Agencies*, at p. 15 and endnote 67 (citing *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994)).

⁴ Op. Att’y Gen. 94-90 (October 25, 1994) (footnotes omitted), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/83A1D5004064269D852562210063168E> (last visited on February 13, 2017).

Mugshot companies operate commercial websites that repost booking photographs. The companies make a profit by charging a fee to remove the image. Photos posted on one site may also be reposted to other sites, causing continuing harm to the reputation of the individual. Florida law does not specifically prohibit this practice.⁵

Laws and Legislation of Other States

Some states have passed laws that say public records cannot be used for commercial purposes. Thirteen states have enacted legislation designed to prohibit commercial website operators from posting mugshot photos on a website and charging a removal fee.⁶

An American Bar Association article suggests that there is no legal solution to this problem, and instead, the solution will develop through private sector activity.⁷ For example, Google has adjusted its algorithms so that the mugshot companies will not appear as prominently in the search results. In addition, some credit card companies such as MasterCard, American Express, and Discover are cutting ties with these types of websites.⁸

Other Actions

In 2014, the Pinellas County Sheriff's Office announced that it would no longer post booking photographs on its website. The names, addresses, and initial charges of those arrested are still available on the website. The agency still provides access to the mugshots to other law enforcement agencies and the media, but those entities must request access to those photographs. Members of the public may also submit requests for mugshots.⁹

The Lee County Sheriff's Office website indicates that it will remove a booking photograph once notified the arrest record information is sealed or expunged.¹⁰

Case Law

Persons having their booking photographs posted by commercial entities have sought relief based on various causes of action. These include claims for an invasion of privacy based on false

⁵ National Conference of State Legislatures, *Mug Shots and Booking Photo Websites, Overview*, February 3, 2017, available at <http://www.ncsl.org/research/telecommunications-and-information-technology/mug-shots-and-booking-photo-websites.aspx> (last visited on February 13, 2017).

⁶ *Id.* The thirteen states are California, Colorado, Georgia, Illinois, Kentucky, Maryland, Missouri, Oregon, South Carolina, Texas, Utah, Virginia, and Wyoming.

⁷ Stephanie Francis Ward, *Hoist Your Mug: Websites Will Post Your Name and Photo; Others Will Charge You to Remove Them*, ABA Journal, August 1, 2012, available at http://www.abajournal.com/magazine/article/hoist_your_mug_websites_will_post_your_name_and_photo_others_will_charge_you (last visited on February 13, 2017).

⁸ *Supra* note 5.

⁹ Stephen Thompson, *Pinellas Sheriff Limiting Access to Mugshots Online*, The Tampa Tribune, January 10, 2014, available at <http://tbo.com/pinellas-county/pinellas-sheriff-targeting-websites-limits-access-to-mug-shots-20140109/> (last visited on February 13, 2017).

¹⁰ Lee County Sheriff's Office, *FAQ, How can I have my arrest photo or information removed from the Lee County Sheriff's Office website?*, October 22, 2015, available at <http://www.sheriffleefl.org/main/index.php?r=faqs/index&cat=1&id=524> (last visited on February 13, 2017).

light,¹¹ invasion of privacy based on unauthorized appropriation of name or likeness, defamation by slander, and unjust enrichment.

In 2008, the Florida Supreme Court indicated that Florida does not recognize tort claims based on false light, “because we conclude that false light is largely duplicative of existing torts, but without the attendant protections of the First Amendment.”¹² The Court specifically noted that the key elements of a false claim are nearly identical to the elements required in a defamation case.¹³ Florida does recognize defamation claims.¹⁴

Right of Publicity

Section 540.08(1), F.S., prohibits a person from publishing, printing, displaying, or otherwise publicly using for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the person’s express written or oral consent to such use. There are exceptions for:

- Publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes;
- The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use on or in connection with the initial sale or distribution; and
- Any photograph of a person solely as a member of the public and where such person is not named or otherwise identified in or in connection with the use of such photograph.¹⁵

When necessary consent is not obtained, the person whose name, portrait, photograph, or other likeness is used may bring an action to enjoin the unauthorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.¹⁶

In 2014, a Florida federal district court denied the defendant’s motion to dismiss a cause of action alleging a violation of s. 540.08, F.S., for publishing the plaintiff’s booking photograph without her consent and advertising “unpublishing services” that required the payment of a fee to remove the photograph.¹⁷ In a later proceeding, the court denied the plaintiff’s Motion to Certify Class (to allow the case to proceed as a class action) without prejudice.¹⁸ The case did not have a

¹¹ A claim of false light is a type of a claim of invasion of privacy based in tort. For example, to prevail in a false light claim in Pennsylvania, a defendant must establish that a highly offensive false statement was publicized by a defendant with knowledge or in reckless disregard of its falsity. *Santillo v. Reedel*, 430 Pa. Super. 290, 295-296 (Pa. Super. Ct.1993).

¹² *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1100 (Fla. 2008).

¹³ *Id.* at 1105-1106.

¹⁴ *Id.* at 1111-1112. See ch. 770, F.S.

¹⁵ Section 540.08(4), F.S.

¹⁶ Section 540.08(2), F.S.

¹⁷ *Bilotta v. Citizen Info. Assocs., LLC*, 2014 U.S. Dist. LEXIS 3229 (M.D. Fla. Jan. 10, 2014).

¹⁸ *Bilotta v. Citizen Info. Assocs., LLC*, 2014 U.S. Dist. LEXIS 68495 (M.D. Fla. May 19, 2014).

trial on the merits of the cases so it is unknown whether the plaintiff would have succeeded on her claim.

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.¹⁹ The FDUTPA is based on federal law.²⁰ The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.²¹ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.²² Consumers may also file suit through private actions.²³

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to \$10,000 per willful violation.²⁴

Remedies for private parties are limited to a:

- Declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.²⁵

¹⁹ Chapter 73-124, L.O.F., and s. 501.202, F.S.

²⁰ D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. Miami L. Rev. 1083, Summer 2011.

²¹ Section 501.207, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, available at http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on February 13, 2017).

²² Section 501.203(2), F.S.

²³ Section 501.211, F.S.

²⁴ Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.

²⁵ Section 501.211(1) and (2), F.S.

Expunction of Criminal Records

A court may order a criminal record to be expunged.²⁶ A person seeking to have a criminal record expunged must first obtain a valid certificate of eligibility from the FDLE. To do so, the person must provide the FDLE:

- A written, certified statement from the appropriate state attorney or statewide prosecutor that:
 - An indictment, information, or other charging document was not filed or issued in the case.
 - An indictment, information, or other charging document, if filed or issued in the case, was dismissed or dropped by the state attorney or the court, and that none of the charges resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.
 - The applicant does not have a criminal history record relating to certain delineated violations.²⁷
- A \$75 processing fee, unless the fee is waived.
- A certified copy of the disposition of the charge.²⁸

The person also must not:

- Before the date the application for a certificate of eligibility is filed, have been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.²⁹
- Have been adjudicated guilty or delinquent of committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.
- Be under court supervision for the arrest or crime to which the petition to expunge pertains.
- Have secured a prior sealing or expunction other than the required 10-year sealing for the offense sought to be expunged.³⁰

Additionally, the person must have had the record sealed for at least 10 years by court order. The requirement for the record to have been sealed for 10 years does not apply if a plea was not entered or all charges related to the arrest or offense to which the petition to expunge pertains were dismissed before trial.³¹

²⁶ “Expunction of a criminal history record” is defined in s. 943.045(16), F.S.

²⁷ These violations include sexual misconduct, luring or enticing a child, sexual battery, lewd or lascivious offenses, voyeurism, violations of the Florida Communications Fraud Act, sexual performance by a child, offenses by public officers or employees, acts in connection with obscenity and minors, pornography, traveling to meet a minor, selling or buying of minors, drug trafficking, a pretrial detention violation, and any violation specified as a predicate offense for registration as a sexual predator or sexual offender. Section 943.0585(2)(a)3., F.S.

²⁸ Section 943.0585(2)(a)-(c), F.S.

²⁹ These crimes include assault; battery; carrying a concealed weapon; unlawful use of destructive devices or bombs; neglect of a child; assault or battery on a law enforcement officer, firefighter, or certain other officers; open carry of a weapon; exposure of sexual organs; unlawful possession of a firearm; petit theft; cruelty to animals; arson; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or school property. Section 943.051(3)(b), F.S.

³⁰ Section 943.0585(2)(d)-(g), F.S.

³¹ Section 943.0585(2)(h), F.S.

After receiving the certificate of eligibility, the person must file a petition with the court to expunge the record. The petition must include a sworn statement attesting that he or she:

- Has never been adjudicated guilty of a crime or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.;³²
- Has never been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest of alleged criminal activity to which the petition pertains;
- Has never secured a prior sealing or expunction of a criminal history record unless the petition for expunction is for a criminal history record previously sealed for 10 years, provided the record is otherwise eligible for expunction; and
- Is eligible for such an expunction and does not have any other petition to expunge or petition to seal before any court.³³

Effect of an Expunction of a Criminal History Record

If the court grants a petition to expunge, several entities are required to forward copies of the expunction order to relevant persons or entities. The clerk of the court must provide the expunction order to the state attorney or statewide prosecutor, the arresting agency, and any entity that previously received the criminal history record from the court. The arresting agency must provide the expunction order to any entity to which the agency previously disseminated the criminal history record information. Finally, the FDLE must provide the expunction order to the Federal Bureau of Investigation.³⁴

Any criminal justice agency that has a record that is expunged must physically destroy or obliterate the record. The FDLE, however, must maintain the record. The record is protected as confidential and exempt from disclosure requirements under the public records laws.³⁵

A person who has had a record expunged may deny or fail to report the arrests expunged, unless the person is:

- Seeking appointment as a guardian, a position with a criminal justice agency, a license by the Division of Insurance Agent and Agent Services of the Department of Financial Services, or a position with an agency which is responsible for the protection of vulnerable persons, including children, disabled persons, and elderly persons;
- A defendant in a criminal prosecution;
- Petitioning for an expunction of a criminal history record, or of an offense as a victim of human trafficking, or a sealing of a criminal history record; or
- Applying for admission to The Florida Bar.³⁶

³² *Supra* note 27.

³³ Section 943.0585(1)(b), F.S.

³⁴ Section 943.0585(3), F.S.

³⁵ Section 943.0585(4), F.S.

³⁶ Section 943.0585(4)(a), F.S.

III. Effect of Proposed Changes:

Arrest Booking Photographs

The bill prohibits any person or entity that disseminates arrest booking photographs to solicit or accept a fee to remove the photographs. Within ten calendar days of receiving a written request by the person in the photograph or his or her legal representative, the publisher of the photograph must remove the photograph without charge.

If the publisher does not remove the photograph, the person whose arrest booking photograph was published or otherwise disseminated may bring a civil action to have the court issue an injunction. The court may also impose a civil penalty of \$1,000 per day for noncompliance with the injunction. The court must also award reasonable attorney fees and court costs related to the issuance and enforcement of the injunction. Any money recovered for the civil penalties must be deposited into the General Revenue Fund.

Refusal to remove an arrest booking photograph after a written request constitutes an unfair or deceptive trade practice and subjects the publisher to additional penalties under the FDUTPA.

The bill states that the provisions discussed above do not apply to a person or entity that publishes or disseminates information relating to arrest booking photographs, unless the person or entity solicits or accepts a fee to remove the information.

Eligibility for Expunction

The bill enables a person to seek expunction of a criminal history record associated with a judgment of acquittal³⁷ or a not guilty verdict. Currently, the criminal history records of cases disposed of by a judgement of acquittal or in a trial are ineligible for expunction, regardless of the verdict in the trial.

The bill also allows a person to seek expunction of a criminal history record if he or she has not been adjudicated guilty for a misdemeanor offense or been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b), F.S., in the past ten years. Currently, a person cannot seek the expunction of a criminal history record if he or she has ever been adjudicated of a misdemeanor or adjudicated delinquent for a misdemeanor specified in s. 943.051(3)(b), F.S.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁷ A judgment of acquittal may occur after the state concludes its case if the evidence in the light most favorable to the state is insufficient for conviction. BLACK'S LAW DICTIONARY, 6th ed.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Requiring private entities to remove booking arrest photos may result in a constitutional challenge based on the First Amendment to the extent that the bill regulates protected speech. However, the absence of a sufficiently analogous case on point makes the potential outcome of a First Amendment challenge speculative.³⁸

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

None.

B. Private Sector Impact:

The bill may reduce costs for people who have their booking photographs published and want the photographs removed because the bill prohibits publishers of the photographs from charging removal fees. The bill also authorizes a civil cause of action, with an entitlement to reasonable attorney fees and costs, against those who, after a written request, fail to remove the photographs.

C. Government Sector Impact:

The bill allows a court to impose a civil penalty of \$1,000 per day on the publisher for noncompliance with an injunction requiring the removal of a posted photograph. If a court orders this civil penalty, the monies would go to the General Revenue Fund. Any impact on the courts because of the civil cause of action created by the bill are expected to have a minimal fiscal impact.

The bill allows a person to seek expunction of a criminal history record associated with a judgment of acquittal or a not guilty verdict. The bill also allows a person to seek expunction of a criminal history record if he or she has not been adjudicated for a misdemeanor offense or been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b), F.S., in the past ten years. This will require the FDLE to

³⁸ For comparison, see *Fla. Star v. B.J.F.*, 491 U.S. 524, 526 (1989) (holding that a newspaper was not liable for disclosing a victim's identity obtained from a police report released by law enforcement in violation of law, and further that the matter was of public concern and that imposing damages on the newspaper violated the First Amendment); *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001), (holding that if a publisher lawfully obtains the information in question, the speech is protected by the First Amendment provided it is a matter of public concern, even if the source recorded it unlawfully).

make technological changes but the FDLE estimates these changes will have a minimal fiscal impact.³⁹

The Office of the State Courts Administrator expects an increase in judicial workload because more people will be eligible for expunction of their criminal history records. However, the fiscal impact of these changes is indeterminate due to the unavailability of data needed to determine the increase in judicial workload.⁴⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida Statutes.

This bill substantially amends section 943.0585 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/CS by Criminal Justice on March 6, 2017:

The Committee Substitute:

- Allows a person to seek expunction of a criminal history record if they have not been adjudicated for a misdemeanor offense or been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b), F.S., in the past ten years; and
- Makes technical and stylistic changes.

CS by Judiciary Committee on January 24, 2017:

The CS clarifies that a case in which a judge renders a judgment of acquittal or a case that the jury returns a not guilty verdict is eligible for expunction. The CS also:

- Removes the expunction requirement for cases for which a person may get an arrest booking photograph removed from publication or dissemination by a private publisher;
- Reduces from 14, to 10, the number of calendar days in which a publisher has to remove the photographs before a person can seek an injunction;

³⁹ Florida Department of Law Enforcement, *2017 FDLE Legislative Bill Analysis for SB 118*, December 19, 2016 (on file with the Senate Criminal Justice Committee).

⁴⁰ Office of the State Courts Administrator, *2017 Judicial Impact Statement for SB 118*, January 23, 2017 (on file with the Senate Criminal Justice Committee).

- Removes criminal penalties but increases from \$500 to \$1,000, the civil fine that a court may impose on a publisher who fails to comply with removal of the photographs; and
- Subjects the publisher to additional penalties under the Florida Deceptive and Unfair Trade Practices Act, including a civil penalty of up to \$10,000 per willful violation.

B. Amendments:

None.

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



240462

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/06/2017	.	
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The Committee on Criminal Justice (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. (1) Any person or entity engaged in the business of publishing or otherwise disseminating arrest booking photographs of persons who have previously been arrested through a publicly accessible print or electronic medium may not solicit or accept a fee or other form of payment to remove, correct, or modify such photographs.



240462

11 (2) Within 10 calendar days of receipt of a written request
12 for removal of a booking photograph from a person whose booking
13 photograph is published or otherwise disseminated, or from his
14 or her legal representative, the person or entity who published
15 or otherwise disseminated the photograph shall remove the
16 photograph without charge.

17 (3) The person whose arrest booking photograph was
18 published or otherwise disseminated in the publication or
19 electronic medium may bring a civil action to enjoin the
20 continued publication or dissemination of the photograph if the
21 photograph is not removed within 10 calendar days after receipt
22 of the written request for removal. The court may impose a civil
23 penalty of \$1,000 per day for noncompliance with an injunction
24 and shall award reasonable attorney fees and court costs related
25 to the issuance and enforcement of the injunction. Moneys
26 recovered for civil penalties under this section shall be
27 deposited into the General Revenue Fund.

28 (4) Refusal to remove an arrest booking photograph after
29 written request has been made constitutes an unfair or deceptive
30 trade practice in accordance with part II of chapter 501.

31 (5) This section does not apply to any person or entity
32 that publishes or disseminates information relating to arrests
33 unless the person or entity solicits or accepts payment to
34 remove, correct, or modify the photographs.

35 Section 2. Paragraph (a) of subsection (2) of section
36 943.0585, Florida Statutes, is amended to read:

37 943.0585 Court-ordered expunction of criminal history
38 records.—

39 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to



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40 petitioning the court to expunge a criminal history record, a
41 person seeking to expunge a criminal history record shall apply
42 to the department for a certificate of eligibility for
43 expunction. The department shall, by rule adopted pursuant to
44 chapter 120, establish procedures pertaining to the application
45 for and issuance of certificates of eligibility for expunction.
46 A certificate of eligibility for expunction is valid for 12
47 months after the date stamped on the certificate when issued by
48 the department. After that time, the petitioner must reapply to
49 the department for a new certificate of eligibility. Eligibility
50 for a renewed certification of eligibility must be based on the
51 status of the applicant and the law in effect at the time of the
52 renewal application. The department shall issue a certificate of
53 eligibility for expunction to a person who is the subject of a
54 criminal history record if that person:

55 (a) Has obtained, and submitted to the department, a
56 written, certified statement from the appropriate state attorney
57 or statewide prosecutor which indicates:

58 1. That an indictment, information, or other charging
59 document was not filed or issued in the case.

60 2. That an indictment, information, or other charging
61 document, if filed or issued in the case, was dismissed or nolle
62 prosequi by the state attorney or statewide prosecutor, or was
63 dismissed by a court of competent jurisdiction, that a judgment
64 of acquittal was rendered by a judge, or that a verdict of not
65 guilty was rendered by a judge or jury and that none of the
66 charges related to the arrest or alleged criminal activity to
67 which the petition to expunge pertains resulted in a trial,
68 without regard to whether the outcome of the trial was other



240462

69 ~~than an adjudication of guilt.~~

70 3. That the criminal history record does not relate to a
71 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
72 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
73 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
74 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
75 or any violation specified as a predicate offense for
76 registration as a sexual predator pursuant to s. 775.21, without
77 regard to whether that offense alone is sufficient to require
78 such registration, or for registration as a sexual offender
79 pursuant to s. 943.0435, where the defendant was found guilty
80 of, or pled guilty or nolo contendere to any such offense, or
81 that the defendant, as a minor, was found to have committed, or
82 pled guilty or nolo contendere to committing, such an offense as
83 a delinquent act, without regard to whether adjudication was
84 withheld.

85 Section 3. This act shall take effect July 1, 2017.

86
87 ===== T I T L E A M E N D M E N T =====

88 And the title is amended as follows:

89 Delete everything before the enacting clause
90 and insert:

91 A bill to be entitled
92 An act relating to criminal history records;
93 prohibiting a person or entity engaged in publishing
94 or disseminating arrest booking photographs from
95 soliciting or accepting a fee or other payment to
96 remove, correct, or modify such photograph; requiring
97 a person or entity, within a specified timeframe, to



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98 remove an arrest booking photograph after receipt of a
99 written request; authorizing a person to bring a civil
100 action to enjoin such publishing of a photograph;
101 authorizing a court to impose a civil penalty and
102 award attorney fees and court costs; providing
103 applicability; amending s. 943.0585, F.S.; revising
104 the eligibility requirements for expunction of
105 criminal history records to include instances in which
106 a judgment of acquittal or a verdict of not guilty is
107 rendered; providing an effective date.



756200

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Criminal Justice (Steube) recommended the following:

1 **Senate Substitute for Amendment (240462) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. (1) Any person or entity engaged in the business
7 of publishing or otherwise disseminating arrest booking
8 photographs of persons who have previously been arrested through
9 a publicly accessible print or electronic medium may not solicit
10 or accept a fee or other form of payment to remove the



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11 photographs.

12 (2) Within 10 calendar days of receipt of a written request
13 for removal of a booking photograph from a person whose booking
14 photograph is published or otherwise disseminated, or from his
15 or her legal representative, the person or entity who published
16 or otherwise disseminated the photograph shall remove the
17 photograph without charge.

18 (3) The person whose arrest booking photograph was
19 published or otherwise disseminated in the publication or
20 electronic medium may bring a civil action to enjoin the
21 continued publication or dissemination of the photograph if the
22 photograph is not removed within 10 calendar days after receipt
23 of the written request for removal. The court may impose a civil
24 penalty of \$1,000 per day for noncompliance with an injunction
25 and shall award reasonable attorney fees and court costs related
26 to the issuance and enforcement of the injunction. Monies
27 recovered for civil penalties under this section shall be
28 deposited into the General Revenue Fund.

29 (4) Refusal to remove an arrest booking photograph after
30 written request has been made constitutes an unfair or deceptive
31 trade practice in accordance with part II of chapter 501.

32 (5) This section does not apply to any person or entity
33 that publishes or disseminates information relating to arrest
34 booking photographs unless the person or entity solicits or
35 accepts payment to remove the photographs.

36 Section 2. Paragraph (a) of subsection (2) of section
37 943.0585, Florida Statutes, is amended to read:

38 943.0585 Court-ordered expunction of criminal history
39 records.—Court-ordered expunction of criminal history records.—



756200

40 The courts of this state have jurisdiction over their own
41 procedures, including the maintenance, expunction, and
42 correction of judicial records containing criminal history
43 information to the extent such procedures are not inconsistent
44 with the conditions, responsibilities, and duties established by
45 this section. Any court of competent jurisdiction may order a
46 criminal justice agency to expunge the criminal history record
47 of a minor or an adult who complies with the requirements of
48 this section. The court shall not order a criminal justice
49 agency to expunge a criminal history record until the person
50 seeking to expunge a criminal history record has applied for and
51 received a certificate of eligibility for expunction pursuant to
52 subsection (2) or subsection (5). A criminal history record that
53 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
54 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
55 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
56 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
57 s. 907.041, or any violation specified as a predicate offense
58 for registration as a sexual predator pursuant to s. 775.21,
59 without regard to whether that offense alone is sufficient to
60 require such registration, or for registration as a sexual
61 offender pursuant to s. 943.0435, may not be expunged, without
62 regard to whether adjudication was withheld, if the defendant
63 was found guilty of or pled guilty or nolo contendere to the
64 offense, or if the defendant, as a minor, was found to have
65 committed, or pled guilty or nolo contendere to committing, the
66 offense as a delinquent act. The court may only order expunction
67 of a criminal history record pertaining to one arrest or one
68 incident of alleged criminal activity, except as provided in



756200

69 this section. The court may, at its sole discretion, order the
70 expunction of a criminal history record pertaining to more than
71 one arrest if the additional arrests directly relate to the
72 original arrest. If the court intends to order the expunction of
73 records pertaining to such additional arrests, such intent must
74 be specified in the order. A criminal justice agency may not
75 expunge any record pertaining to such additional arrests if the
76 order to expunge does not articulate the intention of the court
77 to expunge a record pertaining to more than one arrest. This
78 section does not prevent the court from ordering the expunction
79 of only a portion of a criminal history record pertaining to one
80 arrest or one incident of alleged criminal activity.
81 Notwithstanding any law to the contrary, a criminal justice
82 agency may comply with laws, court orders, and official requests
83 of other jurisdictions relating to expunction, correction, or
84 confidential handling of criminal history records or information
85 derived therefrom. This section does not confer any right to the
86 expunction of any criminal history record, and any request for
87 expunction of a criminal history record may be denied at the
88 sole discretion of the court.

89 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
90 petitioning the court to expunge a criminal history record, a
91 person seeking to expunge a criminal history record shall apply
92 to the department for a certificate of eligibility for
93 expunction. The department shall, by rule adopted pursuant to
94 chapter 120, establish procedures pertaining to the application
95 for and issuance of certificates of eligibility for expunction.
96 A certificate of eligibility for expunction is valid for 12
97 months after the date stamped on the certificate when issued by



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98 the department. After that time, the petitioner must reapply to
99 the department for a new certificate of eligibility. Eligibility
100 for a renewed certification of eligibility must be based on the
101 status of the applicant and the law in effect at the time of the
102 renewal application. The department shall issue a certificate of
103 eligibility for expunction to a person who is the subject of a
104 criminal history record if that person:

105 (a) Has obtained, and submitted to the department, a
106 written, certified statement from the appropriate state attorney
107 or statewide prosecutor which indicates:

108 1. That an indictment, information, or other charging
109 document was not filed or issued in the case.

110 2. That an indictment, information, or other charging
111 document, if filed or issued in the case, was dismissed or nolle
112 prosequi by the state attorney or statewide prosecutor, or was
113 dismissed by a court of competent jurisdiction, that a judgment
114 of acquittal was rendered by a judge, or that a verdict of not
115 guilty was rendered by a judge or jury and that none of the
116 charges related to the arrest or alleged criminal activity to
117 which the petition to expunge pertains resulted in a trial,
118 without regard to whether the outcome of the trial was other
119 than an adjudication of guilt.

120 3. That the criminal history record does not relate to a
121 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
122 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
123 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
124 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
125 or any violation specified as a predicate offense for
126 registration as a sexual predator pursuant to s. 775.21, without



127 regard to whether that offense alone is sufficient to require
128 such registration, or for registration as a sexual offender
129 pursuant to s. 943.0435, where the defendant was found guilty
130 of, or pled guilty or nolo contendere to any such offense, or
131 that the defendant, as a minor, was found to have committed, or
132 pled guilty or nolo contendere to committing, such an offense as
133 a delinquent act, without regard to whether adjudication was
134 withheld.

135 Section 3. This act shall take effect July 1, 2017.

136

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

138 And the title is amended as follows:

139 Delete everything before the enacting clause
140 and insert:

141 A bill to be entitled
142 An act relating to criminal history records;
143 prohibiting a person or entity engaged in publishing
144 or disseminating arrest booking photographs from
145 soliciting or accepting a fee or other payment to
146 remove the photograph; requiring a person or entity,
147 within a specified timeframe, to remove an arrest
148 booking photograph after receipt of a written request;
149 authorizing a person to bring a civil action to enjoin
150 such publishing of a photograph; authorizing a court
151 to impose a civil penalty and award attorney fees and
152 court costs; providing applicability; amending s.
153 943.0585, F.S.; revising the eligibility requirements
154 for expunction of criminal history records to include
155 instances in which a judgment of acquittal or a



756200

156
157

verdict of not guilty is rendered; providing an
effective date.



371480

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

1 **Senate Amendment to Substitute Amendment (756200) (with**
2 **title amendment)**

3
4 Delete lines 36 - 134
5 and insert:

6 Section 2. Paragraph (b) of subsection (1) and paragraphs
7 (a) and (d) of subsection (2) of section 943.0585, Florida
8 Statutes, is amended to read:

9 943.0585 Court-ordered expunction of criminal history
10 records.—The courts of this state have jurisdiction over their



11 own procedures, including the maintenance, expunction, and
12 correction of judicial records containing criminal history
13 information to the extent such procedures are not inconsistent
14 with the conditions, responsibilities, and duties established by
15 this section. Any court of competent jurisdiction may order a
16 criminal justice agency to expunge the criminal history record
17 of a minor or an adult who complies with the requirements of
18 this section. The court shall not order a criminal justice
19 agency to expunge a criminal history record until the person
20 seeking to expunge a criminal history record has applied for and
21 received a certificate of eligibility for expunction pursuant to
22 subsection (2) or subsection (5). A criminal history record that
23 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
24 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
25 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
26 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
27 s. 907.041, or any violation specified as a predicate offense
28 for registration as a sexual predator pursuant to s. 775.21,
29 without regard to whether that offense alone is sufficient to
30 require such registration, or for registration as a sexual
31 offender pursuant to s. 943.0435, may not be expunged, without
32 regard to whether adjudication was withheld, if the defendant
33 was found guilty of or pled guilty or nolo contendere to the
34 offense, or if the defendant, as a minor, was found to have
35 committed, or pled guilty or nolo contendere to committing, the
36 offense as a delinquent act. The court may only order expunction
37 of a criminal history record pertaining to one arrest or one
38 incident of alleged criminal activity, except as provided in
39 this section. The court may, at its sole discretion, order the



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40 expunction of a criminal history record pertaining to more than
41 one arrest if the additional arrests directly relate to the
42 original arrest. If the court intends to order the expunction of
43 records pertaining to such additional arrests, such intent must
44 be specified in the order. A criminal justice agency may not
45 expunge any record pertaining to such additional arrests if the
46 order to expunge does not articulate the intention of the court
47 to expunge a record pertaining to more than one arrest. This
48 section does not prevent the court from ordering the expunction
49 of only a portion of a criminal history record pertaining to one
50 arrest or one incident of alleged criminal activity.

51 Notwithstanding any law to the contrary, a criminal justice
52 agency may comply with laws, court orders, and official requests
53 of other jurisdictions relating to expunction, correction, or
54 confidential handling of criminal history records or information
55 derived therefrom. This section does not confer any right to the
56 expunction of any criminal history record, and any request for
57 expunction of a criminal history record may be denied at the
58 sole discretion of the court.

59 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
60 petition to a court to expunge a criminal history record is
61 complete only when accompanied by:

62 (b) The petitioner's sworn statement attesting that the
63 petitioner:

64 1. Has never, before ~~prior~~ to the date on which the
65 petition is filed, been adjudicated guilty of a felony ~~criminal~~
66 offense or comparable ordinance violation, or been adjudicated
67 delinquent for committing any felony ~~or a misdemeanor specified~~
68 ~~in s. 943.051(3)(b).~~



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69 2. Has not been adjudicated guilty of a misdemeanor offense
70 or been adjudicated delinquent for committing a misdemeanor
71 specified in s. 943.051(3)(b) in the previous 10 years.

72 ~~3.2.~~ Has not been adjudicated guilty of, or adjudicated
73 delinquent for committing, any of the acts stemming from the
74 arrest or alleged criminal activity to which the petition
75 pertains.

76 ~~4.3.~~ Has never secured a prior sealing or expunction of a
77 criminal history record under this section, s. 943.059, former
78 s. 893.14, former s. 901.33, or former s. 943.058, unless
79 expunction is sought of a criminal history record previously
80 sealed for 10 years pursuant to paragraph (2)(h) and the record
81 is otherwise eligible for expunction.

82 ~~5.4.~~ Is eligible for such an expunction to the best of his
83 or her knowledge or belief and does not have any other petition
84 to expunge or any petition to seal pending before any court.

85

86 Any person who knowingly provides false information on such
87 sworn statement to the court commits a felony of the third
88 degree, punishable as provided in s. 775.082, s. 775.083, or s.
89 775.084.

90 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
91 petitioning the court to expunge a criminal history record, a
92 person seeking to expunge a criminal history record shall apply
93 to the department for a certificate of eligibility for
94 expunction. The department shall, by rule adopted pursuant to
95 chapter 120, establish procedures pertaining to the application
96 for and issuance of certificates of eligibility for expunction.
97 A certificate of eligibility for expunction is valid for 12



371480

98 months after the date stamped on the certificate when issued by
99 the department. After that time, the petitioner must reapply to
100 the department for a new certificate of eligibility. Eligibility
101 for a renewed certification of eligibility must be based on the
102 status of the applicant and the law in effect at the time of the
103 renewal application. The department shall issue a certificate of
104 eligibility for expunction to a person who is the subject of a
105 criminal history record if that person:

106 (a) Has obtained, and submitted to the department, a
107 written, certified statement from the appropriate state attorney
108 or statewide prosecutor which indicates:

109 1. That an indictment, information, or other charging
110 document was not filed or issued in the case.

111 2. That an indictment, information, or other charging
112 document, if filed or issued in the case, was dismissed or nolle
113 prosequi by the state attorney or statewide prosecutor, or was
114 dismissed by a court of competent jurisdiction, that a judgment
115 of acquittal was rendered by a judge, or that a verdict of not
116 guilty was rendered by a judge or jury ~~and that none of the~~
117 ~~charges related to the arrest or alleged criminal activity to~~
118 ~~which the petition to expunge pertains resulted in a trial,~~
119 ~~without regard to whether the outcome of the trial was other~~
120 ~~than an adjudication of guilt.~~

121 3. That the criminal history record does not relate to a
122 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
123 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
124 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
125 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
126 or any violation specified as a predicate offense for



371480

127 registration as a sexual predator pursuant to s. 775.21, without
128 regard to whether that offense alone is sufficient to require
129 such registration, or for registration as a sexual offender
130 pursuant to s. 943.0435, where the defendant was found guilty
131 of, or pled guilty or nolo contendere to any such offense, or
132 that the defendant, as a minor, was found to have committed, or
133 pled guilty or nolo contendere to committing, such an offense as
134 a delinquent act, without regard to whether adjudication was
135 withheld.

136 (d)1. Has never, before ~~prior to~~ the date on which the
137 application for a certificate of eligibility is filed, been
138 adjudicated guilty of a felony ~~criminal~~ offense or comparable
139 ordinance violation, or been adjudicated delinquent for
140 committing any felony ~~or a misdemeanor specified in s.~~
141 ~~943.051(3)(b).~~

142 2. Has not been adjudicated guilty of a misdemeanor offense
143 or been adjudicated delinquent for committing a misdemeanor
144 specified in s. 943.051(3)(b) in the previous 10 years.

145
146 ===== T I T L E A M E N D M E N T =====

147 And the title is amended as follows:

148 Delete line 155

149 and insert:

150 adjudications of guilt or delinquency for specified
151 misdemeanor offenses committed before a certain time
152 and instances in which a judgment of acquittal or a



671508

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/06/2017	.	
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The Committee on Criminal Justice (Brandes) recommended the following:

1 **Senate Amendment to Substitute Amendment (756200) (with**
2 **directory and title amendments)**

3
4 Between lines 88 and 89
5 insert:

6 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
7 petition to a court to expunge a criminal history record is
8 complete only when accompanied by:

9 (b) The petitioner's sworn statement attesting that the
10 petitioner:



671508

11 1. Has never, before ~~prior~~ to the date on which the
12 petition is filed, been adjudicated guilty of a felony ~~criminal~~
13 offense or comparable ordinance violation, or been adjudicated
14 delinquent for committing any felony ~~or a misdemeanor specified~~
15 ~~in s. 943.051(3)(b).~~

16 2. Has not been adjudicated guilty of a misdemeanor offense
17 or been adjudicated delinquent for committing a misdemeanor
18 specified in s. 943.051(3)(b) in the previous 10 years.

19 ~~3.2.~~ Has not been adjudicated guilty of, or adjudicated
20 delinquent for committing, any of the acts stemming from the
21 arrest or alleged criminal activity to which the petition
22 pertains.

23 ~~4.3.~~ Has never secured a prior sealing or expunction of a
24 criminal history record under this section, s. 943.059, former
25 s. 893.14, former s. 901.33, or former s. 943.058, unless
26 expunction is sought of a criminal history record previously
27 sealed for 10 years pursuant to paragraph (2)(h) and the record
28 is otherwise eligible for expunction.

29 ~~5.4.~~ Is eligible for such an expunction to the best of his
30 or her knowledge or belief and does not have any other petition
31 to expunge or any petition to seal pending before any court.

32
33 Any person who knowingly provides false information on such
34 sworn statement to the court commits a felony of the third
35 degree, punishable as provided in s. 775.082, s. 775.083, or s.
36 775.084.

37
38 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

39 And the directory clause is amended as follows:



671508

40 Delete line 36
41 and insert:
42 Section 2. Paragraph (b) of subsection (1) and paragraph
43 (a) of subsection (2) of section
44
45 ===== T I T L E A M E N D M E N T =====
46 And the title is amended as follows:
47 Delete line 155
48 and insert:
49 adjudications of guilt or delinquency for specified
50 misdemeanor offenses committed before a certain time
51 and instances in which a judgment of acquittal or a

By the Committee on Judiciary; and Senator Steube

590-00957-17

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A bill to be entitled

An act relating to criminal history records; prohibiting a person or entity engaged in publishing or disseminating arrest booking photographs from soliciting or accepting a fee or other payment to remove, correct, or modify such photograph; requiring a person or entity, within a specified timeframe, to remove an arrest booking photograph after receipt of a written request; authorizing a person to bring a civil action to enjoin such publishing of a photograph; authorizing a court to impose a civil penalty and award attorney fees and court costs; providing applicability; amending s. 943.0585, F.S.; revising the eligibility requirements for expunction of criminal history records to include instances in which a judgment of acquittal or a verdict of not guilty is rendered; providing an effective date.

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

Section 1. (1) Any person or entity engaged in the business of publishing or otherwise disseminating arrest booking photographs of persons who have previously been arrested through a publicly accessible print or electronic medium may not solicit or accept a fee or other form of payment to remove, correct, or modify such photographs.

(2) Upon receipt of a written request from a person whose booking photograph is published or otherwise disseminated, or his or her legal representative, the person or entity who published or otherwise disseminated the photograph shall remove the photograph without charge within 10 calendar days after receiving the request for removal.

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

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(3) The person whose arrest booking photograph was published or otherwise disseminated in the publication or electronic medium may bring a civil action to enjoin the continued publication or dissemination of the photograph if the photograph is not removed within 10 calendar days after receipt of the written request for removal. In addition to the remedies set forth in this subsection, the court may impose a civil penalty of \$1,000 per day for noncompliance with an injunction and shall award reasonable attorney fees and court costs related to the issuance of the injunction.

(4) Refusal to remove an arrest booking photograph after written request has been made constitutes an unfair or deceptive trade practice in accordance with part II of chapter 501.

(5) This section does not apply to any person or entity that publishes or disseminates information relating to arrests unless the person or entity solicits or accepts payment to remove the information.

Section 2. Section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice

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62 agency to expunge a criminal history record until the person
 63 seeking to expunge a criminal history record has applied for and
 64 received a certificate of eligibility for expunction pursuant to
 65 subsection (2) or subsection (5). A criminal history record that
 66 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
 67 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
 68 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
 69 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
 70 s. 907.041, or any violation specified as a predicate offense
 71 for registration as a sexual predator pursuant to s. 775.21,
 72 without regard to whether that offense alone is sufficient to
 73 require such registration, or for registration as a sexual
 74 offender pursuant to s. 943.0435, may not be expunged, without
 75 regard to whether adjudication was withheld, if the defendant
 76 was found guilty of or pled guilty or nolo contendere to the
 77 offense, or if the defendant, as a minor, was found to have
 78 committed, or pled guilty or nolo contendere to committing, the
 79 offense as a delinquent act. The court may only order expunction
 80 of a criminal history record pertaining to one arrest or one
 81 incident of alleged criminal activity, except as provided in
 82 this section. The court may, at its sole discretion, order the
 83 expunction of a criminal history record pertaining to more than
 84 one arrest if the additional arrests directly relate to the
 85 original arrest. If the court intends to order the expunction of
 86 records pertaining to such additional arrests, such intent must
 87 be specified in the order. A criminal justice agency may not
 88 expunge any record pertaining to such additional arrests if the
 89 order to expunge does not articulate the intention of the court
 90 to expunge a record pertaining to more than one arrest. This

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91 section does not prevent the court from ordering the expunction
 92 of only a portion of a criminal history record pertaining to one
 93 arrest or one incident of alleged criminal activity.
 94 Notwithstanding any law to the contrary, a criminal justice
 95 agency may comply with laws, court orders, and official requests
 96 of other jurisdictions relating to expunction, correction, or
 97 confidential handling of criminal history records or information
 98 derived therefrom. This section does not confer any right to the
 99 expunction of any criminal history record, and any request for
 100 expunction of a criminal history record may be denied at the
 101 sole discretion of the court.

102 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
 103 petition to a court to expunge a criminal history record is
 104 complete only when accompanied by:

105 (a) A valid certificate of eligibility for expunction
 106 issued by the department pursuant to subsection (2).

107 (b) The petitioner's sworn statement attesting that the
 108 petitioner:

109 1. Has never, prior to the date on which the petition is
 110 filed, been adjudicated guilty of a criminal offense or
 111 comparable ordinance violation, or been adjudicated delinquent
 112 for committing any felony or a misdemeanor specified in s.
 113 943.051(3)(b).

114 2. Has not been adjudicated guilty of, or adjudicated
 115 delinquent for committing, any of the acts stemming from the
 116 arrest or alleged criminal activity to which the petition
 117 pertains.

118 3.a. Has never secured a prior sealing or expunction of a
 119 criminal history record under this section, s. 943.059, former

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120 s. 893.14, former s. 901.33, or former s. 943.058, unless
 121 expunction is sought of a criminal history record previously
 122 sealed for 10 years pursuant to paragraph (2)(h) and the record
 123 is otherwise eligible for expunction; or

124 b. Is seeking to expunge a criminal history record
 125 associated with a judgment of acquittal or a not guilty verdict.

126 4. Is eligible for such an expunction to the best of his or
 127 her knowledge or belief and does not have any other petition to
 128 expunge or any petition to seal pending before any court.

129

130 Any person who knowingly provides false information on such
 131 sworn statement to the court commits a felony of the third
 132 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 133 775.084.

134 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
 135 petitioning the court to expunge a criminal history record, a
 136 person seeking to expunge a criminal history record shall apply
 137 to the department for a certificate of eligibility for
 138 expunction. The department shall, by rule adopted pursuant to
 139 chapter 120, establish procedures pertaining to the application
 140 for and issuance of certificates of eligibility for expunction.
 141 A certificate of eligibility for expunction is valid for 12
 142 months after the date stamped on the certificate when issued by
 143 the department. After that time, the petitioner must reapply to
 144 the department for a new certificate of eligibility. Eligibility
 145 for a renewed certification of eligibility must be based on the
 146 status of the applicant and the law in effect at the time of the
 147 renewal application. The department shall issue a certificate of
 148 eligibility for expunction to a person who is the subject of a

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149 criminal history record if that person:

150 (a) Has obtained, and submitted to the department, a
 151 written, certified statement from the appropriate state attorney
 152 or statewide prosecutor which indicates:

153 1. That an indictment, information, or other charging
 154 document was not filed or issued in the case.

155 2. That an indictment, information, or other charging
 156 document, if filed or issued in the case, was dismissed or nolle
 157 prosequi by the state attorney or statewide prosecutor, or was
 158 dismissed by a court of competent jurisdiction, that a judgment
 159 of acquittal was rendered by a judge, or that a verdict of not
 160 guilty was rendered by a judge or jury and that none of the
 161 charges related to the arrest or alleged criminal activity to
 162 which the petition to expunge pertains resulted in a trial,
 163 without regard to whether the outcome of the trial was other
 164 than an adjudication of guilt.

165 3. That the criminal history record does not relate to a
 166 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 167 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
 168 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
 169 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
 170 or any violation specified as a predicate offense for
 171 registration as a sexual predator pursuant to s. 775.21, without
 172 regard to whether that offense alone is sufficient to require
 173 such registration, or for registration as a sexual offender
 174 pursuant to s. 943.0435, where the defendant was found guilty
 175 of, or pled guilty or nolo contendere to any such offense, or
 176 that the defendant, as a minor, was found to have committed, or
 177 pled guilty or nolo contendere to committing, such an offense as

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178 a delinquent act, without regard to whether adjudication was
179 withheld.

180 (b) Remits a \$75 processing fee to the department for
181 placement in the Department of Law Enforcement Operating Trust
182 Fund, unless such fee is waived by the executive director.

183 (c) Has submitted to the department a certified copy of the
184 disposition of the charge to which the petition to expunge
185 pertains.

186 (d) Has never, prior to the date on which the application
187 for a certificate of eligibility is filed, been adjudicated
188 guilty of a criminal offense or comparable ordinance violation,
189 or been adjudicated delinquent for committing any felony or a
190 misdemeanor specified in s. 943.051(3)(b).

191 (e) Has not been adjudicated guilty of, or adjudicated
192 delinquent for committing, any of the acts stemming from the
193 arrest or alleged criminal activity to which the petition to
194 expunge pertains.

195 (f) 1. Has never secured a prior sealing or expunction of a
196 criminal history record under this section, s. 943.059, former
197 s. 893.14, former s. 901.33, or former s. 943.058, unless
198 expunction is sought of a criminal history record previously
199 sealed for 10 years pursuant to paragraph (h) and the record is
200 otherwise eligible for expunction; or

201 2. Is seeking to expunge a criminal history record
202 associated with a judgment of acquittal or a not guilty verdict.

203 (g) Is no longer under court supervision applicable to the
204 disposition of the arrest or alleged criminal activity to which
205 the petition to expunge pertains.

206 (h) Has previously obtained a court order sealing the

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207 record under this section, former s. 893.14, former s. 901.33,
208 or former s. 943.058 for a minimum of 10 years because
209 adjudication was withheld or because all charges related to the
210 arrest or alleged criminal activity to which the petition to
211 expunge pertains were not dismissed prior to trial, without
212 regard to whether the outcome of the trial was other than an
213 adjudication of guilt. The requirement for the record to have
214 previously been sealed for a minimum of 10 years does not apply
215 when a plea was not entered or all charges related to the arrest
216 or alleged criminal activity to which the petition to expunge
217 pertains were dismissed prior to trial.

218 (3) PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

219 (a) In judicial proceedings under this section, a copy of
220 the completed petition to expunge shall be served upon the
221 appropriate state attorney or the statewide prosecutor and upon
222 the arresting agency; however, it is not necessary to make any
223 agency other than the state a party. The appropriate state
224 attorney or the statewide prosecutor and the arresting agency
225 may respond to the court regarding the completed petition to
226 expunge.

227 (b) If relief is granted by the court, the clerk of the
228 court shall certify copies of the order to the appropriate state
229 attorney or the statewide prosecutor and the arresting agency.
230 The arresting agency is responsible for forwarding the order to
231 any other agency to which the arresting agency disseminated the
232 criminal history record information to which the order pertains.
233 The department shall forward the order to expunge to the Federal
234 Bureau of Investigation. The clerk of the court shall certify a
235 copy of the order to any other agency which the records of the

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236 court reflect has received the criminal history record from the
237 court.

238 (c) For an order to expunge entered by a court prior to
239 July 1, 1992, the department shall notify the appropriate state
240 attorney or statewide prosecutor of an order to expunge which is
241 contrary to law because the person who is the subject of the
242 record has previously been convicted of a crime or comparable
243 ordinance violation or has had a prior criminal history record
244 sealed or expunged. Upon receipt of such notice, the appropriate
245 state attorney or statewide prosecutor shall take action, within
246 60 days, to correct the record and petition the court to void
247 the order to expunge. The department shall seal the record until
248 such time as the order is voided by the court.

249 (d) On or after July 1, 1992, the department or any other
250 criminal justice agency is not required to act on an order to
251 expunge entered by a court when such order does not comply with
252 the requirements of this section. Upon receipt of such an order,
253 the department must notify the issuing court, the appropriate
254 state attorney or statewide prosecutor, the petitioner or the
255 petitioner's attorney, and the arresting agency of the reason
256 for noncompliance. The appropriate state attorney or statewide
257 prosecutor shall take action within 60 days to correct the
258 record and petition the court to void the order. No cause of
259 action, including contempt of court, shall arise against any
260 criminal justice agency for failure to comply with an order to
261 expunge when the petitioner for such order failed to obtain the
262 certificate of eligibility as required by this section or such
263 order does not otherwise comply with the requirements of this
264 section.

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265 (4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
266 criminal history record of a minor or an adult which is ordered
267 expunged by a court of competent jurisdiction pursuant to this
268 section must be physically destroyed or obliterated by any
269 criminal justice agency having custody of such record; except
270 that any criminal history record in the custody of the
271 department must be retained in all cases. A criminal history
272 record ordered expunged that is retained by the department is
273 confidential and exempt from the provisions of s. 119.07(1) and
274 s. 24(a), Art. I of the State Constitution and not available to
275 any person or entity except upon order of a court of competent
276 jurisdiction. A criminal justice agency may retain a notation
277 indicating compliance with an order to expunge.

278 (a) The person who is the subject of a criminal history
279 record that is expunged under this section or under other
280 provisions of law, including former s. 893.14, former s. 901.33,
281 and former s. 943.058, may lawfully deny or fail to acknowledge
282 the arrests covered by the expunged record, except when the
283 subject of the record:

- 284 1. Is a candidate for employment with a criminal justice
285 agency;
- 286 2. Is a defendant in a criminal prosecution;
- 287 3. Concurrently or subsequently petitions for relief under
288 this section, s. 943.0583, or s. 943.059;
- 289 4. Is a candidate for admission to The Florida Bar;
- 290 5. Is seeking to be employed or licensed by or to contract
291 with the Department of Children and Families, the Division of
292 Vocational Rehabilitation within the Department of Education,
293 the Agency for Health Care Administration, the Agency for

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294 Persons with Disabilities, the Department of Health, the
 295 Department of Elderly Affairs, or the Department of Juvenile
 296 Justice or to be employed or used by such contractor or licensee
 297 in a sensitive position having direct contact with children, the
 298 disabled, or the elderly;

299 6. Is seeking to be employed or licensed by the Department
 300 of Education, any district school board, any university
 301 laboratory school, any charter school, any private or parochial
 302 school, or any local governmental entity that licenses child
 303 care facilities;

304 7. Is seeking to be licensed by the Division of Insurance
 305 Agent and Agency Services within the Department of Financial
 306 Services; or

307 8. Is seeking to be appointed as a guardian pursuant to s.
 308 744.3125.

309 (b) Subject to the exceptions in paragraph (a), a person
 310 who has been granted an expunction under this section, former s.
 311 893.14, former s. 901.33, or former s. 943.058 may not be held
 312 under any provision of law of this state to commit perjury or to
 313 be otherwise liable for giving a false statement by reason of
 314 such person's failure to recite or acknowledge an expunged
 315 criminal history record.

316 (c) Information relating to the existence of an expunged
 317 criminal history record which is provided in accordance with
 318 paragraph (a) is confidential and exempt from the provisions of
 319 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 320 except that the department shall disclose the existence of a
 321 criminal history record ordered expunged to the entities set
 322 forth in subparagraphs (a)1., 4., 5., 6., 7., and 8. for their

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323 respective licensing, access authorization, and employment
 324 purposes, and to criminal justice agencies for their respective
 325 criminal justice purposes. It is unlawful for any employee of an
 326 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 327 subparagraph (a)5., subparagraph (a)6., subparagraph (a)7., or
 328 subparagraph (a)8. to disclose information relating to the
 329 existence of an expunged criminal history record of a person
 330 seeking employment, access authorization, or licensure with such
 331 entity or contractor, except to the person to whom the criminal
 332 history record relates or to persons having direct
 333 responsibility for employment, access authorization, or
 334 licensure decisions. Any person who violates this paragraph
 335 commits a misdemeanor of the first degree, punishable as
 336 provided in s. 775.082 or s. 775.083.

337 (5) EXCEPTION FOR LAWFUL SELF-DEFENSE.—Notwithstanding the
 338 eligibility requirements prescribed in paragraph (1)(b) and
 339 subsection (2), the department shall issue a certificate of
 340 eligibility for expunction under this subsection to a person who
 341 is the subject of a criminal history record if that person:

342 (a) Has obtained, and submitted to the department, on a
 343 form provided by the department, a written, certified statement
 344 from the appropriate state attorney or statewide prosecutor
 345 which states whether an information, indictment, or other
 346 charging document was not filed or was dismissed by the state
 347 attorney, or dismissed by the court, because it was found that
 348 the person acted in lawful self-defense pursuant to the
 349 provisions related to justifiable use of force in chapter 776.

350 (b) Each petition to a court to expunge a criminal history
 351 record pursuant to this subsection is complete only when

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352 accompanied by:

353 1. A valid certificate of eligibility for expunction issued
354 by the department pursuant to this subsection.

355 2. The petitioner's sworn statement attesting that the
356 petitioner is eligible for such an expunction to the best of his
357 or her knowledge or belief.

358

359 Any person who knowingly provides false information on such
360 sworn statement to the court commits a felony of the third
361 degree, punishable as provided in s. 775.082, s. 775.083, or s.
362 775.084.

363 (c) This subsection does not confer any right to the
364 expunction of a criminal history record, and any request for
365 expunction of a criminal history record may be denied at the
366 discretion of the court.

367 (d) Subsections (3) and (4) shall apply to expunction
368 ordered under this subsection.

369 (e) The department shall, by rule adopted pursuant to
370 chapter 120, establish procedures pertaining to the application
371 for and issuance of certificates of eligibility for expunction
372 under this subsection.

373 (6) STATUTORY REFERENCES.—Any reference to any other
374 chapter, section, or subdivision of the Florida Statutes in this
375 section constitutes a general reference under the doctrine of
376 incorporation by reference.

377 Section 3. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/2017

118

Meeting Date

Bill Number (if applicable)

Topic Expunctions & Mugshot

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Street Tallahassee, FL 32301

Email jorge@flapartners.com

City State Zip

Speaking: [X] For [] Against [] Information

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

Representing Fla Assoc of Criminal Defense Lawyers

Appearing at request of Chair: [X] Yes [] 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)

3-10-17

Meeting Date

SB118

Bill Number (if applicable)

Topic Criminal History Records

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Constituency Services

Address 401 S. Magnolia Dr.

Phone 850-425-2600

Street

Tallahassee

Email cmackin@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing The Children's Campaign

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)

March 6, 2017

Meeting Date

CS/SB 118

Bill Number (if applicable)

Topic Criminal History Records

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Avenue

Phone 352-338-7370

Street

Gainesville

FL

32601

Email scotts@pdo8.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)

March 6, 2017

Meeting Date

CS/SB 118

Bill Number (if applicable)

Topic Criminal History Records

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

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)

3/6/2017

118

Meeting Date

Bill Number (if applicable)

Topic Criminal History Records

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs Association

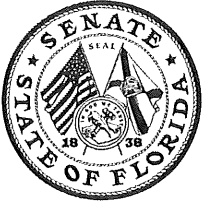
Appearing at request of Chair: Yes No

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

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

January 27, 2017

The Honorable Randal Bracy
Florida Senate
213 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bracy,

I am writing this letter because my bill, CS/SB 118: Criminal History Records, has been referred to the Senate Criminal Justice Committee. 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 black ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 722 Apex Road, Unit A, 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 Committee on Criminal Justice

BILL: SJR 270

INTRODUCER: Senator Thurston

SUBJECT: Restoration of Civil Rights

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Favorable
2.			JU	
3.			RC	

I. Summary:

SJR 270 proposes an amendment to Article IV, section 8 of the State Constitution, relating to the restoration of civil rights. It authorizes the Legislature to prescribe additional circumstances under which certain fines and forfeitures may be suspended or remitted, reprieves may be granted (pardons), civil rights restored, and punishments may be commuted.

The joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

If approved by the voters in the general election held November 2017, the joint resolution will become effective on January 1, 2018.

II. Present Situation:

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights.¹ The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction.² Other civil rights that are lost in accordance with statute include the right to serve on a jury³ and the right to possess a firearm.⁴

The power to pardon, restore civil rights, commute punishment, or remit fines and forfeitures is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members.⁵ Section 940.05, F.S., provides that any person convicted of a felony may be entitled

¹ Section 944.292, F.S.

² Article IV, s. 4, Fla. Const.

³ Section 40.013, F.S.

⁴ Sections 790.06(2)(d) and (k) and 790.23, F.S.

⁵ Article IV, s. 8(a), Fla. Const. See also s. 940.01, F.S.

to the restoration of all the rights of citizenship enjoyed by him or her before conviction⁶ if the person has:

- Received a full pardon from the Board of Executive Clemency;
- Served the maximum term of the sentence imposed upon him or her; or
- Been granted his or her final release by the Florida Commission on Offender Review.

The Governor and Cabinet sit as the Board of Executive Clemency (Clemency Board) and the Office of Executive Clemency assists in the acceptance, review, and recommendation of applications for clemency.⁷ The Rules of Executive Clemency set forth the eligibility and requirements for an individual to seek a full or conditional pardon, restore civil rights, commute punishment, or remit fines and forfeitures.⁸ An individual seeking clemency submits an application to the Office of Executive Clemency and the application is forwarded to the Florida Commission on Offender Review for investigation, report, and recommendation.⁹

Eligibility for restoration of civil rights without a hearing is for less serious offenses and requires that five years have passed since the date of completion of all sentences and conditions of supervision imposed. The person may not have pending criminal charges and must have paid all restitution, be a citizen of the United States, and, if convicted in a court other than a Florida court, be a legal resident of Florida.¹⁰ The person also is not eligible for restoration of civil rights if he or she committed one of a number of crimes, such as murder, sexual battery, or kidnapping.¹¹

Eligibility for restoration of civil rights with a hearing requires that seven years have passed since the date of completion of all sentences and conditions of supervision imposed for all felony convictions. The person must have paid all restitution, be a citizen of the United States, and, if convicted in a court other than a Florida court, be a legal resident of Florida.¹²

III. Effect of Proposed Changes:

The joint resolution proposes an amendment to Article IV, section 8 of the State Constitution, relating to the restoration of civil rights. It authorizes the Legislature to prescribe additional circumstances under which certain fines and forfeitures may be suspended or remitted, reprieves may be granted (pardons), civil rights restored, and punishments may be commuted. The joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature for passage.

⁶ Restoration does not relieve a person of “registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.” Rules of Executive Clemency 4.I.(G). Additionally, the Rules of Executive Clemency require a separate application to restore the rights to possess, own, or use a firearm. Rules of Executive Clemency 4I.(F) and (G) and 5(D) and (E).

⁷ Rules of Executive Clemency (2)(B).

⁸ Rules of Executive Clemency 4. Art. IV, s. 8, Fla. Const.

⁹ Rules of Executive Clemency 6(A) and 7. *See also* s. 940.03, F.S.

¹⁰ Rule of Executive Clemency 9(A)

¹¹ Rules of Executive Clemency 9(A)4.

¹² Rule of Executive Clemency 10(A)

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 Division of Elections within the Department of State is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county where a newspaper is published – once in the tenth week and again in the sixth week immediately preceding the week the election is held.¹³ The division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments.

An estimate of the full publication costs for advertising the proposed amendment is approximately \$135.97 per word, for a total publishing cost of \$47,589.50.

D. Other Constitutional Issues:

Amendments to the Florida Constitution

Article XI, section 1 of the Florida Constitution, authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose.

¹³ Article XI, sec. 5(d), Fla. Const.

Article XI, section 5(a) of the Florida Constitution, and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”¹⁴

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective on January 1, 2018.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 1975, Florida Governor Askew requested an advisory opinion on whether the Florida Correctional Reform Act presented an infringement upon the constitutional power of the governor and cabinet to restore civil rights. The Florida Correctional Reform Act provided for suspension and automatic reinstatement of civil rights for prisoners through statute. The Florida Supreme Court answered in the affirmative and determined that it was a clear infringement upon the constitutional power of the governor to restore civil rights through executive clemency.¹⁵

VIII. Statutes Affected:

This joint resolution substantially amends Article IV of the Florida Constitution.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹⁴ *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep’t of State v. Slough*, 992 So. 2d 142, 147 (Fla. 2008).

¹⁵ *In re Advisory Opinion of Governor Civil Rights*, 306 So. 2d 520 (Fla. 1975).

By Senator Thurston

33-00375-17

2017270__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 8 of Article IV of the State Constitution, relating to restoration of civil rights, to authorize the Legislature to prescribe additional circumstances under which certain fines and forfeitures may be suspended or remitted, reprieves may be granted, civil rights may be restored, and punishments may be commuted.

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

That the following amendment to Section 8 of Article IV of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IV

EXECUTIVE

SECTION 8. Clemency.—

(a) Except in cases of treason and in cases where impeachment results in conviction, and except as otherwise prescribed by law, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

(b) In cases of treason the governor may grant reprieves until adjournment of the regular session of the legislature convening next after the conviction, at which session the legislature may grant a pardon or further reprieve; otherwise

Page 1 of 2

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

33-00375-17

2017270__

the sentence shall be executed.

(c) There may be created by law 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 prescribed by law.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE IV, SECTION 8

RESTORATION OF CIVIL RIGHTS.—Proposing an amendment to the State Constitution to authorize the Legislature to provide conditions under which fines and forfeitures may be suspended or remitted, reprieves may be granted, civil rights may be restored, and punishments may be commuted.

Page 2 of 2

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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)

3/6/17

Meeting Date

2700

Bill Number (if applicable)

Topic Restoration of Civil Rights

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title LEGISLATIVE COORDINATOR

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

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)

March 6, 2017

SJR 270

Meeting Date

Bill Number (if applicable)

Topic Restoration of Civil Rights

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Avenue

Phone 352-338-7370

Street

Gainesville

FL

32601

Email scott@sdo8.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
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 Committee on Criminal Justice

BILL: SB 382

INTRODUCER: Senator Gibson

SUBJECT: Judicial Accountability

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	Pre-meeting
2.			JU	
3.			AP	
4.			RC	

I. Summary:

SB 382 requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to collect data and prepare a report detailing the sentence imposed by each circuit court and county judge in criminal and juvenile cases. Collected data must identify specified case information and demographic information about defendants. The OPPAGA must post this report on its website by March 1 annually.

Evidence of disparity in sentencing by a judge with regard to a demographic group is grounds for disqualification of that judge from any case involving a member of that group.

Beginning February 1, 2018, and each February 1 thereafter, the OPPAGA must provide the report to the Chief Justice of the Florida Supreme Court, the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of each chamber. The OPPAGA must also provide each circuit and county judge an individual annual report of his or her data.

The OPPAGA states that it can implement the bill within budgeted resources. Further, posting a report on the OPPAGA's website and creating and sending reports to individual judges could be completed with current technology resources.

II. Present Situation:

The Office of Program Policy Analysis and Government Accountability (OPPAGA)

The Office of Program Policy Analysis and Government Accountability (OPPAGA) was created by the Legislature in 1994.¹ The OPPAGA, which describes itself as the “research arm of the Florida Legislature,”² “is an office of the Legislature. OPPAGA provides data, evaluative research, and objective analyses to assist legislative budget and policy deliberations. OPPAGA conducts research as directed by state law, the presiding officers, or the Joint Legislative Auditing Committee.”³ The OPPAGA’s research services include:

- Performance evaluations and policy reviews of government programs and follow-up reviews that assess whether agencies have resolved problems identified in earlier studies;
- Research and technical assistance to legislators and legislative committees;
- Government Program Summaries (GPS), an electronic encyclopedia containing descriptive and evaluative information on all major state programs; and
- Policy Notes, a weekly electronic newsletter of policy research of interest to Florida policymakers.⁴

The OPPAGA is authorized to examine all entities and numerous records listed in s. 11.45(3), F.S., which includes accounts and records of any governmental entity created or established by law and the information technology programs, activities, functions, or systems of any governmental entity created or established by law.⁵

Disqualification of a Judge (s. 38.10, F.S.)

Section 38.10, F.S., provides, in part, that whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial⁶ in the court where the suit is pending on account of the prejudice⁷ of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further. Another judge shall be designated in the manner prescribed by Florida law for the substitution of judges for the trial of causes in which the presiding judge is disqualified.⁸ The affidavit must state the facts and the reasons for the belief that any such bias or prejudice exists and be accompanied by a certificate of counsel of record that the affidavit and application are made in good faith.

¹ Chapter 94-249, L.O.F.

² “What We Do,” Office of Program Policy Analysis and Government Accountability, The Florida Legislature, available at <http://www.oppaga.state.fl.us/shell.aspx?pagepath=about/whatwedo.htm> (last viewed on February 28, 2017).

³ “About OPPAGA,” Office of Program Policy Analysis and Government Accountability, The Florida Legislature, available at <http://www.oppaga.state.fl.us/shell.aspx?pagepath=about/about.htm> (last viewed on February 28, 2017).

⁴ See footnote 2.

⁵ Section 11.51(1), F.S.

⁶ “... [T]he protections of section 38.10 are not confined to fair treatment in the context of a trial.” *Rucks v. State*, 692 So.2d 976, 977 (Fla. 2d DCA 1997) (citation omitted).

⁷ “To achieve a judge’s disqualification, the movant need not prove the judge is actually prejudiced.” *Rucks v. State*, 692 So.2d at 977.

⁸ “Florida Rule of Judicial Administration 2.160 prescribes the attendant procedure.” *Rucks v. State*, 692 So.2d at 977 (citation omitted).

The Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code⁹ (Code) as Florida’s “primary sentencing policy.”¹⁰ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹¹ Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses.¹² Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury. 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.

Absent mitigation,¹³ the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to and including the maximum penalty provided under s. 775.082, F.S.¹⁴ However, if the offender’s offense has a mandatory minimum term that is greater than the scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.¹⁵ Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.¹⁶

One of the stated principles of the Code is that “[s]entencing is neutral with respect to race, gender, and social and economic status.”¹⁷ However, the Code does not include intent language that previously appeared in the law relating to the pre-Code sentencing guidelines regarding “unwarranted variation in sentencing”: “The sentencing guidelines are intended to eliminate unwarranted variation in the sentencing process by reducing the subjectivity in interpreting specific offense-related and offender-related criteria and in defining the relative importance of those criteria in the sentencing decision.”¹⁸

⁹ 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.

¹⁰ *Florida’s Criminal Punishment Code: A Comparative Assessment (FY 2012-2013)* (Executive Summary), Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited on February 27, 2017).

¹¹ 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.

¹² Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹³ 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.

¹⁴ 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.

¹⁵ Fla. R. Crim. P. 3.704(d)(26).

¹⁶ See e.g., s. 775.082(10), F.S. (diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections’ prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).

¹⁷ Section 921.002(1)(a), F.S.

¹⁸ Section 921.001(4), F.S. (1997).

Under the former sentencing guidelines, a recommended sentence was scored and the court was authorized to sentence within a range.¹⁹ If the court wished to impose a prison sentence that exceeded the permissible range (an “upward departure” sentence), the sentence had to be accompanied by a written statement delineating the reasons for the departure.²⁰ The Legislature provided a list of some reasons for which a departure was reasonably justified. These departure reasons were referred to as “aggravating circumstances.”²¹

III. Effect of Proposed Changes:

The bill, which takes effect on July 1, 2017, creates s. 38.24, F.S. Section 38.24, F.S., provides that, pursuant to s. 11.51, F.S.,²² the OPPAGA shall collect data and prepare a report detailing the sentence²³ imposed by each circuit court and county judge in criminal and juvenile cases. Collected data must identify case information and demographic information about defendants.²⁴ The initial report must reflect data collected for the previous 5 calendar years, and subsequent reports must include data collected for the previous calendar year.

Collected case information includes:

- The judge who presided over each trial;
- The judge who presided over the sentencing phase;
- The circuit and specific location of the court where each case was heard;
- Each offense for which the defendant was convicted or pled nolo contendere to;
- The range of possible sentences for each offense; and
- The sentence imposed for each offense, including, but not limited to, jail time, prison time, and probation, a fine, or any other imposed terms.

Collected demographic information on defendants includes:

- Age;
- Sex;
- Race;
- Income; and
- Prior criminal history.

The OPPAGA must post this report on its website by March 1 annually.

¹⁹ Sections 921.0014(1)(b) and 921.0016(1)(b), F.S. (1997).

²⁰ Section 921.0016(1)(c), F.S. (1997).

²¹ Section 921.0016(3), F.S. (1997).

²² As previously noted, s. 11.51(1), F.S., authorizes the OPPAGA to examine all entities and records listed in s. 11.45(3), F.S., including accounts and records of any governmental entity created or established by law and the information technology programs, activities, functions, or systems of any governmental entity created or established by law.

²³ The term “sentence” is typically used in the adult court system. In the juvenile court system, the final decision as to how a juvenile’s case is to be handled after an adjudication is called a “disposition.” However, because the OPPAGA is required to report information about “juvenile cases,” “sentence” would probably be construed by the OPPAGA to include “disposition.”

²⁴ The term “defendants” is typically used to describe persons charged with crimes in the adult system. However, because the OPPAGA is required to report information about “juvenile cases,” “defendants” would probably be construed by the OPPAGA to include children charged with delinquent acts.

The bill further provides that evidence of disparity²⁵ in sentencing by a judge with regard to a demographic group is grounds for disqualification of that judge from any case involving a member of that group.

Finally, the bill provides that, beginning February 1, 2018, and each February 1 thereafter, the OPPAGA shall provide the report to the Chief Justice of the Florida Supreme Court, the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of each chamber. The OPPAGA shall also provide each circuit and county judge an individual annual report of his or her data.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

It is possible that some of the information collected by the OPPAGA may be from agencies or offices like the Florida Department of Law Enforcement, the Department of Corrections, the Department of Juvenile Justice, the Office of the State Courts Administrator, and the Florida clerks of court. To the extent that records information received is exempt from public disclosure or confidential and exempt, the OPPAGA is required to maintain that status.²⁶ However, criminal justice statistical information is aggregated information that typically identifies characteristics of an offender group (e.g., the percentage of offenders convicted of a specific offense), not information specific to an individual offender.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The OPPAGA states that it can implement the bill within budgeted resources. Further, posting a report on the OPPAGA's website and creating and sending reports to individual

²⁵ The bill does not define the term "disparity," so it is unclear what constitutes disparity in sentencing.

²⁶ Section 11.0431(2)(a), F.S.

judges could be completed with current technology resources. However, the OPPAGA notes that workload associated with completing tasks described in the bill would greatly increase if the bill requires data collection and reporting on misdemeanor cases and if OPPAGA is required in its initial report to include data for the previous 5 calendar years.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

The OPPAGA determined that the requirement for data on specific location of the court and individual defendant's income would not be available to include in the report. The bill also requires the inclusion of "juvenile cases." The OPPAGA anticipates that reporting much of the required information on juveniles would be complicated by the confidentiality of juvenile case information. Additionally, there may be difficulties in identifying the range of possible sentences for each offense. Except when mandatory minimum sentences apply, felony cases involving multiple counts or offenses are typically given one sentence aggregating all counts, with the minimum sentence range determined by sentencing scoresheet calculation and the maximum determined by the statutory maximum. Also, judges presiding over juvenile cases have greater discretion in sanctioning delinquent youth, which makes it difficult to compare the given juvenile disposition to possible dispositions.

VIII. Statutes Affected:

This bill creates section 38.24 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.)

None.

B. Amendments:

None.

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

²⁷ Telephonic and e-mail communications between staff of the Senate Committee on Criminal Committee and OPPAGA staff. E-mail communications are on file with the Senate Committee on Criminal Justice.



971442

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Gibson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 30 - 59
and insert:
judge and county judge in criminal cases and direct file
juvenile cases. The initial report must reflect data collected
for the previous 3 calendar years, and subsequent reports must
include data collected for the previous calendar year. The data
must identify all of the following:

(a) The presiding judge.



971442

- 11 (b) The judge presiding over final disposition.
- 12 (c) The circuit and county location of the court where each
- 13 case was heard.
- 14 (d) Each offense for which the defendant had adjudication
- 15 withheld or was convicted after a plea or trial.
- 16 (e) The range of possible sentences for each offense.
- 17 (f) The sentence imposed for each offense, including, but
- 18 not limited to, jail, prison, probation, a fine, or any other
- 19 imposed term.
- 20 (g) Demographic information about the defendant, including,
- 21 but not limited to:
 - 22 1. Date of birth.
 - 23 2. Sex.
 - 24 3. Race and ethnicity.
 - 25 4. Court-appointed or private counsel.
 - 26 5. Scoresheet.
- 27 (2) The Office of Program Policy Analysis and Government
- 28 Accountability shall post the report by March 1 of each year on
- 29 its website.
- 30 (3) Beginning on February 1, 2018, and each February 1

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

33 And the title is amended as follows:

34 Delete lines 7 - 15

35 and insert:

36 judge in criminal and direct file juvenile cases;
37 requiring that the first report provide information
38 for a specified period and that subsequent reports
39 provide information for the previous calendar year;



971442

40
41

requiring the office to post the report annually by a
specified date to its website;

By Senator Gibson

6-00381A-17

2017382__

A bill to be entitled

An act relating to judicial accountability; creating s. 38.24, F.S.; requiring the Office of Program Policy Analysis and Government Accountability to collect specified information and prepare a report on the sentences imposed by each circuit judge and county judge in criminal and juvenile cases; requiring that the first report provide information for a specified period and that subsequent reports provide information for the previous calendar year; requiring the office to post the report annually by a specified date to its website; requiring disqualification of a judge from a case involving a member of a certain demographic group for which there is evidence of disparity in sentencing by that judge with regard to that demographic group; requiring the office to annually provide the report to the Chief Justice, the Governor, and specified members of the Legislature by a specified date; requiring the office to annually send each judge an individual report; providing an effective date.

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

Section 1. Section 38.24, Florida Statutes, is created to read:

38.24 Judicial accountability.-

(1) Pursuant to s. 11.51, the Office of Program Policy Analysis and Government Accountability shall collect data and prepare a report detailing the sentences imposed by each circuit judge and county judge in criminal cases and juvenile cases. The initial report must reflect data collected for the previous 5 calendar years, and subsequent reports must include data

Page 1 of 3

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6-00381A-17

2017382__

collected for the previous calendar year. The data must identify:

(a) The judge who presided over each trial;
(b) The judge who presided over the sentencing phase;
(c) The circuit and specific location of the court where each case was heard;
(d) Each offense for which the defendant was convicted or pled nolo contendere to;
(e) The range of possible sentences for each offense;
(f) The sentence imposed for each offense, including, but not limited to, jail time, prison time, probation, a fine, or any other imposed terms; and
(g) Demographic information about the defendant, including, but not limited to:

1. Age.

2. Sex.

3. Race.

4. Income.

5. Prior criminal history.

(2) The Office of Program Policy Analysis and Government Accountability must post the report by March 1 annually on its website.

(3) Evidence of disparity in sentencing by a judge with regard to any demographic group is grounds for disqualification of that judge from any case involving a member of that demographic group, pursuant to s. 38.10.

(4) Beginning on February 1, 2018, and each February 1 thereafter, the Office of Program Policy Analysis and Government Accountability shall provide the report to the Chief Justice of

Page 2 of 3

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

6-00381A-17

2017382__

62 the Supreme Court, the Governor, the President of the Senate,
63 the Speaker of the House of Representatives, and the majority
64 and minority leaders of the Senate and the House of
65 Representatives. The office shall also send each circuit judge
66 and county judge an individual annual report of his or her data.

67 Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 6, 2017

Meeting Date

SB 382

Bill Number (if applicable)

971442

Amendment Barcode (if applicable)

Topic Judicial Accountability

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Avenue

Street

Gainesville

City

FL

State

32601

Zip

Phone 352-338-7370

Email scotts@pdo8.org

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)

3/6/17

Meeting Date

382

Bill Number (if applicable)

Topic Judicial Accountab, 1, 14

Amendment Barcode (if applicable)

Name Lee HAWORTH

Job Title Senior Judge

Address SILVERTOOTH Judicial CTR
Street

Phone 941-861-7800

SARASOTA FL 34237
City State Zip

Email LHAWORTH@JUD12.FL
COURTS.ORG

Speaking: For ~~Against~~ Information

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

Representing CHIEF Judge - 12TH CIRCUIT

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

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5 Mch 17

Meeting Date

382

Bill Number (if applicable)

Topic Judicial Accountability

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall

City

FL

State

32301

Zip

Email

Speaking: For Against Information

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

Representing Fla. 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

March 6, 2017

Meeting Date

SB 382

Bill Number (if applicable)

Topic Judicial Accountability

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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)

3/6/17 Meeting Date

SB 382 Bill Number (if applicable)

Topic RELATING TO JUDICIAL ACCOUNTABILITY

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

Address 4500 BISLAYNE BLVD. Street

Phone 780-363-4436

MIAMI FL City State Zip

Email KGROSS@ACLUFL.ORG

Speaking: For Against Information

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

Representing ACLU OF FLORIDA

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

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3/6/2017
Meeting Date

382
Bill Number (if applicable)

Topic Judicial Accountability

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title _____

Address 104 S. Monroe Street

Phone 850-425-1344

Street

Tallahassee FL 32301

Email teglobby@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida State Conference of NAACP Branches

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

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3-6-2017

Meeting Date

382

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Peter Dunbar

Job Title _____

Address 215 S. Monroe St, Suite 215

Phone 999-4100

Street

Tallahassee

State

32301

Zip

Email pdunbar@deanmead.com

City

Speaking: For Against Information

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

Representing Florida Conference of Circuit Court Judges

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)

03/06/17

Meeting Date

SB092

Bill Number (if applicable)

Topic JUDICIAL ACCOUNTABILITY

Amendment Barcode (if applicable)

Name A. WELLINGTON BARLOW

Job Title ATTORNEY

Address 3450 DUNN AVE SUITE 17

Phone 904 359-0001

Street

JACKSONVILLE FL 32218

Email BARLOWAW@GMAIL.COM

City

State

Zip

Speaking: For Against Information

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

Representing JUSTICE FOR ALL

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries
Joint Legislative Auditing Committee

SENATOR AUDREY GIBSON
6th District

February 1, 2017

Senator Randolph Bracy, Chair
Committee on Criminal Justice
510 Knott Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Bracy:

I respectfully request that SB 382, Judicial Accountability, be placed on the next committee agenda.

SB 382, was filed to better address the grave disparities in prison sentences throughout the state of Florida. This bill calls for sentencing data to be compiled annually and presented to trial and sentencing judges, the Legislature, Governor, and the Chief Justice of the Supreme Court. In the interest of full transparency, the bill also specifies that the information is to be posted for the public on the website of Florida Legislature's research arm, the Office of Program Policy Analysis and Government Accountability.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

REPLY TO:

- 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553 FAX: (904) 359-2532
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



Fredric G. Levin College of Law
Professor Kenneth B. Nunn

314 Holland Hall
PO Box 117625
Gainesville, FL 32611-7625
352-273-0660
352-392-3005 Fax
nunn@law.ufl.edu

February 26, 2017

A. Wellington Barlow, Esquire
Post Office Box 26098
Jacksonville, FL 32226

Dear Attorney Barlow:

Thank you for sharing your proposal, "The Codification of Common Sense," with me. Your proposal is designed to provide for the fair and equitable sentencing of criminal defendants in Florida courts. I think your proposal is accurately titled. It is indeed "common sense" to create an ongoing and real-time record of sentencing practices in Florida courts so any disparities in sentencing can be monitored and corrected.

Currently, Florida courts are required to keep data noting the length of sentence and the race and gender of the offender. However, your proposal is an improvement over this practice because you suggest recording the prosecutor, defense attorney, procedural history of the case (whether charges dropped, evidence was suppressed, etc.), and the guideline minimums and maximums.

This information would be extremely helpful to judges, prosecutors, defense attorneys, citizens and researchers who are interested in monitoring sentencing disparities in the state of Florida. I think your proposal would be enhanced if it were it was also statutorily required for the resulting data to be a public record.

Again, I commend you on your thoughtful proposal, which I endorse wholeheartedly. Let me know how I can offer any further assistance.

Sincerely yours,

A handwritten signature in black ink, appearing to be "K. Nunn", with a long horizontal line extending to the right.

Kenneth B. Nunn
Professor of Law

Proposed Amendments to SB382

Author: A. Wellington Barlow, Esquire – 31 year - Trial Attorney

Tuesday February 28, 017

- A. Require each Clerk of the Circuit Court (or the most appropriate agency) to collect additional data for every case in every Circuit and County division as follows:
 1. Name(s): Sentencing Judge, Prosecutor & Division Chief, Public Defender & Division Chief or Private Defense Attorney Charge(s), Arresting Officer/Detective
 2. Exact Disposition/Sentence (Charges Dropped, Dismissed, Evidence Suppressed)
 3. Min/Max Time/Sentence Exposure on Guidelines
 4. Actual Sentence
 5. Date of Sentence
- B. Require the aforesaid data to be formulated into a spreadsheet (rubric) for usage by each circuit judge and each county judge*
- C. Circuit and County Judges:
 1. For each current Circuit Judge and each County Judge, require the collection of data from up to 12 months from the effective date of this law
 2. Require collected data same into spread sheet form
 3. Require the spread sheet data to be available for usage by the following:
 - i. Every Judge in each County & Circuit
 - ii. The Office of the State Attorney
 - iii. The Office of the Public Defender
 - iv. Each private attorney who is an attorney of record on any pending case in the respective circuit/county
 - v. The Public Press
 4. Circuit and County Judges are required to review the data base and compare sentences they have issued to defendants over the past 12 months who have the same and/or substantially similar charges, guideline score and criminal histories as the defendant about to be sentenced.
 5. Prosecutors are required to certify in writing on the plea-bargain form that they have reviewed the negotiated sentences of defendants from their respective division that took place over the past 12 months that involved the same and/or similar charges as well as the respective sentencing guideline points of said defendants prior to negotiating the plea bargain for each defendant about to be sentenced.

*=Each Circuit/County Jurisdiction collects its own data to be used exclusively by in that court's jurisdiction. I.E. data from cases in the 4th Circuit (Clay, Duval and Nassau Counties) will be available to the respective judges, prosecutors, public defenders and private attorneys handling cases in this circuit

This data will allow all parties to look back to see how other similarly situated defendants were sentenced (over the last weeks months, years) to make sure the current defendant(s) are being treated the same, justly/fairly or unjustly/unfairly!

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 Committee on Criminal Justice

BILL: CS/SB 624

INTRODUCER: Criminal Justice Committee and Senator Steube

SUBJECT: Body Cameras

DATE: March 7, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 624 requires a law enforcement agency to include a provision in its body camera policies and procedures for a law enforcement officer using a body camera to review the body camera footage.

Section 943.1718, F.S., requires a law enforcement agency using body cameras to establish certain policies and procedures. However, Florida law does not require agencies to use body cameras or address whether a law enforcement officer may review body camera footage prior to writing a report or making a statement about the incident.

Specifically, the bill provides a law enforcement officer using a body camera with the ability to review the body camera footage before:

- Writing a report; or
- Providing a statement regarding an event arising within the scope of his or her official duties.

The bill prohibits a law enforcement officer using a body camera to review the body camera footage before providing information at the scene of an incident for the sole purposes of identifying and preserving the crime scene and identifying witnesses and suspects.

The bill is effective July 1, 2017.

II. Present Situation:

Body Cameras

A body camera is a portable electronic recording device that is worn on a law enforcement officer's person that records audio and video data of the officer's law-enforcement-related encounters and activities.¹ Body cameras are currently being used or considered for use by many law enforcement agencies.

Annually, the Criminal Justice Standards and Training Commission compiles the Criminal Justice Agency Profile Report, which provides compensation and benefit information for the 399 criminal justice agencies in Florida.² The 2015 report shows 91 of the 382 responding agencies reported using body cameras and the 2016 preliminary report shows that 107 of the 368 responding agencies reported using body cameras.³

Officer Review of Body Camera Footage

The use of body cameras has raised numerous policy questions within the law enforcement community. A 2014 report from the Police Executive Research Forum explored these policy concerns and made specific recommendations. One recommendation was to allow a law enforcement officer to review the body camera footage of an incident before making a statement about the incident. The report found that allowing officers to review the body camera footage provides the best evidence of the incident in question.⁴

Lexipol provides state specific training to public safety organizations and hosted a webinar on the issue of whether an officer should be allowed to view the body camera footage before making a statement.⁵ The webinar featured a PowerPoint presentation of the opposing views of an officer viewing body camera footage prior to making a statement.⁶

The presentation noted that a video is not always an accurate representation of the incident because it does not always show the fear of the officer or the force that occurred during the incident.⁷ However, viewing the video after the incident can assist the officer with memory recall of what occurred.⁸ The webinar also opined that an officer who views body camera footage

¹ Section 943.1718(1)(a), F.S.

² Florida Department of Law Enforcement, *Criminal Justice Agency Profile Survey Results*, available at <http://www.fdle.state.fl.us/cms/CJSTC/Publications/CJAP/CJAP.aspx> (last visited February 27, 2017).

³ Email from Ronald Draa, Director of External Affairs, Florida Department of Law Enforcement, to Senate Criminal Justice Committee staff, (February 28, 2017) (on file with the Senate Criminal Justice Committee).

⁴ Community Oriented Policing Services, U.S. Department of Justice, Police Executive Research Forum, *Implementing a Body-Worn Camera Program, Recommendations and Lessons Learned*, pp. v. and 29, (2014), available at <https://ric-zai-inc.com/Publications/cops-p296-pub.pdf> (last visited February 27, 2017).

⁵ Lexipol, *About Lexipol, Public Safety Organization Policies and Resources*, available at <http://www.lexipol.com/about-us/> (last visited February 27, 2017) and Lexipol, *Officer Viewing of Body Worn Camera Footage*, available at <http://www.lexipol.com/body-worn-camera-webinar/> (last visited February 27, 2017).

⁶ Ken Wallentine, Laura Scarry, and Grant Federicks, Lexipol, *Point/Counterpoint: The Debate Over Officer Viewing of BWC Video*, December 12, 2016, available at <http://www.lexipol.com/wp-content/uploads/2016/11/BWC-Video-Viewing.pdf> (last visited February 27, 2017).

⁷ *Id.* at p. 5-6.

⁸ *Id.* at 17.

before writing a report could make themselves more susceptible to scrutiny because there could be a perception that the officer changed his account.⁹

Other States

Thirty states and the District of Columbia have created laws governing body cameras.¹⁰ Some states have laws addressing whether a law enforcement officer can view body camera footage prior to writing a report or making a statement.¹¹ For example, in Texas a law enforcement agency that uses body cameras must have policies that ensure an officer access to any recording of the incident prior to making a statement.¹²

In Connecticut, an officer may view the body camera footage when writing his or her police report. If an officer has to give a formal statement about his or her use of force or is the subject of a disciplinary investigation, the officer may view the body camera footage. The officer also has the right to view the body camera footage with an attorney or labor representative present and to review recordings of the incident from other body cameras that captured the officer's image or voice.¹³

Section 943.1718, F.S., requires a law enforcement agency using body cameras to establish certain policies and procedures. However, Florida law does not require agencies to use body cameras or address whether a law enforcement officer may review body camera footage prior to writing a report or making a statement about the incident.

Section 943.1718, F.S., Body Camera Policies and Procedure

Section 943.1718, F.S., requires a law enforcement agency using body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

III. Effect of Proposed Changes:

The bill requires a law enforcement agency to include a provision in its body camera policies and procedures for a law enforcement officer to review body camera footage. Specifically, the bill

⁹ *Id.* at 19.

¹⁰ National Conference of State Legislatures, BODY-WORN CAMERAS INTERACTIVE GRAPHIC, *State Body-Worn Camera Laws*, August 20, 2016, available at <http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx> (last visited February 27, 2017).

¹¹ National Conference of State Legislatures, BODY-WORN CAMERAS INTERACTIVE GRAPHIC, *Body Camera Laws*, Search by State, *Select a specific state to view its body camera laws*, available at <http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx#/> (last visited February 27, 2017).

¹² Tex. Occ. Code s. 1701.655(b)(5).

¹³ Conn. Gen. Stat. Ann. s. 29-6d(e) and (f).

provides a law enforcement officer using a body camera with the ability to review the body camera footage before:

- Writing a report; or
- Providing a statement regarding an event arising within the scope of his or her official duties.

The bill prohibits a law enforcement officer using a body camera to review the body camera footage before providing information at the scene of an incident for the sole purposes of identifying and preserving the crime scene and identifying witnesses and suspects.

The bill is effective July 1, 2017.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill allows *a law enforcement officer using a body camera* to review *the body camera footage*. This excludes officers not wearing body cameras from reviewing body camera footage. It is also unclear if a law enforcement officer using a body camera can review the body camera footage from other officers wearing body cameras.

VIII. Statutes Affected:

This bill substantially amends section 943.1718 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 March 6, 2017:

The committee substitute:

- Requires a “provision” instead of “general guidelines” by law enforcement using body cameras;
- Limits the review of footage to law enforcement officers using body cameras;
- Allows the law enforcement officer to view the body camera footage instead of “relevant audio and video recordings”;
- Specifies that the law enforcement officer can review the body camera footage for incidents within the scope of the officer’s official duties instead of incidents in which the officer was involved; and
- Prohibits a law enforcement officer using a body camera to review the body camera footage before providing information at the scene of an incident for the sole purposes of identifying and preserving the crime scene and identifying witnesses and suspects.

- B. **Amendments:**

None.



837386

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 27 - 31

and insert:

(d) A provision permitting a law enforcement officer using a body camera to review the recorded footage from the body camera, upon his or her own initiative or request, before writing a report or providing a statement regarding an event arising within the scope of his or her official duties, except when an officer provides information at the scene of an incident



837386

11 for the sole purposes of identifying and preserving the crime
12 scene and identifying witnesses and suspects.

13
14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 Delete lines 5 - 8

17 and insert:

18 establish policies and procedures that include a
19 provision permitting a law enforcement officer using a
20 body camera to review body camera footage before
21 taking certain actions; providing an effective date.

By Senator Steube

23-00631A-17

2017624__

1 A bill to be entitled
 2 An act relating to body cameras; amending s. 943.1718,
 3 F.S.; requiring law enforcement agencies that permit
 4 law enforcement officers to wear body cameras to
 5 establish policies and procedures that include general
 6 guidelines for the law enforcement officers to review
 7 relevant audio and video recordings before taking
 8 certain actions; providing an effective date.

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

11
 12 Section 1. Subsection (2) of section 943.1718, Florida
 13 Statutes, is amended to read:

14 943.1718 Body cameras; policies and procedures.—

15 (2) A law enforcement agency that permits its law
 16 enforcement officers to wear body cameras shall establish
 17 policies and procedures addressing the proper use, maintenance,
 18 and storage of body cameras and the data recorded by body
 19 cameras. The policies and procedures must include:

20 (a) General guidelines for the proper use, maintenance, and
 21 storage of body cameras.

22 (b) Any limitations on which law enforcement officers are
 23 permitted to wear body cameras.

24 (c) Any limitations on law-enforcement-related encounters
 25 and activities in which law enforcement officers are permitted
 26 to wear body cameras.

27 (d) General guidelines for law enforcement officers who use
 28 body cameras to review the relevant audio and video recordings
 29 from the body cameras before writing a report or before
 30 providing a statement about an incident in which the officers
 31 were involved.

32 (e)~~(d)~~ General guidelines for the proper storage,

Page 1 of 2

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

23-00631A-17

2017624__

33 retention, and release of audio and video data recorded by body
 34 cameras.

35 Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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3/6/2017

Meeting Date

624

Bill Number (if applicable)

837386

Amendment Barcode (if applicable)

Topic Body Cameras

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850-877-2165

Email mdunagan@flsheriffs.org

Speaking: For Against Information

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

Representing Florida Sheriffs 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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March 6, 2017

Meeting Date

SB 624

Bill Number (if applicable)

837386

Amendment Barcode (if applicable)

Topic Body Cameras

Name Shane Bennett

Job Title Chief of Police

Address 2739 Lake Street

Street

Lawtey

City

FL

State

32058

Zip

Phone 904-782-3751

Email lawteypolicepd@flcjr.net

Speaking: For Against Information

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

Representing The Florida Police Chiefs 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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5 Mch 17
Meeting Date

624
Bill Number (if applicable)

Topic Body Camera's

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe St
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email

Speaking: For Against Information

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

Representing Fla. 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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3/6/2017

624

Meeting Date

Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

March 6, 2017

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

SB 624

Meeting Date

Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Shane Bennett

Job Title Chief of Police

Address 2739 Lake Street

Phone 904-782-3751

Lawtey FL 32058

Email lawteypolicepd@flgin.net

Speaking: For Against Information

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

Representing The Florida Police Chiefs 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)

3/6/2017

Meeting Date

624

Bill Number (if applicable)

Topic Body Cameras for Law Enforcement

Amendment Barcode (if applicable)

Name Matt Pickett

Job Title Lobbyist

Address 300 East Brevard St. Street

Phone

Tallahassee FL 32301 City State Zip

Email

Speaking: [X] For [] Against [] Information

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

Representing Florida Blice Benevolent Association

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)

5 Mch 17
Meeting Date

624
Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 So. Monroe
Street

Phone 850.510.9922

Fall FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. 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

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

February 17, 2017

The Honorable Randolph Bracy
Florida Senate
213 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Bracy,

I am writing this letter because my bill, SB 624: Body Cameras, has been referred to the Senate Criminal Justice Committee. 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 dark ink, appearing to read "W. Gregory Steube".

W. Gregory Steube, District 23

REPLY TO:

- 722 Apex Road, Unit A, 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 Committee on Criminal Justice

BILL: SCR 920

INTRODUCER: Senator Farmer

SUBJECT: Groveland Four

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Favorable
2.			JU	
3.			RC	

I. Summary:

SCR 920 acknowledges the grave injustice perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, who came to be known as the “Groveland Four,” exonerates the four men, offers a formal and heartfelt apology to these men and to their families; and urges the Governor and Cabinet to pardon Walter Irvin and Charles Greenlee.

II. Present Situation:

Concurrent Resolutions

A concurrent resolution is a resolution that is adopted by both houses and is limited to procedural legislative matters and ratification of federal constitutional amendments.¹ Florida Senate Rule 3.6 requires concurrent resolutions to contain a proper title, as defined in Article III, Section 6 of the State Constitution. Standard rules of capitalization apply. Concurrent resolutions are required to contain the resolving clause: “Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:”

Florida Senate Rule 4.13 requires that each concurrent resolution be read by title on two separate days before a voice vote on adoption, unless decided otherwise by a two-thirds vote of those Senators present.

Exoneration and Pardon

One of the legal definitions of “exoneration” is the absolving of a charge or imputation of guilt.² The power to pardon is granted by the Florida Constitution to the Governor with the consent of

¹ The Florida Senate, *Glossary, Bills: Resolution: Concurrent Resolution (SCR, HCR)*, available at <http://www.flsenate.gov/Reference/Glossary> (last visited March 2, 2017).

² Ballentine’s Law Dictionary (3rd Edition 2010).

at least two Cabinet members.³ Except in cases of treason and in cases when impeachment results in conviction, the Governor may, by executive order filed with the Secretary of State, suspend collection of fines and forfeitures, grant reprieves not exceeding 60 days, and with the approval of two members of the Cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.⁴

III. Effect of Proposed Changes

The Senate Concurrent Resolution provides a number of whereas clauses regarding the following background of the Groveland Four.

On July 16, 1949, a 17-year-old white woman and her estranged husband reported to police that they had been attacked and that she had been raped by four black men after the car in which she and her estranged husband were riding broke down on a rural road outside Groveland, in Lake County. Despite the lack of physical evidence in the case and the established alibis of the accused, Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, the four men were presumed guilty.

Walter Irvin and Samuel Shepherd, both World War II veterans, acknowledged that they had stopped by the broken-down vehicle to see if they could assist the couple, but denied any involvement in the alleged rape. Charles Greenlee, who was only 16 years old at the time, and Ernest Thomas denied ever meeting the alleged victim and her estranged husband.

After their arrest that evening, Charles Greenlee, Walter Irvin, and Samuel Shepherd were severely beaten in the basement of the county jail. Mr. Greenlee and Mr. Shepherd were coerced into confessing to the crime, while Mr. Irvin refused to admit his guilt. Ernest Thomas, who fled the county, was shot to death several days later in Madison County by members of a deputized posse of armed men.

The three surviving men, Charles Greenlee, Walter Irvin, and Samuel Shepherd, were tried and convicted in the case. Mr. Greenlee was sentenced to life imprisonment due to his young age and Mr. Irvin and Mr. Shepherd were sentenced to death.

Thurgood Marshall, then executive director of the NAACP Legal Defense and Educational Fund, took over as defense counsel and appealed the convictions of Walter Irvin and Samuel Shepherd to the United States Supreme Court. The court unanimously overturned the judgments on April 9, 1951, and ordered a retrial.⁵

Seven months later, in November 1951, while transporting Walter Irvin and Samuel Shepherd from Florida State Prison in Raiford to Tavares State Prison for a pretrial hearing, Lake County Sheriff Willis McCall and Deputy Sheriff James L. Yates shot both men on a dirt road leading into Umatilla, claiming that they had shot the handcuffed men in self-defense when the two tried to escape.

³ Fla. Const. art. IV, s. 8(a).

⁴ Section 940.01, F.S.

⁵ *Shepherd v. Florida*, 341 U.S. 50 (1951).

Samuel Shepherd died at the scene as a result of his wounds, but Walter Irvin, who pretended to be dead, survived and accused the sheriff and his deputy of attempted murder. No charges were ever brought against the officers.

Walter Irvin was retried and convicted a second time for the crime and was sentenced to death.⁶ Mr. Irvin tried to appeal his second conviction, but all attempts were denied by the appellate courts.⁷

Mr. Irvin's sentence was commuted to life in prison in 1955 by then Governor LeRoy Collins, who was not convinced of Mr. Irvin's guilt. In 1970, while visiting Lake County, Mr. Irvin, who had been paroled 2 years earlier by then Governor Claude Kirk, was found dead in his car. While Mr. Irvin's death was officially attributed to natural causes (heart attack), it is reported that Thurgood Marshall had doubts about the circumstances surrounding Mr. Irvin's death.

Charles Greenlee, who was paroled in 1962 after serving 12 years in prison, died in April 2012 at the age of 78.

On March 15, 2016, the Lake County Commission approved Proclamation 2016-26 and presented it to the families of the Groveland Four. The proclamation reportedly apologizes to the families for the injustices against Mr. Irvin, Mr. Shepherd, Mr. Greenlee, and Mr. Thomas, and urges the Governor to exonerate the men.⁸

NAACP leader Harry T. Moore and his wife, Harriette, advocated on behalf of the four men. They were killed when their home in Mims was bombed on December 25, 1951. Their efforts on behalf of the Groveland Four may have played a role in their deaths.

The resolution seeks:

- The acknowledgement that Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas were the victims of gross injustices and that the Legislature apologizes to the families of the Groveland Four and deems the four men formally exonerated;
- That the Legislature urges the Governor and Cabinet to review the cases of Walter Irvin and Charles Greenlee and to grant Mr. Irvin and Mr. Greenlee pardons; and
- That a copy of this resolution be provided to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, and the families of the Groveland Four.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶ See *Irvin v. Chapman*, 75 So. 2d 591 (Fla. 1954).

⁷ *Id.* See also *Irvin v. State*, 66 So. 2d 288 (Fla. 1953).

⁸ Lake County Commission, Minutes of a Regular Meeting of the Board of County Commissioners (March 15, 2016), available at http://www.lakecountyclerk.org/forms/board_minutes/2016/03/2016-03-15_Regular_Meeting.htm (last visited February 28, 2017). Christal Hayes, *Groveland Four families thankful for Lake apology, still seek exoneration*, Orlando Sentinel (March 15, 2016), available at <http://www.orlandosentinel.com/news/lake/os-groveland-four-families-lake-county-20160315-story.html> (last visited February 28, 2017).

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A person has been exonerated if he or she was convicted of a crime and later was found to be innocent of the crime or relieved of all consequences of the criminal conviction by a government official or body with the authority to take that action.⁹ “The official action may be:

- A complete pardon by a governor or other competent authority, whether or not the pardon is designated as based on innocence;
- An acquittal of all charges factually related to the crime for which the person was originally convicted; or
- A dismissal of all charges related to the crime for which the person was originally convicted, by a court or by a prosecutor with the authority to enter that dismissal.”¹⁰

VIII. Statutes Affected:

None.

⁹ The National Registry of Exonerations, *Glossary*, available at <https://www.law.umich.edu/special/exoneration/Pages/glossary.aspx> (last visited March 2, 2017). The National Registry of Exonerations is a joint project of the Newkirk Center for Science & Society at University of California Irvine, the University of Michigan Law School, and Michigan State University College of Law.

¹⁰ *Id.*

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Farmer

34-00535A-17

2017920__

Senate Concurrent Resolution

A concurrent resolution acknowledging the grave injustice perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, who came to be known as the "Groveland Four," exonerating the four men, offering a formal and heartfelt apology to these victims of racial hatred and to their families; and urging the Governor and Cabinet to pardon Walter Irvin and Charles Greenlee.

WHEREAS, on July 16, 1949, a 17-year-old white woman and her estranged husband reported to police that they had been attacked and that she had been raped by four black men after the car in which she and her estranged husband were riding broke down on a rural road outside Groveland, in Lake County, and

WHEREAS, despite the lack of physical evidence in the case and the established alibis of the accused, Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, the four men were presumed guilty, and

WHEREAS, Walter Irvin and Samuel Shepherd, both World War II veterans, acknowledged that they had stopped by the broken-down vehicle to see if they could assist the couple, but denied any involvement in the alleged rape, and

WHEREAS, Charles Greenlee, who was only 16 years old at the time, and Ernest Thomas denied ever meeting the alleged victim and her estranged husband, and

WHEREAS, after their arrest that evening, Charles Greenlee, Walter Irvin, and Samuel Shepherd were severely beaten in the basement of the county jail, and Mr. Greenlee and Mr. Shepherd

Page 1 of 4

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

34-00535A-17

2017920__

were coerced into confessing to the crime, while Mr. Irvin refused to admit his guilt, and

WHEREAS, Ernest Thomas, who fled the county, was shot to death several days later in Madison County by members of a deputized posse of armed men, and

WHEREAS, the three surviving men, Charles Greenlee, Walter Irvin, and Samuel Shepherd, were tried and convicted in the case, with Mr. Greenlee sentenced to life imprisonment due to his age and Mr. Irvin and Mr. Shepherd sentenced to death, and

WHEREAS, Thurgood Marshall, then executive director of the NAACP Legal Defense and Educational Fund, appealed the convictions of Walter Irvin and Samuel Shepherd to the United States Supreme Court, which unanimously overturned the judgments on April 9, 1951, and ordered a retrial, and

WHEREAS, 7 months later, in November 1951, while transporting Walter Irvin and Samuel Shepherd from Florida State Prison in Raiford to Tavares State Prison for a pretrial hearing, Lake County Sheriff Willis McCall and Deputy Sheriff James L. Yates shot both men on a dirt road leading into Umatilla, claiming that they had shot the handcuffed men in self-defense when the two tried to escape, and

WHEREAS, Samuel Shepherd died at the scene as a result of his wounds, but Walter Irvin, who pretended to be dead, survived and accused the sheriff and his deputy of attempted murder, but no charges were ever brought against the officers, and

WHEREAS, Walter Irvin was retried and convicted a second time for the crime and was sentenced to death, despite the fact that the state attorney allegedly withheld exculpatory medical evidence from the defense, and despite testimony from a former

Page 2 of 4

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

34-00535A-17

2017920__

59 Federal Bureau of Investigation criminologist stating that he
60 believed forensic evidence had been manufactured by deputies,
61 and

62 WHEREAS, Mr. Irvin's sentence was commuted to life in
63 prison in 1955 by then Governor LeRoy Collins, who was not
64 convinced of Mr. Irvin's guilt, and

65 WHEREAS, in 1970, while visiting Lake County, Walter Irvin,
66 who had been paroled 2 years earlier by then Governor Claude
67 Kirk, was found dead in his car, and, while Mr. Irvin's death
68 was officially attributed to natural causes, Thurgood Marshall
69 reportedly had doubts about the circumstances surrounding his
70 death, and

71 WHEREAS, Charles Greenlee, who was paroled in 1962 after
72 serving 12 years in prison, died in April 2012 at the age of 78,
73 and

74 WHEREAS, the grave injustice perpetrated against the
75 Groveland Four extended far beyond Lake and Madison Counties and
76 is believed to have played a role in the deaths of National
77 Association for the Advancement of Colored People leader Harry
78 T. Moore and his wife, Harriette, who had advocated on behalf of
79 the four men and were killed when their home in Mims was bombed
80 on December 25, 1951, and

81 WHEREAS, the people of this state recognize that no action
82 on the part of the Legislature can make right the egregious
83 wrongs perpetrated against Charles Greenlee, Walter Irvin,
84 Samuel Shepherd, and Ernest Thomas and their families by the
85 criminal justice system, law enforcement agencies, and
86 individuals whose actions were fueled by racial hatred, and

87 WHEREAS, the families of Charles Greenlee, Walter Irvin,

34-00535A-17

2017920__

88 Samuel Shepherd, and Ernest Thomas have demanded that steps be
89 taken to clear the men's names, NOW, THEREFORE,

90
91 Be It Resolved by the Senate of the State of Florida, the House
92 of Representatives Concurring:

93
94 That we hereby acknowledge that Charles Greenlee, Walter
95 Irvin, Samuel Shepherd, and Ernest Thomas were the victims of
96 gross injustices and that we apologize to the families of the
97 Groveland Four for all of the aforementioned wrongs and deem the
98 four men formally exonerated.

99 BE IT FURTHER RESOLVED that the Legislature urges the
100 Governor and Cabinet to review the cases of Walter Irvin and
101 Charles Greenlee and to grant Mr. Irvin and Mr. Greenlee
102 pardons.

103 BE IT FURTHER RESOLVED that a copy of this resolution be
104 provided to the Governor, the Attorney General, the Chief
105 Financial Officer, the Commissioner of Agriculture, and the
106 families of the Groveland Four as a tangible token of the
107 sentiments expressed herein.

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 6, 2017

Meeting Date

SCR 920

Bill Number (if applicable)

Topic Groveland Four

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address PO Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

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 Committee on Criminal Justice

BILL: SB 934

INTRODUCER: Senator Thurston

SUBJECT: Restoration of Civil Rights

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 934 may be cited as the “Restoration of Civil Rights Act.” The bill provides that a person convicted of a felony (except for crimes excluded by the bill) shall have his or her civil rights restored upon completion of his or her sentence. “Completion of sentence” occurs when a person is released from incarceration upon expiration of his or her sentence and has completed all other terms and conditions of the sentence or subsequent supervision. It also occurs if a person has not been incarcerated for the felony but has completed all terms and conditions of supervision.

Persons convicted of any of the following offenses are ineligible for automatic restoration of civil rights:

- Murder;
- Aggravated manslaughter of a child;
- Sexual battery;
- Incest;
- Sexual performance by a child; or
- Selling or buying minors.

A person is also ineligible for automatic restoration of civil rights if he or she was convicted of treason or if his or her impeachment has resulted in conviction.

However, the bill does not impair the ability of a person convicted of a felony to apply for executive clemency.

The bill requires a court to provide a defendant certain notice about restoration of civil rights before accepting a guilty plea or imposing a sentence for a felony.

The Secretary of State is required to develop and implement a program to educate members of the public, attorneys, judges, election officials, and corrections officials, including parole and probation officers, about the requirements of this bill.

The bill applies retroactively to all persons who are eligible for restoration of civil rights under the bill, regardless of whether such persons were convicted or discharged from sentence before the effective date of the bill.

The bill takes effect on the effective date of SJR 270 or another amendment to the State Constitution which authorizes, or removes impediments to, enactment of this bill by the Legislature.

II. Present Situation:

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights.¹ The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction.² Other civil rights that are lost in accordance with statute include the right to serve on a jury³ and the right to possess a firearm.⁴

The power to pardon, restore civil rights, commute punishment, or remit fines and forfeitures is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members.⁵ 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 conviction⁶ if the person has:

- Received a full pardon from the Board of Executive Clemency;
- Served that maximum term of the sentence imposed upon him or her; or
- Been granted his or her final release by the Florida Commission on Offender Review.

The Governor and Cabinet sit as the Board of Executive Clemency (Clemency Board) and the Office of Executive Clemency assists in the acceptance, review, and recommendation of applications for clemency.⁷ The Rules of Executive Clemency set forth the eligibility and requirements for an individual to seek a full or conditional pardon, restore civil rights, commute punishment, or remit fines and forfeitures.⁸ An individual seeking clemency submits an application to the Office of Executive Clemency and the application is forwarded to the Florida Commission on Offender Review for investigation, report, and recommendation.⁹

¹ Section 944.292, F.S.

² Article IV, s. 4, Fla. Const.

³ Section 40.013, F.S.

⁴ Sections 790.06(2)(d) and (k) and 790.23, F.S.

⁵ Article IV, s. 8(a), Fla. Const. See also s. 940.01, F.S.

⁶ Restoration does not relieve a person of “registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.” Rules of Executive Clemency 4.I.(G). Additionally the Rules of Executive Clemency require a separate application to restore the rights to possess, own, or use a firearm. Rules of Executive Clemency 4.I.(F) and (G) and 5(D) and (E).

⁷ Rules of Executive Clemency 2(B).

⁸ Rules of Executive Clemency 4. Article IV, s. 8, Fla. Const.

⁹ Rules of Executive Clemency 6(A) and 7. See also s. 940.03, F.S.

Eligibility for restoration of civil rights without a hearing is for less serious offenses and requires that five years have passed since the date of completion of all sentences and conditions of supervision imposed. The person may not have pending criminal charges and must have paid all restitution, be a citizen of the United States, and, if convicted in a court other than a Florida court, be a legal resident of Florida.¹⁰ The person also is not eligible for restoration of civil rights if he or she committed one of a number of crimes, such as murder, sexual battery, or kidnapping.¹¹

Eligibility for restoration of civil rights with a hearing requires that seven years have passed since the date of completion of all sentences and conditions of supervision imposed for all felony convictions. The person must have paid all restitution 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.¹²

III. Effect of Proposed Changes:

Short Title

The short title of the bill is the “Restoration of Civil Rights Act.”

Findings and Purpose

The bill provides the following Legislative findings:

- The exercise of civil rights is a fundamental aspect of citizenship. Restoring civil rights allows former felons to participate in public service, serve on juries, and pursue chosen occupations.
- Restoring civil rights helps felons who have completed their sentences to reintegrate into society. Having opportunities to fully participate in society reinforces their ties to their communities and may help to prevent recidivism.
- Under current law, all persons convicted of felonies permanently lose many civil rights unless they receive discretionary executive clemency.
- The restoration of civil rights through the clemency process is cumbersome, costly, and produces long delays. The clemency process imposes administrative burdens on the state and economic burdens on state taxpayers and should be reserved for extraordinary cases. Streamlining the restoration process for the majority of former felons will advance administrative efficiency, fiscal responsibility, fairness, and democracy.

The bill provides that its purpose is to “strengthen democratic institutions by enabling persons who have completed their felony sentences to become productive members of society and to streamline procedures for restoring civil rights.”

¹⁰ Rules of Executive Clemency 9(A)

¹¹ Rules of Executive Clemency 9(A)4.

¹² Rule of Executive Clemency 10(A).

Restoration of Civil Rights

The bill creates s. 944.294, F.S., to provide that a person convicted of a felony¹³ shall have his or her civil rights restored upon completion of his or her sentence. “Completion of sentence” occurs when a person is released from incarceration upon expiration of his or her sentence and has completed all other terms and conditions of the sentence or subsequent supervision. It also occurs if a person has not been incarcerated for the felony but has completed all terms and conditions of supervision.

Persons ineligible for restoration of civil rights.

Persons convicted of any of the following offenses are ineligible for automatic restoration of civil rights under the bill:

- Murder;¹⁴
- Aggravated manslaughter of a child;¹⁵
- Sexual battery;¹⁶
- Incest;¹⁷
- Sexual performance by a child;¹⁸ or
- Selling or buying minors.¹⁹

A person is also ineligible for automatic restoration of civil rights if he or she was convicted of treason or if his or her impeachment has resulted in conviction.²⁰

However, the bill does not impair the ability of a person convicted of a felony to apply for executive clemency pursuant to the Florida Constitution.

Notification by the Court

Before accepting a plea of guilty or nolo contendere to a felony without trial or, if a trial is held, before imposing sentence for a felony, a court shall notify the defendant as follows:

- Felonies that preclude a person from being eligible for restoration of civil rights as enumerated above do not preclude a person from applying for executive clemency.
- If the felony does not preclude a person from being eligible for restoration of civil rights as enumerated above, the defendant must complete his or her sentence before his or her civil rights are restored, except for the right to own, possess, or use firearms.

Secretary of State

The bill requires the Secretary of State to develop and implement a program to educate members of the public, attorneys, judges, election officials, and corrections officials, including parole and

¹³ Except those felonies enumerated in s. 944.294(3), F.S., created by the bill.

¹⁴ Section 782.04, F.S.

¹⁵ Section 782.07(3), F.S.

¹⁶ Section 794.011, F.S.

¹⁷ Section 836.04, F.S.

¹⁸ Section 827.071, F.S.

¹⁹ Section 847.0145, F.S.

²⁰ Article IV, s. 8, Fla. Const.

probation officers, about the requirements of this bill. In doing so, the Secretary of State shall ensure that:

- Judges are informed of their obligation to notify criminal defendants of the potential loss and restoration of their civil rights.
- Accurate and complete information about the civil rights of people who have been charged with or convicted of crimes, whether disenfranchising or not, is made available through a single publication to government officials and the public.

Suspension of Civil Rights

Section 944.292, F.S., is amended to provide that in addition to a full pardon, conditional pardon, or through clemency, civil rights may be restored as provided for in this bill.

Release Orientation Program

Section 944.705, F.S., is amended to require the Department of Corrections to include instruction on restoration of civil rights in the release orientation program.

Retroactivity

The bill applies retroactively to all persons who are eligible for restoration of civil rights, regardless of whether such persons were convicted or discharged from sentence before the effective date of this bill.

Effective Date

The bill takes effect on the effective date of SJR 270 or another amendment to the State Constitution which authorizes, or removes impediments to, enactment of this bill by the Legislature.

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 impact to the Department of State is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 1975, Florida Governor Askew requested an advisory opinion on whether the Florida Correctional Reform Act presented an infringement upon the constitutional power of the Governor and Cabinet to restore civil rights. The Florida Correctional Reform Act provided for suspension and automatic reinstatement of civil rights for prisoners through statute. The Florida Supreme Court answered in the affirmative and determined that it was a clear infringement upon the constitutional power of the Governor to restore civil rights through executive clemency.²¹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 944.292 and 944.705.

This bill creates section 944.294 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.)

None.

B. Amendments:

None.

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

²¹ In re Advisory Opinion of Governor Civil Rights, 306 So. 2d 520 (Fla. 1975).



962638

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 55 - 96

and insert:

(2) For purposes of this section, the term "completion of sentence" occurs when a person is released from incarceration upon expiration of his or her sentence and has completed all other terms and conditions of the sentence or subsequent supervision or, if the person has not been incarcerated for the felony offense, has completed all terms and conditions of



962638

11 supervision imposed on him or her.

12 (3) (a) A person is ineligible for restoration of civil
13 rights under this section if he or she was convicted of a crime
14 defined by any of the following:

15 1. Section 782.04, relating to murder.

16 2. Section 782.07(3), relating to aggravated manslaughter
17 of a child.

18 3. Section 794.011, relating to sexual battery.

19 4. Section 826.04, relating to incest.

20 5. Section 827.071, relating to sexual performance by a
21 child.

22 6. Section 847.0145, relating to selling or buying of
23 minors, otherwise transferring or obtaining custody or control
24 of minors, or offering to do the same.

25 (b) A person is ineligible for restoration of civil rights
26 under this section if he or she was convicted of treason or if
27 his or her impeachment has resulted in conviction, as referred
28 to in s. 8, Art. IV of the State Constitution.

29 (4) This section does not impair the ability of a person
30 convicted of a felony to apply for executive clemency under s.
31 8, Art. IV of the State Constitution.

32 (5) A court shall, before accepting a plea of guilty or
33 nolo contendere to a felony without trial or, if a trial is
34 held, before imposing sentence for a felony, notify the
35 defendant as follows:

36 (a) If the felony is described in subsection (3), that
37 conviction will result in permanent loss of civil rights unless
38 he or she receives executive clemency under s. 8, Art. IV of the
39 State Constitution.



962638

40 (b) If the felony is not described in subsection (3), that
41 conviction will result in loss of civil rights until the
42 defendant completes his or her sentence and that civil rights
43 will be restored thereafter.

44

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

46 And the title is amended as follows:

47 Delete lines 7 - 8

48 and insert:

49 rights after completion of his or her sentence of



329812

LEGISLATIVE ACTION

Senate

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House

The Committee on Criminal Justice (Brandes) recommended the following:

1 **Senate Substitute for Amendment (962638) (with title**
2 **amendment)**

3
4 Delete lines 54 - 96

5 and insert:

6 that felony restored five years after completion of his or her
7 sentence.

8 (2) For purposes of this section, the term "completion of
9 sentence" occurs when a person is released from incarceration
10 upon expiration of his or her sentence and has completed all



329812

11 other terms and conditions of the sentence or subsequent
12 supervision or, if the person has not been incarcerated for the
13 felony offense, has completed all terms and conditions of
14 supervision imposed on him or her.

15 (3) (a) A person is ineligible for restoration of civil
16 rights under this section if he or she was convicted of a crime
17 defined by any of the following:

18 1. Section 782.04, relating to murder.

19 2. Section 782.07(3), relating to aggravated manslaughter
20 of a child.

21 3. Section 794.011, relating to sexual battery.

22 4. Section 826.04, relating to incest.

23 5. Section 827.071, relating to sexual performance by a
24 child.

25 6. Section 847.0145, relating to selling or buying of
26 minors, otherwise transferring or obtaining custody or control
27 of minors, or offering to do the same.

28 (b) A person is ineligible for restoration of civil rights
29 under this section if he or she was convicted of treason or if
30 his or her impeachment has resulted in conviction, as referred
31 to in s. 8, Art. IV of the State Constitution.

32 (4) This section does not impair the ability of a person
33 convicted of a felony to apply for executive clemency under s.
34 8, Art. IV of the State Constitution.

35 (5) A court shall, before accepting a plea of guilty or
36 nolo contendere to a felony without trial or, if a trial is
37 held, before imposing sentence for a felony, notify the
38 defendant as follows:

39 (a) If the felony is described in subsection (3), that



329812

40 conviction will result in permanent loss of civil rights unless
41 he or she receives executive clemency under s. 8, Art. IV of the
42 State Constitution.

43 (b) If the felony is not described in subsection (3), that
44 conviction will result in loss of civil rights until the
45 defendant completes his or her sentence and that civil rights
46 will be restored thereafter.

47
48 ===== T I T L E A M E N D M E N T =====

49 And the title is amended as follows:

50 Delete lines 7 - 8

51 and insert:

52 rights five years after completion of his or her
53 sentence of



836862

LEGISLATIVE ACTION

Senate

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House

The Committee on Criminal Justice (Thurston) recommended the following:

Senate Amendment

Delete lines 79 - 80
and insert:
his or her impeachment has resulted in conviction, pursuant to
s. 8, Art. IV of the State Constitution.



352694

LEGISLATIVE ACTION

Senate

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House

The Committee on Criminal Justice (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete lines 105 - 109

and insert:

(b) Accurate and complete information about the loss and restoration of civil rights is made available through a single publication to government officials and the public.

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

And the title is amended as follows:



352694

11 Delete lines 14 - 15
12 and insert:
13 implement a program to educate the public about civil
14 rights;

By Senator Thurston

33-01358-17

2017934__

1 A bill to be entitled
 2 An act relating to restoration of civil rights;
 3 providing a short title; providing legislative
 4 findings and purpose; creating s. 944.294, F.S.;

5 defining the term "completion of sentence"; providing
 6 for automatic restoration of a former felon's civil
 7 rights, other than the right to own, possess, or use
 8 firearms, after completion of his or her sentence of
 9 incarceration and conditions of supervision; providing
 10 conditions for and exemptions from automatic
 11 restoration; requiring a court to notify a defendant
 12 of specified information under certain circumstances;
 13 requiring the Secretary of State to develop and
 14 implement a program to educate the public about the
 15 civil rights of people who have felony convictions;
 16 amending ss. 944.292 and 944.705, F.S.; conforming
 17 provisions; providing retroactive applicability;
 18 providing a contingent effective date.

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

21
 22 Section 1. Short title.—This act may be cited as the
 23 "Restoration of Civil Rights Act."

24 Section 2. Findings and purpose.—

25 (1) FINDINGS.—The Legislature finds that:

26 (a) The exercise of civil rights is a fundamental aspect of
 27 citizenship. Restoring civil rights allows former felons to
 28 participate in public service, serve on juries, and pursue
 29 chosen occupations.

Page 1 of 5

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

33-01358-17

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30 (b) Restoring civil rights helps felons who have completed
 31 their sentences to reintegrate into society. Having
 32 opportunities to fully participate in society reinforces their
 33 ties to their communities and may help to prevent recidivism.
 34 (c) Under current law, all persons convicted of felonies
 35 permanently lose many civil rights unless they receive
 36 discretionary executive clemency.
 37 (d) The restoration of civil rights through the clemency
 38 process is cumbersome, costly, and produces long delays. The
 39 clemency process imposes administrative burdens on the state and
 40 economic burdens on state taxpayers and should be reserved for
 41 extraordinary cases. Streamlining the restoration process for
 42 the majority of former felons will advance administrative
 43 efficiency, fiscal responsibility, fairness, and democracy.
 44 (2) PURPOSE.—The purposes of this act are to strengthen
 45 democratic institutions by enabling persons who have completed
 46 their felony sentences to become productive members of society
 47 and to streamline procedures for restoring civil rights.
 48 Section 3. Section 944.294, Florida Statutes, is created to
 49 read:
 50 944.294 Restoration of civil rights.—
 51 (1) A person who has been convicted of a felony, other than
 52 a felony set forth in subsection (3), shall have his or her
 53 civil rights that are lost as a consequence of a conviction of
 54 that felony restored upon completion of his or her sentence.
 55 However, this subsection does not apply to restoration of the
 56 right to own, possess, or use firearms.
 57 (2) For purposes of this section, "completion of sentence"
 58 occurs when a person is released from incarceration upon

Page 2 of 5

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

33-01358-17 2017934__

59 expiration of his or her sentence and has completed all other
 60 terms and conditions of the sentence or subsequent supervision
 61 or, if the person has not been incarcerated for the felony
 62 offense, has completed all terms and conditions of supervision
 63 imposed on him or her.

64 (3) (a) A person is ineligible for restoration of civil
 65 rights under this section if he or she was convicted of a crime
 66 defined by any of the following:

- 67 1. Section 782.04, relating to murder.
- 68 2. Section 782.07(3), relating to aggravated manslaughter
 69 of a child.
- 70 3. Section 794.011, relating to sexual battery.
- 71 4. Section 826.04, relating to incest.
- 72 5. Section 827.071, relating to sexual performance by a
 73 child.
- 74 6. Section 847.0145, relating to selling or buying minors,
 75 otherwise transferring or obtaining custody or control of
 76 minors, or offering to do the same.

77 (b) A person is ineligible for restoration of civil rights
 78 under this section if he or she was convicted of treason or if
 79 his or her impeachment has resulted in conviction, as referred
 80 to in s. 8, Art. IV of the State Constitution.

81 (4) This section does not impair the ability of a person
 82 convicted of a felony to apply for executive clemency under s.
 83 8, Art. IV of the State Constitution.

84 (5) A court shall, before accepting a plea of guilty or
 85 nolo contendere to a felony without trial or, if a trial is
 86 held, before imposing sentence for a felony, notify the
 87 defendant as follows:

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88 (a) If the felony is described in subsection (3), that
 89 conviction will result in permanent loss of civil rights unless
 90 he or she receives executive clemency under s. 8, Art. IV of the
 91 State Constitution.

92 (b) If the felony is not described in subsection (3), that
 93 conviction will result in loss of civil rights until the
 94 defendant completes his or her sentence and that civil rights
 95 will be restored thereafter, except for the right to own,
 96 possess, or use firearms.

97 (6) The Secretary of State shall develop and implement a
 98 program to educate members of the public, attorneys, judges,
 99 election officials, and corrections officials, including parole
 100 and probation officers, about the requirements of this section,
 101 ensuring that:

102 (a) Judges are informed of their obligation to notify
 103 criminal defendants of the potential loss and restoration of
 104 their civil rights as required by subsection (5).

105 (b) Accurate and complete information about the civil
 106 rights of people who have been charged with or convicted of
 107 crimes, whether disenfranchising or not, is made available
 108 through a single publication to government officials and the
 109 public.

110 Section 4. Subsection (1) of section 944.292, Florida
 111 Statutes, is amended to read:

112 944.292 Suspension of civil rights.—

113 (1) Upon conviction of a felony as defined in s. 10, Art. X
 114 of the State Constitution, the civil rights of the person
 115 convicted shall be suspended in Florida until such rights are
 116 restored by a full pardon, conditional pardon, or restoration of

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117 civil rights granted pursuant to s. 8, Art. IV of the State
118 Constitution or by restoration of civil rights pursuant to s.
119 944.294.

120 Section 5. Paragraph (g) of subsection (2) of section
121 944.705, Florida Statutes, is redesignated as paragraph (h), and
122 a new paragraph (g) is added to that subsection to read:

123 944.705 Release orientation program.—

124 (2) The release orientation program instruction must
125 include, but is not limited to:

126 (g) Restoration of civil rights.

127 Section 6. This act applies retroactively to all persons
128 who are eligible for restoration of civil rights under the terms
129 of the act, regardless of whether such persons were convicted or
130 discharged from sentence before the effective date of this act.

131 Section 7. This act shall take effect on the effective date
132 of SJR 270 or another amendment to the State Constitution which
133 authorizes, or removes impediments to, enactment of this act by
134 the Legislature.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/10/2017

Meeting Date

934

Bill Number (if applicable)

Topic Restoration of Civil Rights

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Court

Phone 772-204-1792

tallahassee FL 32301

Email twvfadvocacy@gmail.com

Speaking: [X] For [] Against [] Information

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

Representing League of Women Voters of Florida

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)

March 6, 2017

Meeting Date

SB 934

Bill Number (if applicable)

Topic Restoration of Civil Rights

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Avenue

Phone 352-338-7370

Street

Gainesville

FL

32601

Email scotts@pdo8.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)

3/6/17
Meeting Date

SB 934
Bill Number (if applicable)

Topic Rights

Amendment Barcode (if applicable)

Name Jode James

Job Title Ex DIR

Address 1375 Cypress
Street

Phone 321 253 3673

Melbourne, FL
City State Zip

Email JamesFlorida@gmail.com

Speaking: For Against Information

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

Representing FLORIDA CA

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 Committee on Criminal Justice

BILL: SB 448

INTRODUCER: Senator Brandes

SUBJECT: Prearrest Diversion Programs

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 448 creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program. The bill prescribes a model program that local communities may adopt. The model program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation to an adult who commits a nonviolent misdemeanor offense, admits to committing the offense, has not previously been arrested, and has not previously received an adult civil citation. An adult is ineligible for a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation.

An adult who agrees to a civil citation must successfully complete a program that includes interventions and community service hours. If the adult successfully completes the program, an arrest record may not be associated with the offense. If the adult does not successfully complete the program, the law enforcement agency that issued the citation shall criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

The bill has no impact on state funds. The creation of an adult civil citation program could result in cost savings for local governments. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

Through the years the term "diversion" has been used broadly to refer to programs that allow an individual to avoid incarceration but still result in a criminal conviction. In recent years, the term diversion has also begun to be used to refer to programs that address an individual's behavior but

do not result in a conviction. “At either end of the diversion spectrum, the overriding goals are the same – to maximize the opportunity for success and minimize the likelihood of recidivism.”¹

An example of diversion is prearrest diversion. One form of prearrest diversion is a civil citation program where a law enforcement officer may issue a civil citation to an individual who commits an eligible misdemeanor offense (as determined by the prearrest diversion program), meets other eligibility requirements, and agrees to participate in and successfully complete a program (interventions and sanctions, including community service hours). If the individual successfully completes the program, he or she does not have an arrest or arrest record.²

Juvenile civil citation programs are in operation throughout the state and are recommended by Florida law.³ Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults.

Juvenile Civil Citation

Section 985.12, F.S., encourages local entities to establish juvenile civil citation programs. The statute provides a framework for a modal juvenile civil citation program, which provides an alternative to custody by the Department of Juvenile Justice (DJJ) for children who commit nonserious delinquent acts.⁴ Under the model program, if a juvenile admits to committing a misdemeanor⁵ a law enforcement officer has the discretion to:

- Issue a warning or inform the juvenile’s parent of the child’s infraction;
- Issue a civil citation or require participation in a similar diversion program; or
- Arrest the juvenile.⁶

These programs are discretionary⁷ to participate in by the child and require the youth to complete no more than 50 community service hours. The programs may also require participation in intervention services appropriate to the identified needs of the youth, including family counseling, urinalysis monitoring, and substance abuse and mental health treatment services.⁸

¹ 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%20Diversio%20Report_web.pdf (last visited February 20, 2017).

² Civil Citation Network, *Adult Civil Citation Program*, (revised September 2013), pg. 2, available at <http://www.discvillage.com/DOCS/AdultCivilCitationBrochure.pdf> (last visited February 20, 2017).

³ Section 985.12, F.S.

⁴ Section 985.12(1), F.S.

⁵ Misdemeanors involving sexual or firearm offenses are currently ineligible for civil citation programs under the DJJ Civil Citation Model Plan. *2017 Bill Analysis for SB 196*, Department of Juvenile Justice, (January 18, 2017) (on file with the Senate Criminal Justice Committee).

⁶ Section 985.12(1), F.S.

⁷ See example, Nineteenth Judicial Circuit Court of Florida, Programs and Services, Juvenile, Civil Citation, *Juvenile Programs – Civil Citation*, available at <http://www.circuit19.org/programs/prgjuvenilecc.html> (last visited February 20, 2017).

⁸ Section 985.12(1), F.S.

The Leon County Adult Civil Citation Program

The American Bar Association has observed: “Although Florida’s civil citation programs are focused on juveniles, the guidelines and principles inherent in the programs are generally applicable to adults, as well.”⁹ Leon County operates an adult civil citation program.¹⁰

The Leon County’s program provides a law enforcement officer with the discretion to issue a civil citation once probable cause has been determined to arrest an adult and the officer has advised the adult of his or her Miranda rights and obtained an admission.¹¹ The law enforcement officer must then verify whether the adult meets all of the following criteria:

- The offense is one of the following misdemeanor offenses:
 - Possession of alcohol by a person under 21 years of age;
 - Possession of less than 20 grams of marijuana;
 - Possession of drug paraphernalia;
 - An open house party violation;
 - Selling or giving alcoholic beverages to a minor;
 - Criminal mischief (restitution may not exceed \$50);
 - Trespass;
 - Non-domestic battery or assault;
 - Petit theft (restitution may not exceed \$50); or
 - Disorderly conduct.
- The adult resides within the Second Judicial Circuit;¹² and
- The adult is a first-time adult offender (no previous arrest as an adult and no previous adult civil citation).¹³

If the officer determines that the adult is eligible to participate in the adult civil citation program and that a civil citation is appropriate, the officer then must explain to the adult that participation in the adult civil citation program is voluntary.¹⁴ If the adult chooses not to participate in the adult civil citation program, the officer either issues a Notice to Appear (NTA) or transports the adult to the jail for formal booking.¹⁵

⁹ American Bar Association, Criminal Justice Section, *State Policy Implementation Project*, pg. 5, available at http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/spip_civilcitations_authcheckdam.pdf (last visited February 20, 2017).

¹⁰ Alert M. Kopak, *Top reasons to expand adult civil citation program*, Tallahassee Democrat, June 17, 2016, available at <http://www.tallahassee.com/story/opinion/2016/06/17/top-reasons-expand-adult-civil-citation-program/86046394/> (last visited February 20, 2017).

¹¹ Civil Citation Network, Pilot Adult Civil Citation Program, *Implementation Guide*, Second Judicial Circuit of Florida, (August 2013), pg. 4, available at <http://www.civilcitationnetwork.com/docs/Implementation-Guide.pdf> (last visited February 20, 2017).

¹² The Second Judicial Circuit includes the following counties: Franklin, Gadsden, Jefferson, Leon, Liberty, and Wakulla. See Florida’s Second Judicial Circuit, *Court Map*, available at <http://2ndcircuit.leoncountyfl.gov/> (last visited February 20, 2017). *Supra* note 11 at 2-3.

¹³ A prior juvenile civil citation does not make the adult ineligible for a civil citation. *Supra* note 11 at 3.

¹⁴ *Supra* note 11 at 4.

¹⁵ *Supra* note 11 at 3.

If the adult agrees to participate in the adult civil citation program, the officer issues a civil citation and the adult has 7 days to report to DISC Village, Inc.,¹⁶ for intake and assessment. Based on the results of the assessment and initial drug screening, the provider creates an individualized intervention plan. The intervention plan includes:

- Counseling sessions (at least three with a behavioral health specialist);
- Drug screening;
- Online educational intervention modules; and
- Community service hours.¹⁷

The adult must also pay a \$350 fee to participate in the program.¹⁸ If the adult successfully completes all sanctions and intervention services, the social services provider notifies the referring law enforcement agency and the person does not have an arrest record.¹⁹

If the participant does not successfully complete the program, the referring law enforcement agency is notified and then contacts the adult and attempts to issue a NTA. If the adult does not comply with arrangements to receive a NTA, an arrest affidavit and warrant are submitted. Subsequently, the adult may face prosecution if the state attorney determines that prosecution is appropriate.²⁰

Statistics on the Leon County Adult Civil Citation Program

From March 2013 to August 2016, the Tallahassee Police Department and Leon County Sheriff's Office issued 1,113 adult civil citations with an average successful completion rate of 83 percent. Of those who successfully completed the adult civil citation program, the rearrest rate was 7 percent and for those who did not successfully complete the program, the rearrest rate was 61 percent.²¹

III. Effect of Proposed Changes:

The bill creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program. The bill provides a framework for a model adult civil citation program that may be adopted. The model program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation to an adult who:

- Commits a nonviolent misdemeanor offense (as determined by the program);
- Admits to committing the offense;
- Has not previously been arrested; and
- Has not previously received an adult civil citation.

¹⁶ DISC Village, Inc., is a non-profit social services provider. DISC Village, Inc., also operates the juvenile assessment center and juvenile civil citation program that serve counties in the Second Judicial Circuit. *See Disc Village*, available at <http://www.discvillage.com/home.html> (last visited February 20, 2017).

¹⁷ *Supra* note 11 at 5, 9-10, and 12.

¹⁸ Email from Barney T. Bishop, President and CEO, Florida Smart Justice Alliance, to Senate Criminal Justice Committee Staff, (February 27, 2017) (on file with the Senate Criminal Justice Committee).

¹⁹ *Id.* at 12.

²⁰ *Id.*

²¹ Civil Citation Network, *Tallahassee/Leon County Three-Year Outcomes, Pre-arrest Diversion Adult Civil Citation Program*, p. 1, (on file with the Senate Criminal Justice Committee).

An adult is ineligible for a civil citation if the misdemeanor involves a victim and the victim objects to the issuance of the citation.

The model program requires a committee to develop policies and procedures for the program, including, eligibility criteria, program implementation and operation, the determination of the fee to be paid by adults participating in the program, and qualifying nonviolent misdemeanor offenses. The committee is comprised of:

- Representatives of participating law enforcement agencies;
- A representative of the program services provider;
- The public defender;
- The state attorney; and
- The clerk of the circuit court.

The model program committee must solicit input from other interested stakeholders when developing the program's policies and procedures. The model program may be operated by a law enforcement agency, the county or municipality, or another entity that the county or city selects.

The model program requires an adult who receives a civil citation to report for intake and be provided appropriate assessment, intervention, education, and behavioral health care services. While in the model program, the adult must complete the required community service hours and pay restitution.

The model program provides that if the adult successfully completes the program, an arrest record may not be associated with the offense. If the adult does not successfully complete the program, the law enforcement agency that issued the citation must criminally charge the adult for the original offense and refer the case to the state attorney to determine if prosecution is appropriate.

Counties and municipalities are not preempted from enacting noncriminal sanctions for a violation of an ordinance or other violation. Counties, municipalities, and public or private educational institutions are not preempted from creating their own model for a prearrest diversion program for adults. However, if a prearrest diversion program is implemented the program is encouraged to share information with other programs.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not mandate that local governments create a prearrest diversion program for adults; it only "encourages" the creation of such a program. Additionally, criminal laws are excluded from Article VII, section 18 of the Florida Constitution, relating to state mandates that affect revenues and expenditures of local governments.

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:

Participants of an adult civil citation program will likely have to pay fees to participate. For example, under the Leon County model, an eligible adult who chooses to participate in the adult civil citation program must pay a program fee of \$350, but this fee may be waived if the participant does not have the means to pay it.²² The participant may also have to pay restitution as part of an adult civil citation program.

C. Government Sector Impact:

The bill has no impact on state funds.

The bill does not mandate that local governments or public or private educational institutions create prearrest diversion programs for adults. Under the Leon County model, the adult civil citation program is self-sustaining (paid for by program fees).²³ The fee for the Leon County adult civil citation program is \$350.²⁴

Creation of an adult civil citation program could result in cost savings (e.g., reduced detention/confinement costs and 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 civil citations by those agencies, and any impact the program may have in reducing arrests.

VI. Technical Deficiencies:

None.

²² *Supra* note 18.

²³ Adult Civil Citation, *Senate Bill 618 – Pre-Arrest Diversion Programs*, November 5, 2015 (on file with the Senate Committee on Criminal Justice).

²⁴ *Supra* note 18.

VII. Related Issues:

Florida law does not specifically address adult civil citation programs or other prearrest diversion programs for adults. If the bill were to become law, the law would specifically indicate that the Legislature encourages the creation of such programs.

The approach taken by the bill affords law enforcement officers complete discretion in the decision to arrest or issue a civil citation. The Florida Supreme Court has remarked that “the discretionary judgmental power granted a police officer to make an arrest and enforce the law” is “considered basic to the police power function of governmental entities and is recognized as critical to a law enforcement officer’s ability to carry out his duties.”²⁵

SB 450 is the related public records bill linked to this bill.

VIII. Statutes Affected:

This bill creates section 901.40 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.)

None.

B. **Amendments:**

None.

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

²⁵ *Everton v. Willard*, 468 So.2d 936, 938 (Fla.1985).



353442

LEGISLATIVE ACTION

Senate

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House

The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 51 - 91

and insert:

(2) MODEL PREARREST DIVERSION PROGRAM.—Local communities and public or private educational institutions may adopt a program in which:

(a) Law enforcement officers, at their sole discretion, may issue a civil citation or similar prearrest diversion program notice to certain adults who commit a qualifying misdemeanor



353442

11 offense selected by the program. A civil citation or similar
12 prearrest diversion program notice may be issued if the adult:

13 1. Admits that he or she committed the offense or does not
14 contest the offense; and

15 2. Has not previously been arrested and has not received an
16 adult civil citation or similar prearrest diversion program,
17 unless the terms of the local adult prearrest diversion program
18 allows otherwise.

19 (b) An adult who receives a civil citation or similar
20 prearrest diversion program notice shall report for intake as
21 required by the local prearrest diversion program and shall be
22 provided appropriate assessment, intervention, education, and
23 behavioral health care services by the program. While in the
24 local prearrest diversion program, the adult shall perform
25 community service hours as specified by the program. The adult
26 shall pay restitution due to the victim as a program
27 requirement. If the adult does not successfully complete the
28 prearrest diversion program, the law enforcement officer shall
29 determine if there is good cause to arrest the adult for the
30 original misdemeanor offense and refer the case to the state
31 attorney to determine if prosecution is appropriate or allow the
32 adult to continue in the program.

33 (3) PROGRAM DEVELOPMENT, IMPLEMENTATION, AND OPERATION.—
34 Representatives of participating law enforcement agencies, a
35 representative of the program services provider, the public
36 defender, the state attorney, and the clerk of the circuit court
37 shall create the prearrest diversion program and develop its
38 policies and procedures, including, but not limited to,
39 eligibility criteria, program implementation and operation, and



353442

40 the determination of the fee, if any, to be paid by adults
41 participating in the program. In developing the policies and
42 procedures for the program, the parties must solicit input from
43 other interested stakeholders. The program may be operated by an
44 entity such as a law enforcement agency, the county or
45 municipality, or another entity selected by the county or
46 municipality.

47 (4) QUALIFYING OFFENSES.—Misdemeanor offenses

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

49 And the title is amended as follows:

50 Delete lines 9 - 28

51 and insert:

52 officers, at their sole discretion, to issue a civil
53 citation or similar prearrest diversion program notice
54 to adults under specified circumstances; requiring an
55 adult who is issued a civil citation or similar
56 prearrest diversion program notice by a participating
57 law enforcement agency to report for intake as
58 required by the prearrest diversion program; requiring
59 the program to provide certain appropriate services;
60 requiring that an adult who is issued a civil citation
61 or similar prearrest diversion program notice fulfill
62 a community service requirement; requiring the adult
63 to pay restitution to a victim; requiring the law
64 enforcement officer to determine if there is good
65 cause to arrest a adult who did not successfully
66 complete the program and refer the case to the state
67 attorney or allow the adult to continue in the
68 program; requiring specified entities to create the



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69 prearrest diversion program; requiring the entities to
70 develop policies and procedures for the development
71 and operation of the program and to solicit input from
72 other interested stakeholders; authorizing specified
73 entities to operate the program; specifying how the
74 misdemeanor offenses

By Senator Brandes

24-00112B-17

2017448__

A bill to be entitled

An act relating to prearrest diversion programs; creating s. 901.40, F.S.; encouraging local communities and public or private educational institutions to implement prearrest diversion programs for certain offenders; encouraging prearrest diversion programs to share information with other prearrest diversion programs; authorizing law enforcement officers, at their sole discretion, to issue a civil citation to adults under specified circumstances; requiring an adult who is issued a civil citation by a participating law enforcement agency to report for intake as required by the prearrest diversion program; requiring the program to provide certain appropriate services; requiring that an adult who is issued a civil citation fulfill a community service requirement; requiring the adult to pay restitution to a victim; providing for criminal prosecution of adults who fail to complete the prearrest diversion program; prohibiting an arrest record from being associated with a certain offense for an adult who successfully completes the program; requiring specified entities to create the prearrest diversion program; requiring the entities to develop policies and procedures for the development and operation of the program and to solicit input from other interested stakeholders; authorizing specified entities to operate the program; specifying how the nonviolent misdemeanor offenses that are eligible for the prearrest diversion program are selected; providing applicability; providing an effective date.

Page 1 of 4

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

24-00112B-17

2017448__

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

Section 1. Section 901.40, Florida Statutes, is created to read:

901.40 Prearrest diversion programs.—

(1) INTENT.—The Legislature encourages local communities and public or private educational institutions to implement prearrest diversion programs that afford certain adults who fulfill specified intervention and community service obligations the opportunity to avoid an arrest record. The Legislature does not mandate that a particular prearrest diversion program for adults be adopted, but finds that the adoption of the model provided in this section would allow certain adults to avoid an arrest record, while ensuring that those adults receive appropriate intervention and fulfill community service obligations. If a prearrest diversion program is implemented, the program is encouraged to share information with other prearrest diversion programs.

(2) MODEL ADULT CIVIL CITATION PROGRAM.—Local communities and public or private educational institutions may adopt a program in which:

(a) Law enforcement officers, at their sole discretion, may issue a civil citation to certain adults who commit a qualifying nonviolent misdemeanor offense selected by the program. A civil citation may be issued only if the adult admits that he or she committed the offense and if the adult has not previously been arrested and has not received an adult civil citation. However, an adult may not be issued a civil citation if the nonviolent misdemeanor offense involves a victim and the victim objects to

Page 2 of 4

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

24-00112B-17

2017448__

62 issuance of the civil citation.

63 (b) An adult who receives a civil citation shall report for
 64 intake as required by the local prearrest diversion program and
 65 shall be provided appropriate assessment, intervention,
 66 education, and behavioral health care services by the program.
 67 While in the local prearrest diversion program, the adult shall
 68 perform community service hours as specified by the program. The
 69 adult shall pay restitution due to the victim as a program
 70 requirement. If the adult does not successfully complete the
 71 prearrest diversion program, the law enforcement agency that
 72 issued the civil citation shall criminally charge the adult for
 73 the original offense and refer the case to the state attorney to
 74 determine if prosecution is appropriate. If the adult
 75 successfully completes the program, an arrest record may not be
 76 associated with the offense.

77 (3) PROGRAM DEVELOPMENT, IMPLEMENTATION, AND OPERATION.—
 78 Representatives of participating law enforcement agencies, a
 79 representative of the program services provider, the public
 80 defender, the state attorney, and the clerk of the circuit court
 81 shall create the prearrest diversion program and develop its
 82 policies and procedures, including, but not limited to,
 83 eligibility criteria, program implementation and operation, and
 84 the determination of the fee to be paid by adults participating
 85 in the program. In developing the policies and procedures for
 86 the program, the parties must solicit input from other
 87 interested stakeholders. The program may be operated by an
 88 entity such as a law enforcement agency, the county or
 89 municipality, or another entity selected by the county or
 90 municipality.

Page 3 of 4

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

24-00112B-17

2017448__

91 (4) QUALIFYING OFFENSES.—Nonviolent misdemeanor offenses
 92 that qualify the offender for a prearrest diversion program must
 93 be selected as part of the program development under subsection
 94 (3).

95 (5) APPLICABILITY.—This section does not preempt a county
 96 or municipality from enacting noncriminal sanctions for a
 97 violation of an ordinance or other violation, and it does not
 98 preempt a county, a municipality, or a public or private
 99 educational institution from creating its own model for a
 100 prearrest diversion program for adults.

101 Section 2. This act shall take effect July 1, 2017.

Page 4 of 4

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/2017

Meeting Date

SB 448

Bill Number (if applicable)

Topic Pre-arrest Diversion

Amendment Barcode (if applicable)

Name Ralph Wilson

Job Title Researcher

Address 1747 Pepper dr. Street

Phone 334 477 2749

Tallahassee FL 32304 City State Zip

Email ralph.wilson.ralph@gmail.com

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)

5 Mar 17
Meeting Date

448
Bill Number (if applicable)

Topic Pre-arrest Diversion

Amendment Barcode (if applicable)

Name Berney Bishop

Job Title Pres & CEO

Address 204 S. Monroe Ste. 201

Phone 850.510.9922

Street

Tall FL 3239

Email

City

State

Zip

Speaking: For Against Information

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

Representing Fla. 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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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/2017

Meeting Date

448

Bill Number (if applicable)

Topic Pre Arrest Diversion

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Street

Tallahassee, FL 32301

Email jorge@flapartners.com

City

State

Zip

Speaking: For Against Information

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

Representing Fla Assoc of Criminal Defense Lawyers

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)

March 6, 2017

Meeting Date

SB 448

Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking: For Against Information

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

Representing Southern Poverty Law Center

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)

3/6/2017

448

Meeting Date

Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs 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)

3/6/17

Meeting Date

SB 448

Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Counsel

Address 4500 Biscayne Blvd Street

Phone 786-363-4436

MIAMI FL City State Zip

Email KGROSS@ACLUFL.ORG

Speaking: For [checked] Against [] Information []

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

Representing ACLU OF FLORIDA

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

Lobbyist registered with Legislature: Yes [checked] 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)

March 6, 2017

SB 448

Meeting Date

Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Avenue

Phone 352-338-7370

Street

Gainesville

FL

32601

Email scotts@pdo8.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)

3/6/17
Meeting Date

448
Bill Number (if applicable)

Topic Prearrest Diversion - 80448

Amendment Barcode (if applicable)

Name Chelsea Murphy

Job Title State Director

Address 824 N. Duval St

Phone 954 557 0016

Street

Tallahassee 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 - w/ Texas Public Policy Foundry

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)

3-6-17

Meeting Date

SB448

Bill Number (if applicable)

Topic Pre Arrest Diversion

Amendment Barcode (if applicable)

Name MARK FONTAINE

Job Title Executive Director

Address 2868 Mahan Drive

Phone 878-2196

Street

Tallahassee

FL

32308

Email mfontaine@fadaa.org

City

State

Zip

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

APPEARANCE RECORD

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

3/6/17
Meeting Date

448
Bill Number (if applicable)

Topic Prearrest Diversion Programs

Amendment Barcode (if applicable)

Name Lisa Hurley

Job Title

Address 311 E. Park Ave.
Street

Phone 50.224.5081

City State Zip

Email ~~lhurley@smcfla.com~~
neff@fla

Speaking: For Against Information

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

Representing Florida Association of Counties

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

Committee Agenda Request

To: Senator Randolph Bracy,
Committee on Criminal Justice



Subject: Committee Agenda Request

Date: February 10th, 2017

I respectfully request that **Senate Bill #448**, relating to **Prearrest Diversion Programs**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

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 Committee on Criminal Justice

BILL: SB 450

INTRODUCER: Senator Brandes

SUBJECT: Public Records

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Pre-meeting
2.			GO	
3.			AP	
4.			RC	

I. Summary:

SB 450, which is linked to the passage of SB 448, creates a public records exemption for a civil citation, documentation of a prearrest program, and any documents concerning a civil citation or prearrest diversion program held by a law enforcement agency, a public or private educational institution, or a program service provider.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2022, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

The Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it creates a new public records exemption.

The bill takes effect on the same date that SB 448 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

II. Present Situation:

The Florida Constitution provides that every individual has a right of access to public records which are made or received in connection with official public business unless the records are exempt. This right applies to records of the legislative, executive, and judicial branches.¹

¹ Article I, s. 24(a), FLA. CONST.

The Public Records Act, codified in ch. 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record² at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.³

Only the Legislature may create an exemption to public records requirements.⁴ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.

The Open Government Sunset Review Act (OGSR) requires a newly created or expanded public records exemption be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.⁵ It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.⁶

An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption.
- The release of sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt.
- It protects trade or business secrets.⁷

In addition, the Legislature must find that the purpose of the exemption overrides Florida's public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.⁸ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of the exemption. These specified questions are:

- What specific records or meetings are affected by the exemption?

² Section 119.011(12), F.S., defines "public record" as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

³ Section 119.07(1)(a), F.S.

⁴ Article I, s. 24(c), FLA. CONST. There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Bd. of Seminole*, 874 So.2d 48 (Fla. 5th DCA 1994), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, then such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in the statutory exemption. See Op. Att'y Gen, Fla. 85-62, August 1, 1985.

⁵ Section 119.15(3), F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(6)(b)1.-3., F.S.

⁸ Section 119.15(6)(a), F.S.

- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?⁹

To enact an exemption, the bill may not contain other substantive provisions¹⁰ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹¹

Adult Criminal History Records

A criminal history record is any nonjudicial record maintained by a criminal justice agency containing criminal history information.¹² Criminal history information includes information on a person's arrests, detentions, indictments, informations (formal criminal charges), and the disposition of the charges.¹³

An adult's criminal history information is available free of charge to criminal justice agencies and to the public with payment of a fee.¹⁴ Adults seeking to prevent such disclosure may petition the court to seal¹⁵ or expunge the record.¹⁶

Sections 943.059 and 943.0585, F.S., provide the procedures for sealing and expunging criminal history records. When a record is sealed, it is not destroyed, but access is limited to:

- The subject of the record;
- His or her attorney;
- Criminal justice agencies for criminal justice purposes;
- Judges; and
- Certain agencies for licensing and employment purposes.¹⁷

When a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE is required to retain expunged records.¹⁸

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain

⁹ Section 119.15(6)(a)1.-6., F.S.

¹⁰ The bill may, however, contain multiple exemptions that relate to one subject.

¹¹ Article I, s. 24(c), FLA. CONST.

¹² Section 943.045(6), F.S.

¹³ Section 943.045(5), F.S.

¹⁴ Section 943.053(3)(a), F.S.

¹⁵ Section 943.059, F.S.

¹⁶ Section 943.0585, F.S.

¹⁷ Section 943.059(4), F.S.

¹⁸ Section 943.0585(4), F.S.

types of employment,¹⁹ petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.²⁰

Sealed or expunged records are confidential and exempt from the public records law.²¹ It is a first degree misdemeanor²² to divulge their existence.²³

Model Prearrest Diversion Program

SB 448, which is linked to SB 450, creates s. 901.40, F.S., to encourage local communities and public or private educational institutions to implement a prearrest diversion program. SB 448 provides a framework for a model adult civil citation program that may be adopted. The model program allows a law enforcement officer, at the officer's sole discretion, to issue a civil citation to an adult who:

- Commits a nonviolent misdemeanor offense (as determined by the program);
- Admits to committing the offense;
- Has not previously been arrested; and
- Has not previously received an adult civil citation.

The model program requires an adult who receives a civil citation to complete the required community service hours and pay restitution. The model program provides that if the adult successfully completes the program, an arrest record may not be associated with the offense.

Civil citations are issued in lieu of an arrest so no criminal history record is created. However, records of a civil citation held by the issuing law enforcement agency and by a model program are subject to disclosure. Currently, Florida law does not provide a public records exemption for records associated with a civil citation.

III. Effect of Proposed Changes:

The bill creates a public records exemption for a civil citation, documentation of a prearrest program, and any documents concerning a civil citation or prearrest diversion program held by a law enforcement agency, a public or private educational institution, or a program service provider.

The bill specifies that the exempt information may be disclosed to law enforcement agencies, public or private educational institutions, program service providers, authorized court personnel, state attorneys, and public defenders.

¹⁹ These include candidates for appointment as a guardian, admission to The Florida Bar, employment with a criminal justice agency, a license by the Division of Insurance Agent and Agent Services of the Department of Financial Services, or a position with an agency which is responsible for the protection of vulnerable persons, including children, disabled persons, and elderly persons.

²⁰ Sections 943.0585(4)(a) and 943.059(4)(a), F.S.

²¹ Sections 943.059(4)(c) and 943.0585(4)(c), F.S.

²² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

²³ Sections 943.059 and 943.0585, F.S., require FDLE to disclose sealed and expunged criminal history records to specified entities for specified purposes.

The bill provides a statement of public necessity as required by the Florida Constitution.²⁴ The statement includes the following findings:

- The goal of the prearrest diversion program is to give a second chance to adults who commit nonviolent misdemeanor offenses and allow them the opportunity to avoid having an arrest record.
- If a civil citation, documentation of the prearrest diversion program, and any other reports or documents concerning a civil citation or prearrest diversion program were not exempt from disclosure, it would defeat the goal of giving adults who commit nonviolent misdemeanor offenses a means to avoid arrest and prosecution.
- If such information were able to be obtained by the public, that disclosure might negatively impact the effectiveness of the prearrest diversion program.

The bill repeals the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature.

The bill takes effect on the same date that SB 448 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a new public record exemption. Therefore, the following constitutional requirements apply.

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption and includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, a court could find that the exception is broader than necessary to accomplish its stated purpose.

²⁴ Article I, s. 24(c), FLA. CONST.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record. However, these costs should be able to be absorbed with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill is linked to the passage of SB 448.

VIII. Statutes Affected:

This bill creates section 901.40 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.)

None.

B. Amendments:

None.



576030

LEGISLATIVE ACTION

Senate

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. .
. .
. .
. .

House

The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) is added to section 901.40,
Florida Statutes, as created by SB 448, 2017 Regular Session, to
read:

901.40 Prearrest diversion programs.—

(6) PUBLIC RECORDS EXEMPTION.—The personal identifying
information of an adult who participates in a prearrest



576030

11 diversion program, as encouraged by this section, is exempt from
12 s. 119.07(1), and s. 24(a), Art. I of the State Constitution.
13 This subsection is subject to the Open Government Sunset Review
14 Act in accordance with s. 119.15 and shall stand repealed on
15 October 2, 2022, unless reviewed and saved from such repeal
16 through reenactment by the Legislature.

17 Section 2. The Legislature finds that it is a public
18 necessity that the personal identifying information of an adult
19 who participates in a prearrest diversion program be exempt from
20 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
21 State Constitution. The goal of such programs is to give a
22 second chance to adults who commit misdemeanor offenses and
23 allow them the opportunity to avoid having an arrest record. If
24 the personal identifying information of such adults were not
25 exempt from disclosure, it would defeat the program's goal of
26 giving adults who commit misdemeanor offenses a means to avoid
27 the negative consequences of an arrest and prosecution. If such
28 information were able to be obtained by the public, the
29 disclosure might negatively impact the effectiveness of the
30 program. For these reasons, the Legislature finds that it is a
31 public necessity that the personal identifying information of an
32 adult who participates in a prearrest diversion program be
33 exempt from public records requirements.

34 Section 3. This act shall take effect on the same date
35 that SB 448 or similar legislation takes effect, if such
36 legislation is adopted in the same legislative session or an
37 extension thereof and becomes a law.

38
39 ===== T I T L E A M E N D M E N T =====



576030

40 And the title is amended as follows:

41 Delete everything before the enacting clause
42 and insert:

43 A bill to be entitled

44 An act relating to public records; amending s. 901.40,
45 F.S.; providing that the personal identifying
46 information of an adult who participates in a
47 prearrest diversion program is exempt from public
48 record requirements; providing for future review and
49 repeal of the exemption; providing a statement of
50 public necessity; providing a contingent effective
51 date.

By Senator Brandes

24-00623-17

2017450__

A bill to be entitled

An act relating to public records; amending s. 901.40, F.S.; requiring that a civil citation, documentation of a prearrest diversion program, and any other reports or documents concerning a civil citation or a prearrest diversion program which are held by a law enforcement agency, a public or private educational institution, or a program service provider are exempt from public record requirements; providing for future review and repeal of the exemption; providing an exception; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (6) is added to section 901.40, Florida Statutes, as created by SB ____, 2017 Regular Session, to read:

901.40 Prearrest diversion programs.—

(6) PUBLIC RECORDS EXEMPTION.—A civil citation, documentation of a prearrest diversion program, and any other reports or documents concerning a civil citation or a prearrest diversion program, as encouraged by this section, which are held by a law enforcement agency, a public or private educational institution, or a program service provider are exempt from s. 119.07(1), and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from such repeal through reenactment by the Legislature. Such exempt information may be disclosed to law enforcement agencies, public or private educational institutions, program service providers, authorized

Page 1 of 2

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

24-00623-17

2017450__

court personnel, state attorneys, and public defenders.

Section 2. The Legislature finds that it is a public necessity that a civil citation, documentation of a prearrest diversion program, and any other reports or documents concerning a civil citation or a prearrest diversion program held by a law enforcement agency be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The goal of the prearrest diversion program is to give a second chance to adults who commit nonviolent misdemeanor offenses and allow them the opportunity to avoid having an arrest record. If the civil citation, documentation of the prearrest diversion program, and any other reports or documents concerning a civil citation or prearrest diversion program held by a law enforcement agency were not exempt from disclosure, it would defeat the goal of giving adults who commit nonviolent misdemeanor offenses a means to avoid arrest and prosecution. If such information were able to be obtained by the public, that disclosure might negatively impact the effectiveness of the prearrest diversion program. For these reasons, the Legislature finds that it is a public necessity that a civil citation, documentation of a prearrest diversion program, and any other reports or documents concerning a civil citation or a prearrest diversion program held by a law enforcement agency be exempt from public records requirements.

Section 3. This act shall take effect on the same date that SB ____ or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

5 Mch 17

Meeting Date

450

Bill Number (if applicable)

Topic Public Records Exemption

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe, Ste. 201

Phone 850.570.9922

Street

Tall

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing Fla. 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)

3/6/2017

450

Meeting Date

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs 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)

3/6/17

Meeting Date

SB 450

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

Address 4500 BISCAYNE BLVD
Street

Phone 780-3109-4436

MIAMI FL
City State Zip

Email KGROSS@ACLUFL.ORG

Speaking: For Against Information

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

Representing ACLU OF FLORIDA

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)

March 6, 2017

Meeting Date

SB 450

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Avenue

Phone 352-338-7370

Street

Gainesville

FL

32601

Email scotts@pdo8.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

Committee Agenda Request

To: Senator Randolph Bracy,
Committee on Criminal Justice

Subject: Committee Agenda Request

Date: February 10th, 2017

I respectfully request that **Senate Bill #450**, relating to **Public Records**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



Senator Jeff Brandes
Florida Senate, District 24

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 Committee on Criminal Justice

BILL: CS/SB 608

INTRODUCER: Criminal Justice Committee and Senator Clemens

SUBJECT: Decreasing Penalties for Certain Criminal Acts

DATE: March 7, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Hrdlicka	CJ	Fav/CS
2.			TR	
3.			ACJ	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 608 reduces criminal penalties for numerous offenses. Most of these offenses are misdemeanor traffic violations. Generally, the bill reduces first degree misdemeanors to second degree misdemeanors and second degree misdemeanors to noncriminal violations.

The bill reduces the length of the driver license suspension period from one year to six months for persons over the age of 18 and for minors convicted of certain drug offenses. The bill also repeals provisions allowing an individual to petition the Department of Highway Safety and Motor Vehicles (DHSMV) for a hardship license after six months of his or her suspension because the bill reduces the suspension period to six months.

The bill also makes the following changes regarding theft offenses:

- Increases the property value threshold for grand theft from \$300 to \$1,000;
- Increases the maximum property threshold from “less than \$300” to “less than \$1,000” for theft from a dwelling (grand theft of the third degree) and petit theft of the first degree;
- Punishes theft of a will or stop sign based on value of these items, in contrast to current law which punishes the theft as a third degree felony; and
- Repeals the third degree felony offense of petit theft with two or more prior theft convictions.

The bill also increases the threshold amount for felony worthless check offenses from \$150 to \$500.

The Criminal Justice Impact Conference (CJIC) reviewed the original bill and determined that removing felony penalties for petit theft with two or more prior convictions will result in a decrease of 1,182 prison beds over FY 2017-2018 to FY 2021-2022 with a projected cost savings of \$167,086,568 (\$91,362,172 in annual operating costs and \$75,724,396 in annual fixed capital outlay costs). The CJIC determined that the overall prison bed impact of the bill will at least be the decrease of 1,182 prison beds over FY 2017-2018 to FY 2021-2022. Changes to the original bill will require additional review by the CJIC but those changes should not affect the CJIC's estimate regarding the petit theft changes.

II. Present Situation:

The bill amends numerous sections of the Florida Statutes. A summary of those sections is provided in the "Effect of Proposed Changes" section of this analysis.

III. Effect of Proposed Changes:

The bill, which takes effect July 1, 2017, reduces punishment for several misdemeanors, reduces the length of the driver license suspension period for certain drug offenders, and revises penalties or threshold property value amounts relevant to several theft and worthless check offenses. A description of the statutes amended and the changes to those statutes made by the bill is provided below.

White Cane Offense (Section 1)

Current Law: Section 316.1301(1), F.S., provides that it is a second degree misdemeanor for a person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway, to carry in a raised or extended position a cane or walking stick which is white in color or white tipped with red.

Proposed Changes: Section 1 of the bill repeals s. 316.1301(1), F.S., thereby eliminating this white cane offense.

Violations Relating to Windshields, Windows, and Sunscreening Material (Section 2)

Current Law: Section 316.2956(3), F.S., provides that it is a second degree misdemeanor for a person to sell or install sunscreening material in violation of any provision of ss. 316.2951-316.2955, F.S. (requirements relating to motor vehicle windows, windshields, and window sunscreening).

Proposed Changes: Section 2 of the bill amends s. 316.2956(3), F.S., to reduce punishment for a violation of this subsection from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Invalid Motor Vehicle Insurance (Section 3)

Current Law: Section 324.022, F.S., requires every registered owner or operator of a motor vehicle to maintain property insurance. Section 324.023, F.S., requires a registered owner or

operator of a motor vehicle to have liability insurance for bodily injury or death for a specified period if the owner or operator has pled guilty or nolo contendere or has been convicted of driving under the influence. Unless an exception applies, s. 627.733, F.S., requires every owner or registrant of a motor vehicle to maintain personal injury protection insurance.

Section 316.646(1), F.S., provides that any person required to maintain insurance under s. 324.022, F.S., s. 324.023, F.S., or s. 627.733, F.S., shall have in his or her immediate possession at all times while operating the motor vehicle proper proof of maintenance of the required insurance. Section 316.646(4), F.S., provides that any person presenting proof of insurance as required by s. 316.646(1), F.S., who knows that the insurance as represented by the proof of insurance is not currently in force commits a first degree misdemeanor.

Proposed Changes: Section 3 of the bill amends s. 316.646(4), F.S., to reduce punishment for a violation of this subsection from a first degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Refusal to Accept and Sign a Traffic Summons (Section 4)

Current Law: Unless an exception applies, s. 318.14(2), F.S., provides that any person cited for a traffic infraction listed in s. 318.19, F.S., that requires a mandatory hearing or any other criminal traffic violation listed in ch. 316, F.S. (the Florida Uniform Traffic Law) must sign and accept a citation indicating a promise to appear (summons). Section 318.14(3), F.S., provides that any person who willfully refuses to accept and sign a summons as provided in s. 318.14(2), F.S., commits a second degree misdemeanor.

Proposed Changes: Section 4 of the bill amends s. 318.14(3), F.S., to reduce punishment for a violation of this subsection from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Issuance of a Commercial License (Section 5)

Current Law: Section 322.03(b), F.S., provides that, except as provided in s. 322.03(3)(c), F.S., it is a first degree misdemeanor for a Florida resident who is required by Florida law to possess a commercial driver license to operate a commercial motor vehicle in Florida unless he or she possesses a valid Florida commercial driver license. Section 322.03(3)(c), F.S., provides that it is a nonmoving violation for a person whose commercial driver license has expired for a period of 30 days or less to drive a commercial motor vehicle in Florida.

Proposed Changes: Section 5 of the bill amends s. 322.03(3)(c), F.S., to reduce the punishment for a violation of this paragraph from a first degree misdemeanor to a second degree misdemeanor. It also amends s. 322.03(3)(b) and (c), F.S., to replace the term “is guilty of” with “commits.” This is only a technical change to use more contemporary wording regarding the penalties in these paragraphs. The bill does not make any substantive change to the offense or its penalty in s. 322.03(3)(c), F.S.

Restricted Driver License for Business or Employment Purposes (Section 6)

Current Law: 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.¹ A percentage of federal highway funding given to the state is contingent upon this law. A state may opt-out of the law if the state governor submits both written certification stating he is opposed to the enforcement of this law and certification from the state 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.²

Pursuant to s. 322.055, F.S., the court is required to direct the DHSMV to suspend, revoke, or withhold the issuance of the driver license of a person 18 years or older who is convicted of a drug offense. 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 Department of Highway Safety and Motor Vehicles 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.

Proposed Changes: Section 6 of the bill³ amends s. 322.055, F.S., to reduce the length of the driver license suspension period from one year to six months for persons over the age of 18 and for minors convicted of certain drug offenses. Section 6 of the bill also 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.

Sale of Alcoholic Beverages (Section 7)

Current Law: Section 562.14(1), F.S., provides that, except as otherwise provided by county or municipal ordinance, alcoholic beverages may not be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the Division of Alcoholic Beverages and Tobacco⁴ between the hours of midnight and 7 a.m. of the following day, unless an exception applies.⁵

Section 562.14(2), F.S., provides that, except as otherwise provided by county or municipal ordinance, no vendor issued an alcoholic beverage license to sell alcoholic beverages for consumption on the vendor’s licensed premises and whose principal business is the sale of

¹ 23 U.S.C. s. 159(a)(3)(A).

² 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 March 6, 2017).

³ Section 6 of the bill is identical to Section 6 of CS/SB 302 (2017).

⁴ The Division of Alcoholic Beverages and Tobacco is part of the Florida Department of Business and Professional Regulation. Section 20.165(2)(b), F.S.

⁵ This section does not apply to railroads selling only to passengers for consumption on railroad cars. Section 562.14(1), F.S.

alcoholic beverages shall allow the licensed premises to be rented, leased, or otherwise used during the hours in which the sale of alcoholic beverages is prohibited.⁶

Pursuant to s. 562.14(4), F.S., a violation of s. 562.14(1) or (2), F.S., is a second degree misdemeanor.

Proposed Changes: Section 7 of the bill amends s. 562.14, F.S., to reduce punishment for a violation of s. 562.14(1), F.S., from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S. A violation of s. 562.14(2), F.S., continues to be a second degree misdemeanor but the punishment language for that violation is moved from subsection (4) to subsection (2), and subsection (4) is repealed.

Habitual Drunkards (Section 8)

Current Law: Section 562.50, F.S., provides that it is a second degree misdemeanor for any person to sell, give away, dispose of, exchange, or barter any alcoholic beverage or other specified intoxicants to any person habitually addicted to the use of any intoxicating liquor, after having been given written notice by wife, husband, or a specified relative that this addicted person is an habitual drunkard and that the use of intoxicating drink is injuring the addicted person or the person giving written notice.

Proposed Changes: Section 8 of the bill amends s. 562.50, F.S., to reduce punishment for a violation of this section from a second degree misdemeanor to a noncriminal violation under s. 775.083, F.S.

Grand Theft and Petit Theft (Section 9)

Current Law: Section 812.014(2)(c), F.S., generally provides that, when a theft is based on property value, the threshold property value for grand theft of the third degree, a third degree felony, is \$300. However, under s. 812.014(2)(d), F.S., it is also grand theft of the third degree, a third degree felony, when the property stolen is valued at \$100 or more but less than \$300, and is taken from a dwelling or the unenclosed curtilage of a dwelling.

Further, under s. 812.014(2)(c), F.S., theft of some property constitutes grand theft of the third degree, a third degree felony, regardless of value. Examples of such items include:

- A will, codicil, or other testamentary instrument.
- Any stop sign.

Section 812.014(2)(e) F.S., provides that, except as provided in s. 812.014(2)(d), F.S., if the property stolen is valued at \$100 or more but less than \$300, the offender commits petit theft of the first degree, a first degree misdemeanor. Section 812.014(3)(a), F.S., which is theft of any property not specified in s. 812.014(2), F.S., is petit theft of the second degree, a second degree misdemeanor.

⁶ This prohibition does not apply to the rental, lease, or other use of the licensed premises on Sundays after 8 a.m. Further, neither this subsection, nor any local ordinance adopted pursuant to this subsection, shall be construed to apply to a theme park complex or an entertainment/resort complex. Section 562.14(2), F.S.

Section 812.014(3)(b), F.S., provides that it is first degree misdemeanor to commit petit theft if the person committing the petit theft has previously been convicted of any theft. Section 812.014(3)(c), F.S., provides that it is third degree felony to commit petit theft if the person committing the petit theft has previously been convicted two or more times of any theft.

Proposed Changes: Section 9 of the bill amends the property value threshold for grand theft of the third degree under s. 812.014(2)(c), F.S. It increases this threshold from \$300 to \$1,000. Therefore, many thefts that would constitute grand theft of the third degree under the current threshold of \$300 would constitute petit theft if the revised threshold were to become law.

Consistent with increasing the minimum threshold for grand theft to \$1,000, section 9 of the bill also amends s. 812.014(2)(d) and (e), F.S., to increase the maximum property value for theft from a dwelling (grand theft of the third degree) and petit theft of the first degree from “less than \$300” to “less than \$1,000.”

Section 9 of the bill also amends s. 812.014(2)(c), F.S., to remove the listing of the following property for which theft of that property would constitute grand theft of the third degree, regardless of its value:

- A will, codicil, or other testamentary instrument.
- Any stop sign.

Theft of a will, codicil, or other testamentary instrument, and theft of a stop sign would no longer necessarily be third degree felonies. The degree of the crime would depend on the value of the property and might constitute misdemeanor petit theft.

Finally, section 9 of the bill repeals s. 812.014(3)(c), F.S. (petit theft with two or more prior theft convictions). Section 812.014(3)(b), F.S., which is not amended by the bill, will punish petit theft with prior theft convictions as a first degree misdemeanor.

Worthless Checks, Drafts, or Debit Card Orders (Sections 10 and 11)

Current Law: Section 832.05(2)(a), F.S., provides, in part, that it is unlawful to draft or issue a check, draft, or debit card order, knowing there are insufficient funds or credit. Section 832.05(2)(b), F.S., provides that a violation of s. 832.05(2)(a), F.S., is a first degree misdemeanor. However, the violation is a third degree felony if the check, draft, or debit card order is for \$150 or more and the payee receives something of value.

Section 832.05(4)(a), F.S., provides, in part, that it is unlawful to receive anything of value by means of a worthless check or draft knowing there are insufficient funds or credit. Section 832.05(4)(b), F.S., makes it unlawful to use a debit card to obtain anything of value, knowing there are insufficient funds or credit. Section 832.05(4)(c), F.S., provides that a violation of s. 832.05(4), F.S., is a first degree misdemeanor, if the check, draft, or debit card order is less than \$150. However, the violation is a third degree felony if the check, draft, or debit card order is for \$150 or more.

Section 832.062(1), F.S., provides, in part, that is unlawful to draft or issue to the Department of Revenue any check or draft, or to use a debit card, to make any electronic funds transfer for the

payment of any taxes, penalties, interest, fees, or associated amounts administered by the department, knowing that there are insufficient funds or credit. Section 832.062(2), F.S., provides that a violation of s. 832.062, F.S., is a second degree misdemeanor. However, the violation is a third degree felony if the check, draft, or debit card order is for \$150 or more.

Proposed Changes: Section 10 of the bill amends s. 832.05, F.S., to increase the threshold amount for felony worthless check offenses in s. 832.05(2)(a) and (4)(a), F.S., from \$150 to \$500, and to increase the maximum threshold for a misdemeanor violation of s. 832.05(4)(a), F.S., from “less than \$150” to “less than \$500.”

Section 11 of the bill amends s. 832.062, F.S., to increase the threshold amount for the felony worthless check offenses in s. 832.062(1), F.S., from \$150 to \$500.

Technical Changes and Reenactment of Statutes (Sections 12-31)

Section 12 of the bill amends s. 922.0022, F.S., the Criminal Punishment Code offense severity ranking chart, to correct referencing and descriptions of offenses to reflect changes made to s. 812.014, F.S., by section 9 of the bill. Sections 13-31 reenact the following sections of the Florida Statutes: 95.18, 318.18, 318.21, 320.02, 373.6055, 400.9935, 409.910, 489.126, 538.23, 550.6305, 634.319, 634.421, 636.238, 642.038, 705.102, 812.015, 812.0155, 812.14, and 893.138. These reenactments are intended to incorporate amendments made to statutes that are referenced in the reenacted provisions.

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 Criminal Justice Impact Conference (CJIC), which provides the final, official prison bed impact, if any, reviewed the originally filed bill, and determined that removing the felony penalty for petit theft with two or more prior theft convictions (section 9 of the bill) will result in a significant prison bed decrease (see details below). The CJIC determined that the overall prison bed impact of the bill will at least be the specific bed impact resulting from this change.⁷ Changes to the original bill⁸ will require additional review by the CJIC but those changes should not affect the CJIC's estimate regarding the petit theft changes.

The CJIC's estimate is that there will be a significant decrease in prison beds if the petit theft with prior theft convictions is no longer punished as a third degree felony.⁹ The CJIC estimates this change will result in a decrease of 1,182 prison beds over FY 2017-2018 to FY 2021-2022 with a projected cost savings of \$167,086,568 (\$91,362,172 in annual operating costs¹⁰ and \$75,724,396 in annual fixed capital outlay costs¹¹).

The remainder of the changes to s. 812.014, F.S., will have a "negative indeterminate" prison bed impact (an unquantifiable decrease in prison beds). Per the DOC, in FY 2015-2016, there were 11,028 (adj.)¹² offenders sentenced under s. 812.014(2)(c)(1), F.S. (grand theft of the third degree). Of the 11,028 (adj.) offenders, 1,273 (adj.) were sentenced to prison. Their mean sentence length was 25.9 months. The incarceration rate was 11.5 percent (adj. or unadj.). The number of offenders that currently fall within the proposed changes to s. 812.014(2)(c)(1), F.S., thresholds cannot be differentiated from the current thresholds.

⁷ Telephonic communication between staff of the Senate Committee on Criminal Justice and staff of the Office of Economic and Demographic Research (EDR) (March 6, 2017).

⁸ For example, unlike the original bill, the committee substitute amends ss. 832.05 and 832.062, F.S., to increase the threshold amount for felony worthless check offenses from \$150 to \$500. This change has not yet been reviewed by the CJIC.

⁹ An impact statement is not intended to represent the direct appropriations impact of this bill. Rather, it provides a standalone estimate of the prison bed need of this particular bill. Cost data are included to allow a comparison of the impact of this bill with other proposed legislation. The actual appropriation associated with passage of this bill will differ depending on a number of factors including the existing inventory of prison beds.

¹⁰ "FY 2015-16 operating costs per inmate were obtained from DOC. The \$53.49 per diem (\$19,524 annual cost) is for all department facilities (excluding private institutions and approximately 150 beds in PRCs) and includes operations, health services, and education services. It does not include debt service costs. It also does not include indirect and administrative costs of \$3.34 per inmate (state facilities). Operating costs in future years were increased by the change in the CPI from the National Economic Estimating Conference." See "SB 608" link for "Criminal Justice Impact Conference Narrative Analyses of Adopted Impacts" (updated through March 2, 2017), Office of Economic and Demographic Research (EDR), available at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/adoptedimpacts.cfm> (last visited on March 7, 2017). All further CJIC estimate information is from this source.

¹¹ "FY 2006-07 capital costs per bed were based on Department of Corrections cost to build Suwanee CI (\$94,000,000 for 2,003 lawful capacity beds) as reported at the Criminal Justice Impact Conference held February 23, 2010. Capital costs in later years were increased by the change in the chained price index for state and local construction spending obtained from Global Insight, Inc."

¹² The abbreviation "adj." means "adjusted." The abbreviation "unadj." means "unadjusted." Sentencing data from the DOC is incomplete, which means that the numbers the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

Per the DOC, in FY 2015-2016, the 2 (adj.) offenders sentenced for theft of a will did not receive a prison sentence. One offender was sentenced for theft of a stop sign, and that offender received a 22-month prison sentence.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.1301, 316.2956, 316.646, 318.14, 322.03, 322.055, 562.14, 562.50, 812.014, 832.05, 832.062, and 921.022.

This bill also reenacts the following sections of the Florida Statutes: 95.18, 318.18, 318.21, 320.02, 373.6055, 400.9935, 409.910, 489.126, 538.23, 550.6305, 634.319, 634.421, 636.238, 642.038, 705.102, 812.015, 812.0155, 812.14, and 893.138. These reenactments are intended to correct cross-references and to incorporate amendments made to statutes that are referenced in the reenacted provisions.

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 March 6, 2017:

The CS:

- Removes sections of the bill that reduce criminal penalties for violations of s. 316.061, F.S. (crashes involving damage to vehicles or property), s. 316.545, F.S. (violations relating to motor vehicle weighing), s. 319.33, F.S. (invalid motor vehicle insurance), s. 562.111, F.S. (possession of alcoholic beverages by person under age 21), and s. 893.13, F.S. (possession of 20 grams or less of cannabis).
- Reduces the length of the driver license suspension period from one year to six months for persons over the age of 18 and for minors convicted of certain drug offenses.
- Repeals provisions allowing individuals to petition the Department of Highway Safety and Motor Vehicles for a hardship license after six months of their suspension because the bill reduces the suspension period to six months.
- Increases the maximum property threshold from “less than \$300” to “less than \$1,000” for theft from a dwelling (grand theft of the third degree) and petit theft of the first degree.
- Punishes theft of a stop sign based on the value of the item, in contrast to current law which punishes the theft as a third degree felony.
- Repeals the third degree felony offense of petit theft with two or more prior theft convictions.

- Deletes proposed changes to penalties for theft of a commercially farmed animal, a bee colony, aquacultural species, and a fire extinguisher.
- Increases the threshold amount for felony worthless check offenses from \$150 to \$500.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsection (1) of section 316.1301,
Florida Statutes, is amended to read:

316.1301 Traffic regulations to assist blind persons.-

~~(1) It is unlawful for any person, unless totally or
partially blind or otherwise incapacitated, while on any public
street or highway, to carry in a raised or extended position a~~



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11 ~~eane or walking stick which is white in color or white tipped~~
12 ~~with red. A person who is convicted of a violation of this~~
13 ~~subsection is guilty of a misdemeanor of the second degree,~~
14 ~~punishable as provided in s. 775.082 or s. 775.083.~~

15 Section 2. Subsection (3) of section 316.2956, Florida
16 Statutes, is amended to read:

17 316.2956 Violation of provisions relating to windshields,
18 windows, and sunscreening material; penalties.—

19 (3) Any person who sells or installs suncreening material
20 in violation of any provision of ss. 316.2951-316.2955 commits a
21 noncriminal violation ~~is guilty of a misdemeanor of the second~~
22 ~~degree~~, punishable as provided in ~~s. 775.082 or~~ s. 775.083.

23 Section 3. Subsection (1) of section 316.646, Florida
24 Statutes, is republished, and subsection (4) of that section is
25 amended, to read:

26 316.646 Security required; proof of security and display
27 thereof.—

28 (1) Any person required by s. 324.022 to maintain property
29 damage liability security, required by s. 324.023 to maintain
30 liability security for bodily injury or death, or required by s.
31 627.733 to maintain personal injury protection security on a
32 motor vehicle shall have in his or her immediate possession at
33 all times while operating such motor vehicle proper proof of
34 maintenance of the required security.

35 (a) Such proof shall be in a uniform paper or electronic
36 format, as prescribed by the department, a valid insurance
37 policy, an insurance policy binder, a certificate of insurance,
38 or such other proof as may be prescribed by the department.

39 (b)1. The act of presenting to a law enforcement officer an



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40 electronic device displaying proof of insurance in an electronic
41 format does not constitute consent for the officer to access any
42 information on the device other than the displayed proof of
43 insurance.

44 2. The person who presents the device to the officer
45 assumes the liability for any resulting damage to the device.

46 (4) Any person presenting proof of insurance as required in
47 subsection (1) who knows that the insurance as represented by
48 such proof of insurance is not currently in force commits a
49 noncriminal violation ~~is guilty of a misdemeanor of the first~~
50 ~~degree~~, punishable as provided in ~~s. 775.082~~ or s. 775.083.

51 Section 4. Subsection (2) of section 318.14, Florida
52 Statutes, is republished, and subsection (3) of that section is
53 amended, to read:

54 318.14 Noncriminal traffic infractions; exception;
55 procedures.—

56 (2) Except as provided in ss. 316.1001(2) and 316.0083, any
57 person cited for a violation requiring a mandatory hearing
58 listed in s. 318.19 or any other criminal traffic violation
59 listed in chapter 316 must sign and accept a citation indicating
60 a promise to appear. The officer may indicate on the traffic
61 citation the time and location of the scheduled hearing and must
62 indicate the applicable civil penalty established in s. 318.18.
63 For all other infractions under this section, except for
64 infractions under s. 316.1001, the officer must certify by
65 electronic, electronic facsimile, or written signature that the
66 citation was delivered to the person cited. This certification
67 is prima facie evidence that the person cited was served with
68 the citation.



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69 (3) Any person who willfully refuses to accept and sign a
70 summons as provided in subsection (2) commits a noncriminal
71 violation, punishable as provided in s. 775.083 ~~misdemeanor of~~
72 ~~the second degree.~~

73 Section 5. Subsection (3) of section 322.03, Florida
74 Statutes, is amended to read:

75 322.03 Drivers must be licensed; penalties.—

76 (3) (a) The department may not issue a commercial driver
77 license to any person who is not a resident of this state.

78 (b) A resident of this state who is required by the laws of
79 this state to possess a commercial driver license may not
80 operate a commercial motor vehicle in this state unless he or
81 she possesses a valid commercial driver license issued by this
82 state. Except as provided in paragraph (c), any person who
83 violates this paragraph commits ~~is guilty of~~ a misdemeanor of
84 the second ~~first~~ degree, punishable as provided in s. 775.082 or
85 s. 775.083.

86 (c) Any person whose commercial driver license has been
87 expired for a period of 30 days or less and who drives a
88 commercial motor vehicle within this state commits ~~is guilty of~~
89 a nonmoving violation, punishable as provided in s. 318.18.

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

92 322.055 Revocation or suspension of, or delay of
93 eligibility for, driver license for persons 18 years of age or
94 older convicted of certain drug offenses.—

95 (1) Notwithstanding s. 322.28, upon the conviction of a
96 person 18 years of age or older for possession or sale of,
97 trafficking in, or conspiracy to possess, sell, or traffic in a



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98 controlled substance, the court shall direct the department to
99 revoke the driver license or driving privilege of the person.
100 The period of such revocation shall be 6 months ~~1 year~~ or until
101 the person is evaluated for and, if deemed necessary by the
102 evaluating agency, completes a drug treatment and rehabilitation
103 program approved or regulated by the Department of Children and
104 Families. However, the court may, in its sound discretion,
105 direct the department to issue a license for driving privilege
106 restricted to business or employment purposes only, as defined
107 by s. 322.271, if the person is otherwise qualified for such a
108 license. ~~A driver whose license or driving privilege has been~~
109 ~~suspended or revoked under this section or s. 322.056 may, upon~~
110 ~~the expiration of 6 months, petition the department for~~
111 ~~restoration of the driving privilege on a restricted or~~
112 ~~unrestricted basis depending on length of suspension or~~
113 ~~revocation. In no case shall~~ A restricted license may not be
114 available until 6 months of the suspension or revocation period
115 has been completed ~~expired~~.

116 (2) If a person 18 years of age or older is convicted for
117 the possession or sale of, trafficking in, or conspiracy to
118 possess, sell, or traffic in a controlled substance and such
119 person is eligible by reason of age for a driver license or
120 privilege, the court shall direct the department to withhold
121 issuance of such person's driver license or driving privilege
122 for a period of 6 months ~~1 year~~ after the date the person was
123 convicted or until the person is evaluated for and, if deemed
124 necessary by the evaluating agency, completes a drug treatment
125 and rehabilitation program approved or regulated by the
126 Department of Children and Families. However, the court may, in



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127 its sound discretion, direct the department to issue a license
128 for driving privilege restricted to business or employment
129 purposes only, as defined by s. 322.271, if the person is
130 otherwise qualified for such a license. ~~A driver whose license
131 or driving privilege has been suspended or revoked under this
132 section or s. 322.056 may, upon the expiration of 6 months,
133 petition the department for restoration of the driving privilege
134 on a restricted or unrestricted basis depending on the length of
135 suspension or revocation. In no case shall A restricted license
136 may not be available until 6 months of the suspension or
137 revocation period has been completed ~~expired.~~~~

138 (3) If a person 18 years of age or older is convicted for
139 the possession or sale of, trafficking in, or conspiracy to
140 possess, sell, or traffic in a controlled substance and such
141 person's driver license or driving privilege is already under
142 suspension or revocation for any reason, the court shall direct
143 the department to extend the period of such suspension or
144 revocation by an additional period of 6 months ~~1 year~~ or until
145 the person is evaluated for and, if deemed necessary by the
146 evaluating agency, completes a drug treatment and rehabilitation
147 program approved or regulated by the Department of Children and
148 Families. However, the court may, in its sound discretion,
149 direct the department to issue a license for driving privilege
150 restricted to business or employment purposes only, as defined
151 by s. 322.271, if the person is otherwise qualified for such a
152 license. ~~A driver whose license or driving privilege has been
153 suspended or revoked under this section or s. 322.056 may, upon
154 the expiration of 6 months, petition the department for
155 restoration of the driving privilege on a restricted or~~



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156 ~~unrestricted basis depending on the length of suspension or~~
157 ~~revocation. In no case shall~~ A restricted license may not be
158 available until 6 months of the suspension or revocation period
159 has been completed ~~expired~~.

160 (4) If a person 18 years of age or older is convicted for
161 the possession or sale of, trafficking in, or conspiracy to
162 possess, sell, or traffic in a controlled substance and such
163 person is ineligible by reason of age for a driver license or
164 driving privilege, the court shall direct the department to
165 withhold issuance of such person's driver license or driving
166 privilege for a period of 6 months ~~1 year~~ after the date that he
167 or she would otherwise have become eligible or until he or she
168 becomes eligible by reason of age for a driver license and is
169 evaluated for and, if deemed necessary by the evaluating agency,
170 completes a drug treatment and rehabilitation program approved
171 or regulated by the Department of Children and Families.
172 However, the court may, in its sound discretion, direct the
173 department to issue a license for driving privilege restricted
174 to business or employment purposes only, as defined by s.
175 322.271, if the person is otherwise qualified for such a
176 license. ~~A driver whose license or driving privilege has been~~
177 ~~suspended or revoked under this section or s. 322.056 may, upon~~
178 ~~the expiration of 6 months, petition the department for~~
179 ~~restoration of the driving privilege on a restricted or~~
180 ~~unrestricted basis depending on the length of suspension or~~
181 ~~revocation. In no case shall~~ A restricted license may not be
182 available until 6 months of the suspension or revocation period
183 has been completed ~~expired~~.

184 Section 7. Section 562.14, Florida Statutes, is amended to



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185 read:

186 562.14 Regulating the time for sale of alcoholic and
187 intoxicating beverages; prohibiting use of licensed premises.—

188 (1) Except as otherwise provided by county or municipal
189 ordinance, ~~no~~ alcoholic beverages may not be sold, consumed,
190 served, or permitted to be served or consumed in any place
191 holding a license under the division between the hours of
192 midnight and 7 a.m. of the following day. This section does
193 ~~shall~~ not apply to railroads selling only to passengers for
194 consumption on railroad cars. A person who violates this
195 subsection commits a noncriminal violation, punishable as
196 provided in s. 775.083.

197 (2) Except as otherwise provided by county or municipal
198 ordinance, a ~~no~~ vendor issued an alcoholic beverage license to
199 sell alcoholic beverages for consumption on the vendor's
200 licensed premises and whose principal business is the sale of
201 alcoholic beverages may not, ~~shall~~ allow the licensed premises,
202 as defined in s. 561.01(11), to be rented, leased, or otherwise
203 used during the hours in which the sale of alcoholic beverages
204 is prohibited. However, this prohibition does ~~shall~~ not apply to
205 the rental, lease, or other use of the licensed premises on
206 Sundays after 8 a.m. Further, neither this subsection, nor any
207 local ordinance adopted pursuant to this subsection, shall be
208 construed to apply to a theme park complex as defined in s.
209 565.02(6) or an entertainment/resort complex as defined in s.
210 561.01(18). A person who violates this subsection commits a
211 misdemeanor of the second degree, punishable as provided in s.
212 775.082 or s. 775.083.

213 (3) The division is not ~~shall not be~~ responsible for the



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214 enforcement of the hours of sale established by county or
215 municipal ordinance.

216 ~~(4) Any person violating this section shall be guilty of a~~
217 ~~misdemeanor of the second degree, punishable as provided in s.~~
218 ~~775.082 or s. 775.083.~~

219 Section 8. Section 562.50, Florida Statutes, is amended to
220 read:

221 562.50 Habitual drunkards; furnishing intoxicants to, after
222 notice.—Any person who shall sell, give away, dispose of,
223 exchange, or barter any alcoholic beverage, or any essence,
224 extract, bitters, preparation, compound, composition, or any
225 article whatsoever under any name, label, or brand, which
226 produces intoxication, to any person habitually addicted to the
227 use of any or all such intoxicating liquors, after having been
228 given written notice by wife, husband, father, mother, sister,
229 brother, child, or nearest relative that said person so addicted
230 is an habitual drunkard and that the use of intoxicating drink
231 or drinks is working an injury to the person using said liquors,
232 or to the person giving said written notice, commits a
233 noncriminal violation ~~shall be guilty of a misdemeanor of the~~
234 ~~second degree, punishable as provided in s. 775.082 or s.~~
235 ~~775.083.~~

236 Section 9. Paragraphs (c), (d), and (e) of subsection (2)
237 and paragraph (c) of subsection (3) of section 812.014, Florida
238 Statutes, are amended to read:

239 812.014 Theft.—

240 (2)

241 (c) It is grand theft of the third degree and a felony of
242 the third degree, punishable as provided in s. 775.082, s.



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243 775.083, or s. 775.084, if the property stolen is:
244 1. Valued at \$1,000 ~~\$300~~ or more, but less than \$5,000.
245 2. Valued at \$5,000 or more, but less than \$10,000.
246 3. Valued at \$10,000 or more, but less than \$20,000.
247 ~~4. A will, codicil, or other testamentary instrument.~~
248 ~~4.5.~~ A firearm.
249 ~~5.6.~~ A motor vehicle, except as provided in paragraph (a).
250 ~~6.7.~~ Any commercially farmed animal, including any animal
251 of the equine, bovine, or swine class or other grazing animal; a
252 bee colony of a registered beekeeper; and aquaculture species
253 raised at a certified aquaculture facility. If the property
254 stolen is aquaculture species raised at a certified aquaculture
255 facility, then a \$10,000 fine shall be imposed.
256 ~~7.8.~~ Any fire extinguisher.
257 ~~8.9.~~ Any amount of citrus fruit consisting of 2,000 or more
258 individual pieces of fruit.
259 ~~9.10.~~ Taken from a designated construction site identified
260 by the posting of a sign as provided for in s. 810.09(2)(d).
261 ~~11. Any stop sign.~~
262 ~~10.12.~~ Anhydrous ammonia.
263 ~~11.13.~~ Any amount of a controlled substance as defined in
264 s. 893.02. Notwithstanding any other law, separate judgments and
265 sentences for theft of a controlled substance under this sub-
266 subparagraph ~~subparagraph~~ and for any applicable possession of
267 controlled substance offense under s. 893.13 or trafficking in
268 controlled substance offense under s. 893.135 may be imposed
269 when all such offenses involve the same amount or amounts of a
270 controlled substance.
271



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272 However, if the property is stolen within a county that is
273 subject to a state of emergency declared by the Governor under
274 chapter 252, the property is stolen after the declaration of
275 emergency is made, and the perpetration of the theft is
276 facilitated by conditions arising from the emergency, the
277 offender commits a felony of the second degree, punishable as
278 provided in s. 775.082, s. 775.083, or s. 775.084, if the
279 property is valued at \$5,000 or more, but less than \$10,000, as
280 provided under subparagraph 2., or if the property is valued at
281 \$10,000 or more, but less than \$20,000, as provided under
282 subparagraph 3. As used in this paragraph, the term "conditions
283 arising from the emergency" means civil unrest, power outages,
284 curfews, voluntary or mandatory evacuations, or a reduction in
285 the presence of or the response time for first responders or
286 homeland security personnel. For purposes of sentencing under
287 chapter 921, a felony offense that is reclassified under this
288 paragraph is ranked one level above the ranking under s.
289 921.0022 or s. 921.0023 of the offense committed.

290 (d) It is grand theft of the third degree and a felony of
291 the third degree, punishable as provided in s. 775.082, s.
292 775.083, or s. 775.084, if the property stolen is valued at \$100
293 or more, but less than \$1,000 ~~\$300~~, and is taken from a dwelling
294 as defined in s. 810.011(2) or from the unenclosed curtilage of
295 a dwelling pursuant to s. 810.09(1).

296 (e) Except as provided in paragraph (d), if the property
297 stolen is valued at \$100 or more, but less than \$1,000 ~~\$300~~, the
298 offender commits petit theft of the first degree, punishable as
299 a misdemeanor of the first degree, as provided in s. 775.082 or
300 s. 775.083.



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301 (3)
302 ~~(c) A person who commits petit theft and who has previously~~
303 ~~been convicted two or more times of any theft commits a felony~~
304 ~~of the third degree, punishable as provided in s. 775.082 or s.~~
305 ~~775.083.~~

306 Section 10. Paragraph (b) of subsection (2) and paragraph
307 (c) of subsection (4) of section 832.05, Florida Statutes, are
308 amended to read:

309 832.05 Giving worthless checks, drafts, and debit card
310 orders; penalty; duty of drawee; evidence; costs; complaint
311 form.—

312 (2) WORTHLESS CHECKS, DRAFTS, OR DEBIT CARD ORDERS;
313 PENALTY.—

314 (b) A violation of the provisions of this subsection
315 constitutes a misdemeanor of the first degree, punishable as
316 provided in s. 775.082 or s. 775.083, unless the check, draft,
317 debit card order, or other written order drawn, made, uttered,
318 issued, or delivered is in the amount of \$500 ~~\$150~~, or its
319 equivalent, or more and the payee or a subsequent holder thereof
320 receives something of value therefor. In that event, the
321 violation constitutes a felony of the third degree, punishable
322 as provided in s. 775.082, s. 775.083, or s. 775.084.

323 (4) OBTAINING PROPERTY OR SERVICES IN RETURN FOR WORTHLESS
324 CHECKS, DRAFTS, OR DEBIT CARD ORDERS; PENALTY.—

325 (c) A violation of the provisions of this subsection, if
326 the check, draft, other written order, or debit card order is
327 for an amount less than \$500 ~~\$150~~ or its equivalent, constitutes
328 a misdemeanor of the first degree, punishable as provided in s.
329 775.082 or s. 775.083. A violation of the provisions of this



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330 subsection, if the check, draft, other written order, or debit
331 card order is in the amount of \$500 ~~\$150~~, or its equivalent, or
332 more, constitutes a felony of the third degree, punishable as
333 provided in s. 775.082, s. 775.083, or s. 775.084.

334 Section 11. Subsection (2) of section 832.062, Florida
335 Statutes, is amended, and subsection (1) of that section is
336 republished, to read:

337 832.062 Prosecution for worthless checks, drafts, debit
338 card orders, or electronic funds transfers made to pay any tax
339 or associated amount administered by the Department of Revenue.—

340 (1) It is unlawful for any person, firm, or corporation to
341 draw, make, utter, issue, or deliver to the Department of
342 Revenue any check, draft, or other written order on any bank or
343 depository, to use a debit card, to make, send, instruct, order,
344 or initiate any electronic funds transfer, or to cause or direct
345 the making, sending, instructing, ordering, or initiating of any
346 electronic funds transfer, for the payment of any taxes,
347 penalties, interest, fees, or associated amounts administered by
348 the Department of Revenue, knowing at the time of the drawing,
349 making, uttering, issuing, or delivering such check, draft, or
350 other written order, at the time of using such debit card, at
351 the time of making, sending, instructing, ordering, or
352 initiating any electronic funds transfer, or at the time of
353 causing or directing the making, sending, instructing, ordering,
354 initiating, or executing of any electronic funds transfer, that
355 the maker, drawer, sender, or receiver thereof has not
356 sufficient funds on deposit in or credit with such bank or
357 depository with which to pay the same on presentation. This
358 section does not apply to any check or electronic funds transfer



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359 when the Department of Revenue knows or has been expressly
360 notified prior to the drawing or uttering of the check or the
361 sending or initiating of the electronic funds transfer, or has
362 reason to believe, that the drawer, sender, or receiver did not
363 have on deposit or to the drawer's, sender's, or receiver's
364 credit with the drawee or receiving bank or depository
365 sufficient funds to ensure payment as aforesaid, and this
366 section does not apply to any postdated check.

367 (2) A violation of this section constitutes a misdemeanor
368 of the second degree, punishable as provided in s. 775.082 or s.
369 775.083, unless the check, draft, debit card order, or other
370 written order drawn, made, uttered, issued, or delivered, or
371 electronic funds transfer made, sent, instructed, ordered, or
372 initiated, or caused or directed to be made, sent, instructed,
373 ordered, or initiated is in the amount of \$500 ~~\$150~~ or more. In
374 that event, the violation constitutes a felony of the third
375 degree, punishable as provided in s. 775.082, s. 775.083, or s.
376 775.084.

377 Section 12. Paragraphs (a) through (d) of subsection (3) of
378 section 921.0022, Florida Statutes, are amended to read:

379 921.0022 Criminal Punishment Code; offense severity ranking
380 chart.—

381 (3) OFFENSE SEVERITY RANKING CHART

382 (a) LEVEL 1

383

Florida Statute	Felony Degree	Description
24.118(3) (a)	3rd	Counterfeit or altered state

384



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lottery ticket.

385

212.054 (2) (b) 3rd Discretionary sales surtax;
limitations, administration,
and collection.

386

212.15 (2) (b) 3rd Failure to remit sales
taxes, amount greater than
\$300 but less than \$20,000.

387

316.1935 (1) 3rd Fleeing or attempting to
elude law enforcement
officer.

388

319.30 (5) 3rd Sell, exchange, give away
certificate of title or
identification number plate.

389

319.35 (1) (a) 3rd Tamper, adjust, change,
etc., an odometer.

390

320.26 (1) (a) 3rd Counterfeit, manufacture, or
sell registration license
plates or validation
stickers.

391

322.212 3rd Possession of forged,
(1) (a) - (c) stolen, counterfeit, or
unlawfully issued driver



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392			license; possession of simulated identification.
393	322.212 (4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
394	322.212 (5) (a)	3rd	False application for driver license or identification card.
395	414.39 (3) (a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
396	443.071 (1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
397	509.151 (1)	3rd	Defraud an innkeeper, food or lodging value greater than \$300.
398	517.302 (1)	3rd	Violation of the Florida Securities and Investor Protection Act.



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399	562.27(1)	3rd	Possess still or still apparatus.
400	713.69	3rd	Tenant removes property upon which lien has accrued, value more than \$50.
401	812.014(3)(e)	3rd	Petit theft (3rd conviction); theft of any property not specified in subsection (2).
402	812.081(2)	3rd	Unlawfully makes or causes to be made a reproduction of a trade secret.
403	815.04(5)(a)	3rd	Offense against intellectual property (i.e., computer programs, data).
404	817.52(2)	3rd	Hiring with intent to defraud, motor vehicle services.
	817.569(2)	3rd	Use of public record or public records information or providing false information to facilitate commission of a felony.



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405	826.01	3rd	Bigamy.
406	828.122 (3)	3rd	Fighting or baiting animals.
407	831.04 (1)	3rd	Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
408	831.31 (1) (a)	3rd	Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
409	832.041 (1)	3rd	Stopping payment with intent to defraud \$150 or more.
410	832.05 (2) (b) & (4) (c)	3rd	Knowing, making, issuing worthless checks <u>\$500</u> \$150 or more or obtaining property in return for worthless check <u>\$500</u> \$150 or more.
411	838.15 (2)	3rd	Commercial bribe receiving.
412	838.16	3rd	Commercial bribery.
413			



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414	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
415	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
416	849.01	3rd	Keeping gambling house.
417	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
418	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
419	849.25(2)	3rd	Engaging in bookmaking.
420	860.08	3rd	Interfere with a railroad signal.
421	860.13(1)(a)	3rd	Operate aircraft while under the influence.
	893.13(2)(a)2.	3rd	Purchase of cannabis.



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422	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
423	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
424			
425			
426			
427	(b) LEVEL 2		
428			
	Florida	Felony	
	Statute	Degree	Description
429	379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
430	379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
431	403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in



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weight or 100 cubic feet
in volume or any
quantity for commercial
purposes, or hazardous
waste.

432

517.07(2)

3rd

Failure to furnish a
prospectus meeting
requirements.

433

590.28(1)

3rd

Intentional burning of
lands.

434

784.05(3)

3rd

Storing or leaving a
loaded firearm within
reach of minor who uses
it to inflict injury or
death.

435

787.04(1)

3rd

In violation of court
order, take, entice,
etc., minor beyond state
limits.

436

806.13(1)(b)3.

3rd

Criminal mischief;
damage \$1,000 or more to
public communication or
any other public
service.



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437	810.061 (2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
438	810.09 (2) (e)	3rd	Trespassing on posted commercial horticulture property.
439	812.014 (2) (c) 1.	3rd	Grand theft, 3rd degree; <u>\$1,000</u> \$300 or more but less than \$5,000.
440	812.014 (2) (d)	3rd	Grand theft, 3rd degree; \$100 or more but less than <u>\$1,000</u> \$300 , taken from unenclosed curtilage of dwelling.
441	812.015 (7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
442	817.234 (1) (a) 2.	3rd	False statement in support of insurance claim.



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443	817.481 (3) (a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
444	817.52 (3)	3rd	Failure to redeliver hired vehicle.
445	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
446	817.60 (5)	3rd	Dealing in credit cards of another.
447	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
448	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
449	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.



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450	831.01	3rd	Forgery.
451	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
452	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
453	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
454	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
455	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
456	832.05 (3) (a)	3rd	Cashing or depositing item with intent to defraud.
457			



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458	843.08	3rd	False personation.
	893.13 (2) (a) 2.	3rd	Purchase of any s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) drugs other than cannabis.
459	893.147 (2)	3rd	Manufacture or delivery of drug paraphernalia.
460			
461			
462			
463	(c) LEVEL 3		
464			
	Florida	Felony	
	Statute	Degree	Description
465	119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
466	316.066 (3) (b) - (d)	3rd	Unlawfully obtaining or using confidential crash reports.
467			



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468	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
469	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
470	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
471	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
472	319.33 (1) (c)	3rd	Procure or pass title on stolen vehicle.
473	319.33 (4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
474	327.35 (2) (b)	3rd	Felony BUI.



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475	328.05 (2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
476	328.07 (4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
477	376.302 (5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
478	379.2431 (1) (e) 5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
	379.2431	3rd	Soliciting to commit or



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479	(1) (e) 6.		conspiring to commit a violation of the Marine Turtle Protection Act.
	400.9935 (4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
480	400.9935 (4) (e)	3rd	Filing a false license application or other required information or failing to report information.
481	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
482	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
483	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.



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484	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.
485	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.
486	697.08	3rd	Equity skimming.
487	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.
488	806.10 (1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
489	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.
490	810.09 (2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous



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weapon.

491	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
492	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
493	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.
494	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
495	817.233	3rd	Burning to defraud insurer.
496	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
497	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
498	817.236	3rd	Filing a false motor vehicle insurance



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499			application.
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
500			
	817.413 (2)	3rd	Sale of used goods as new.
501			
	817.505 (4)	3rd	Patient brokering.
502			
	828.12 (2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
503			
	831.28 (2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
504			
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
505			
	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.



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506	843.19	3rd	Injure, disable, or kill police dog or horse.
507	860.15(3)	3rd	Overcharging for repairs and parts.
508	870.01(2)	3rd	Riot; inciting or encouraging.
509	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
510	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
511	893.13(1)(f)2.	2nd	Sell, manufacture, or



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deliver s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or
(4) drugs within 1,000 feet
of public housing facility.

512

893.13(4)(c)

3rd

Use or hire of minor;
deliver to minor other
controlled substances.

513

893.13(6)(a)

3rd

Possession of any
controlled substance other
than felony possession of
cannabis.

514

893.13(7)(a)8.

3rd

Withhold information from
practitioner regarding
previous receipt of or
prescription for a
controlled substance.

515

893.13(7)(a)9.

3rd

Obtain or attempt to obtain
controlled substance by
fraud, forgery,
misrepresentation, etc.

516

893.13(7)(a)10.

3rd

Affix false or forged label



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to package of controlled
substance.

517

893.13(7)(a)11.

3rd

Furnish false or fraudulent
material information on any
document or record required
by chapter 893.

518

893.13(8)(a)1.

3rd

Knowingly assist a patient,
other person, or owner of
an animal in obtaining a
controlled substance
through deceptive, untrue,
or fraudulent
representations in or
related to the
practitioner's practice.

519

893.13(8)(a)2.

3rd

Employ a trick or scheme in
the practitioner's practice
to assist a patient, other
person, or owner of an
animal in obtaining a
controlled substance.

520

893.13(8)(a)3.

3rd

Knowingly write a
prescription for a
controlled substance for a
fictitious person.



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521	893.13 (8) (a) 4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
522	918.13 (1) (a)	3rd	Alter, destroy, or conceal investigation evidence.
523	944.47 (1) (a) 1. & 2.	3rd	Introduce contraband to correctional facility.
524	944.47 (1) (c)	2nd	Possess contraband while upon the grounds of a correctional institution.
525	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
526			
527			
528			
529	(d) LEVEL 4		
530			



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	Florida Statute	Felony Degree	Description
531	316.1935 (3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
532	499.0051 (1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
533	499.0051 (5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
534	517.07 (1)	3rd	Failure to register securities.
535	517.12 (1)	3rd	Failure of dealer, associated person, or



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536			issuer of securities to register.
	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
537			
	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
538			
	784.075	3rd	Battery on detention or commitment facility staff.
539			
	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
540			
	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
541			
	784.081 (3)	3rd	Battery on specified official or employee.
542			
	784.082 (3)	3rd	Battery by detained person on visitor or



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543			other detainee.
	784.083(3)	3rd	Battery on code inspector.
544			
	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
545			
	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
546			
	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
547			
	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.



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548	787.07	3rd	Human smuggling.
549	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
550	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
551	790.115 (2) (c)	3rd	Possessing firearm on school property.
552	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
553	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
554	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance;



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555			unarmed; no assault or battery.
556	810.06	3rd	Burglary; possession of tools.
557	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
558	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
559	<u>812.014</u> <u>(2) (c) 4.-9.</u> 812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, <u>fire extinguisher, citrus fruit, construction site property etc.</u>
560	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
	817.563 (1)	3rd	Sell or deliver substance other than controlled substance



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561	817.568 (2) (a)	3rd	agreed upon, excluding s. 893.03(5) drugs. Fraudulent use of personal identification information.
562	817.625 (2) (a)	3rd	Fraudulent use of scanning device or reencoder.
563	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
564	837.02 (1)	3rd	Perjury in official proceedings.
565	837.021 (1)	3rd	Make contradictory statements in official proceedings.
566	838.022	3rd	Official misconduct.
567	839.13 (2) (a)	3rd	Falsifying records of an individual in the care



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568			and custody of a state agency.
	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
569			
	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
570			
	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
571			
	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
572			
	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
573			
	874.05(1)(a)	3rd	Encouraging or



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574			recruiting another to join a criminal gang.
	893.13 (2) (a) 1.	2nd	Purchase of cocaine (or other s. 893.03(1) (a), (b), or (d), (2) (a), (2) (b), or (2) (c) 4. drugs).
575			
	914.14 (2)	3rd	Witnesses accepting bribes.
576			
	914.22 (1)	3rd	Force, threaten, etc., witness, victim, or informant.
577			
	914.23 (2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
578			
	918.12	3rd	Tampering with jurors.
579			
	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
580			
581			



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Section 13. For the purpose of incorporating the amendment made by this act to section 316.1301, Florida Statutes, in a reference thereto, paragraph (f) of subsection (3) of section 318.18, Florida Statutes, is reenacted 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:

(3)

(f) If a violation of s. 316.1301 or s. 316.1303(1) results in an injury to the pedestrian or damage to the property of the pedestrian, an additional fine of up to \$250 shall be paid. This amount must be distributed pursuant to s. 318.21.

Section 14. For the purpose of incorporating the amendment made by this act to section 316.1301, Florida Statutes, in a reference thereto, subsection (4) of section 318.21, Florida Statutes, is reenacted to read:

318.21 Disposition of civil penalties by county courts.—All civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly as follows:

(4) Of the additional fine assessed under s. 318.18(3)(f) for a violation of s. 316.1301, 40 percent must be remitted to the Department of Revenue for deposit in the Grants and Donations Trust Fund of the Division of Blind Services of the Department of Education, and 60 percent must be distributed pursuant to subsections (1) and (2).

Section 15. For the purpose of incorporating the amendment made by this act to section 316.646, Florida Statutes, in a



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611 reference thereto, paragraph (a) of subsection (5) of section
612 320.02, Florida Statutes, is reenacted to read:

613 320.02 Registration required; application for registration;
614 forms.—

615 (5) (a) Proof that personal injury protection benefits have
616 been purchased if required under s. 627.733, that property
617 damage liability coverage has been purchased as required under
618 s. 324.022, that bodily injury or death coverage has been
619 purchased if required under s. 324.023, and that combined bodily
620 liability insurance and property damage liability insurance have
621 been purchased if required under s. 627.7415 shall be provided
622 in the manner prescribed by law by the applicant at the time of
623 application for registration of any motor vehicle that is
624 subject to such requirements. The issuing agent shall refuse to
625 issue registration if such proof of purchase is not provided.
626 Insurers shall furnish uniform proof-of-purchase cards in a
627 paper or electronic format in a form prescribed by the
628 department and include the name of the insured's insurance
629 company, the coverage identification number, and the make, year,
630 and vehicle identification number of the vehicle insured. The
631 card must contain a statement notifying the applicant of the
632 penalty specified under s. 316.646(4). The card or insurance
633 policy, insurance policy binder, or certificate of insurance or
634 a photocopy of any of these; an affidavit containing the name of
635 the insured's insurance company, the insured's policy number,
636 and the make and year of the vehicle insured; or such other
637 proof as may be prescribed by the department shall constitute
638 sufficient proof of purchase. If an affidavit is provided as
639 proof, it must be in substantially the following form:



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640
641 Under penalty of perjury, I ...(Name of insured)... do hereby
642 certify that I have ...(Personal Injury Protection, Property
643 Damage Liability, and, if required, Bodily Injury Liability)...
644 Insurance currently in effect with ...(Name of insurance
645 company)... under ...(policy number)... covering ...(make, year,
646 and vehicle identification number of vehicle).... ...(Signature
647 of Insured)...

648
649 Such affidavit must include the following warning:

650
651 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE
652 REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA
653 LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS
654 SUBJECT TO PROSECUTION.

655
656 If an application is made through a licensed motor vehicle
657 dealer as required under s. 319.23, the original or a
658 photostatic copy of such card, insurance policy, insurance
659 policy binder, or certificate of insurance or the original
660 affidavit from the insured shall be forwarded by the dealer to
661 the tax collector of the county or the Department of Highway
662 Safety and Motor Vehicles for processing. By executing the
663 aforesaid affidavit, no licensed motor vehicle dealer will be
664 liable in damages for any inadequacy, insufficiency, or
665 falsification of any statement contained therein. A card must
666 also indicate the existence of any bodily injury liability
667 insurance voluntarily purchased.

668 Section 16. For the purpose of incorporating the amendment



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669 made by this act to section 812.014, Florida Statutes, in a
670 reference thereto, subsection (10) of section 95.18, Florida
671 Statutes, is reenacted to read:

672 95.18 Real property actions; adverse possession without
673 color of title.—

674 (10) A person who occupies or attempts to occupy a
675 residential structure solely by claim of adverse possession
676 under this section and offers the property for lease to another
677 commits theft under s. 812.014.

678 Section 17. For the purpose of incorporating the amendment
679 made by this act to section 812.014, Florida Statutes, in a
680 reference thereto, paragraph (c) of subsection (3) of section
681 373.6055, Florida Statutes, is reenacted to read:

682 373.6055 Criminal history checks for certain water
683 management district employees and others.—

684 (3)

685 (c) In addition to other requirements for employment or
686 access established by any water management district pursuant to
687 its water management district's security plan for buildings,
688 facilities, and structures, each water management district's
689 security plan shall provide that:

690 1. Any person who has within the past 7 years been
691 convicted, regardless of whether adjudication was withheld, for
692 a forcible felony as defined in s. 776.08; an act of terrorism
693 as defined in s. 775.30; planting of a hoax bomb as provided in
694 s. 790.165; any violation involving the manufacture, possession,
695 sale, delivery, display, use, or attempted or threatened use of
696 a weapon of mass destruction or hoax weapon of mass destruction
697 as provided in s. 790.166; dealing in stolen property; any



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698 violation of s. 893.135; any violation involving the sale,
699 manufacturing, delivery, or possession with intent to sell,
700 manufacture, or deliver a controlled substance; burglary;
701 robbery; any felony violation of s. 812.014; any violation of s.
702 790.07; any crime an element of which includes use or possession
703 of a firearm; any conviction for any similar offenses under the
704 laws of another jurisdiction; or conviction for conspiracy to
705 commit any of the listed offenses may not be qualified for
706 initial employment within or authorized regular access to
707 buildings, facilities, or structures defined in the water
708 management district's security plan as restricted access areas.

709 2. Any person who has at any time been convicted of any of
710 the offenses listed in subparagraph 1. may not be qualified for
711 initial employment within or authorized regular access to
712 buildings, facilities, or structures defined in the water
713 management district's security plan as restricted access areas
714 unless, after release from incarceration and any supervision
715 imposed as a sentence, the person remained free from a
716 subsequent conviction, regardless of whether adjudication was
717 withheld, for any of the listed offenses for a period of at
718 least 7 years prior to the employment or access date under
719 consideration.

720 Section 18. For the purpose of incorporating the amendment
721 made by this act to section 812.014, Florida Statutes, in a
722 reference thereto, subsection (3) of section 400.9935, Florida
723 Statutes, is reenacted to read:

724 400.9935 Clinic responsibilities.—

725 (3) A charge or reimbursement claim made by or on behalf of
726 a clinic that is required to be licensed under this part but



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727 that is not so licensed, or that is otherwise operating in
728 violation of this part, regardless of whether a service is
729 rendered or whether the charge or reimbursement claim is paid,
730 is an unlawful charge and is noncompensable and unenforceable. A
731 person who knowingly makes or causes to be made an unlawful
732 charge commits theft within the meaning of and punishable as
733 provided in s. 812.014.

734 Section 19. For the purpose of incorporating the amendment
735 made by this act to section 812.014, Florida Statutes, in a
736 reference thereto, paragraph (g) of subsection (17) of section
737 409.910, Florida Statutes, is reenacted to read:

738 409.910 Responsibility for payments on behalf of Medicaid-
739 eligible persons when other parties are liable.-

740 (17)

741 (g) The agency may investigate and request appropriate
742 officers or agencies of the state to investigate suspected
743 criminal violations or fraudulent activity related to third-
744 party benefits, including, without limitation, ss. 414.39 and
745 812.014. Such requests may be directed, without limitation, to
746 the Medicaid Fraud Control Unit of the Office of the Attorney
747 General or to any state attorney. Pursuant to s. 409.913, the
748 Attorney General has primary responsibility to investigate and
749 control Medicaid fraud.

750 Section 20. For the purpose of incorporating the amendment
751 made by this act to section 812.014, Florida Statutes, in a
752 reference thereto, subsection (4) of section 489.126, Florida
753 Statutes, is reenacted to read:

754 489.126 Moneys received by contractors.-

755 (4) Any person who violates any provision of this section



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756 is guilty of theft and shall be prosecuted and punished under s.
757 812.014.

758 Section 21. For the purpose of incorporating the amendment
759 made by this act to section 812.014, Florida Statutes, in a
760 reference thereto, subsection (2) of section 538.23, Florida
761 Statutes, is reenacted to read:

762 538.23 Violations and penalties.—

763 (2) A secondary metals recycler is presumed to know upon
764 receipt of stolen regulated metals property in a purchase
765 transaction that the regulated metals property has been stolen
766 from another if the secondary metals recycler knowingly and
767 intentionally fails to maintain the information required in s.
768 538.19 and shall, upon conviction of a violation of s. 812.015,
769 be punished as provided in s. 812.014(2) or (3).

770 Section 22. For the purpose of incorporating the amendment
771 made by this act to section 812.014, Florida Statutes, in a
772 reference thereto, subsection (10) of section 550.6305, Florida
773 Statutes, is reenacted to read:

774 550.6305 Intertrack wagering; guest track payments;
775 accounting rules.—

776 (10) All races or games conducted at a permitholder's
777 facility, all broadcasts of such races or games, and all
778 broadcast rights relating thereto are owned by the permitholder
779 at whose facility such races or games are conducted and
780 constitute the permitholder's property as defined in s.
781 812.012(4). Transmission, reception of a transmission,
782 exhibition, use, or other appropriation of such races or games,
783 broadcasts of such races or games, or broadcast rights relating
784 thereto without the written consent of the permitholder



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785 constitutes a theft of such property under s. 812.014; and in
786 addition to the penal sanctions contained in s. 812.014, the
787 permitholder has the right to avail itself of the civil remedies
788 specified in ss. 772.104, 772.11, and 812.035 in addition to any
789 other remedies available under applicable state or federal law.

790 Section 23. For the purpose of incorporating the amendment
791 made by this act to section 812.014, Florida Statutes, in a
792 reference thereto, subsection (2) of section 634.319, Florida
793 Statutes, is reenacted to read:

794 634.319 Reporting and accounting for funds.—

795 (2) Any sales representative who, not being entitled
796 thereto, diverts or appropriates such funds or any portion
797 thereof to her or his own use is, upon conviction, guilty of
798 theft, punishable as provided in s. 812.014.

799 Section 24. For the purpose of incorporating the amendment
800 made by this act to section 812.014, Florida Statutes, in a
801 reference thereto, subsection (2) of section 634.421, Florida
802 Statutes, is reenacted to read:

803 634.421 Reporting and accounting for funds.—

804 (2) Any sales representative who, not being entitled
805 thereto, diverts or appropriates funds or any portion thereof to
806 her or his own use commits theft as provided in s. 812.014.

807 Section 25. For the purpose of incorporating the amendment
808 made by this act to section 812.014, Florida Statutes, in a
809 reference thereto, subsection (3) of section 636.238, Florida
810 Statutes, is reenacted to read:

811 636.238 Penalties for violation of this part.—

812 (3) A person who collects fees for purported membership in
813 a discount medical plan but purposefully fails to provide the



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814 promised benefits commits a theft, punishable as provided in s.
815 812.014.

816 Section 26. For the purpose of incorporating the amendment
817 made by this act to section 812.014, Florida Statutes, in a
818 reference thereto, subsection (2) of section 642.038, Florida
819 Statutes, is reenacted to read:

820 642.038 Reporting and accounting for funds.—

821 (2) Any sales representative who, not being entitled
822 thereto, diverts or appropriates such funds or any portion
823 thereof to his or her own use commits theft as provided in s.
824 812.014.

825 Section 27. For the purpose of incorporating the amendment
826 made by this act to section 812.014, Florida Statutes, in a
827 reference thereto, subsection (4) of section 705.102, Florida
828 Statutes, is reenacted to read:

829 705.102 Reporting lost or abandoned property.—

830 (4) Any person who unlawfully appropriates such lost or
831 abandoned property to his or her own use or refuses to deliver
832 such property when required commits theft as defined in s.
833 812.014, punishable as provided in s. 775.082, s. 775.083, or s.
834 775.084.

835 Section 28. For the purpose of incorporating the amendment
836 made by this act to section 812.014, Florida Statutes, in a
837 reference thereto, subsection (2) of section 812.015, Florida
838 Statutes, is reenacted to read:

839 812.015 Retail and farm theft; transit fare evasion;
840 mandatory fine; alternative punishment; detention and arrest;
841 exemption from liability for false arrest; resisting arrest;
842 penalties.—



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843 (2) Upon a second or subsequent conviction for petit theft
844 from a merchant, farmer, or transit agency, the offender shall
845 be punished as provided in s. 812.014(3), except that the court
846 shall impose a fine of not less than \$50 or more than \$1,000.
847 However, in lieu of such fine, the court may require the
848 offender to perform public services designated by the court. In
849 no event shall any such offender be required to perform fewer
850 than the number of hours of public service necessary to satisfy
851 the fine assessed by the court, as provided by this subsection,
852 at the minimum wage prevailing in the state at the time of
853 sentencing.

854 Section 29. For the purpose of incorporating the amendment
855 made by this act to section 812.014, Florida Statutes, in
856 references thereto, subsections (1) and (2) of section 812.0155,
857 Florida Statutes, are reenacted to read:

858 812.0155 Suspension of driver license following an
859 adjudication of guilt for theft.—

860 (1) Except as provided in subsections (2) and (3), the
861 court may order the suspension of the driver license of each
862 person adjudicated guilty of any misdemeanor violation of s.
863 812.014 or s. 812.015, regardless of the value of the property
864 stolen. Upon ordering the suspension of the driver license of
865 the person adjudicated guilty, the court shall forward the
866 driver license of the person adjudicated guilty to the
867 Department of Highway Safety and Motor Vehicles in accordance
868 with s. 322.25.

869 (a) The first suspension of a driver license under this
870 subsection shall be for a period of up to 6 months.

871 (b) A second or subsequent suspension of a driver license



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872 under this subsection shall be for 1 year.

873 (2) The court may revoke, suspend, or withhold issuance of
874 a driver license of a person less than 18 years of age who
875 violates s. 812.014 or s. 812.015 as an alternative to
876 sentencing the person to:

877 (a) Probation as defined in s. 985.03 or commitment to the
878 Department of Juvenile Justice, if the person is adjudicated
879 delinquent for such violation and has not previously been
880 convicted of or adjudicated delinquent for any criminal offense,
881 regardless of whether adjudication was withheld.

882 (b) Probation as defined in s. 985.03, commitment to the
883 Department of Juvenile Justice, probation as defined in chapter
884 948, community control, or incarceration, if the person is
885 convicted as an adult of such violation and has not previously
886 been convicted of or adjudicated delinquent for any criminal
887 offense, regardless of whether adjudication was withheld.

888 Section 30. For the purpose of incorporating the amendment
889 made by this act to section 812.014, Florida Statutes, in
890 references thereto, subsections (4), (7), and (8) of section
891 812.14, Florida Statutes, are reenacted to read:

892 812.14 Trespass and larceny with relation to utility
893 fixtures; theft of utility services.—

894 (4) A person who willfully violates paragraph (2)(a),
895 paragraph (2)(b), or paragraph (2)(c) commits theft, punishable
896 as provided in s. 812.014.

897 (7) A person who willfully violates subsection (5) commits
898 a misdemeanor of the first degree, punishable as provided in s.
899 775.082 or s. 775.083. Prosecution for a violation of subsection
900 (5) does not preclude prosecution for theft pursuant to



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901 subsection (8) or s. 812.014.

902 (8) Theft of utility services for the purpose of
903 facilitating the manufacture of a controlled substance is theft,
904 punishable as provided in s. 812.014.

905 Section 31. For the purpose of incorporating the amendment
906 made by this act to section 812.014, Florida Statutes, in a
907 reference thereto, subsection (3) of section 893.138, Florida
908 Statutes, is reenacted to read:

909 893.138 Local administrative action to abate drug-related,
910 prostitution-related, or stolen-property-related public
911 nuisances and criminal gang activity.-

912 (3) Any pain-management clinic, as described in s. 458.3265
913 or s. 459.0137, which has been used on more than two occasions
914 within a 6-month period as the site of a violation of:

915 (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
916 relating to assault and battery;

917 (b) Section 810.02, relating to burglary;

918 (c) Section 812.014, relating to theft;

919 (d) Section 812.131, relating to robbery by sudden
920 snatching; or

921 (e) Section 893.13, relating to the unlawful distribution
922 of controlled substances,

923
924 may be declared to be a public nuisance, and such nuisance may
925 be abated pursuant to the procedures provided in this section.

926 Section 32. This act shall take effect July 1, 2017.

927
928 ===== T I T L E A M E N D M E N T =====

929 And the title is amended as follows:



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930 Delete everything before the enacting clause
931 and insert:

932 A bill to be entitled
933 An act relating to decreasing penalties for certain
934 criminal acts; amending s. 316.1301, F.S.; deleting a
935 criminal penalty prohibiting a person on a public
936 street or highway from carrying a white or white
937 tipped with red cane or walking stick unless the
938 person is totally or partially blind; amending s.
939 316.2956, F.S.; decreasing the penalty for a person
940 who sells or installs suncreening material in
941 violation of specified provisions; amending s.
942 316.646, F.S.; decreasing the penalty for a person who
943 is required to maintain certain motor vehicle
944 insurance coverage and who presents proof of insurance
945 knowing that such insurance is not currently in force;
946 amending s. 318.14, F.S.; decreasing the penalty for a
947 person who willfully refuses to accept and to sign a
948 citation indicating a promise to appear in a hearing;
949 amending s. 322.03, F.S.; decreasing the penalty for a
950 resident of this state who operates a commercial motor
951 vehicle without possessing a commercial driver license
952 under certain circumstances; amending s. 322.055,
953 F.S.; decreasing the period for revocation or
954 suspension of, or delay of eligibility for, driver
955 licenses or driving privileges for certain persons
956 convicted of certain drug offenses; deleting
957 provisions authorizing a driver to petition the
958 Department of Highway Safety and Motor Vehicles for



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959 restoration of his or her driving privilege; amending
960 s. 562.14, F.S.; decreasing the penalty for selling,
961 consuming, serving, or allowing to be served in a
962 place having a license between midnight and 7 a.m. the
963 next day; amending s. 562.50, F.S.; decreasing the
964 penalty for selling, giving away, disposing of,
965 exchanging, or bartering certain beverages or articles
966 with a habitual drunkard after receiving notice from a
967 family member about such person's condition; amending
968 s. 812.014, F.S.; increasing the minimum monetary
969 value of stolen property for the crime of grand theft
970 of the third degree; increasing the maximum monetary
971 value for grand theft of the third degree involving
972 theft of property from a dwelling or its unenclosed
973 curtilage; increasing the maximum value for petit
974 theft of the first degree; revising the list of
975 offenses that make up grand theft of the third degree;
976 deleting a criminal penalty for petit theft by an
977 offender who has two or more prior theft convictions;
978 amending s. 832.05, F.S.; revising threshold amounts
979 for offenses involving giving worthless checks,
980 drafts, and debit card orders; amending s. 832.062,
981 F.S.; revising the threshold amount for offenses
982 involving payments to the Department of Revenue;
983 amending s. 921.0022, F.S.; conforming provisions to
984 changes made by the act; conforming cross-references;
985 amending s. 985.565, F.S.; conforming provisions to
986 changes made by the act; reenacting ss. 318.18(3)(f)
987 and 318.21(4), F.S., relating to amounts of penalties



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988 and disposition of civil penalties by county courts,
989 respectively, to incorporate the amendment made to s.
990 316.1301, F.S., in references thereto; reenacting s.
991 320.02(5)(a), relating to proof of insurance coverage,
992 to incorporate the amendment made to s. 316.646, F.S.,
993 in a reference thereto; reenacting ss. 95.18(10),
994 373.6055(3)(c), 400.9935(3), 409.910(17)(g),
995 489.126(4), 538.23(2), 550.6305(10), 634.319(2),
996 634.421(2), 636.238(3), 642.038(2), 705.102(4),
997 812.015(2), 812.0155(1) and (2), 812.14(4), (7), and
998 (8), and 893.138(3), F.S., relating to adverse
999 possession without color of title, criminal history
1000 checks for certain employees, clinic responsibilities,
1001 investigating suspected criminal violations or
1002 fraudulent activity related to theft, moneys received
1003 by contractors, violations and penalties, theft and
1004 penal sanctions for theft, reporting and accounting
1005 for funds, reporting and accounting for funds,
1006 penalties for specified violations, reporting and
1007 accounting for funds, reporting lost or abandoned
1008 property, second or subsequent conviction for petit
1009 theft, suspension of driver license following an
1010 adjudication of guilt for theft, theft of utility
1011 services, and local administrative action to abate a
1012 stolen-property-related public nuisance, respectively,
1013 to incorporate the amendment made to s. 812.014, F.S.,
1014 in references thereto; providing an effective date.



541938

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete lines 155 - 162

and insert:

scales. Anyone who refuses to submit to such weighing ~~obstructs~~
~~an officer pursuant to s. 843.02 and commits a noncriminal~~
~~violation is guilty of a misdemeanor of the first degree,~~
punishable as provided in ~~s. 775.082 or~~ s. 775.083. Anyone who
knowingly and willfully resists, obstructs, or opposes a weight
and safety officer while refusing to submit to such weighing by



541938

11 resisting the officer with violence to the officer's person
12 ~~pursuant to s. 843.01~~ commits a misdemeanor of the second degree

13
14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 Delete line 15

17 and insert:

18 revising elements and decreasing penalties for
19 offenses involving a person who refuses to



502536

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Clemens) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 445 - 449

and insert:

(d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at \$100 or more, but less than \$1,000 ~~\$300~~, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1).



502536

11 (e) Except as provided in paragraph (d), if the property
12 stolen is valued at \$100 or more, but less than \$1,000 ~~\$300~~, the
13 offender commits petit theft of the first degree, punishable as
14 a misdemeanor of the first degree, as provided in s. 775.082 or
15 s. 775.083.

16 (3)

17 ~~(c) A person who commits petit theft and who has previously~~
18 ~~been convicted two or more times of any theft commits a felony~~
19 ~~of the third degree, punishable as provided in s. 775.082 or s.~~
20 ~~775.083.~~

21
22 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====
23 And the directory clause is amended as follows:

24 Delete lines 381 - 383

25 and insert:

26 Section 13. Paragraphs (c), (d), and (e) of subsection (2)
27 and paragraph (c) of subsection (3) of section 812.014, Florida
28 Statutes, are amended to read:

29
30 ===== T I T L E A M E N D M E N T =====
31 And the title is amended as follows:

32 Delete lines 54 - 58

33 and insert:

34 degree; increasing the maximum monetary value for
35 grand theft of the third degree involving theft of
36 property from a dwelling or its unenclosed curtilage;
37 increasing the maximum monetary value for petit theft
38 of the first degree; revising the list of offenses
39 that make up grand theft of the third degree;



40 decreasing the penalty for stealing property or a stop
41 sign; deleting a criminal penalty for petit theft by
42 an offender who has two or more prior theft
43 convictions; amending s. 893.13, F.S.;

By Senator Clemens

31-00401-17

2017608__

1 A bill to be entitled
 2 An act relating to decreasing penalties for certain
 3 criminal acts; amending s. 316.061, F.S.; decreasing
 4 the penalty for a driver of a vehicle involved in a
 5 crash resulting only in damage to a vehicle or other
 6 property if such driver does not stop; amending s.
 7 316.1301, F.S.; deleting a criminal penalty
 8 prohibiting a person on a public street or highway
 9 from carrying a white or white tipped with red cane or
 10 walking stick unless the person is totally or
 11 partially blind; amending s. 316.2956, F.S.;
 12 decreasing the penalty for a person who sells or
 13 installs sunscreening material in violation of
 14 specified provisions; amending s. 316.545, F.S.;
 15 decreasing the penalties for a person who refuses to
 16 submit to the weighing of a vehicle after being
 17 required to do so by an officer; amending s. 316.646,
 18 F.S.; decreasing the penalty for a person who is
 19 required to maintain certain motor vehicle insurance
 20 coverage and who presents proof of insurance knowing
 21 that such insurance is not currently in force;
 22 amending s. 318.14, F.S.; decreasing the penalty for a
 23 person who willfully refuses to accept and to sign a
 24 citation indicating a promise to appear in a hearing;
 25 amending s. 319.33, F.S.; decreasing the penalty for a
 26 person who knowingly and with intent to defraud
 27 commits specified actions with regard to a certificate
 28 of title, registration, bill of sale, or other indicia
 29 of ownership of a motor vehicle or mobile home;
 30 amending s. 322.03, F.S.; decreasing the penalty for a
 31 resident of this state who operates a commercial motor
 32 vehicle without possessing a commercial driver license

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33 under certain circumstances; amending s. 322.055,
 34 F.S.; restricting, rather than revoking, the driver
 35 license or driving privilege of a person to business
 36 or employment purposes only, if the person is 18 years
 37 of age or older, is convicted of certain drug
 38 offenses, and otherwise qualifies for such a license;
 39 authorizing such person to petition for the
 40 restoration of the license or driving privilege;
 41 amending s. 562.111, F.S.; decreasing the penalty for
 42 possession of alcoholic beverages by a person under 21
 43 years of age; amending s. 562.14, F.S.; decreasing the
 44 penalty for selling, consuming, serving, or allowing
 45 to be served in a place having a license between
 46 midnight and 7 a.m. the next day; amending s. 562.50,
 47 F.S.; decreasing the penalty for selling, giving away,
 48 disposing of, exchanging, or bartering certain
 49 beverages or articles with a habitual drunkard after
 50 receiving notice from a family member about such
 51 person's condition; amending s. 812.014, F.S.;
 52 increasing the minimum monetary value of stolen
 53 property for the crime of grand theft of the third
 54 degree; revising the list of offenses that make up
 55 grand theft of the third degree; decreasing the
 56 penalty for stealing property or a stop sign;
 57 decreasing the penalty for a third or subsequent
 58 offense for petit theft; amending s. 893.13, F.S.;
 59 decreasing the penalty for the possession of 20 grams
 60 or less of cannabis; amending s. 921.0022, F.S.;
 61 conforming provisions to changes made by the act;

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62 conforming cross-references; amending ss. 932.701 and
 63 985.557, F.S.; conforming cross-references; reenacting
 64 ss. 318.18(3)(f) and 318.21(4), F.S., relating to
 65 amounts of penalties and disposition of civil
 66 penalties by county courts, respectively, to
 67 incorporate the amendment made to s. 316.1301, F.S.,
 68 in references thereto; reenacting ss. 316.516(1),
 69 316.655(1), 318.17, and 318.18(4), F.S., relating to
 70 width, height, and length for inspection; penalties;
 71 excepted offenses; and the amount of penalties, to
 72 incorporate the amendment made to s. 316.545, F.S., in
 73 references thereto; reenacting s. 320.02(5)(a),
 74 relating to proof of insurance coverage, to
 75 incorporate the amendment made to s. 316.646, F.S., in
 76 a reference thereto; reenacting ss. 95.18(10),
 77 373.6055(3)(c), 400.9935(3), 409.910(17)(g),
 78 489.126(4), 538.23(2), 550.6305(10), 634.319(2),
 79 634.421(2), 636.238(3), 642.038(2), 705.102(4),
 80 812.015(2), 812.0155(1) and (2), 812.14(4), (7), and
 81 (8), and 893.138(3), F.S., relating to adverse
 82 possession without color of title, felony theft
 83 violations, clinic responsibilities, investigating
 84 suspected criminal violations or fraudulent activity
 85 related to theft, moneys received by contractors,
 86 violations and penalties, theft and penal sanctions
 87 for theft, reporting and accounting for funds,
 88 reporting and accounting for funds, penalties for
 89 specified violations, reporting and accounting for
 90 funds, reporting lost or abandoned property, second or

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91 subsequent conviction for petit theft, suspension of
 92 driver license following an adjudication of guilt for
 93 theft, theft of utility services, and local
 94 administrative action to abate a stolen-property-
 95 related public nuisance, respectively, to incorporate
 96 the amendment made to s. 812.014, F.S., in references
 97 thereto; reenacting ss. 397.451(4)(b), 435.07(2),
 98 775.084(1)(a), 810.02(3), 831.311(1), 893.15, and
 99 921.187(1)(1), F.S., relating to background checks of
 100 service provider personnel, exemptions from
 101 disqualifications, the definition of the term
 102 "habitual felony offender," burglary, prohibited
 103 actions for violations of s. 893.13, F.S.,
 104 rehabilitation, and additional assessments for certain
 105 violations, respectively, to incorporate the amendment
 106 made to s. 893.13, F.S., in references thereto;
 107 providing an effective date.

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

110
 111 Section 1. Subsection (1) of section 316.061, Florida
 112 Statutes, is amended to read:

113 316.061 Crashes involving damage to vehicle or property.—
 114 (1) The driver of any vehicle involved in a crash resulting
 115 only in damage to a vehicle or other property which is driven or
 116 attended by any person shall immediately stop such vehicle at
 117 the scene of such crash or as close thereto as possible, and
 118 shall forthwith return to, and in every event shall remain at,
 119 the scene of the crash until he or she has fulfilled the

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120 requirements of s. 316.062. A person who violates this
 121 subsection commits a noncriminal violation ~~misdemeanor of the~~
 122 ~~second degree~~, punishable as provided in ~~s. 775.082 or s.~~
 123 775.083. Notwithstanding any other provision of this section, \$5
 124 shall be added to a fine imposed pursuant to this section, which
 125 \$5 shall be deposited in the Emergency Medical Services Trust
 126 Fund.

127 Section 2. Present subsection (1) of section 316.1301,
 128 Florida Statutes, is amended, and present subsections (2) and
 129 (3) of that section are redesignated as subsections (1) and (2),
 130 respectively, to read:

131 316.1301 Traffic regulations to assist blind persons.—

132 ~~(1) It is unlawful for any person, unless totally or~~
 133 ~~partially blind or otherwise incapacitated, while on any public~~
 134 ~~street or highway, to carry in a raised or extended position a~~
 135 ~~cane or walking stick which is white in color or white tipped~~
 136 ~~with red. A person who is convicted of a violation of this~~
 137 ~~subsection is guilty of a misdemeanor of the second degree,~~
 138 ~~punishable as provided in s. 775.082 or s. 775.083.~~

139 Section 3. Subsection (3) of section 316.2956, Florida
 140 Statutes, is amended to read:

141 316.2956 Violation of provisions relating to windshields,
 142 windows, and sunscreening material; penalties.—

143 (3) Any person who sells or installs suncreening material
 144 in violation of any provision of ss. 316.2951-316.2955 commits a
 145 noncriminal violation ~~is guilty of a misdemeanor of the second~~
 146 ~~degree~~, punishable as provided in ~~s. 775.082 or s. 775.083.~~

147 Section 4. Subsection (1) of section 316.545, Florida
 148 Statutes, is amended to read:

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149 316.545 Weight and load unlawful; special fuel and motor
 150 fuel tax enforcement; inspection; penalty; review.—

151 (1) Any officer of the Florida Highway Patrol having reason
 152 to believe that the weight of a vehicle and load is unlawful is
 153 authorized to require the driver to stop and submit to a
 154 weighing of the same by means of either portable or fixed
 155 scales. Anyone who refuses to submit to such weighing obstructs
 156 an officer pursuant to s. 843.02 and commits a noncriminal
 157 violation ~~is guilty of a misdemeanor of the first degree,~~
 158 punishable as provided in ~~s. 775.082 or~~ s. 775.083. Anyone who
 159 knowingly and willfully resists, obstructs, or opposes a weight
 160 and safety officer while refusing to submit to such weighing by
 161 resisting the officer with violence to the officer's person
 162 pursuant to s. 843.01 commits a misdemeanor of the second degree
 163 is guilty of a felony of the third degree, punishable as
 164 provided in s. 775.082 or s. 775.083, ~~or s. 775.084.~~

165 Section 5. Subsection (1) of section 316.646, Florida
 166 Statutes, is republished, and subsection (4) of that section is
 167 amended, to read:

168 316.646 Security required; proof of security and display
 169 thereof.—

170 (1) Any person required by s. 324.022 to maintain property
 171 damage liability security, required by s. 324.023 to maintain
 172 liability security for bodily injury or death, or required by s.
 173 627.733 to maintain personal injury protection security on a
 174 motor vehicle shall have in his or her immediate possession at
 175 all times while operating such motor vehicle proper proof of
 176 maintenance of the required security.

177 (a) Such proof shall be in a uniform paper or electronic

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178 format, as prescribed by the department, a valid insurance
179 policy, an insurance policy binder, a certificate of insurance,
180 or such other proof as may be prescribed by the department.

181 (b)1. The act of presenting to a law enforcement officer an
182 electronic device displaying proof of insurance in an electronic
183 format does not constitute consent for the officer to access any
184 information on the device other than the displayed proof of
185 insurance.

186 2. The person who presents the device to the officer
187 assumes the liability for any resulting damage to the device.

188 (4) Any person presenting proof of insurance as required in
189 subsection (1) who knows that the insurance as represented by
190 such proof of insurance is not currently in force commits a
191 noncriminal violation ~~is guilty of a misdemeanor of the first~~
192 ~~degree~~, punishable as provided in ~~s. 775.082~~ or s. 775.083.

193 Section 6. Subsection (2) of section 318.14, Florida
194 Statutes, is republished, and subsection (3) of that section is
195 amended, to read:

196 318.14 Noncriminal traffic infractions; exception;
197 procedures.—

198 (2) Except as provided in ss. 316.1001(2) and 316.0083, any
199 person cited for a violation requiring a mandatory hearing
200 listed in s. 318.19 or any other criminal traffic violation
201 listed in chapter 316 must sign and accept a citation indicating
202 a promise to appear. The officer may indicate on the traffic
203 citation the time and location of the scheduled hearing and must
204 indicate the applicable civil penalty established in s. 318.18.
205 For all other infractions under this section, except for
206 infractions under s. 316.1001, the officer must certify by

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207 electronic, electronic facsimile, or written signature that the
208 citation was delivered to the person cited. This certification
209 is prima facie evidence that the person cited was served with
210 the citation.

211 (3) Any person who willfully refuses to accept and sign a
212 summons as provided in subsection (2) commits a noncriminal
213 violation, punishable as provided in s. 775.083 ~~misdemeanor of~~
214 ~~the second degree~~.

215 Section 7. Subsections (4), (5), and (6) of section 319.33,
216 Florida Statutes, are reordered and amended to read:

217 319.33 Offenses involving vehicle identification numbers,
218 applications, certificates, papers; penalty.—

219 ~~(6)~~~~(4)~~ It is unlawful for any person knowingly and with
220 intent to defraud to have in his or her possession, sell, offer
221 to sell, counterfeit, or supply a blank, forged, fictitious,
222 counterfeit, stolen, or fraudulently or unlawfully obtained
223 certificate of title, registration, bill of sale, or other
224 indicia of ownership of a motor vehicle or mobile home or to
225 conspire to do any of the foregoing. Any person who violates
226 this subsection commits a misdemeanor of the second degree,
227 punishable as provided in s. 775.082 or s. 775.083.

228 ~~(4)~~~~(5)~~ It is unlawful for any person, firm, or corporation
229 to knowingly possess, manufacture, sell or exchange, offer to
230 sell or exchange, supply in blank, or give away any counterfeit
231 manufacturer's or state-assigned identification number plates or
232 serial plates or any decal used for the purpose of
233 identification of any motor vehicle; or for any officer, agent,
234 or employee of any person, firm, or corporation, or any person
235 who shall authorize, direct, aid in exchange, or give away such

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236 counterfeit manufacturer's or state-assigned identification
 237 number plates or serial plates or any decal; or conspire to do
 238 any of the foregoing. However, nothing in this subsection shall
 239 be applicable to any approved replacement manufacturer's or
 240 state-assigned identification number plates or serial plates or
 241 any decal issued by the department or any state.

242 ~~(5)(6)~~ Any person who violates subsection (1), subsection
 243 (2), subsection (3), or subsection (4) commits any provision of
 244 ~~this section is guilty of~~ a felony of the third degree,
 245 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 246 Any motor vehicle used in violation of this section shall
 247 constitute contraband ~~that which~~ may be seized by a law
 248 enforcement agency and shall be subject to forfeiture
 249 proceedings pursuant to ss. 932.701-932.704. This section is not
 250 exclusive of any other penalties prescribed by any existing or
 251 future laws for the larceny or unauthorized taking of motor
 252 vehicles or mobile homes, but is supplementary thereto.

253 Section 8. Subsection (3) of section 322.03, Florida
 254 Statutes, is amended to read:

255 322.03 Drivers must be licensed; penalties.-

256 (3) (a) The department may not issue a commercial driver
 257 license to any person who is not a resident of this state.

258 (b) A resident of this state who is required by the laws of
 259 this state to possess a commercial driver license may not
 260 operate a commercial motor vehicle in this state unless he or
 261 she possesses a valid commercial driver license issued by this
 262 state. Except as provided in paragraph (c), any person who
 263 violates this paragraph ~~commits is guilty of~~ a misdemeanor of
 264 the ~~second~~ first degree, punishable as provided in s. 775.082 or

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265 s. 775.083.

266 (c) Any person whose commercial driver license has been
 267 expired for a period of 30 days or less and who drives a
 268 commercial motor vehicle within this state ~~commits is guilty of~~
 269 a nonmoving violation, punishable as provided in s. 318.18.

270 Section 9. Subsection (1) of section 322.055, Florida
 271 Statutes, is amended to read:

272 322.055 Revocation or suspension of, or delay of
 273 eligibility for, driver license for persons 18 years of age or
 274 older convicted of certain drug offenses.-

275 (1) Notwithstanding s. 322.28, upon the conviction of a
 276 person 18 years of age or older for possession or sale of,
 277 trafficking in, or conspiracy to possess, sell, or traffic in a
 278 controlled substance, the court shall direct the department to
 279 restrict ~~revoke~~ the person's driver license or driving privilege
 280 to business or employment purposes only, as defined in s.
 281 322.271, if the person otherwise qualifies for such a license ~~of~~
 282 ~~the person~~. The period of such restriction ~~revocation~~ shall be 1
 283 year or until the person is evaluated for and, if deemed
 284 necessary by the evaluating agency, completes a drug treatment
 285 and rehabilitation program approved or regulated by the
 286 Department of Children and Families. ~~However, the court may, in~~
 287 ~~its sound discretion, direct the department to issue a license~~
 288 ~~for driving privilege restricted to business or employment~~
 289 ~~purposes only, as defined by s. 322.271, if the person is~~
 290 ~~otherwise qualified for such a license~~. A driver whose license
 291 or driving privilege has been suspended, restricted to business
 292 or employment purposes only, or revoked under this section or s.
 293 322.056 may, upon the expiration of 6 months, petition the

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294 department for restoration of the driving privilege on a
295 restricted or unrestricted basis depending on length of
296 suspension or revocation. In no case shall a restricted license
297 be available until 6 months of the suspension or revocation
298 period has expired.

299 Section 10. Subsection (1) of section 562.111, Florida
300 Statutes, is amended, and subsection (3) of that section is
301 republished, to read:

302 562.111 Possession of alcoholic beverages by persons under
303 age 21 prohibited.-

304 (1) It is unlawful for any person under the age of 21
305 years, except a person employed under ~~the provisions of s.~~
306 562.13 acting in the scope of her or his employment, to have in
307 her or his possession alcoholic beverages, except that nothing
308 contained in this subsection shall preclude the employment of
309 any person 18 years of age or older in the sale, preparation, or
310 service of alcoholic beverages in licensed premises in any
311 establishment licensed by the Division of Alcoholic Beverages
312 and Tobacco or the Division of Hotels and Restaurants.
313 Notwithstanding ~~the provisions of s. 562.45,~~ any person under
314 the age of 21 who is convicted of a violation of this subsection
315 commits a noncriminal violation ~~is guilty of a misdemeanor of~~
316 ~~the second degree,~~ punishable as provided in ~~s. 775.082 or s.~~
317 775.083 or by a term of community service determined by a judge,
318 or both; however, any person under the age of 21 who has been
319 convicted of a violation of this subsection and who is
320 thereafter convicted of a further violation of this subsection
321 is, upon conviction of the further offense, guilty of a
322 misdemeanor of the first degree, punishable as provided in s.

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323 775.082 or s. 775.083.

324 (3) In addition to any other penalty imposed for a
325 violation of subsection (1), the court shall direct the
326 Department of Highway Safety and Motor Vehicles to withhold
327 issuance of, or suspend or revoke, the violator's driver license
328 or driving privilege, as provided in s. 322.056.

329 Section 11. Section 562.14, Florida Statutes, is amended to
330 read:

331 562.14 Regulating the time for sale of alcoholic and
332 intoxicating beverages; prohibiting use of licensed premises.-

333 (1) Except as otherwise provided by county or municipal
334 ordinance, ~~no~~ alcoholic beverages may not be sold, consumed,
335 served, or permitted to be served or consumed in any place
336 holding a license under the division between the hours of
337 midnight and 7 a.m. of the following day. This section does
338 ~~shall~~ not apply to railroads selling only to passengers for
339 consumption on railroad cars. A person who violates this
340 subsection commits a noncriminal violation, punishable as
341 provided in s. 775.083.

342 (2) Except as otherwise provided by county or municipal
343 ordinance, a ~~no~~ vendor issued an alcoholic beverage license to
344 sell alcoholic beverages for consumption on the vendor's
345 licensed premises and whose principal business is the sale of
346 alcoholic beverages may not, ~~shall~~ allow the licensed premises,
347 as defined in s. 561.01(11), to be rented, leased, or otherwise
348 used during the hours in which the sale of alcoholic beverages
349 is prohibited. However, this prohibition does ~~shall~~ not apply to
350 the rental, lease, or other use of the licensed premises on
351 Sundays after 8 a.m. Further, neither this subsection, nor any

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352 local ordinance adopted pursuant to this subsection, shall be
 353 construed to apply to a theme park complex as defined in s.
 354 565.02(6) or an entertainment/resort complex as defined in s.
 355 561.01(18). A person who violates this subsection commits a
 356 misdemeanor of the second degree, punishable as provided in s.
 357 775.082 or s. 775.083.

358 (3) The division is not ~~shall not be~~ responsible for the
 359 enforcement of the hours of sale established by county or
 360 municipal ordinance.

361 ~~(4) Any person violating this section shall be guilty of a~~
 362 ~~misdemeanor of the second degree, punishable as provided in s.~~
 363 ~~775.082 or s. 775.083.~~

364 Section 12. Section 562.50, Florida Statutes, is amended to
 365 read:

366 562.50 Habitual drunkards; furnishing intoxicants to, after
 367 notice.—Any person who shall sell, give away, dispose of,
 368 exchange, or barter any alcoholic beverage, or any essence,
 369 extract, bitters, preparation, compound, composition, or any
 370 article whatsoever under any name, label, or brand, which
 371 produces intoxication, to any person habitually addicted to the
 372 use of any or all such intoxicating liquors, after having been
 373 given written notice by wife, husband, father, mother, sister,
 374 brother, child, or nearest relative that said person so addicted
 375 is an habitual drunkard and that the use of intoxicating drink
 376 or drinks is working an injury to the person using said liquors,
 377 or to the person giving said written notice, commits a
 378 noncriminal violation ~~shall be guilty of a misdemeanor of the~~
 379 ~~second degree, punishable as provided in s. 775.082 or s.~~
 380 ~~775.083.~~

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381 Section 13. Paragraph (c) of subsection (2) and paragraph
 382 (c) of subsection (3) of section 812.014, Florida Statutes, are
 383 amended to read:

384 812.014 Theft.—

385 (2)

386 (c) 1. It is grand theft of the third degree and a felony of
 387 the third degree, punishable as provided in s. 775.082, s.
 388 775.083, or s. 775.084, if the property stolen is:

389 a.1- Valued at \$1,000 ~~\$300~~ or more, but less than \$5,000.

390 b.2- Valued at \$5,000 or more, but less than \$10,000.

391 c.3- Valued at \$10,000 or more, but less than \$20,000.

392 4. A will, codicil, or other testamentary instrument.

393 d.5- A firearm.

394 e.6- A motor vehicle, except as provided in paragraph (a).

395 7. Any commercially farmed animal, including any animal of
 396 the equine, bovine, or swine class or other grazing animal; a
 397 bee colony of a registered beekeeper; and aquaculture species
 398 raised at a certified aquaculture facility. If the property
 399 stolen is aquaculture species raised at a certified aquaculture
 400 facility, then a \$10,000 fine shall be imposed.

401 8. Any fire extinguisher.

402 f.9- Any amount of citrus fruit consisting of 2,000 or more
 403 individual pieces of fruit.

404 g.10- Taken from a designated construction site identified
 405 by the posting of a sign as provided for in s. 810.09(2) (d).

406 11. Any stop sign.

407 h.12- Anhydrous ammonia.

408 i.13- Any amount of a controlled substance as defined in s.
 409 893.02. Notwithstanding any other law, separate judgments and

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410 sentences for theft of a controlled substance under this sub-
 411 subparagraph ~~subparagraph~~ and for any applicable possession of
 412 controlled substance offense under s. 893.13 or trafficking in
 413 controlled substance offense under s. 893.135 may be imposed
 414 when all such offenses involve the same amount or amounts of a
 415 controlled substance.

416

417 However, if the property is stolen within a county that is
 418 subject to a state of emergency declared by the Governor under
 419 chapter 252, the property is stolen after the declaration of
 420 emergency is made, and the perpetration of the theft is
 421 facilitated by conditions arising from the emergency, the
 422 offender commits a felony of the second degree, punishable as
 423 provided in s. 775.082, s. 775.083, or s. 775.084, if the
 424 property is valued at \$5,000 or more, but less than \$10,000, as
 425 provided under subparagraph 2., or if the property is valued at
 426 \$10,000 or more, but less than \$20,000, as provided under
 427 subparagraph 3. As used in this paragraph, the term "conditions
 428 arising from the emergency" means civil unrest, power outages,
 429 curfews, voluntary or mandatory evacuations, or a reduction in
 430 the presence of or the response time for first responders or
 431 homeland security personnel. For purposes of sentencing under
 432 chapter 921, a felony offense that is reclassified under this
 433 paragraph is ranked one level above the ranking under s.
 434 921.0022 or s. 921.0023 of the offense committed.

435 2. A person who steals a commercially farmed animal,
 436 including an animal of the equine, bovine, or swine class or
 437 other grazing animal; a bee colony of a registered beekeeper; or
 438 an aquaculture species raised at a certified aquaculture

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439 facility commits a misdemeanor of the second degree, punishable
 440 as provided in s. 775.082 or s. 775.083. If the property stolen
 441 is an aquaculture species raised at a certified aquaculture
 442 facility, a \$10,000 fine shall be imposed.

443 3. A person who steals a stop sign commits a noncriminal
 444 violation, punishable by a \$500 fine.

445

(3)

446 (c) A person who commits petit theft and who has previously
 447 been convicted two or more times of any theft commits a
 448 misdemeanor of the second degree ~~felony of the third degree~~, punishable
 449 as provided in s. 775.082 or s. 775.083.

450 Section 14. Paragraph (b) of subsection (6) of section
 451 893.13, Florida Statutes, is amended to read:

452 893.13 Prohibited acts; penalties.—

453

(6)

454 (b) If the offense is the possession of 20 grams or less of
 455 cannabis, as defined in this chapter, the person commits a
 456 noncriminal violation ~~misdemeanor of the first degree~~,
 457 punishable as provided in s. 775.082 or s. 775.083 or by a term
 458 of community service determined by a judge, or both. As used in
 459 this subsection, the term "cannabis" does not include the resin
 460 extracted from the plants of the genus *Cannabis*, or any compound
 461 manufacture, salt, derivative, mixture, or preparation of such
 462 resin.

463 Section 15. Paragraphs (a) through (d) of subsection (3) of
 464 section 921.0022, Florida Statutes, are amended to read:

465 921.0022 Criminal Punishment Code; offense severity ranking
 466 chart.—

467

(3) OFFENSE SEVERITY RANKING CHART

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468	31-00401-17		2017608__
469	(a) LEVEL 1		
	Florida	Felony	
	Statute	Degree	Description
470	24.118(3)(a)	3rd	Counterfeit or altered state lottery ticket.
471	212.054(2)(b)	3rd	Discretionary sales surtax; limitations, administration, and collection.
472	212.15(2)(b)	3rd	Failure to remit sales taxes, amount greater than \$300 but less than \$20,000.
473	316.1935(1)	3rd	Fleeing or attempting to elude law enforcement officer.
474	319.30(5)	3rd	Sell, exchange, give away certificate of title or identification number plate.
475	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an odometer.
476	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell registration license

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			plates or validation stickers.
477	322.212	3rd	Possession of forged, stolen, counterfeit, or unlawfully issued driver license; possession of simulated identification.
	(1)(a)-(c)		
478	322.212(4)	3rd	Supply or aid in supplying unauthorized driver license or identification card.
479	322.212(5)(a)	3rd	False application for driver license or identification card.
480	414.39(3)(a)	3rd	Fraudulent misappropriation of public assistance funds by employee/official, value more than \$200.
481	443.071(1)	3rd	False statement or representation to obtain or increase reemployment assistance benefits.
482	509.151(1)	3rd	Defraud an innkeeper, food or lodging value greater

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				than \$300.
483	517.302(1)	3rd		Violation of the Florida Securities and Investor Protection Act.
484	562.27(1)	3rd		Possess still or still apparatus.
485	713.69	3rd		Tenant removes property upon which lien has accrued, value more than \$50.
486	812.014(3)(e)	3rd		Petit theft (3rd conviction); theft of any property not specified in subsection (2).
487	812.081(2)	3rd		Unlawfully makes or causes to be made a reproduction of a trade secret.
488	815.04(5)(a)	3rd		Offense against intellectual property (i.e., computer programs, data).
489	817.52(2)	3rd		Hiring with intent to defraud, motor vehicle services.

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490	817.569(2)	3rd		Use of public record or public records information or providing false information to facilitate commission of a felony.
491	826.01	3rd		Bigamy.
492	828.122(3)	3rd		Fighting or baiting animals.
493	831.04(1)	3rd		Any erasure, alteration, etc., of any replacement deed, map, plat, or other document listed in s. 92.28.
494	831.31(1)(a)	3rd		Sell, deliver, or possess counterfeit controlled substances, all but s. 893.03(5) drugs.
495	832.041(1)	3rd		Stopping payment with intent to defraud \$150 or more.
496	832.05(2)(b) & (4)(c)	3rd		Knowing, making, issuing worthless checks \$150 or more or obtaining property in return for worthless check \$150 or more.

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497	838.15(2)	3rd	Commercial bribe receiving.
498	838.16	3rd	Commercial bribery.
499	843.18	3rd	Fleeing by boat to elude a law enforcement officer.
500	847.011(1)(a)	3rd	Sell, distribute, etc., obscene, lewd, etc., material (2nd conviction).
501	849.01	3rd	Keeping gambling house.
502	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc., or assist therein, conduct or advertise drawing for prizes, or dispose of property or money by means of lottery.
503	849.23	3rd	Gambling-related machines; "common offender" as to property rights.
504	849.25(2)	3rd	Engaging in bookmaking.
505	860.08	3rd	Interfere with a railroad signal.

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506	860.13(1)(a)	3rd	Operate aircraft while under the influence.
507	893.13(2)(a)2.	3rd	Purchase of cannabis.
508	893.13(6)(a)	3rd	Possession of cannabis (more than 20 grams).
509	934.03(1)(a)	3rd	Intercepts, or procures any other person to intercept, any wire or oral communication.
510			
511	(b) LEVEL 2		
512			
	Florida Statute	Felony Degree	Description
513	379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
514	379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.

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	403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
516	517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
517	590.28(1)	3rd	Intentional burning of lands.
518	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
519	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
520	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to

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			public communication or any other public service.
521	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
522	810.09(2)(e)	3rd	Trespassing on posted commercial horticulture property.
523	<u>812.014</u>	3rd	Grand theft, 3rd degree; <u>\$1,000</u> \$300 or more but less than \$5,000.
	<u>(2)(c)1.a.</u>		
	812.014(2)(e)1.		
524	812.014(2)(d)	3rd	Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
525	812.015(7)	3rd	Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
526			

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527	817.234(1)(a)2.	3rd	False statement in support of insurance claim.
528	817.481(3)(a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
529	817.52(3)	3rd	Failure to redeliver hired vehicle.
530	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
531	817.60(5)	3rd	Dealing in credit cards of another.
532	817.60(6)(a)	3rd	Forgery; purchase goods, services with false card.
533	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.

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534	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
535	831.01	3rd	Forgery.
536	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
537	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
538	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
539	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
540	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
	832.05(3)(a)	3rd	Cashing or depositing

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			item with intent to defraud.
541	843.08	3rd	False personation.
542	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs other than cannabis.
543	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
544	(c) LEVEL 3		
545	Florida Statute	Felony Degree	Description
546			
547	119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
548	316.066(3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.

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549	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
550	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
551	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
552	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
553	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
554	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
555	327.35(2)(b)	3rd	Felony BUI.

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	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
557	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
558	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
559	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
560			

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	379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
561	400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
562	400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
563	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
564	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
565	624.401(4)(a)	3rd	Transacting insurance without a certificate of

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	31-00401-17		2017608__	authority.
566				
	624.401(4)(b)1.	3rd		Transacting insurance without a certificate of authority; premium collected less than \$20,000.
567				
	626.902(1)(a) & (b)	3rd		Representing an unauthorized insurer.
568				
	697.08	3rd		Equity skimming.
569				
	790.15(3)	3rd		Person directs another to discharge firearm from a vehicle.
570				
	806.10(1)	3rd		Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
571				
	806.10(2)	3rd		Interferes with or assaults firefighter in performance of duty.
572				
	810.09(2)(c)	3rd		Trespass on property other than structure or conveyance armed with

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573				
	<u>812.014</u>	3rd		Grand theft; \$5,000 or more but less than \$10,000.
	<u>(2)(c)1.b.</u>			
	812.014(2)(e)2.			
574				
	812.0145(2)(c)	3rd		Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
575				
	815.04(5)(b)	2nd		Computer offense devised to defraud or obtain property.
576				
	817.034(4)(a)3.	3rd		Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
577				
	817.233	3rd		Burning to defraud insurer.
578				
	817.234	3rd		Unlawful solicitation of persons involved in motor vehicle accidents.
	(8)(b) & (c)			
579				
	817.234(11)(a)	3rd		Insurance fraud; property value less than \$20,000.
580				

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	817.236	3rd	Filing a false motor vehicle insurance application.
581			
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
582			
	817.413(2)	3rd	Sale of used goods as new.
583			
	817.505(4)	3rd	Patient brokering.
584			
	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
585			
	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
586			
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
587			

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	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
588			
	843.19	3rd	Injure, disable, or kill police dog or horse.
589			
	860.15(3)	3rd	Overcharging for repairs and parts.
590			
	870.01(2)	3rd	Riot; inciting or encouraging.
591			
	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
592			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.

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593 893.13(1)(f)2. 2nd Sell, manufacture, or
deliver s. 893.03(1)(c),
(2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or
(4) drugs within 1,000 feet
of public housing facility.

594 893.13(4)(c) 3rd Use or hire of minor;
deliver to minor other
controlled substances.

595 893.13(6)(a) 3rd Possession of any
controlled substance other
than felony possession of
cannabis.

596 893.13(7)(a)8. 3rd Withhold information from
practitioner regarding
previous receipt of or
prescription for a
controlled substance.

597 893.13(7)(a)9. 3rd Obtain or attempt to obtain
controlled substance by
fraud, forgery,
misrepresentation, etc.

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598 893.13(7)(a)10. 3rd Affix false or forged label
to package of controlled
substance.

599 893.13(7)(a)11. 3rd Furnish false or fraudulent
material information on any
document or record required
by chapter 893.

600 893.13(8)(a)1. 3rd Knowingly assist a patient,
other person, or owner of
an animal in obtaining a
controlled substance
through deceptive, untrue,
or fraudulent
representations in or
related to the
practitioner's practice.

601 893.13(8)(a)2. 3rd Employ a trick or scheme in
the practitioner's practice
to assist a patient, other
person, or owner of an
animal in obtaining a
controlled substance.

602 893.13(8)(a)3. 3rd Knowingly write a
prescription for a

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			controlled substance for a fictitious person.	
603	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.	
604	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.	
605	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.	
606	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.	
607	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).	
608				
609	(d) LEVEL 4			
610				

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	Florida Statute	Felony Degree	Description	
611	316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.	
612	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.	
613	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.	
614	517.07(1)	3rd	Failure to register securities.	
615	517.12(1)	3rd	Failure of dealer, associated person, or	

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			issuer of securities to	
			register.	
616	784.07(2)(b)	3rd	Battery of law	
			enforcement officer,	
			firefighter, etc.	
617	784.074(1)(c)	3rd	Battery of sexually	
			violent predators	
			facility staff.	
618	784.075	3rd	Battery on detention or	
			commitment facility	
			staff.	
619	784.078	3rd	Battery of facility	
			employee by throwing,	
			tossing, or expelling	
			certain fluids or	
			materials.	
620	784.08(2)(c)	3rd	Battery on a person 65	
			years of age or older.	
621	784.081(3)	3rd	Battery on specified	
			official or employee.	
622	784.082(3)	3rd	Battery by detained	
			person on visitor or	

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			other detainee.	
623	784.083(3)	3rd	Battery on code	
			inspector.	
624	784.085	3rd	Battery of child by	
			throwing, tossing,	
			projecting, or expelling	
			certain fluids or	
			materials.	
625	787.03(1)	3rd	Interference with	
			custody; wrongly takes	
			minor from appointed	
			guardian.	
626	787.04(2)	3rd	Take, entice, or remove	
			child beyond state	
			limits with criminal	
			intent pending custody	
			proceedings.	
627	787.04(3)	3rd	Carrying child beyond	
			state lines with	
			criminal intent to avoid	
			producing child at	
			custody hearing or	
			delivering to designated	
			person.	

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	787.07	3rd	Human smuggling.
629	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
630	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
631	790.115(2)(c)	3rd	Possessing firearm on school property.
632	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
633	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
634	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance;

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			unarmed; no assault or battery.
635	810.06	3rd	Burglary; possession of tools.
636	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
637	<u>812.014</u> <u>(2)(c)1.c.</u> 812.014(2)(e)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
638	<u>812.014</u> <u>(2)(c)1.d.-g.</u> 812.014 (2)(e)4. 10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, <u>citrus fruit,</u> <u>construction site</u> <u>property livestock, etc.</u>
639	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
640	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding

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			s. 893.03(5) drugs.
641	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
642	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
643	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
644	837.02(1)	3rd	Perjury in official proceedings.
645	837.021(1)	3rd	Make contradictory statements in official proceedings.
646	838.022	3rd	Official misconduct.
647	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state

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			agency.
648	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
649	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
650	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
651	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
652	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
653	874.05(1)(a)	3rd	Encouraging or recruiting another to

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 join a criminal gang.

654 893.13(2)(a)1. 2nd Purchase of cocaine (or
 other s. 893.03(1)(a),
 (b), or (d), (2)(a),
 (2)(b), or (2)(c)4.
 655 drugs).

914.14(2) 3rd Witnesses accepting
 656 bribes.

914.22(1) 3rd Force, threaten, etc.,
 witness, victim, or
 657 informant.

914.23(2) 3rd Retaliation against a
 witness, victim, or
 658 informant, no bodily
 injury.

918.12 3rd Tampering with jurors.
 659

934.215 3rd Use of two-way
 communications device to
 facilitate commission of
 a crime.

660 Section 16. Paragraph (a) of subsection (2) of section
 661 932.701, Florida Statutes, is amended to read:
 662

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 663 932.701 Short title; definitions.—
 664 (2) As used in the Florida Contraband Forfeiture Act:
 665 (a) "Contraband article" means:
 666 1. Any controlled substance as defined in chapter 893 or
 667 any substance, device, paraphernalia, or currency or other means
 668 of exchange that was used, was attempted to be used, or was
 669 intended to be used in violation of any provision of chapter
 670 893, if the totality of the facts presented by the state is
 671 clearly sufficient to meet the state's burden of establishing
 672 probable cause to believe that a nexus exists between the
 673 article seized and the narcotics activity, whether or not the
 674 use of the contraband article can be traced to a specific
 675 narcotics transaction.
 676 2. Any gambling paraphernalia, lottery tickets, money,
 677 currency, or other means of exchange which was used, was
 678 attempted, or intended to be used in violation of the gambling
 679 laws of the state.
 680 3. Any equipment, liquid or solid, which was being used, is
 681 being used, was attempted to be used, or intended to be used in
 682 violation of the beverage or tobacco laws of the state.
 683 4. Any motor fuel upon which the motor fuel tax has not
 684 been paid as required by law.
 685 5. Any personal property, including, but not limited to,
 686 any vessel, aircraft, item, object, tool, substance, device,
 687 weapon, machine, vehicle of any kind, money, securities, books,
 688 records, research, negotiable instruments, or currency, which
 689 was used or was attempted to be used as an instrumentality in
 690 the commission of, or in aiding or abetting in the commission
 691 of, any felony, whether or not comprising an element of the

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692 felony, or which is acquired by proceeds obtained as a result of
 693 a violation of the Florida Contraband Forfeiture Act.

694 6. Any real property, including any right, title,
 695 leasehold, or other interest in the whole of any lot or tract of
 696 land, which was used, is being used, or was attempted to be used
 697 as an instrumentality in the commission of, or in aiding or
 698 abetting in the commission of, any felony, or which is acquired
 699 by proceeds obtained as a result of a violation of the Florida
 700 Contraband Forfeiture Act.

701 7. Any personal property, including, but not limited to,
 702 equipment, money, securities, books, records, research,
 703 negotiable instruments, currency, or any vessel, aircraft, item,
 704 object, tool, substance, device, weapon, machine, or vehicle of
 705 any kind in the possession of or belonging to any person who
 706 takes aquaculture products in violation of s. 812.014(2)(c)2. ~~s.~~
 707 ~~812.014(2)(e).~~

708 8. Any motor vehicle offered for sale in violation of s.
 709 320.28.

710 9. Any motor vehicle used during the course of committing
 711 an offense in violation of s. 322.34(9)(a).

712 10. Any photograph, film, or other recorded image,
 713 including an image recorded on videotape, a compact disc,
 714 digital tape, or fixed disk, that is recorded in violation of s.
 715 810.145 and is possessed for the purpose of amusement,
 716 entertainment, sexual arousal, gratification, or profit, or for
 717 the purpose of degrading or abusing another person.

718 11. Any real property, including any right, title,
 719 leasehold, or other interest in the whole of any lot or tract of
 720 land, which is acquired by proceeds obtained as a result of

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721 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
 722 property, including, but not limited to, equipment, money,
 723 securities, books, records, research, negotiable instruments, or
 724 currency; or any vessel, aircraft, item, object, tool,
 725 substance, device, weapon, machine, or vehicle of any kind in
 726 the possession of or belonging to any person which is acquired
 727 by proceeds obtained as a result of Medicaid fraud under s.
 728 409.920 or s. 409.9201.

729 12. Any personal property, including, but not limited to,
 730 any vehicle, item, object, tool, device, weapon, machine, money,
 731 security, book, or record, that is used or attempted to be used
 732 as an instrumentality in the commission of, or in aiding and
 733 abetting in the commission of, a person's third or subsequent
 734 violation of s. 509.144, whether or not comprising an element of
 735 the offense.

736 Section 17. Paragraph (a) of subsection (1) and paragraph
 737 (c) of subsection (2) of section 985.557, Florida Statutes, are
 738 amended to read:

739 985.557 Direct filing of an information; discretionary and
 740 mandatory criteria.—

741 (1) DISCRETIONARY DIRECT FILE.—

742 (a) With respect to any child who was 14 or 15 years of age
 743 at the time the alleged offense was committed, the state
 744 attorney may file an information when in the state attorney's
 745 judgment and discretion the public interest requires that adult
 746 sanctions be considered or imposed and when the offense charged
 747 is for the commission of, attempt to commit, or conspiracy to
 748 commit:

749 1. Arson;

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750 2. Sexual battery;

751 3. Robbery;

752 4. Kidnapping;

753 5. Aggravated child abuse;

754 6. Aggravated assault;

755 7. Aggravated stalking;

756 8. Murder;

757 9. Manslaughter;

758 10. Unlawful throwing, placing, or discharging of a

759 destructive device or bomb;

760 11. Armed burglary in violation of s. 810.02(2)(b) or

761 specified burglary of a dwelling or structure in violation of s.

762 810.02(2)(c), or burglary with an assault or battery in

763 violation of s. 810.02(2)(a);

764 12. Aggravated battery;

765 13. Any lewd or lascivious offense committed upon or in the

766 presence of a person less than 16 years of age;

767 14. Carrying, displaying, using, threatening, or attempting

768 to use a weapon or firearm during the commission of a felony;

769 15. Grand theft in violation of s. 812.014(2)(a);

770 16. Possessing or discharging any weapon or firearm on

771 school property in violation of s. 790.115;

772 17. Home invasion robbery;

773 18. Carjacking; or

774 19. Grand theft of a motor vehicle in violation of s.

775 812.014(2)(c)1.e. s. 812.014(2)(c)1.e. or grand theft of a motor

776 vehicle valued at \$20,000 or more in violation of s.

777 812.014(2)(b) if the child has a previous adjudication for grand

778 theft of a motor vehicle in violation of s. 812.014(2)(c)1.e. s.

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779 ~~812.014(2)(c)6.~~ or s. 812.014(2)(b).

780 (2) MANDATORY DIRECT FILE.—

781 (c) The state attorney must file an information if a child,

782 regardless of the child's age at the time the alleged offense

783 was committed, is alleged to have committed an act that would be

784 a violation of law if the child were an adult, that involves

785 stealing a motor vehicle, including, but not limited to, a

786 violation of s. 812.133, relating to carjacking, or s.

787 812.014(2)(c)1.e. s. 812.014(2)(c)1.e. ~~s. 812.014(2)(c)6.~~, relating to grand theft of

788 a motor vehicle, and while the child was in possession of the

789 stolen motor vehicle the child caused serious bodily injury to

790 or the death of a person who was not involved in the underlying

791 offense. For purposes of this section, the driver and all

792 willing passengers in the stolen motor vehicle at the time such

793 serious bodily injury or death is inflicted shall also be

794 subject to mandatory transfer to adult court. "Stolen motor

795 vehicle," for the purposes of this section, means a motor

796 vehicle that has been the subject of any criminal wrongful

797 taking. For purposes of this section, "willing passengers" means

798 all willing passengers who have participated in the underlying

799 offense.

800 Section 18. For the purpose of incorporating the amendment

801 made by this act to section 316.1301, Florida Statutes, in a

802 reference thereto, paragraph (f) of subsection (3) of section

803 318.18, Florida Statutes, is reenacted to read:

804 318.18 Amount of penalties.—The penalties required for a

805 noncriminal disposition pursuant to s. 318.14 or a criminal

806 offense listed in s. 318.17 are as follows:

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808 (f) If a violation of s. 316.1301 or s. 316.1303(1) results
809 in an injury to the pedestrian or damage to the property of the
810 pedestrian, an additional fine of up to \$250 shall be paid. This
811 amount must be distributed pursuant to s. 318.21.

812 Section 19. For the purpose of incorporating the amendment
813 made by this act to section 316.1301, Florida Statutes, in a
814 reference thereto, subsection (4) of section 318.21, Florida
815 Statutes, is reenacted to read:

816 318.21 Disposition of civil penalties by county courts.—All
817 civil penalties received by a county court pursuant to the
818 provisions of this chapter shall be distributed and paid monthly
819 as follows:

820 (4) Of the additional fine assessed under s. 318.18(3)(f)
821 for a violation of s. 316.1301, 40 percent must be remitted to
822 the Department of Revenue for deposit in the Grants and
823 Donations Trust Fund of the Division of Blind Services of the
824 Department of Education, and 60 percent must be distributed
825 pursuant to subsections (1) and (2).

826 Section 20. For the purpose of incorporating the amendment
827 made by this act to section 316.545, Florida Statutes, in a
828 reference thereto, subsection (1) of section 316.516, Florida
829 Statutes, is reenacted to read:

830 316.516 Width, height, and length; inspection; penalties.—

831 (1) Any law enforcement officer, as prescribed in s.
832 316.640, or any weight inspector of the Department of
833 Transportation, as prescribed in s. 316.545(1), who has reason
834 to believe that the width, height, or length of a vehicle or
835 combination of vehicles and the load thereon is not in
836 conformance with s. 316.515 is authorized to require the driver

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837 to stop and submit such vehicle and load to measurement of its
838 width, height, or length.

839 Section 21. For the purpose of incorporating the amendment
840 made by this act to section 316.545, Florida Statutes, in a
841 reference thereto, subsection (1) of section 316.655, Florida
842 Statutes, is reenacted to read:

843 316.655 Penalties.—

844 (1) A violation of any of the provisions of this chapter,
845 except those violations with a specific criminal charge, as
846 enumerated in s. 318.17, are infractions, as defined in s.
847 318.13(3). Except for violations of s. 316.302, infractions of
848 this chapter are punishable as provided in chapter 318. Any
849 person convicted of a violation of or otherwise found to be in
850 violation of s. 316.063, s. 316.3025, s. 316.516, s. 316.545, or
851 s. 316.550 shall be punished as specifically provided in that
852 section.

853 Section 22. For the purpose of incorporating the amendment
854 made by this act to section 316.545, Florida Statutes, in a
855 reference thereto, section 318.17, Florida Statutes, is
856 reenacted to read:

857 318.17 Offenses excepted.—No provision of this chapter is
858 available to a person who is charged with any of the following
859 offenses:

860 (1) Fleeing or attempting to elude a police officer, in
861 violation of s. 316.1935;

862 (2) Leaving the scene of a crash, in violation of ss.
863 316.027 and 316.061;

864 (3) Driving, or being in actual physical control of, any
865 vehicle while under the influence of alcoholic beverages, any

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866 chemical substance set forth in s. 877.111, or any substance
 867 controlled under chapter 893, in violation of s. 316.193, or
 868 driving with an unlawful blood-alcohol level;
 869 (4) Reckless driving, in violation of s. 316.192;
 870 (5) Making false crash reports, in violation of s. 316.067;
 871 (6) Willfully failing or refusing to comply with any lawful
 872 order or direction of any police officer or member of the fire
 873 department, in violation of s. 316.072(3);
 874 (7) Obstructing an officer, in violation of s. 316.545(1);
 875 or
 876 (8) Any other offense in chapter 316 which is classified as
 877 a criminal violation.

878 Section 23. For the purpose of incorporating the amendment
 879 made by this act to section 316.545, Florida Statutes, in a
 880 reference thereto, subsection (4) of section 318.18, Florida
 881 Statutes, is reenacted to read:

882 318.18 Amount of penalties.—The penalties required for a
 883 noncriminal disposition pursuant to s. 318.14 or a criminal
 884 offense listed in s. 318.17 are as follows:

885 (4) The penalty imposed under s. 316.545 shall be
 886 determined by the officer in accordance with the provisions of
 887 ss. 316.535 and 316.545.

888 Section 24. For the purpose of incorporating the amendment
 889 made by this act to section 316.646, Florida Statutes, in a
 890 reference thereto, paragraph (a) of subsection (5) of section
 891 320.02, Florida Statutes, is reenacted to read:

892 320.02 Registration required; application for registration;
 893 forms.—

894 (5) (a) Proof that personal injury protection benefits have

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895 been purchased if required under s. 627.733, that property
 896 damage liability coverage has been purchased as required under
 897 s. 324.022, that bodily injury or death coverage has been
 898 purchased if required under s. 324.023, and that combined bodily
 899 liability insurance and property damage liability insurance have
 900 been purchased if required under s. 627.7415 shall be provided
 901 in the manner prescribed by law by the applicant at the time of
 902 application for registration of any motor vehicle that is
 903 subject to such requirements. The issuing agent shall refuse to
 904 issue registration if such proof of purchase is not provided.
 905 Insurers shall furnish uniform proof-of-purchase cards in a
 906 paper or electronic format in a form prescribed by the
 907 department and include the name of the insured's insurance
 908 company, the coverage identification number, and the make, year,
 909 and vehicle identification number of the vehicle insured. The
 910 card must contain a statement notifying the applicant of the
 911 penalty specified under s. 316.646(4). The card or insurance
 912 policy, insurance policy binder, or certificate of insurance or
 913 a photocopy of any of these; an affidavit containing the name of
 914 the insured's insurance company, the insured's policy number,
 915 and the make and year of the vehicle insured; or such other
 916 proof as may be prescribed by the department shall constitute
 917 sufficient proof of purchase. If an affidavit is provided as
 918 proof, it must be in substantially the following form:

919
 920 Under penalty of perjury, I ...(Name of insured)... do hereby
 921 certify that I have ...(Personal Injury Protection, Property
 922 Damage Liability, and, if required, Bodily Injury Liability)...
 923 Insurance currently in effect with ...(Name of insurance

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924 company)... under ...(policy number)... covering ...(make, year,
 925 and vehicle identification number of vehicle).... ...(Signature
 926 of Insured)...

927

928 Such affidavit must include the following warning:

929

930 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE
 931 REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA
 932 LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS
 933 SUBJECT TO PROSECUTION.

934

935 If an application is made through a licensed motor vehicle
 936 dealer as required under s. 319.23, the original or a
 937 photostatic copy of such card, insurance policy, insurance
 938 policy binder, or certificate of insurance or the original
 939 affidavit from the insured shall be forwarded by the dealer to
 940 the tax collector of the county or the Department of Highway
 941 Safety and Motor Vehicles for processing. By executing the
 942 aforesaid affidavit, no licensed motor vehicle dealer will be
 943 liable in damages for any inadequacy, insufficiency, or
 944 falsification of any statement contained therein. A card must
 945 also indicate the existence of any bodily injury liability
 946 insurance voluntarily purchased.

947 Section 25. For the purpose of incorporating the amendment
 948 made by this act to section 812.014, Florida Statutes, in a
 949 reference thereto, subsection (10) of section 95.18, Florida
 950 Statutes, is reenacted to read:

951 95.18 Real property actions; adverse possession without
 952 color of title.-

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953 (10) A person who occupies or attempts to occupy a
 954 residential structure solely by claim of adverse possession
 955 under this section and offers the property for lease to another
 956 commits theft under s. 812.014.

957 Section 26. For the purpose of incorporating the amendment
 958 made by this act to section 812.014, Florida Statutes, in a
 959 reference thereto, paragraph (c) of subsection (3) of section
 960 373.6055, Florida Statutes, is reenacted to read:

961 373.6055 Criminal history checks for certain water
 962 management district employees and others.-

963 (3)

964 (c) In addition to other requirements for employment or
 965 access established by any water management district pursuant to
 966 its water management district's security plan for buildings,
 967 facilities, and structures, each water management district's
 968 security plan shall provide that:

969 1. Any person who has within the past 7 years been
 970 convicted, regardless of whether adjudication was withheld, for
 971 a forcible felony as defined in s. 776.08; an act of terrorism
 972 as defined in s. 775.30; planting of a hoax bomb as provided in
 973 s. 790.165; any violation involving the manufacture, possession,
 974 sale, delivery, display, use, or attempted or threatened use of
 975 a weapon of mass destruction or hoax weapon of mass destruction
 976 as provided in s. 790.166; dealing in stolen property; any
 977 violation of s. 893.135; any violation involving the sale,
 978 manufacturing, delivery, or possession with intent to sell,
 979 manufacture, or deliver a controlled substance; burglary;
 980 robbery; any felony violation of s. 812.014; any violation of s.
 981 790.07; any crime an element of which includes use or possession

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982 of a firearm; any conviction for any similar offenses under the
 983 laws of another jurisdiction; or conviction for conspiracy to
 984 commit any of the listed offenses may not be qualified for
 985 initial employment within or authorized regular access to
 986 buildings, facilities, or structures defined in the water
 987 management district's security plan as restricted access areas.

988 2. Any person who has at any time been convicted of any of
 989 the offenses listed in subparagraph 1. may not be qualified for
 990 initial employment within or authorized regular access to
 991 buildings, facilities, or structures defined in the water
 992 management district's security plan as restricted access areas
 993 unless, after release from incarceration and any supervision
 994 imposed as a sentence, the person remained free from a
 995 subsequent conviction, regardless of whether adjudication was
 996 withheld, for any of the listed offenses for a period of at
 997 least 7 years prior to the employment or access date under
 998 consideration.

999 Section 27. For the purpose of incorporating the amendment
 1000 made by this act to section 812.014, Florida Statutes, in a
 1001 reference thereto, subsection (3) of section 400.9935, Florida
 1002 Statutes, is reenacted to read:

1003 400.9935 Clinic responsibilities.—

1004 (3) A charge or reimbursement claim made by or on behalf of
 1005 a clinic that is required to be licensed under this part but
 1006 that is not so licensed, or that is otherwise operating in
 1007 violation of this part, regardless of whether a service is
 1008 rendered or whether the charge or reimbursement claim is paid,
 1009 is an unlawful charge and is noncompensable and unenforceable. A
 1010 person who knowingly makes or causes to be made an unlawful

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1011 charge commits theft within the meaning of and punishable as
 1012 provided in s. 812.014.

1013 Section 28. For the purpose of incorporating the amendment
 1014 made by this act to section 812.014, Florida Statutes, in a
 1015 reference thereto, paragraph (g) of subsection (17) of section
 1016 409.910, Florida Statutes, is reenacted to read:

1017 409.910 Responsibility for payments on behalf of Medicaid-
 1018 eligible persons when other parties are liable.—

1019 (17)

1020 (g) The agency may investigate and request appropriate
 1021 officers or agencies of the state to investigate suspected
 1022 criminal violations or fraudulent activity related to third-
 1023 party benefits, including, without limitation, ss. 414.39 and
 1024 812.014. Such requests may be directed, without limitation, to
 1025 the Medicaid Fraud Control Unit of the Office of the Attorney
 1026 General or to any state attorney. Pursuant to s. 409.913, the
 1027 Attorney General has primary responsibility to investigate and
 1028 control Medicaid fraud.

1029 Section 29. For the purpose of incorporating the amendment
 1030 made by this act to section 812.014, Florida Statutes, in a
 1031 reference thereto, subsection (4) of section 489.126, Florida
 1032 Statutes, is reenacted to read:

1033 489.126 Moneys received by contractors.—

1034 (4) Any person who violates any provision of this section
 1035 is guilty of theft and shall be prosecuted and punished under s.
 1036 812.014.

1037 Section 30. For the purpose of incorporating the amendment
 1038 made by this act to section 812.014, Florida Statutes, in a
 1039 reference thereto, subsection (2) of section 538.23, Florida

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1040 Statutes, is reenacted to read:

1041 538.23 Violations and penalties.—

1042 (2) A secondary metals recycler is presumed to know upon
1043 receipt of stolen regulated metals property in a purchase
1044 transaction that the regulated metals property has been stolen
1045 from another if the secondary metals recycler knowingly and
1046 intentionally fails to maintain the information required in s.
1047 538.19 and shall, upon conviction of a violation of s. 812.015,
1048 be punished as provided in s. 812.014(2) or (3).

1049 Section 31. For the purpose of incorporating the amendment
1050 made by this act to section 812.014, Florida Statutes, in a
1051 reference thereto, subsection (10) of section 550.6305, Florida
1052 Statutes, is reenacted to read:

1053 550.6305 Intertrack wagering; guest track payments;
1054 accounting rules.—

1055 (10) All races or games conducted at a permitholder's
1056 facility, all broadcasts of such races or games, and all
1057 broadcast rights relating thereto are owned by the permitholder
1058 at whose facility such races or games are conducted and
1059 constitute the permitholder's property as defined in s.
1060 812.012(4). Transmission, reception of a transmission,
1061 exhibition, use, or other appropriation of such races or games,
1062 broadcasts of such races or games, or broadcast rights relating
1063 thereto without the written consent of the permitholder
1064 constitutes a theft of such property under s. 812.014; and in
1065 addition to the penal sanctions contained in s. 812.014, the
1066 permitholder has the right to avail itself of the civil remedies
1067 specified in ss. 772.104, 772.11, and 812.035 in addition to any
1068 other remedies available under applicable state or federal law.

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1069 Section 32. For the purpose of incorporating the amendment
1070 made by this act to section 812.014, Florida Statutes, in a
1071 reference thereto, subsection (2) of section 634.319, Florida
1072 Statutes, is reenacted to read:

1073 634.319 Reporting and accounting for funds.—

1074 (2) Any sales representative who, not being entitled
1075 thereto, diverts or appropriates such funds or any portion
1076 thereof to her or his own use is, upon conviction, guilty of
1077 theft, punishable as provided in s. 812.014.

1078 Section 33. For the purpose of incorporating the amendment
1079 made by this act to section 812.014, Florida Statutes, in a
1080 reference thereto, subsection (2) of section 634.421, Florida
1081 Statutes, is reenacted to read:

1082 634.421 Reporting and accounting for funds.—

1083 (2) Any sales representative who, not being entitled
1084 thereto, diverts or appropriates funds or any portion thereof to
1085 her or his own use commits theft as provided in s. 812.014.

1086 Section 34. For the purpose of incorporating the amendment
1087 made by this act to section 812.014, Florida Statutes, in a
1088 reference thereto, subsection (3) of section 636.238, Florida
1089 Statutes, is reenacted to read:

1090 636.238 Penalties for violation of this part.—

1091 (3) A person who collects fees for purported membership in
1092 a discount medical plan but purposefully fails to provide the
1093 promised benefits commits a theft, punishable as provided in s.
1094 812.014.

1095 Section 35. For the purpose of incorporating the amendment
1096 made by this act to section 812.014, Florida Statutes, in a
1097 reference thereto, subsection (2) of section 642.038, Florida

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1098 Statutes, is reenacted to read:

1099 642.038 Reporting and accounting for funds.—

1100 (2) Any sales representative who, not being entitled
1101 thereto, diverts or appropriates such funds or any portion
1102 thereof to his or her own use commits theft as provided in s.
1103 812.014.

1104 Section 36. For the purpose of incorporating the amendment
1105 made by this act to section 812.014, Florida Statutes, in a
1106 reference thereto, subsection (4) of section 705.102, Florida
1107 Statutes, is reenacted to read:

1108 705.102 Reporting lost or abandoned property.—

1109 (4) Any person who unlawfully appropriates such lost or
1110 abandoned property to his or her own use or refuses to deliver
1111 such property when required commits theft as defined in s.
1112 812.014, punishable as provided in s. 775.082, s. 775.083, or s.
1113 775.084.

1114 Section 37. For the purpose of incorporating the amendment
1115 made by this act to section 812.014, Florida Statutes, in a
1116 reference thereto, subsection (2) of section 812.015, Florida
1117 Statutes, is reenacted to read:

1118 812.015 Retail and farm theft; transit fare evasion;
1119 mandatory fine; alternative punishment; detention and arrest;
1120 exemption from liability for false arrest; resisting arrest;
1121 penalties.—

1122 (2) Upon a second or subsequent conviction for petit theft
1123 from a merchant, farmer, or transit agency, the offender shall
1124 be punished as provided in s. 812.014(3), except that the court
1125 shall impose a fine of not less than \$50 or more than \$1,000.
1126 However, in lieu of such fine, the court may require the

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1127 offender to perform public services designated by the court. In
1128 no event shall any such offender be required to perform fewer
1129 than the number of hours of public service necessary to satisfy
1130 the fine assessed by the court, as provided by this subsection,
1131 at the minimum wage prevailing in the state at the time of
1132 sentencing.

1133 Section 38. For the purpose of incorporating the amendment
1134 made by this act to section 812.014, Florida Statutes, in
1135 references thereto, subsections (1) and (2) of section 812.0155,
1136 Florida Statutes, are reenacted to read:

1137 812.0155 Suspension of driver license following an
1138 adjudication of guilt for theft.—

1139 (1) Except as provided in subsections (2) and (3), the
1140 court may order the suspension of the driver license of each
1141 person adjudicated guilty of any misdemeanor violation of s.
1142 812.014 or s. 812.015, regardless of the value of the property
1143 stolen. Upon ordering the suspension of the driver license of
1144 the person adjudicated guilty, the court shall forward the
1145 driver license of the person adjudicated guilty to the
1146 Department of Highway Safety and Motor Vehicles in accordance
1147 with s. 322.25.

1148 (a) The first suspension of a driver license under this
1149 subsection shall be for a period of up to 6 months.

1150 (b) A second or subsequent suspension of a driver license
1151 under this subsection shall be for 1 year.

1152 (2) The court may revoke, suspend, or withhold issuance of
1153 a driver license of a person less than 18 years of age who
1154 violates s. 812.014 or s. 812.015 as an alternative to
1155 sentencing the person to:

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1156 (a) Probation as defined in s. 985.03 or commitment to the
 1157 Department of Juvenile Justice, if the person is adjudicated
 1158 delinquent for such violation and has not previously been
 1159 convicted of or adjudicated delinquent for any criminal offense,
 1160 regardless of whether adjudication was withheld.

1161 (b) Probation as defined in s. 985.03, commitment to the
 1162 Department of Juvenile Justice, probation as defined in chapter
 1163 948, community control, or incarceration, if the person is
 1164 convicted as an adult of such violation and has not previously
 1165 been convicted of or adjudicated delinquent for any criminal
 1166 offense, regardless of whether adjudication was withheld.

1167 Section 39. For the purpose of incorporating the amendment
 1168 made by this act to section 812.014, Florida Statutes, in
 1169 references thereto, subsections (4), (7), and (8) of section
 1170 812.14, Florida Statutes, are reenacted to read:

1171 812.14 Trespass and larceny with relation to utility
 1172 fixtures; theft of utility services.—

1173 (4) A person who willfully violates paragraph (2) (a),
 1174 paragraph (2) (b), or paragraph (2) (c) commits theft, punishable
 1175 as provided in s. 812.014.

1176 (7) A person who willfully violates subsection (5) commits
 1177 a misdemeanor of the first degree, punishable as provided in s.
 1178 775.082 or s. 775.083. Prosecution for a violation of subsection
 1179 (5) does not preclude prosecution for theft pursuant to
 1180 subsection (8) or s. 812.014.

1181 (8) Theft of utility services for the purpose of
 1182 facilitating the manufacture of a controlled substance is theft,
 1183 punishable as provided in s. 812.014.

1184 Section 40. For the purpose of incorporating the amendment

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1185 made by this act to section 812.014, Florida Statutes, in a
 1186 reference thereto, subsection (3) of section 893.138, Florida
 1187 Statutes, is reenacted to read:

1188 893.138 Local administrative action to abate drug-related,
 1189 prostitution-related, or stolen-property-related public
 1190 nuisances and criminal gang activity.—

1191 (3) Any pain-management clinic, as described in s. 458.3265
 1192 or s. 459.0137, which has been used on more than two occasions
 1193 within a 6-month period as the site of a violation of:

1194 (a) Section 784.011, s. 784.021, s. 784.03, or s. 784.045,
 1195 relating to assault and battery;

1196 (b) Section 810.02, relating to burglary;

1197 (c) Section 812.014, relating to theft;

1198 (d) Section 812.131, relating to robbery by sudden
 1199 snatching; or

1200 (e) Section 893.13, relating to the unlawful distribution
 1201 of controlled substances,

1202
 1203 may be declared to be a public nuisance, and such nuisance may
 1204 be abated pursuant to the procedures provided in this section.

1205 Section 41. For the purpose of incorporating the amendment
 1206 made by this act to section 893.13, Florida Statutes, in a
 1207 reference thereto, paragraph (b) of subsection (4) of section
 1208 397.451, Florida Statutes, is reenacted to read:

1209 397.451 Background checks of service provider personnel.—

1210 (4) EXEMPTIONS FROM DISQUALIFICATION.—

1211 (b) Since rehabilitated substance abuse impaired persons
 1212 are effective in the successful treatment and rehabilitation of
 1213 individuals with substance use disorders, for service providers

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1214 which treat adolescents 13 years of age and older, service
1215 provider personnel whose background checks indicate crimes under
1216 s. 817.563, s. 893.13, or s. 893.147 may be exempted from
1217 disqualification from employment pursuant to this paragraph.

1218 Section 42. For the purpose of incorporating the amendment
1219 made by this act to section 893.13, Florida Statutes, in a
1220 reference thereto, subsection (2) of section 435.07, Florida
1221 Statutes, is reenacted to read:

1222 435.07 Exemptions from disqualification.—Unless otherwise
1223 provided by law, the provisions of this section apply to
1224 exemptions from disqualification for disqualifying offenses
1225 revealed pursuant to background screenings required under this
1226 chapter, regardless of whether those disqualifying offenses are
1227 listed in this chapter or other laws.

1228 (2) Persons employed, or applicants for employment, by
1229 treatment providers who treat adolescents 13 years of age and
1230 older who are disqualified from employment solely because of
1231 crimes under s. 817.563, s. 893.13, or s. 893.147 may be
1232 exempted from disqualification from employment pursuant to this
1233 chapter without application of the waiting period in
1234 subparagraph (1)(a)1.

1235 Section 43. For the purpose of incorporating the amendment
1236 made by this act to section 893.13, Florida Statutes, in a
1237 reference thereto, paragraph (a) of subsection (1) of section
1238 775.084, Florida Statutes, is reenacted to read:

1239 775.084 Violent career criminals; habitual felony offenders
1240 and habitual violent felony offenders; three-time violent felony
1241 offenders; definitions; procedure; enhanced penalties or
1242 mandatory minimum prison terms.—

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1243 (1) As used in this act:

1244 (a) "Habitual felony offender" means a defendant for whom
1245 the court may impose an extended term of imprisonment, as
1246 provided in paragraph (4)(a), if it finds that:

1247 1. The defendant has previously been convicted of any
1248 combination of two or more felonies in this state or other
1249 qualified offenses.

1250 2. The felony for which the defendant is to be sentenced
1251 was committed:

1252 a. While the defendant was serving a prison sentence or
1253 other sentence, or court-ordered or lawfully imposed supervision
1254 that is imposed as a result of a prior conviction for a felony
1255 or other qualified offense; or

1256 b. Within 5 years of the date of the conviction of the
1257 defendant's last prior felony or other qualified offense, or
1258 within 5 years of the defendant's release from a prison
1259 sentence, probation, community control, control release,
1260 conditional release, parole or court-ordered or lawfully imposed
1261 supervision or other sentence that is imposed as a result of a
1262 prior conviction for a felony or other qualified offense,
1263 whichever is later.

1264 3. The felony for which the defendant is to be sentenced,
1265 and one of the two prior felony convictions, is not a violation
1266 of s. 893.13 relating to the purchase or the possession of a
1267 controlled substance.

1268 4. The defendant has not received a pardon for any felony
1269 or other qualified offense that is necessary for the operation
1270 of this paragraph.

1271 5. A conviction of a felony or other qualified offense

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1272 necessary to the operation of this paragraph has not been set
1273 aside in any postconviction proceeding.

1274 Section 44. For the purpose of incorporating the amendment
1275 made by this act to section 893.13, Florida Statutes, in a
1276 reference thereto, subsection (3) of section 810.02, Florida
1277 Statutes, is reenacted to read:

1278 810.02 Burglary.—

1279 (3) Burglary is a felony of the second degree, punishable
1280 as provided in s. 775.082, s. 775.083, or s. 775.084, if, in the
1281 course of committing the offense, the offender does not make an
1282 assault or battery and is not and does not become armed with a
1283 dangerous weapon or explosive, and the offender enters or
1284 remains in a:

1285 (a) Dwelling, and there is another person in the dwelling
1286 at the time the offender enters or remains;

1287 (b) Dwelling, and there is not another person in the
1288 dwelling at the time the offender enters or remains;

1289 (c) Structure, and there is another person in the structure
1290 at the time the offender enters or remains;

1291 (d) Conveyance, and there is another person in the
1292 conveyance at the time the offender enters or remains;

1293 (e) Authorized emergency vehicle, as defined in s. 316.003;
1294 or

1295 (f) Structure or conveyance when the offense intended to be
1296 committed therein is theft of a controlled substance as defined
1297 in s. 893.02. Notwithstanding any other law, separate judgments
1298 and sentences for burglary with the intent to commit theft of a
1299 controlled substance under this paragraph and for any applicable
1300 possession of controlled substance offense under s. 893.13 or

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1301 trafficking in controlled substance offense under s. 893.135 may
1302 be imposed when all such offenses involve the same amount or
1303 amounts of a controlled substance.
1304

1305 However, if the burglary is committed within a county that is
1306 subject to a state of emergency declared by the Governor under
1307 chapter 252 after the declaration of emergency is made and the
1308 perpetration of the burglary is facilitated by conditions
1309 arising from the emergency, the burglary is a felony of the
1310 first degree, punishable as provided in s. 775.082, s. 775.083,
1311 or s. 775.084. As used in this subsection, the term "conditions
1312 arising from the emergency" means civil unrest, power outages,
1313 curfews, voluntary or mandatory evacuations, or a reduction in
1314 the presence of or response time for first responders or
1315 homeland security personnel. A person arrested for committing a
1316 burglary within a county that is subject to such a state of
1317 emergency may not be released until the person appears before a
1318 committing magistrate at a first appearance hearing. For
1319 purposes of sentencing under chapter 921, a felony offense that
1320 is reclassified under this subsection is ranked one level above
1321 the ranking under s. 921.0022 or s. 921.0023 of the offense
1322 committed.

1323 Section 45. For the purpose of incorporating the amendment
1324 made by this act to section 893.13, Florida Statutes, in a
1325 reference thereto, subsection (1) of section 831.311, Florida
1326 Statutes, is reenacted to read:

1327 831.311 Unlawful sale, manufacture, alteration, delivery,
1328 uttering, or possession of counterfeit-resistant prescription
1329 blanks for controlled substances.—

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1330 (1) It is unlawful for any person having the intent to
 1331 injure or defraud any person or to facilitate any violation of
 1332 s. 893.13 to sell, manufacture, alter, deliver, utter, or
 1333 possess with intent to injure or defraud any person, or to
 1334 facilitate any violation of s. 893.13, any counterfeit-resistant
 1335 prescription blanks for controlled substances, the form and
 1336 content of which are adopted by rule of the Department of Health
 1337 pursuant to s. 893.065.

1338 Section 46. For the purpose of incorporating the amendment
 1339 made by this act to section 893.13, Florida Statutes, in a
 1340 reference thereto, section 893.15, Florida Statutes, is
 1341 reenacted to read:

1342 893.15 Rehabilitation.—Any person who violates s.
 1343 893.13(6)(a) or (b) relating to possession may, in the
 1344 discretion of the trial judge, be required to participate in a
 1345 substance abuse services program approved or regulated by the
 1346 Department of Children and Families pursuant to the provisions
 1347 of chapter 397, provided the director of such program approves
 1348 the placement of the defendant in such program. Such required
 1349 participation shall be imposed in addition to any penalty or
 1350 probation otherwise prescribed by law. However, the total time
 1351 of such penalty, probation, and program participation shall not
 1352 exceed the maximum length of sentence possible for the offense.

1353 Section 47. For the purpose of incorporating the amendment
 1354 made by this act to section 893.13, Florida Statutes, in a
 1355 reference thereto, paragraph (1) of subsection (1) of section
 1356 921.187, Florida Statutes, is reenacted to read:

1357 921.187 Disposition and sentencing; alternatives;
 1358 restitution.—

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1359 (1) The alternatives provided in this section for the
 1360 disposition of criminal cases shall be used in a manner that
 1361 will best serve the needs of society, punish criminal offenders,
 1362 and provide the opportunity for rehabilitation. If the offender
 1363 does not receive a state prison sentence, the court may:

1364 (1)1. Require the offender who violates any criminal
 1365 provision of chapter 893 to pay an additional assessment in an
 1366 amount up to the amount of any fine imposed, pursuant to ss.
 1367 938.21 and 938.23.

1368 2. Require the offender who violates any provision of s.
 1369 893.13 to pay an additional assessment in an amount of \$100,
 1370 pursuant to ss. 938.055 and 943.361.

1371 Section 48. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/2017

608

Meeting Date

Bill Number (if applicable)

Topic Decreasing Penalties

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Street

Tallahassee FL 32301

Email jorge@flapartners.com

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing Fla Assoc of Criminal Defense Lawyers

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)

March 6, 2017

Meeting Date

SB 608

Bill Number (if applicable)

Topic Decreasing Penalties for Certain Criminal Acts

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Avenue

Phone 352-338-7370

Street

Gainesville

FL

32601

Email scotts@pdo8.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)

March 6, 2017

Meeting Date

SB 608

Bill Number (if applicable)

Topic Decreasing Penalties of Certain Criminal Acts

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Street

Tallahassee

City

FL

State

32302

Zip

Phone 850-521-3042

Email scott.mccoy@splcenter.org

Speaking: For Against Information

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

Representing Southern Poverty Law Center

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)

3/6/17 Meeting Date

SB 608 Bill Number (if applicable)

Topic DECREASING PENALTIES

Amendment Barcode (if applicable)

Name KARA GROSS

Job Title LEGISLATIVE COUNSEL

Address 4500 BISCAYNE BLVD Street

Phone 786-363-4436

Miami FL City State Zip

Email KGROSS@ACLUFL.ORG

Speaking: For Against Information

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

Representing

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)

3/6/17
Meeting Date

608
Bill Number (if applicable)

Topic CT

Amendment Barcode (if applicable)

Name SAL NUZZO

Job Title VP Policy

Address 100 N DUVAL
Street

Phone _____

TALL FL 32301
City State Zip

Email _____

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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/2017

608

Meeting Date

Bill Number (if applicable)

Topic Decreasing Penalties for Certain Criminal Acts

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs 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)

March 6, 2017
Meeting Date

SB 608
Bill Number (if applicable)

Topic Decreasing penalties for certain criminal acts

Amendment Barcode (if applicable)

Name Share Bennett

Job Title Chief of Police

Address 2739 Lake Street
Street

Phone 904-782-3751

Lawtey FL 32058
City State Zip

Email lawteypolicepd@flcjin.net

Speaking: For Against Information

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

Representing The Florida Police Chiefs 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)

3/6/17
Meeting Date

608
Bill Number (if applicable)

Topic Decreasing Penalties

Amendment Barcode (if applicable)

Name Melissa Ramba

Job Title VP Government Affairs

Address 227 S Adams St.

Phone 850 570-0269

Street

Tallahassee

City

FL

State

32311

Zip

Email Melissa@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.

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 Committee on Criminal Justice

BILL: CS/SB 788

INTRODUCER: Criminal Justice Committee and Senator Clemens

SUBJECT: Marketing Practices for Substance Abuse Services

DATE: March 8, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Hrdlicka	CJ	Fav/CS
2.			RI	
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 788 takes a comprehensive approach to the problem of fraudulent patient brokering and deceptive marketing practices in the business of substance use addiction services, particularly related to the economic relationship between service providers and “recovery residences.”

The bill creates new and amends existing criminal offenses (prohibited acts) related to patient brokering and marketing practices that create or increase fines and potential prison sentences. These offenses are added to the Criminal Punishment Code ranking chart for purposes of assigning sentencing points.

The bill provides assistance to law enforcement and prosecutors by:

- Extending the jurisdiction of the Office of the Statewide Prosecutor to investigate and prosecute patient brokering offenses;
- Adding patient brokering to the list of predicate offenses that may be prosecuted as RICO offenses which could result in higher penalties; and
- Adopting federal law with regard to the timing of law enforcement giving notice to a patient regarding obtaining the patient’s records pursuant to a court order.

Additionally, the bill requires that substance abuse treatment service provider personnel who provide direct clinical treatment services be certified through a Department of Children and Families-recognized certification process.

The bill becomes effective on July 1, 2017.

II. Present Situation:

There has been an alarming increase of deaths from drug overdoses around the country and Florida has not escaped the trend. Total drug-related deaths increased by 13.9 percent in Florida (1,197 more) in 2015 when compared with 2014.¹ Heroin accounted for 733 deaths in Florida and increased by 79.7 percent between 2014 and 2015.²

The number of deadly heroin overdoses more than quadrupled in the United States from 2010 to 2015, as the price of heroin fell and its potency increased.³ In 2015, there were 12,989 deaths involving heroin across the country compared with 3,036 in 2010.⁴ There was a 346 percent increase in admissions nationally for opioid treatment from 2001 to 2011.⁵

In 2012, the rate of substance abuse or dependence among eighteen to twenty-five year olds was twice that of adults twenty-six and older.⁶ Florida is a destination for many young substance use addicts from all over the country who are seeking addiction treatment and recovery services.⁷

The typical model for substance addiction treatment and recovery consists of two basic stages. The length of time a patient spends in each stage varies, depending on the patient's needs and the protocol that will help the patient achieve a healthy outcome. The two stages are:

- Detoxification and services including in-patient treatment, if necessary; and
- Out-patient treatment coupled with a therapeutic residential recovery home or "sober home" environment.

A private industry has grown throughout the state to fill a void in programming, namely "recovery residences."⁸ This component of treatment services is not currently state-licensed or

¹ Florida Department of Law Enforcement, Medical Examiners Commission, *2015 Annual Medical Examiners Commission Drug Report*, page ii, September 2016.

² *2015 Annual Medical Examiners Commission Drug Report*, at pages ii and 41.

³ David Beasley, *Deadly U.S. Heroin Overdoses Quadrupled in Five Years*, Reuters, February 24, 2017, available at <http://www.reuters.com/article/us-usa-heroin-idUSKBN1630EO> (last visited March 2, 2017).

⁴ *Id.*

⁵ Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality (2013); Treatment Episode Data Set (TEDS): 2001-2011.

⁶ Substance Abuse and Mental Health Services Administration (2013); Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings (HHS Publication No. SMA 13-4795, NSDUH Series H-46).

⁷ 15th Judicial Circuit, Presentment of the Palm Beach County, Florida, Grand Jury, Fall Term, 2016; *Report on the Proliferation of Fraud and Abuse in Florida's Addiction Treatment Industry*, December 8, 2016, at page 5 (hereinafter referred to as the "Grand Jury Report"), citing Optum White Paper, *Young Adults and the Behavioral Health System*, 2014, page 4; and Palm Beach County Sober Homes Task Force Report, *Identification of Problems in the Substance Abuse Treatment and Recovery Residence Industries with Recommended Changes to Existing Laws and Regulations*, January 1, 2017, at page 1 (hereinafter referred to as the "Task Force Report"); these materials are available at <http://www.sa15.state.fl.us/stateattorney/SoberHomes/indexSH.htm> (last visited March 2, 2017).

⁸ Task Force Report, at page 6. "Recovery residence" is defined in s. 397.311(36), F.S., as "a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment."

regulated.⁹ Unfortunately, fraudulent activity in the recovery residence industry has become obvious to local communities, law enforcement, and prosecutors.¹⁰

In 2016, the State Attorney from the 15th Judicial Circuit was given the following task by the Legislature in the General Appropriations Act:

Conduct a study aimed to strengthen investigation and prosecution of criminal and regulatory violations within the substance abuse treatment industry. The state attorney shall coordinate with local and state law enforcement and regulatory agencies, the Department of Children and Families, the Florida Alcohol & Drug Abuse Association, and certifying entities of recovery residences and recovery residence administrators to identify statutory clarifications and enhancements to existing law to ensure that communities remain safe and individuals with substance use disorders are protected. The state attorney shall submit the study to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2017.¹¹

The State Attorney's assignment resulted in the creation of a Sober Homes Task Force (Task Force), and the convening of the Grand Jury. Both the Task Force and the Grand Jury issued reports making many of the same findings and suggesting similar solutions to the problems related to fraud in the substance use addiction treatment and recovery industry in Florida.¹²

Among the findings made by the Task Force and Grand Jury:

- Persons seeking substance use treatment and, often, their families are particularly vulnerable to predatory marketing practices.¹³

⁹ Sections 397.487 and 397.4871, F.S., provide for a voluntary certification program for recovery residences and recovery residence administrators offered through a "credentialing entity" approved by the Department of Children and Families, Office of Substance Abuse and Mental Health. See office website, available at <http://www.myflfamilies.com/service-programs/substance-abuse/recovery-residence> (last visited March 2, 2017). The current credentialing entity for recovery residences is the Florida Association of Recovery Residences, which reported the existence of 257 recovery residences in Florida as of March 1, 2017. See <http://farronline.org/>.

¹⁰ Grand Jury Report, at page 5; and Task Force Report, at pages 1 and 3. See also a recent press release from the U.S. Attorney's Office in the Southern District of Florida, *Six Defendants Charged in Health Care Fraud Scheme Involving Sober Homes and Alcohol and Drug Addiction Treatment Centers*, December 21, 2016, available at <https://www.justice.gov/usao-sdfl/pr/six-defendants-charged-health-care-fraud-scheme-involving-sober-homes-and-alcohol-and> (last visited March 2, 2017).

¹¹ See Specific Appropriation 884 (proviso), ch. 2016-66, L.O.F.

¹² See footnote 7.

¹³ "Some marketers create an online presence whereby potential patients and their families are willfully misled and misdirected by unqualified individuals who offer diagnoses and placement recommendations. Often the result of these 'lead generators' is a referral to a provider in Florida." Task Force Report, page 4; "But when the person calls the number listed, the marketer silently routes the call to one of five different customers of the marketer. Some of those customers are simply other call centers or referral services. Others might be good or bad treatment centers in Florida that have paid the marketer for the referral. One of the problems with this practice is the monetary conflict of interest created once a 'lead' is already paid for. For example, when a treatment center pays \$1,000 for a lead, they are compelled to convince that caller to go to *their* treatment center, regardless of what the caller says or whether that particular treatment is in the caller's best interest. The level of care recommended will also be influenced by this monetary incentive. A person calling about outpatient treatment may be urged to get more intensive (and expensive) treatment under this scenario. The Grand Jury finds that deceptive

- Patients engaged in out-patient treatment typically need housing while in a treatment program and if the patient is far from home, unemployed, and unable to pay for basic needs, the patient may fall prey to patient brokering schemes.¹⁴
- Strengthening and modifying existing statutes, including patient brokering as a predicate RICO offense, creating new laws related to marketing practices, and amending existing law related to patient records, would be of benefit to state law enforcement and state attorneys as they investigate and prosecute these criminal enterprises.¹⁵

III. Effect of Proposed Changes:

The bill addresses two components of addiction treatment and recovery fraud, law enforcement and prosecution challenges surrounding those two types of fraud, and the certification of certain substance abuse treatment services provider personnel.

Marketing Practices

Although service providers are licensed through the Department of Children and Families (DCF), currently there is no real regulation or oversight of the marketing practices of service providers or of unlicensed recovery residences.¹⁶

Section 5 of the bill creates s. 397.488, F.S., which prohibits service providers, operators of recovery residences, or third parties providing any form of advertising or marketing services to either of those entities, from engaging in deceptive, false, or misleading marketing practices.

These entities cannot:

- Make or provide false or misleading statements or information about their business in marketing, advertising, media, or on their websites.
- Include on their websites false information, links, or coding or activation that provides false information or redirects to another website.

The entities also cannot enter into a contract with a marketing provider who agrees to generate referrals or leads for patient placement through a call center or website. However, the entity can enter into such a contract if the entity discloses certain information to a prospective patient.

marketing practices like these are detrimental to a patient's chances of receiving quality care and the appropriate level of care." Grand Jury Report, at pages 13-16.

¹⁴ "A common practice within the industry in Florida is for the treatment provider to pay a weekly fee or kickback to the recovery residence, with the understanding that the recovery residence will allow the patient to live at the residence for free or at a greatly reduced rent while attending the provider's outpatient treatment program. This practice was developed, in part, to ensure that out-of-state patients have a local place to live after they step down from inpatient to outpatient treatment. Most out-of-state patients who are attending intensive outpatient treatment are not locally employed, and while some are able to pay rent, many do not have the means. Without a local, stable address, it would be difficult, if not impossible, for a provider to treat the patient. This creates economic pressure for the provider to find a way to house the patient locally. Brokering, by providing kickbacks to the recovery residence in exchange for the delivery of a patient, is commonplace. Some treatment providers and recovery residences offer incentives such as gym memberships, scooters, weekly massages, chiropractic services, cigarettes, clothes, gift cards and more." Task Force Report, at pages 9-10. See Grand Jury Report, at pages 17-18.

¹⁵ Grand Jury Report, at pages 27-30.

¹⁶ Sections 397.401 and 397.487, F.S.

It also prohibits the entities from soliciting or receiving a commission, benefit, bonus, rebate, kickback, or bribe in exchange for a patient referral or acceptance or acknowledgement of treatment. A violation of this provision is punishable as a felony patient brokering offense under s. 817.505, F.S. All other violations created in this section of the bill are punishable as first degree misdemeanors.¹⁷

Section 6 of the bill creates s. 817.0345, F.S., a third degree felony related to fraudulent marketing practices that prohibits knowingly and willfully making a materially false or misleading statement with the intent to induce another to seek treatment with a particular service provider.¹⁸

Patient Brokering

Section 817.505, F.S., is the current law that prohibits patient brokering. Substance abuse service providers, which includes out-patient treatment service providers licensed by the Department of Children and Families under ch. 397, F.S.,¹⁹ are prohibited from engaging in patient brokering. It is unlawful to:²⁰

- Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility;
- Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility;
- Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility; or
- Aid, abet, advise, or otherwise participate in the conduct prohibited under any of the above.²¹

Section 7 of the bill amends s. 817.505(1), F.S., to add the term “benefit” to the list of things a person, health care provider, or health care facility may not offer, pay, solicit, or receive:

- To induce the referral of a patient or patronage to or from a health care provider or facility;
- In return for a referral of a patient or patronage to or from a health care provider or facility;
- or
- In return for the acceptance or acknowledgment of treatment.

¹⁷ Pursuant to the bill, the punishment is up to a \$1,000 fine or court ordered restitution. Sections 775.083 and 775.089, F.S.

¹⁸ A third degree felony is punishable by a fine of up to \$5,000, a term of imprisonment up to 5 years, or both; a habitual offender may be sentenced to a term of imprisonment of up to 10 years. Sections 775.082, 775.083, and 775.084, F.S.

¹⁹ Substance abuse service providers are included under the term “health care provider or health care facility” in s. 817.505(2)(a), F.S.

²⁰ Section 817.505(4), F.S., sets forth third degree felony penalties for patient brokering offenses.

²¹ Section 817.505(1), F.S.

Section 7 also creates the following graduated monetary penalties and new second and first degree felony offenses for violations of s. 817.505, F.S., based upon the number of patients involved in the violation:

- If fewer than 10 patients are involved, the third degree felony²² penalties apply and a new \$50,000 fine is created by the bill;
- If 10-19 patients are involved, a new second degree felony²³ and a \$100,000 fine is created; and
- If 20 or more patients are involved, a new first degree felony²⁴ and a \$500,000 fine is created by the bill.

Section 9 of the bill amends the Criminal Punishment Code to rank the above-referenced offenses as a Level 4, Level 6, and Level 8, respectively, for the purpose of assigning sentencing points.²⁵

Section 3 of the bill amends s. 397.407(11), F.S., to address the economic relationship between licensed service providers and recovery residences.²⁶

The bill prohibits a service provider from referring a prospective patient to, or accepting a referral from, a recovery residence that is not in compliance with the voluntary certification program set forth in ss. 397.487 and 397.4871, F.S.²⁷

The bill does not require a recovery residence to refer any patient to a licensed service provider.

The bill does not prohibit a referral from a recovery residence to a licensed service provider as long as the residence, its owners, operators, and employees do not benefit from the referral. The prohibitions also do not apply to a licensed service provider under contract with a behavioral health managing entity.

Section 8 adds “patient brokering” to the list of crimes in the RICO statute.²⁸

²² Under the bill, the third degree felony is punishable by a fine of \$50,000 and a term of imprisonment up to 5 years; a habitual offender may be sentenced to a term of imprisonment of up to 10 years. Sections 775.082 and 775.084, F.S.

²³ Under the bill, the second degree felony is punishable by a fine of \$100,000 and a term of imprisonment up to 15 years; a habitual offender may be sentenced to a term of imprisonment of up to 30 years. Sections 775.082 and 775.084, F.S.

²⁴ Under the bill, the first degree felony is punishable by a fine of \$500,000 and a term of imprisonment up to 30 years; a habitual offender may be sentenced to a term of imprisonment for life. Sections 775.082 and 775.084, F.S.

²⁵ Assuming the defendant is before the court to be sentenced on one offense and assuming the defendant has no criminal history, the lowest permissible sentence for a Level 4 crime is probation or community control; for a Level 6 crime is probation or community control; and for a Level 8 crime is 34.5 months in prison. (Sentencing scoresheets computed by Criminal Justice Committee staff based upon s. 921.0024, F.S.).

²⁶ According to the Grand Jury Report, there is a “strong economic motive to promote a cycle of unnecessary treatment and/or relapse.” The Grand Jury heard testimony from “countless patients who have fallen prey to this cycle of dependence and its devastating impacts on recovery. It is not uncommon for a person to be in this cycle of treatment/relapse for years.” Grand Jury Report, at page 20.

²⁷ See footnote 9.

²⁸ Sections 895.01-895.06, F.S., make up the Racketeer Influenced and Corrupt Organization (RICO) Act. Prosecution under the RICO Act may result in higher criminal penalties.

Related Law Enforcement and Prosecution Challenges

Patient Records

Section 397.501(7), F.S., protects a substance abuse patient's right to confidentiality of his or her records. The records of service providers pertaining to the identity, diagnosis, prognosis, and service provision are confidential and exempt from public records disclosure requirements.²⁹

Section 397.501(7)(a)5., F.S., provides for "appropriate" disclosure without a patient's consent "[u]pon court order based on application showing good cause for disclosure. In determining whether there is good cause for disclosure, the court shall examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself."

Section 397.501(7)(h), F.S., requires that "[t]he individual and the person holding the records from whom disclosure is sought must be given adequate notice in a manner which will not disclose identifying information to other persons, and an opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order."

It is the requirement of "adequate notice...and an opportunity to file a written response to the application" for the court order that has proven somewhat problematic for law enforcement investigators.³⁰

Section 4 of the bill creates s. 397.501(7)(h)2., F.S., which adopts the federal standard for patient notice.³¹ Federal case law interpreting the federal code reinforces the plain-reading of the code, that notice can be delayed until the order has been "implemented."³²

Office of the Statewide Prosecutor

Section 1 of the bill amends s. 16.56, F.S., to expand the jurisdiction of the Statewide Prosecutor to extend to the investigation and prosecution of patient brokering. This should aid local law enforcement and prosecutors because the Statewide Prosecutor has the ability to seamlessly move from one local jurisdiction to another in a large-scale, jurisdiction-crossing investigation.

Substance Abuse Service Provider Personnel

As provided in ch. 397, F.S., the substance abuse services chapter, "service provider personnel" or "personnel" includes all owners, directors, chief financial officers, staff, and volunteers, including foster parents, of a service provider.³³

²⁹ Section 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

³⁰ Grand Jury Report, at pages 31-32.

³¹ 42 C.F.R. 2.66 provides that "upon implementation" of the court order, the patient and other parties must be given an opportunity to seek revocation or amendment of the order "limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order."

³² *U.S. v. Shinderman*, 515 F.3d 5 (1st Cir., 2008).

³³ Section 397.311(43), F.S.

Section 397.321(13), F.S., currently requires the DCF to ensure that service provider personnel have background checks as required in ch. 397, F.S., and meet the minimum standards.

Section 397.451, F.S., lists the persons who must have a background check, including:

- All owners, directors, and chief financial officers of service providers; and
- All service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services.

However, service providers that are exempt from licensing provisions of ch. 397, F.S., are exempt from personnel fingerprinting and background check requirements, except as otherwise provided in s. 397.451, F.S.

Section 2 of the bill amends s. 397.321, F.S., to require the DCF to ensure that substance abuse service provider personnel who provide direct clinical treatment services are certified through a DCF-recognized certification process. Licensed physicians, physician assistants, advanced registered nurse practitioners, psychologists, mental health counselors, and others are exempted from this requirement.

The bill becomes effective on July 1, 2017.

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 bill creates new felony offenses and increases potential prison sentences within existing offenses. The Criminal Justice Impact Conference, which provides the final,

official estimate of the prison bed impact, if any, of legislation providing for criminal penalties, has not yet reviewed the bill.

The Office of the Statewide Prosecutor indicates that the bill could slightly increase the workload for the office and result in the need for one to two additional prosecutors. The total cost is \$194,120 of which \$181,770 is recurring costs.³⁴

Whether the Department of Children and Families will realize a fiscal impact by gaining the responsibility of ensuring that substance abuse service provider personnel who provide direct clinical treatment services are certified through a DCF-recognized certification process is unknown as of the date of this analysis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 16.56, 397.321, 397.407, 397.501, 817.505, 895.02, and 921.0022.

This bill creates the following sections of the Florida Statutes: 397.488 and 817.0345.

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 March 6, 2017:

The CS:

- Amended s. 397.321, F.S., in a new Section 2 of the bill, to require the Department of Children and Families to ensure that substance abuse service provider personnel who provide direct clinical treatment services are certified through a DCF-recognized certification process.
- Amended Section 3 of the bill to clarify that the bill does not require a recovery residence to refer any patient to a licensed service provider.
- Amended Section 4 of the bill to make technical changes putting the new statutory language in s. 397.488, F.S., clarifying what information must be given to prospective patients, and removing the requirement that the Department of Business and Professional Regulation license the marketing entities addressed in the bill.

³⁴ E-mail dated March 3, 2017, from Office of the Attorney General staff to Criminal Justice Committee staff, on file with Criminal Justice Committee staff.

- Made technical changes removing “s. 775.083,” F.S., a reference to potential fines a person may be sentenced to pay, because the fines are specifically set forth in Section 6 of the bill.
- Amended the Criminal Punishment Code ranking chart found in s. 921.0022, F.S., in Section 9 of 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.



870674

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete lines 107 - 123

and insert:

Section 2. Subsection (21) of section 397.321, Florida Statutes, is added to read:

397.321 Duties of the department.—The department shall:

(21) Ensure that substance abuse service provider personnel who provide direct clinical treatment services as defined in s. 397.311(25) (a) are certified through a department-recognized



870674

11 certification process. A physician or a physician assistant
12 licensed under chapter 458 or chapter 459; a professional
13 licensed under chapter 490 or chapter 491; or an advanced
14 registered nurse practitioner licensed under part I of chapter
15 464 is exempt from the requirements of this subsection.

16 Section 3. Subsection (11) of section 397.407, Florida
17 Statutes, is amended to read:

18 397.407 Licensure process; fees.—

19 (11) Effective July 1, 2017 ~~2016~~, a service provider
20 licensed under this part may not refer a prospective, current,
21 or discharged patient to, or accept a referral from, a recovery
22 residence unless the recovery residence holds a valid
23 certificate of compliance as provided in s. 397.487 and is
24 actively managed by a certified recovery residence administrator
25 as provided in s. 397.4871 ~~or the recovery residence is owned~~
26 ~~and operated by a licensed service provider or a licensed~~
27 ~~service provider's wholly owned subsidiary.~~ For purposes of this
28 subsection, the term "refer" means to inform a patient by any
29 means about the name, address, or other details of the recovery
30 residence. However, this subsection does not require a licensed
31 service provider to refer any patient to a recovery residence.
32 This subsection does not require a recovery residence to refer
33 any patient to a licensed service provider. This subsection

34
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete line 6

38 and insert:

39 brokering offenses; amending 397.321, F.S.; requiring



870674

40 the Department of Children and Families to ensure that
41 substance abuse service provider personnel providing
42 direct clinical treatment services are certified
43 through a department-recognized certification process;
44 exempting specified licensed individuals from
45 certification; amending s. 397.407, F.S.;



340588

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Clemens) recommended the following:

Senate Amendment (with title amendment)

Delete lines 167 - 220

and insert:

Section 4. Section 397.488, Florida Statutes, is created to read:

397.488 Prohibition of deceptive marketing practices.—

(1) The Legislature recognizes that consumers of substance abuse treatment have disabling conditions and that such consumers and their families are vulnerable and at risk of being



340588

11 easily victimized by fraudulent marketing practices that
12 adversely impact the delivery of health care. To protect the
13 health, safety, and welfare of this vulnerable population, a
14 service provider, an operator of a recovery residence, or a
15 third party who provides any form of advertising or marketing
16 services to a service provider or an operator of a recovery
17 residence may not engage in any of the following marketing
18 practices:

19 (a) Making a false or misleading statement or providing
20 false or misleading information about the provider's or
21 operator's or third party's products, goods, services, or
22 geographical locations in its marketing, advertising materials,
23 or media or on its website.

24 (b) Including on its website false information, electronic
25 links, or coding or activation that provides false information
26 or that surreptitiously directs the reader to another website.

27 (c) Soliciting, receiving, or making an attempt to solicit
28 or receive a commission, benefit, bonus, rebate, kickback, or
29 bribe, directly or indirectly, in cash or in kind, or engaging
30 or making an attempt to engage in a split-fee arrangement in
31 return for a referral or an acceptance or acknowledgment of
32 treatment from a service provider or recovery residence.

33 (d) Entering into a contract with a marketing provider who
34 agrees to generate referrals or leads for the placement of
35 patients with a service provider or in a recovery residence
36 through a call center or a web-based presence, unless the
37 service provider or the operator of the recovery residence
38 discloses the following to the prospective patient so that the
39 patient can make an informed health care decision:



340588

40 1. Information about the specific licensed service
41 providers or recovery residences that are represented by the
42 marketing provider and pay a fee to the marketing provider,
43 including the identity of such service providers or recovery
44 residences; and

45 2. Clear and concise instructions that allow the
46 prospective patient to easily access lists of licensed service
47 providers and recovery residences on the department website.

48 (2) In addition to any other punishment authorized by law,
49

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

51 And the title is amended as follows:

52 Delete lines 25 - 34

53 and insert:

54 397.488, F.S.; providing legislative findings;
55 prohibiting service providers, operators of recovery
56 residences, and certain third parties from engaging in
57 specified marketing practices;



352472

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Clemens) recommended the following:

Senate Amendment

Delete lines 272 - 289

and insert:

s. 775.082, ~~s. 775.083~~, or s. 775.084, and a fine of \$50,000.

(b) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, where the prohibited conduct involves 10 or more patients but



352472

11 fewer than 20 patients, commits a felony of the second degree,
12 punishable as provided in s. 775.082 or s. 775.084, and a fine
13 of \$100,000.

14 (c) Any person, including an officer, partner, agent,
15 attorney, or other representative of a firm, joint venture,
16 partnership, business trust, syndicate, corporation, or other
17 business entity, who violates any provision of this section,
18 where the prohibited conduct involves 20 or more patients,
19 commits a felony of the first degree, punishable as provided in
20 s. 775.082 or s. 775.084, and a fine of \$500,000.



187014

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2017	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Clemens) recommended the following:

Senate Amendment (with title amendment)

Between lines 394 and 395

insert:

Section 8. Paragraphs (c), (d), (f), and (h) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:
921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3



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11	Florida Statute	Felony Degree	Description
12	119.10 (2) (b)	3rd	Unlawful use of confidential information from police reports.
13	316.066 (3) (b) - (d)	3rd	Unlawfully obtaining or using confidential crash reports.
14	316.193 (2) (b)	3rd	Felony DUI, 3rd conviction.
15	316.1935 (2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
16	319.30 (4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
17	319.33 (1) (a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.



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18	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
19	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
20	327.35(2)(b)	3rd	Felony BUI.
21	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
22	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
23	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
24	379.2431	3rd	Taking, disturbing,



187014

25	(1) (e) 5.		mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
	379.2431	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
26	(1) (e) 6.		
	400.9935 (4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
27			
	400.9935 (4) (e)	3rd	Filing a false license application or other required information or failing to report information.
28			
	440.1051 (3)	3rd	False report of workers' compensation fraud or



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retaliation for making such
a report.

29

501.001 (2) (b) 2nd Tampers with a consumer
product or the container
using materially
false/misleading
information.

30

624.401 (4) (a) 3rd Transacting insurance
without a certificate of
authority.

31

624.401 (4) (b) 1. 3rd Transacting insurance
without a certificate of
authority; premium
collected less than
\$20,000.

32

626.902 (1) (a) &
(b) 3rd Representing an
unauthorized insurer.

33

697.08 3rd Equity skimming.

34

790.15 (3) 3rd Person directs another to
discharge firearm from a
vehicle.

35

806.10 (1) 3rd Maliciously injure,



187014

36			destroy, or interfere with vehicles or equipment used in firefighting.
	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.
37			
	810.09 (2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
38			
	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
39			
	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
40			
	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.
41			
	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.



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42	817.233	3rd	Burning to defraud insurer.
43	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
44	817.234(11) (a)	3rd	Insurance fraud; property value less than \$20,000.
45	817.236	3rd	Filing a false motor vehicle insurance application.
46	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
47	817.413(2)	3rd	Sale of used goods as new.
48	817.505(4)	3rd	Patient brokering.
49	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
50	831.28(2) (a)	3rd	Counterfeiting a payment



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51			instrument with intent to defraud or possessing a counterfeit payment instrument.
	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
52			
	838.021 (3) (b)	3rd	Threatens unlawful harm to public servant.
53			
	843.19	3rd	Injure, disable, or kill police dog or horse.
54			
	860.15 (3)	3rd	Overcharging for repairs and parts.
55			
	870.01 (2)	3rd	Riot; inciting or encouraging.
56			
	893.13 (1) (a) 2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4)



187014

57

893.13(1)(d)2.

2nd

drugs).

Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.

58

893.13(1)(f)2.

2nd

Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.

59

893.13(4)(c)

3rd

Use or hire of minor; deliver to minor other controlled substances.

60

893.13(6)(a)

3rd

Possession of any controlled substance other than felony possession of cannabis.

61



187014

62	893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
63	893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
64	893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
65	893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
	893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.



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66	893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
67	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
68	893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
69	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
70	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
71	944.47(1)(c)	2nd	Possess contraband while



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upon the grounds of a
correctional institution.

72

985.721

3rd

Escapes from a juvenile
facility (secure detention
or residential commitment
facility).

73

74

75

(d) LEVEL 4

76

Florida
Statute

Felony
Degree

Description

77

316.1935 (3) (a)

2nd

Driving at high speed or
with wanton disregard
for safety while fleeing
or attempting to elude
law enforcement officer
who is in a patrol
vehicle with siren and
lights activated.

78

499.0051 (1)

3rd

Failure to maintain or
deliver transaction
history, transaction
information, or
transaction statements.

79



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80	499.0051 (5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
81	517.07 (1)	3rd	Failure to register securities.
82	517.12 (1)	3rd	Failure of dealer, associated person, or issuer of securities to register.
83	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
84	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
85	784.075	3rd	Battery on detention or commitment facility staff.
	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling



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86			certain fluids or materials.
	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
87			
	784.081 (3)	3rd	Battery on specified official or employee.
88			
	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
89			
	784.083 (3)	3rd	Battery on code inspector.
90			
	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
91			
	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
92			
	787.04 (2)	3rd	Take, entice, or remove child beyond state



187014

93			limits with criminal intent pending custody proceedings.
	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
94			
	787.07	3rd	Human smuggling.
95			
	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
96			
	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
97			
	790.115 (2) (c)	3rd	Possessing firearm on school property.
98			
	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender



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99			less than 18 years.
	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
100			
	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
101			
	810.06	3rd	Burglary; possession of tools.
102			
	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
103			
	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
104			
	812.014 (2) (c) 4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
105			



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106	812.0195 (2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
107	<u>817.505 (4) (a)</u>	<u>3rd</u>	<u>Patient brokering.</u>
108	817.563 (1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
109	817.568 (2) (a)	3rd	Fraudulent use of personal identification information.
110	817.625 (2) (a)	3rd	Fraudulent use of scanning device or reencoder.
111	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.



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112	837.02 (1)	3rd	Perjury in official proceedings.
113	837.021 (1)	3rd	Make contradictory statements in official proceedings.
114	838.022	3rd	Official misconduct.
115	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
116	839.13 (2) (c)	3rd	Falsifying records of the Department of Children and Families.
117	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
118	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.



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119	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
120	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
121	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
122	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
123	914.14(2)	3rd	Witnesses accepting bribes.
124	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
	914.23(2)	3rd	Retaliation against a witness, victim, or



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125			informant, no bodily injury.
126	918.12	3rd	Tampering with jurors.
127	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
128			
129	(f) LEVEL 6		
130			
131	Florida Statute	Felony Degree	Description
132	316.027 (2) (b)	2nd	Leaving the scene of a crash involving serious bodily injury.
133	316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
134	400.9935 (4) (c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
	499.0051 (2)	2nd	Knowing forgery of



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			transaction history, transaction information, or transaction statement.
135	499.0051 (3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
136	499.0051 (4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
137	775.0875 (1)	3rd	Taking firearm from law enforcement officer.
138	784.021 (1) (a)	3rd	Aggravated assault; deadly weapon without intent to kill.
139	784.021 (1) (b)	3rd	Aggravated assault; intent to commit felony.
140	784.041	3rd	Felony battery; domestic battery by strangulation.
141	784.048 (3)	3rd	Aggravated stalking;



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142			credible threat.
	784.048 (5)	3rd	Aggravated stalking of person under 16.
143			
	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
144			
	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
145			
	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
146			
	784.081 (2)	2nd	Aggravated assault on specified official or employee.
147			
	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
148			
	784.083 (2)	2nd	Aggravated assault on code inspector.
149			



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150	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
151	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
152	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
153	790.164 (1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
154	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual



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155			activity by custodial adult.
156	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
157	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
158	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
159	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
160	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
	810.145 (8) (b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.



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161	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
162	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
163	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
164	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
165	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
166	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
167	<u>817.505 (4) (b)</u>	<u>2nd</u>	<u>Patient brokering; 10 or</u>



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168

825.102 (1) 3rd Abuse of an elderly
person or disabled
adult.

169

825.102 (3) (c) 3rd Neglect of an elderly
person or disabled
adult.

170

825.1025 (3) 3rd Lewd or lascivious
molestation of an
elderly person or
disabled adult.

171

825.103 (3) (c) 3rd Exploiting an elderly
person or disabled adult
and property is valued
at less than \$10,000.

172

827.03 (2) (c) 3rd Abuse of a child.

173

827.03 (2) (d) 3rd Neglect of a child.

174

827.071 (2) & (3) 2nd Use or induce a child in
a sexual performance, or
promote or direct such
performance.

175



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176	836.05	2nd	Threats; extortion.
177	836.10	2nd	Written threats to kill or do bodily injury.
178	843.12	3rd	Aids or assists person to escape.
179	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
180	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
181	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily



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182

944.35 (3) (a) 2.

3rd

injury.

Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

183

944.40

2nd

Escapes.

184

944.46

3rd

Harboring, concealing, aiding escaped prisoners.

185

944.47 (1) (a) 5.

2nd

Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

186

951.22 (1)

3rd

Intoxicating drug, firearm, or weapon introduced into county facility.

187

188



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189 (h) LEVEL 8

190

Florida
Statute

Felony
Degree

Description

191

316.193
(3) (c) 3.a.

2nd

DUI manslaughter.

192

316.1935 (4) (b)

1st

Aggravated fleeing or
attempted eluding with
serious bodily injury or
death.

193

327.35 (3) (c) 3.

2nd

Vessel BUI manslaughter.

194

499.0051 (7)

1st

Knowing trafficking in
contraband prescription
drugs.

195

499.0051 (8)

1st

Knowing forgery of
prescription labels or
prescription drug labels.

196

560.123 (8) (b) 2.

2nd

Failure to report
currency or payment
instruments totaling or
exceeding \$20,000, but
less than \$100,000 by
money transmitter.



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197	560.125 (5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
198	655.50 (10) (b) 2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
199	777.03 (2) (a)	1st	Accessory after the fact, capital felony.
200	782.04 (4)	2nd	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or



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201	782.051 (2)	1st	unlawfully discharging bomb. Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).
202	782.071 (1) (b)	1st	Committing vehicular homicide and failing to render aid or give information.
203	782.072 (2)	1st	Committing vessel homicide and failing to render aid or give information.
204	787.06 (3) (a) 1.	1st	Human trafficking for labor and services of a child.
205	787.06 (3) (b)	1st	Human trafficking using coercion for commercial sexual activity of an adult.
206	787.06 (3) (c) 2.	1st	Human trafficking using



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207			coercion for labor and services of an unauthorized alien adult.
	787.06(3)(e)1.	1st	Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the state.
208			
	787.06(3)(f)2.	1st	Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.
209			
	790.161(3)	1st	Discharging a destructive device which results in bodily harm or property damage.
210			
	794.011(5)(a)	1st	Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not



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211

794.011 (5) (b)

2nd

use physical force likely
to cause serious injury.

Sexual battery; victim
and offender 18 years of
age or older; offender
does not use physical
force likely to cause
serious injury.

212

794.011 (5) (c)

2nd

Sexual battery; victim 12
years of age or older;
offender younger than 18
years; offender does not
use physical force likely
to cause injury.

213

794.011 (5) (d)

1st

Sexual battery; victim 12
years of age or older;
offender does not use
physical force likely to
cause serious injury;
prior conviction for
specified sex offense.

214

794.08 (3)

2nd

Female genital
mutilation, removal of a
victim younger than 18
years of age from this



187014

215			state.
	800.04 (4) (b)	2nd	Lewd or lascivious battery.
216			
	800.04 (4) (c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.
217			
	806.01 (1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
218			
	810.02 (2) (a)	1st, PBL	Burglary with assault or battery.
219			
	810.02 (2) (b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
220			
	810.02 (2) (c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.



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221	812.014 (2) (a) 2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
222	812.13 (2) (b)	1st	Robbery with a weapon.
223	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
224	<u>817.505 (4) (c)</u>	<u>1st</u>	<u>Patient brokering; 20 or more patients.</u>
225	817.535 (2) (b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
226	817.535 (3) (a)	2nd	Filing false lien or other unauthorized document; property owner is a public officer or employee.
227	817.535 (4) (a) 1.	2nd	Filing false lien or other unauthorized document; defendant is



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228			incarcerated or under supervision.
	817.535 (5) (a)	2nd	Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.
229			
	817.568 (6)	2nd	Fraudulent use of personal identification information of an individual under the age of 18.
230			
	817.611 (2) (c)	1st	Traffic in or possess 50 or more counterfeit credit cards or related documents.
231			
	825.102 (2)	1st	Aggravated abuse of an elderly person or disabled adult.
232			
	825.1025 (2)	2nd	Lewd or lascivious battery upon an elderly person or disabled adult.
233			



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234	825.103 (3) (a)	1st	Exploiting an elderly person or disabled adult and property is valued at \$50,000 or more.
235	837.02 (2)	2nd	Perjury in official proceedings relating to prosecution of a capital felony.
236	837.021 (2)	2nd	Making contradictory statements in official proceedings relating to prosecution of a capital felony.
237	860.121 (2) (c)	1st	Shooting at or throwing any object in path of railroad vehicle resulting in great bodily harm.
238	860.16	1st	Aircraft piracy.
239	893.13 (1) (b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1) (a) or (b).



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240	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
241	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
242	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
243	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
244	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.
245	893.135 (1)(c)2.c.	1st	Trafficking in hydrocodone, 50 grams or more, less than 200 grams.
	893.135	1st	Trafficking in oxycodone,



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246	(1) (c) 3.c.		25 grams or more, less than 100 grams.
	893.135	1st	Trafficking in
	(1) (d) 1.b.		phencyclidine, more than 200 grams, less than 400 grams.
247			
	893.135	1st	Trafficking in
	(1) (e) 1.b.		methaqualone, more than 5 kilograms, less than 25 kilograms.
248			
	893.135	1st	Trafficking in
	(1) (f) 1.b.		amphetamine, more than 28 grams, less than 200 grams.
249			
	893.135	1st	Trafficking in
	(1) (g) 1.b.		flunitrazepam, 14 grams or more, less than 28 grams.
250			
	893.135	1st	Trafficking in gamma-
	(1) (h) 1.b.		hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
251			



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252	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4- Butanediol, 5 kilograms or more, less than 10 kilograms.
253	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
254	893.1351 (3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
255	895.03 (1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
256	895.03 (2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
	895.03 (3)	1st	Conduct or participate in any enterprise through



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pattern of racketeering
activity.

257

896.101(5)(b)

2nd

Money laundering,
financial transactions
totaling or exceeding
\$20,000, but less than
\$100,000.

258

896.104(4)(a)2.

2nd

Structuring transactions
to evade reporting or
registration
requirements, financial
transactions totaling or
exceeding \$20,000 but
less than \$100,000.

259

260

261

262

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

And the title is amended as follows:

 Delete line 45

and insert:

 "racketeering activity"; amending s. 921.0022, F.S.;

 ranking offenses; providing an effective date.

By Senator Clemens

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A bill to be entitled

An act relating to marketing practices for substance abuse services; amending s. 16.56, F.S.; authorizing the Office of Statewide Prosecution in the Department of Legal Affairs to investigate and prosecute patient brokering offenses; amending s. 397.407, F.S.; revising the requirements for the referral of patients to, and the acceptance of referrals from, a recovery residence; specifying that certain referrals are not prohibited; providing applicability; clarifying that such referrals are not required; amending s. 397.501, F.S.; providing that an application for the disclosure of an individual's records may be filed as part of an active criminal investigation; authorizing a court to approve an application for the disclosure of an individual's substance abuse treatment records without providing express notice of the application to the individual or identified parties with an interest in the records if the application is filed as part of an active criminal investigation; providing that upon implementation of the order granting such application, the individual and identified parties with an interest in the records must be afforded an opportunity to seek revocation or amendment of that order; creating s. 397.55, F.S.; providing legislative findings; prohibiting service providers, operators of recovery residences, and certain third parties from engaging in specified marketing practices; requiring a person or entity to obtain a license from the Department of Business and Professional Regulation before attempting to generate referrals or leads for the placement of patients with a service provider or in a recovery

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residence; requiring such person or entity to maintain an office in the state as a condition of the license; providing penalties; creating s. 817.0345, F.S.; prohibiting a person from knowingly and willfully making specified false or misleading statements or providing specified false or misleading information under certain circumstances; providing penalties; amending s. 817.505, F.S.; providing that it is unlawful for a person to offer or pay, or solicit or receive, benefits under certain circumstances; providing fines and penalties; amending s. 895.02, F.S.; revising the definition of the term "racketeering activity"; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 16.56, Florida Statutes, is amended to read:

16.56 Office of Statewide Prosecution.—

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

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, ~~and~~ home-invasion robbery, and patient brokering;
2. Any crime involving narcotic or other dangerous drugs;
3. Any violation of the Florida RICO (Racketeer Influenced

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62 and Corrupt Organization) Act, including any offense listed in
 63 the definition of racketeering activity in s. 895.02(8) (a),
 64 providing such listed offense is investigated in connection with
 65 a violation of s. 895.03 and is charged in a separate count of
 66 an information or indictment containing a count charging a
 67 violation of s. 895.03, the prosecution of which listed offense
 68 may continue independently if the prosecution of the violation
 69 of s. 895.03 is terminated for any reason;

70 4. Any violation of the Florida Anti-Fencing Act;

71 5. Any violation of the Florida Antitrust Act of 1980, as
 72 amended;

73 6. Any crime involving, or resulting in, fraud or deceit
 74 upon any person;

75 7. Any violation of s. 847.0135, relating to computer
 76 pornography and child exploitation prevention, or any offense
 77 related to a violation of s. 847.0135 or any violation of
 78 chapter 827 where the crime is facilitated by or connected to
 79 the use of the Internet or any device capable of electronic data
 80 storage or transmission;

81 8. Any violation of chapter 815;

82 9. Any criminal violation of part I of chapter 499;

83 10. Any violation of the Florida Motor Fuel Tax Relief Act
 84 of 2004;

85 11. Any criminal violation of s. 409.920 or s. 409.9201;

86 12. Any crime involving voter registration, voting, or
 87 candidate or issue petition activities;

88 13. Any criminal violation of the Florida Money Laundering
 89 Act;

90 14. Any criminal violation of the Florida Securities and

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91 Investor Protection Act; or

92 15. Any violation of chapter 787, as well as any and all
 93 offenses related to a violation of chapter 787;

94
 95 or any attempt, solicitation, or conspiracy to commit any of the
 96 crimes specifically enumerated above. The office shall have such
 97 power only when any such offense is occurring, or has occurred,
 98 in two or more judicial circuits as part of a related
 99 transaction, or when any such offense is connected with an
 100 organized criminal conspiracy affecting two or more judicial
 101 circuits. Informations or indictments charging such offenses
 102 shall contain general allegations stating the judicial circuits
 103 and counties in which crimes are alleged to have occurred or the
 104 judicial circuits and counties in which crimes affecting such
 105 circuits or counties are alleged to have been connected with an
 106 organized criminal conspiracy.

107 Section 2. Subsection (11) of section 397.407, Florida
 108 Statutes, is amended to read:

109 397.407 Licensure process; fees.—

110 (11) Effective July 1, 2017 ~~2016~~, a service provider
 111 licensed under this part may not refer a prospective, current,
 112 or discharged patient to, or accept a referral from, a recovery
 113 residence unless the recovery residence holds a valid
 114 certificate of compliance as provided in s. 397.487 and is
 115 actively managed by a certified recovery residence administrator
 116 as provided in s. 397.4871 ~~or the recovery residence is owned~~
 117 ~~and operated by a licensed service provider or a licensed~~
 118 ~~service provider's wholly owned subsidiary~~. For purposes of this
 119 subsection, the term "refer" means to inform a patient by any

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120 means about the name, address, or other details of the recovery
 121 residence. However, this subsection does not require a licensed
 122 service provider to refer any patient to a recovery residence,
 123 or the licensed service provider, as applicable. This subsection
 124 does not prohibit a referral by a recovery residence to a
 125 licensed service provider when the recovery residence, including
 126 its owners, operators, and employees, do not benefit, directly
 127 or indirectly, from the referral, and does not apply to a
 128 licensed service provider under contract with a managing entity
 129 as defined in s. 394.9082.

130 Section 3. Paragraphs (g) and (h) of subsection (7) of
 131 section 397.501, Florida Statutes, are amended to read:

132 397.501 Rights of individuals.—Individuals receiving
 133 substance abuse services from any service provider are
 134 guaranteed protection of the rights specified in this section,
 135 unless otherwise expressly provided, and service providers must
 136 ensure the protection of such rights.

137 (7) RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.—

138 (g) An order authorizing the disclosure of an individual's
 139 records may be applied for by any person having a legally
 140 recognized interest in the disclosure which is sought. The
 141 application may be filed ~~alone separately~~ or as part of a
 142 pending civil action or an active criminal investigation in
 143 which it appears that the individual's records are needed to
 144 provide evidence. An application must use a fictitious name,
 145 such as John Doe or Jane Doe, to refer to any individual and may
 146 not contain or otherwise disclose any identifying information
 147 unless the individual is the applicant or has given a written
 148 consent to disclosure or the court has ordered the record of the

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149 proceeding sealed from public scrutiny.

150 (h) 1. For applications filed alone or as part of a pending
 151 civil action, the individual and the person holding the records
 152 from whom disclosure is sought must be given adequate notice in
 153 a manner which will not disclose identifying information to
 154 other persons, and an opportunity to file a written response to
 155 the application, or to appear in person, for the limited purpose
 156 of providing evidence on the statutory and regulatory criteria
 157 for the issuance of the court order.

158 2. Applications filed as part of an active criminal
 159 investigation may, in the discretion of the court, be granted
 160 without notice. Although no express notice is required to the
 161 agents, owners, and employees of the treatment provider or to
 162 any patient whose records are to be disclosed, upon
 163 implementation of an order so granted, any of these persons must
 164 be afforded an opportunity to seek revocation or amendment of
 165 the order, limited to the presentation of evidence on the
 166 statutory and regulatory criteria for the issuance of the order.

167 Section 4. Section 397.55, Florida Statutes, is created to
 168 read:

169 397.55 Prohibition of deceptive marketing practices.—

170 (1) The Legislature recognizes that consumers of substance
 171 abuse treatment have disabling conditions and that such
 172 consumers and their families are vulnerable and at risk of being
 173 easily victimized by fraudulent marketing practices that
 174 adversely impact the delivery of health care. To protect the
 175 health, safety, and welfare of this vulnerable population, a
 176 service provider, an operator of a recovery residence, or a
 177 third party who provides any form of advertising or marketing

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178 services to a service provider or an operator of a recovery
 179 residence may not engage in any of the following marketing
 180 practices:

181 (a) Making a false or misleading statement or providing
 182 false or misleading information about the provider's or
 183 operator's or third party's products, goods, services, or
 184 geographical locations in its marketing, advertising materials,
 185 or media or on its website.

186 (b) Including on its website false information or
 187 electronic links, coding or activation that provides false
 188 information or that surreptitiously directs the reader to
 189 another website.

190 (c) Soliciting, receiving, or making an attempt to solicit
 191 or receive a commission, benefit, bonus, rebate, kickback, or
 192 bribe, directly or indirectly, in cash or in kind, or engaging
 193 or making an attempt to engage in a split-fee arrangement in
 194 return for a referral or an acceptance or acknowledgment of
 195 treatment from a service provider or recovery residence.

196 (d) Entering into a contract with a marketing provider who
 197 agrees to generate referrals or leads for the placement of
 198 patients with a service provider or in a recovery residence
 199 through a call center or a web-based presence, unless the
 200 service provider or the operator of the recovery residence
 201 discloses the following to the prospective patient so that the
 202 patient can make an informed health care decision:

203 1. Clear and concise language and instructions that allow
 204 the prospective patient to easily determine whether the
 205 marketing provider represents specific licensed service
 206 providers or recovery residences that pay a fee to the marketing

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207 provider, and the identity of such service providers or recovery
 208 residences; and

209 2. Clear and concise instructions that allow the
 210 prospective patient to easily access lists of licensed service
 211 providers and recovery residences on the department website.

212 (2) A person or entity must obtain a license from the
 213 Department of Business and Professional Regulation before
 214 attempting, by any method or design, including, but not limited
 215 to, a call center or a web-based presence, to generate a
 216 referral or lead for the placement of a patient with a service
 217 provider or in a recovery residence. As a condition of the
 218 license, such a person or entity must maintain an office in the
 219 state for the purpose of service of process.

220 (3) In addition to any other punishment authorized by law,
 221 a person or entity that knowingly and willfully violates
 222 paragraph (1) (a), paragraph (1) (b), or paragraph (1) (d) commits
 223 a misdemeanor of the first degree, punishable as provided in s.
 224 775.083 or s. 775.089. A violation of paragraph (1) (c) is a
 225 violation of the prohibition on patient brokering and may
 226 subject the party committing the violation to criminal penalties
 227 under s. 817.505.

228 Section 5. Section 817.0345, Florida Statutes, is created
 229 to read:

230 817.0345 Prohibition of fraudulent marketing practices.—It
 231 is unlawful for any person to knowingly and willfully make a
 232 materially false or misleading statement or provide false or
 233 misleading information about the identity, products, goods,
 234 services, or geographical location of a licensed service
 235 provider, as defined in chapter 397, in marketing, advertising

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236 materials, or other media or on a website with the intent to
 237 induce another person to seek treatment with that service
 238 provider. A person who violates this section commits a felony of
 239 the third degree, punishable as provided in s. 775.082, s.
 240 775.083, or s. 775.084.

241 Section 6. Subsections (1) and (4) of section 817.505,
 242 Florida Statutes, are amended to read:

243 817.505 Patient brokering prohibited; exceptions;
 244 penalties.-

245 (1) It is unlawful for any person, including any health
 246 care provider or health care facility, to:

247 (a) Offer or pay a any commission, benefit, bonus, rebate,
 248 kickback, or bribe, directly or indirectly, in cash or in kind,
 249 or engage in any split-fee arrangement, in any form whatsoever,
 250 to induce the referral of a patient ~~patients~~ or patronage to or
 251 from a health care provider or health care facility;

252 (b) Solicit or receive a any commission, benefit, bonus,
 253 rebate, kickback, or bribe, directly or indirectly, in cash or
 254 in kind, or engage in any split-fee arrangement, in any form
 255 whatsoever, in return for referring a patient ~~patients~~ or
 256 patronage to or from a health care provider or health care
 257 facility;

258 (c) Solicit or receive a any commission, benefit, bonus,
 259 rebate, kickback, or bribe, directly or indirectly, in cash or
 260 in kind, or engage in any split-fee arrangement, in any form
 261 whatsoever, in return for the acceptance or acknowledgment of
 262 treatment from a health care provider or health care facility;
 263 or

264 (d) Aid, abet, advise, or otherwise participate in the

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265 conduct prohibited under paragraph (a), paragraph (b), or
 266 paragraph (c).

267 (4) (a) Any person, including an officer, partner, agent,
 268 attorney, or other representative of a firm, joint venture,
 269 partnership, business trust, syndicate, corporation, or other
 270 business entity, who violates any provision of this section
 271 commits a felony of the third degree, punishable as provided in
 272 s. 775.082, s. 775.083, or s. 775.084, and shall be ordered to
 273 pay a fine of \$50,000.

274 (b) Any person, including an officer, partner, agent,
 275 attorney, or other representative of a firm, joint venture,
 276 partnership, business trust, syndicate, corporation, or other
 277 business entity, who violates any provision of this section,
 278 where the prohibited conduct involves 10 or more patients but
 279 fewer than 20 patients, commits a felony of the second degree,
 280 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 281 and shall be ordered to pay a fine of \$100,000.

282 (c) Any person, including an officer, partner, agent,
 283 attorney, or other representative of a firm, joint venture,
 284 partnership, business trust, syndicate, corporation, or other
 285 business entity, who violates any provision of this section,
 286 where the prohibited conduct involves 20 or more patients,
 287 commits a felony of the first degree, punishable as provided in
 288 s. 775.082, s. 775.083, or s. 775.084, and shall be ordered to
 289 pay a fine of \$500,000.

290 Section 7. Paragraph (a) of subsection (8) of section
 291 895.02, Florida Statutes, is amended to read:

292 895.02 Definitions.—As used in ss. 895.01-895.08, the term:

293 (8) "Racketeering activity" means to commit, to attempt to

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294 commit, to conspire to commit, or to solicit, coerce, or
 295 intimidate another person to commit:

296 (a) Any crime that is chargeable by petition, indictment,
 297 or information under the following provisions of the Florida
 298 Statutes:

299 1. Section 210.18, relating to evasion of payment of
 300 cigarette taxes.

301 2. Section 316.1935, relating to fleeing or attempting to
 302 elude a law enforcement officer and aggravated fleeing or
 303 eluding.

304 3. Section 403.727(3)(b), relating to environmental
 305 control.

306 4. Section 409.920 or s. 409.9201, relating to Medicaid
 307 fraud.

308 5. Section 414.39, relating to public assistance fraud.

309 6. Section 440.105 or s. 440.106, relating to workers'
 310 compensation.

311 7. Section 443.071(4), relating to creation of a fictitious
 312 employer scheme to commit reemployment assistance fraud.

313 8. Section 465.0161, relating to distribution of medicinal
 314 drugs without a permit as an Internet pharmacy.

315 9. Section 499.0051, relating to crimes involving
 316 contraband, adulterated, or misbranded drugs.

317 10. Part IV of chapter 501, relating to telemarketing.

318 11. Chapter 517, relating to sale of securities and
 319 investor protection.

320 12. Section 550.235 or s. 550.3551, relating to dogracing
 321 and horseracing.

322 13. Chapter 550, relating to jai alai frontons.

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323 14. Section 551.109, relating to slot machine gaming.

324 15. Chapter 552, relating to the manufacture, distribution,
 325 and use of explosives.

326 16. Chapter 560, relating to money transmitters, if the
 327 violation is punishable as a felony.

328 17. Chapter 562, relating to beverage law enforcement.

329 18. Section 624.401, relating to transacting insurance
 330 without a certificate of authority, s. 624.437(4)(c)1., relating
 331 to operating an unauthorized multiple-employer welfare
 332 arrangement, or s. 626.902(1)(b), relating to representing or
 333 aiding an unauthorized insurer.

334 19. Section 655.50, relating to reports of currency
 335 transactions, when such violation is punishable as a felony.

336 20. Chapter 687, relating to interest and usurious
 337 practices.

338 21. Section 721.08, s. 721.09, or s. 721.13, relating to
 339 real estate timeshare plans.

340 22. Section 775.13(5)(b), relating to registration of
 341 persons found to have committed any offense for the purpose of
 342 benefiting, promoting, or furthering the interests of a criminal
 343 gang.

344 23. Section 777.03, relating to commission of crimes by
 345 accessories after the fact.

346 24. Chapter 782, relating to homicide.

347 25. Chapter 784, relating to assault and battery.

348 26. Chapter 787, relating to kidnapping or human
 349 trafficking.

350 27. Chapter 790, relating to weapons and firearms.

351 28. Chapter 794, relating to sexual battery, but only if

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352 such crime was committed with the intent to benefit, promote, or
 353 further the interests of a criminal gang, or for the purpose of
 354 increasing a criminal gang member's own standing or position
 355 within a criminal gang.

356 29. Former s. 796.03, former s. 796.035, s. 796.04, s.
 357 796.05, or s. 796.07, relating to prostitution.

358 30. Chapter 806, relating to arson and criminal mischief.

359 31. Chapter 810, relating to burglary and trespass.

360 32. Chapter 812, relating to theft, robbery, and related
 361 crimes.

362 33. Chapter 815, relating to computer-related crimes.

363 34. Chapter 817, relating to fraudulent practices, false
 364 pretenses, fraud generally, ~~and~~ credit card crimes, and patient
 365 brokering.

366 35. Chapter 825, relating to abuse, neglect, or
 367 exploitation of an elderly person or disabled adult.

368 36. Section 827.071, relating to commercial sexual
 369 exploitation of children.

370 37. Section 828.122, relating to fighting or baiting
 371 animals.

372 38. Chapter 831, relating to forgery and counterfeiting.

373 39. Chapter 832, relating to issuance of worthless checks
 374 and drafts.

375 40. Section 836.05, relating to extortion.

376 41. Chapter 837, relating to perjury.

377 42. Chapter 838, relating to bribery and misuse of public
 378 office.

379 43. Chapter 843, relating to obstruction of justice.

380 44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

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381 s. 847.07, relating to obscene literature and profanity.

382 45. Chapter 849, relating to gambling, lottery, gambling or
 383 gaming devices, slot machines, or any of the provisions within
 384 that chapter.

385 46. Chapter 874, relating to criminal gangs.

386 47. Chapter 893, relating to drug abuse prevention and
 387 control.

388 48. Chapter 896, relating to offenses related to financial
 389 transactions.

390 49. Sections 914.22 and 914.23, relating to tampering with
 391 or harassing a witness, victim, or informant, and retaliation
 392 against a witness, victim, or informant.

393 50. Sections 918.12 and 918.13, relating to tampering with
 394 jurors and evidence.

395 Section 8. This act shall take effect July 1, 2017.

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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)

5 Mch 17

Meeting Date

788

Bill Number (if applicable)

Topic Recovery Residences

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe Street

Phone 850.510.9922

City State Zip

Email

Speaking: For Against Information

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

Representing Fla. 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)

3/10/17

Meeting Date

788

Bill Number (if applicable)

Topic Marketing Practices for Substance Abuse Amendment Barcode (if applicable)

Name Lisa Hurley

Job Title

Address 311 E. Park Ave Street

Phone 850.221.5081

Email hurley@smithhsupersuise.com nyerson

Speaking: For Against Information

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

Representing Florida Association of Counties

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)

3/6/17

Meeting Date

788

Bill Number (if applicable)

Topic SB 788

Amendment Barcode (if applicable)

Name Casey Cook

Job Title PO Box 1757 Senior Legislative Advocate

Address Tallahassee

Phone 222 9684

Street

City

FL
State

32302
Zip

Email ccook@flcities.com

Speaking: For Against Information

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

Representing Florida League of Cities

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)

3/6/2017
Meeting Date

SB 788
Bill Number (if applicable)

Topic Marketing Practices for Substance Abuse Services

Amendment Barcode (if applicable)

Name Devon West

Job Title Legislative Affairs Dir.

Address 2401 SE Monterey
Street

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Stuart FL
City State Zip

Email dwest@martin.fl.us.

Speaking: For Against Information

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

Representing Martin County Board of County Commissioners

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

03/06/2017

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

SB788

Meeting Date

Bill Number (if applicable)

Topic ~~Chapter 397~~ Marketing Practices

Amendment Barcode (if applicable)

Name Alan Johnson

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Street

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City

State

Zip

Speaking: For Against Information

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

Representing Office of the State Attorney 15th Circuit

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)

3/6/17
Meeting Date

788
Bill Number (if applicable)

~~CS 397~~ Marketing Practices
Topic

Amendment Barcode (if applicable)

Dave Aronberg
Name

State Attorney, Palm Beach County
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FL
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Zip

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Email

Speaking: For Against Information

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

Office of the State Attorney, Palm Beach County
Representing

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)

3-6-17

Meeting Date

SB 788

Bill Number (if applicable)

Topic MARKETING PRACTICES

Amendment Barcode (if applicable)

Name MARK FONTAINE

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City State Zip

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Speaking: For Against Information

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

Representing FLORIDA Behavioral Health 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)

3-6-17

Meeting Date

788

Bill Number (if applicable)

870674

Amendment Barcode (if applicable)

Topic Substance Abuse personnel

Name MARK FONTANE

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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.

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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)

3/6/17
Meeting Date

788
Bill Number (if applicable)
870674
Amendment Barcode (if applicable)

Topic ~~Certification~~ / Substance Abuse Services

Name Neal McGarry

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Speaking: For Against Information

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

Representing Florida Certification Board

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 Committee on Criminal Justice

BILL: SB 552

INTRODUCER: Senator Bracy

SUBJECT: Child Support

DATE: March 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CJ	Pre-meeting
2.			CF	
3.			AP	

I. Summary:

SB 552 amends provisions related to the failure to pay support. An obligor can stop suspension of his or her driver license if he or she can demonstrate that he or she:

- Is unable to pay support due to an act of God.
- Is unable to pay support due to a medical emergency involving him or her.
- Is unable to pay support due to sudden involuntary unemployment beyond his or her control.
- Has been ordered by the court to be placed in a work release program or under supervised home confinement without electronic monitoring for failure to pay support.

Additionally, a court shall *not* find an obligor in contempt for failure to pay support if he or she demonstrates inability to pay child support due to:

- An act of God.
- A medical emergency involving him or her.
- Sudden involuntary unemployment beyond his or her control.

The bill then allows a court to order an obligor who the court finds has demonstrated one of the above failures to pay child support to work release or home confinement without electronic monitoring.

The bill requires the Department of Economic Opportunity to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring.

II. Present Situation:

Support

Parents have a duty to support¹ their child until the child turns 18 years of age.² “Public policy favors imposing on parents an obligation to contribute to the child’s support.”³ The obligation exists even if the parents are not married, and can exist when the parents are married, but the child is not the biological child of the husband or if a person contractually agrees to support the child.⁴

A parent caring for a child can seek a court order for support either through dissolution of marriage or through an order for alimony and support of the child without seeking a dissolution of marriage.⁵ Section 61.30, F.S., sets forth guidelines to determine the appropriate amount of support to be provided. A court is permitted to deviate from the guideline amount “after considering all relevant factors, including the needs of the child or children, age, station in life, standard of living, and the financial status and ability of each parent,” but the deviation must be part of a written finding in the support order explaining why the guideline amount is unjust or inappropriate.⁶

Failure to Pay Support

There are several options to enforce a support order, including both civil and criminal remedies. In an enforcement action, “the court must determine whether a valid support order exists, the terms of payment contained in the order, and whether the obligor⁷ has complied with its terms. If a court determines that arrearages are due under a support order, it may also inquire into the reasons why the payments were not made and whether nonpayment can be legally excused.”⁸

Civil remedies include garnishment of the obligor’s wages,⁹ an order for income deduction,¹⁰ suspension or denial of certain business and professional licenses and certificates,¹¹ suspension

¹ Section 61.046(22), F.S., defines “support” as child support when the Department of Revenue is not enforcing the support obligation and it includes spousal support or alimony for the person with whom the child is living when the Department of Revenue is enforcing the support obligation. The definition applies to the use of the term throughout ch. 61, F.S.

² Section 61.29, F.S. *See generally* ss. 744.301 and 744.361, F.S. *See also* 2-33 Florida Family Law s. 33.01 (Parents’ Duty to Support Child).

³ *Mitchell v. Mitchell*, 841 So. 2d 564 570, (Fla. 2nd DCA 2003). In fact, s. 856.04, F.S., provides that it is a third degree felony for a parent to desert his or her child or to withhold from the child the means of support.

⁴ *See* 2-33 Florida Family Law s. 33.01 (Parents’ Duty to Support Child) for a discussion on situations where the duty of providing support arises.

⁵ Section 61.09, F.S.

⁶ Section 61.30(1)(a), F.S.

⁷ Section 61.046(13), F.S., defines “obligor” to mean “a person responsible for making payments pursuant to an order establishing, enforcing, or modifying an obligation for alimony, for child support, or for alimony and child support.”

⁸ 4-70 Florida Family Law s. 70.23 (Complaint for Enforcement).

⁹ Section 61.12, F.S.

¹⁰ Section 61.1301, F.S.

¹¹ Section 61.13015, F.S.

of the person's driver license and motor vehicle registration,¹² and an order to seek employment or job training.¹³

Specifically related to suspension of a driver license, if an obligor is 15 days delinquent in making a support payment, then the Department of Revenue (DOR) can provide notice to the obligor of the delinquency. The notice must state that the DOR will request the Department of Highway Safety and Motor Vehicles to suspend the driver license within 20 days of the date of the notice from the DOR. There are several ways for an obligor to stop suspension of his or her license, including:

- Paying the delinquency in full;
- Contesting the delinquency notice;
- Demonstrating that he or she is on reemployment assistance (unemployment compensation);
- Demonstrating that he or she receives temporary cash assistance; or
- Demonstrating that he or she is disabled and incapable of self-support.¹⁴

The obligor can petition a court to direct the Department of Highway Safety and Motor Vehicles to issue a license for driving privileges restricted to business purposes only.¹⁵

Additionally, a court can hold the obligor in contempt for willfully not paying support.¹⁶ The original order for the payment of support creates a presumption that the obligor has the ability to pay the support. At the contempt hearing, the obligor has the burden of proof to show that he or she lacks the ability to "purge himself or herself from the contempt."¹⁷ If the obligor can show that he or she lacks the ability to pay the support, for example by showing that his or her income has been significantly reduced by economic circumstances beyond his or her control or that he or she is temporarily unable to pay due to involuntary unemployment, then the court may find the obligor to not be in contempt and temporarily suspend the payment of support.¹⁸ Incarceration in and of itself is not an excuse for failure to pay support.¹⁹

There is currently no statutory excusal for failure to pay support due to an act of God, a medical emergency, or sudden involuntary unemployment.

¹² Section 61.13016, F.S.

¹³ Section 61.14(5)(b), F.S.

¹⁴ Section 61.13016(1), F.S.

¹⁵ Section 61.13016(2), F.S. The term "a driving privilege restricted to business purposes only" means a driving privilege that is limited to any 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 for medical purposes. Section 322.271(1)(c)1., F.S.

¹⁶ See s. 38.23, F.S. Contempt is a refusal to obey an order of the court.

¹⁷ Section 61.14(5)(a), F.S.

¹⁸ 4-70 Florida Family Law § 70.24 (Civil Contempt).

¹⁹ "[A]n incarcerated parent may not automatically have his or her child support payment obligations modified based solely on a reduction in income resulting from incarceration. We reject the per se rule that would permit incarceration to be utilized as a basis to modify support, which would be tantamount to authorizing a suspension or abatement of support obligations in disguise and provide the alternative--a flexible procedure designed to encourage and accommodate the payment of support obligations." *Dep't of Revenue v. Jackson*, 846 So. 2d 486, 494 (Fla. 2003).

“If the court grants the motion for contempt, the court may impose appropriate sanctions to obtain compliance with the order including incarceration, attorneys’ fees, suit money and costs, compensatory or coercive fines, and any other coercive sanction or relief permitted by law.”²⁰

Civil and Criminal Contempt Incarceration

Civil and criminal contempt hearings for failure to pay support both can result in incarceration of an obligor, but their purposes are different:

[T]he purpose of a *civil* contempt proceeding is to obtain *compliance* on the part of a person subject to an order of the court. Because incarceration is utilized solely to obtain compliance, it must be used only when the contemnor has the ability to comply. This ability to comply is the contemnor’s “key to his cell.” The purpose of *criminal* contempt, on the other hand, is to *punish*. Criminal contempt proceedings are utilized to vindicate the authority of the court or to punish for an intentional violation of an order of the court.²¹

Incarceration for civil contempt can only be imposed if the court makes a finding that the obligor has the “ability to purge himself of contempt.” The “ability” exists if the obligor is earning a paycheck or if he or she has other assets available to him or her that could be used to pay the support.²²

In imposing incarceration for contempt, the court does not necessarily have to order the obligor to work release or home confinement. However, “work release is often used as a child support enforcement tool.”²³

Work Release

Work release allows certain inmates to work at paid employment in the community during confinement. They must return to the custody of the Department of Corrections or the county facility at the end of each work period.²⁴ The inmate is required to set up a plan for the disbursement of his or her earnings, and such plan must include a provision that “no less than 10% of net income will go toward the support of any dependents the inmate may have.”²⁵

²⁰ Fla. Fam. L. R. P. 12.615(d)(2). “Once the court finds that a civil contempt has occurred, it must determine what alternatives are appropriate to obtain compliance with the court order.” *Bowen v. Bowen*, 471 So. 2d 1274, 1279 (Fla. 1985).

²¹ *Bowen v. Bowen*, 471 So. 2d 1274, 1277 (Fla. 1985) (citations omitted) (emphasis in original). “Civil contempt protects the rights of a petitioner by compelling the responding party to obey a previously issued court order. Criminal contempt, on the other hand, is punitive in nature, and is used by a court to punish persons who show disrespect to the court or who intentionally violate a court order.” 4-70 Florida Family Law § 70.24 (Civil Contempt) (citations omitted).

²² The court is “not limited to the amount of cash immediately available to the contemnor; rather, the court may look to all assets from which the amount might be obtained.” *Bowen v. Bowen*, 471 So. 2d 1274, 1279 (Fla. 1985).

²³ *Bergen County Bd. of Services v. Steinhauer*, 294 N.J. Super. 507, 516 (Ch. Div. 1996).

²⁴ Sections 945.091(1)(b) and 951.24, F.S. See Department of Corrections, *Frequently Asked Questions Regarding Work Release*, available at <http://www.dc.state.fl.us/oth/inmates/wr.html> (last visited March 1, 2017).

²⁵ Rule 33-301.602 (11)(c) and (j), F.A.C. (Community Release Programs). Section 945.091(2), F.S., allows the Department of Corrections to adopt rules related to the disbursement of earnings of inmates.

Additionally, under county programs, wages or salary earned can be paid by the sheriff for support pursuant to a court order.²⁶

Home Confinement

Home confinement, or community control, is “a form of intensive, supervised custody in the community, including surveillance on weekends and holidays.”²⁷ It is an individualized program where the offender’s freedom is restricted within the community, home, or noninstitutional residential placement. The court determines the specific sanctions, such as electronic monitoring, imposed on the offender. Home confinement allows an offender to work while serving his or her sentence.²⁸

Florida Taxes

The Florida Constitution permits the state to levy a tax pursuant to law, and the local governments to levy ad valorem taxes and any other tax that is provided by law.²⁹ The Legislature has enacted numerous taxes and fees and has granted the local governments authority to raise revenues for specific purposes. The Florida Revenue Estimating Conference maintains the Florida Tax Handbook, which provides information about these various revenue sources.³⁰ The Legislature has also enacted numerous laws that provide for exemptions and credits to the revenue sources.³¹

The DOR is responsible for tax collection and enforcement and audits related to such taxes collected.³² Some tax credits are administered by the DOR, while others are administered by another agency. For example, the Department of Economic Opportunity (DEO) administers the rural job tax credit; the DEO accepts applications for the tax credit, reviews the application to determine if it meets the requirements and criteria for the tax credit, and then notifies the DOR of approved applicants. The DOR ensures that anyone claiming the credit on a tax return is eligible to take the credit. The statute for the rural job tax credit sets forth specific criteria, such as eligible applicants and tax credit award amounts.³³

III. Effect of Proposed Changes:

Loss of Driver License for Failure to Pay Support (Section 2)

Section 61.13016, F.S., allows the DOR to request the Department of Highway Safety and Motor Vehicles to suspend an obligor’s driver license within 20 days of the date of the notice from the DOR that the obligor is delinquent in making support payments. The bill amends s. 61.13016,

²⁶ Section 951.24(3)(a), F.S.

²⁷ Section 948.001(3), F.S.

²⁸ *Id.* Sections 948.01 and 948.11, F.S.

²⁹ Article VII, s. 1, Fla. Const.

³⁰ Florida Revenue Estimating Conference, *2016 Florida Tax Handbook*, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf> (last visited March 1, 2017).

³¹ *See generally id.*

³² Section 20.21(2)(c) and (d), F.S.

³³ Section 288.098, F.S.

F.S., to add additional ways for an obligor to stop suspension of his or her license to include demonstration that he or she:

- Is unable to pay support due to an act of God.
- Is unable to pay support due to a medical emergency involving him or her.
- Is unable to pay support due to sudden involuntary unemployment beyond his or her control.
- Has been ordered by the court to be placed in a work release program or under supervised home confinement without electronic monitoring for failure to pay support.³⁴

The obligor must provide applicable documentation to the DOR of such circumstances before the expiration of the 20-day notice period in order to avoid suspension of his or her driver license.

Contempt Orders (Section 3)

The bill amends s. 61.14(5)(a), F.S., to require a court to find that an obligor is *not* in contempt for failure to pay support if he or she demonstrates inability to pay *child* support due to:

- An act of God.³⁵
- A medical emergency involving him or her.³⁶
- Sudden involuntary unemployment beyond his or her control.

The bill then allows a court to order an obligor who the court finds has demonstrated one of the above failures to pay *child* support to work release or supervised home confinement without electronic monitoring.³⁷

Tax Credits (Section 4)

The bill requires the DEO to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring. The bill requires the DEO to adopt rules to implement such a program. See Section IV. Constitutional Issues below.

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not specify the amount of tax credits allowed or the taxes against which a credit is allowed. Therefore, the impact on local revenues is unknown. It is unclear if the bill would be a mandate or not.

³⁴ It is unclear if the person has to be in the work release program or under supervised home confinement at the time of delinquency or just ordered to be placed in such programs.

³⁵ While undefined in the bill, other statutes define “act of God” as “an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency.” See ss. 376.16, 376.308, 377.371, and 403.727, F.S.

³⁶ It is unclear if “involving” means that the obligor was the person with the medical emergency or if he or she was “involved” in an emergency, even if he or she was not the injured, sick, etc., person.

³⁷ The bill refers specifically to *child* support. See footnote 1.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**Contempt Orders (Section 3)**

Under current law, a court can order an obligor to be incarcerated after being found in contempt for failure to pay support. In section 3, the bill appears to allow a court to also order an obligor to be incarcerated after being found not in contempt for failure to pay support for specified reasons. The court must find that the obligor failed to pay support for the specified reason. Allowing a court to order incarceration (even if it is work release or supervised home confinement without electronic monitoring) without a finding of contempt or violation of criminal law may violate the obligor's right not to be imprisoned for a debt under Art. I, s. 11 of the Florida Constitution and due process rights under the U.S. Constitution.³⁸

Tax Credits (Section 4)

Section 4 of the bill directs the DEO to develop and administer a tax credit program for businesses that employ individuals ordered to work release or home confinement without electronic monitoring as part of a civil contempt order. The bill gives the DEO unbridled discretion in developing and administering the program. As such, this provision may be found to be unconstitutional under Art. II, s. 3 of the Florida Constitution.³⁹

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

The fiscal impact is indeterminate. The bill does not specify the amount of tax credits allowed or the taxes against which a credit is allowed. Therefore, the impact on state and local revenues is unknown.

B. Private Sector Impact:

An obligator who fails to pay child support and is able to show the circumstances provided in the bill will benefit by not being held in contempt and will be able to retain

³⁸ Article 1, s. 11, Fla. Const. *See* 26 Fla. Jur. Family Law s. 1345; 11 Fla. Jur. Contempt s. 58; 10A Fla. Jur. Constitutional Law s. 347; and *Gregory v. Rice*, 727 So. 2d 251, 256 (Fla. 1999) (Incarceration to obtain compliance with a court order may indeed be warranted when a contemnor has the ability to comply with the order and willfully refuses to do so, but incarceration for the simple failure to pay a debt is clearly prohibited.).

³⁹ "Under this doctrine [of nondelegation of legislative power] fundamental and primary policy decisions shall be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program." *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla. 1978). *See also Fla. Dep't of State v. Martin*, 916 So. 2d 763, (Fla. 2005).

his or her driver license. However, the obligator may be ordered to work release or home confinement without electronic monitoring.

C. Government Sector Impact:

The DOR indicates that the bill will have an insignificant fiscal impact on department expenditures.

The fiscal impact on the DEO is indeterminate to develop and administer the tax credit program required by the bill.

Any impact on the state court system is unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the DEO to adopt rules to develop and administer a program to provide tax credits to business entities that employ obligors ordered to be placed in work release programs or supervised home confinement without electronic monitoring.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.13016 and 61.14.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Criminal Justice (Bracy) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Florida
Responsible Parent Act."

Section 2. Paragraph (c) of subsection (1) and subsection
(3) of section 61.13016, Florida Statutes, are amended to read:
61.13016 Suspension of driver licenses and motor vehicle
registrations.—



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11 (1) The driver license and motor vehicle registration of a
12 support obligor who is delinquent in payment or who has failed
13 to comply with subpoenas or a similar order to appear or show
14 cause relating to paternity or support proceedings may be
15 suspended. When an obligor is 15 days delinquent making a
16 payment in support or failure to comply with a subpoena, order
17 to appear, order to show cause, or similar order in IV-D cases,
18 the Title IV-D agency may provide notice to the obligor of the
19 delinquency or failure to comply with a subpoena, order to
20 appear, order to show cause, or similar order and the intent to
21 suspend by regular United States mail that is posted to the
22 obligor's last address of record with the Department of Highway
23 Safety and Motor Vehicles. When an obligor is 15 days delinquent
24 in making a payment in support in non-IV-D cases, and upon the
25 request of the obligee, the depository or the clerk of the court
26 must provide notice to the obligor of the delinquency and the
27 intent to suspend by regular United States mail that is posted
28 to the obligor's last address of record with the Department of
29 Highway Safety and Motor Vehicles. In either case, the notice
30 must state:

31 (c) That notification will be given to the Department of
32 Highway Safety and Motor Vehicles to suspend the obligor's
33 driver license and motor vehicle registration unless, within 20
34 days after the date that the notice is mailed, the obligor:

35 1.a. Pays the delinquency in full and any other costs and
36 fees accrued between the date of the notice and the date the
37 delinquency is paid;

38 b. Enters into a written agreement for payment with the
39 obligee in non-IV-D cases or with the Title IV-D agency in IV-D



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40 cases; or in IV-D cases, complies with a subpoena or order to
41 appear, order to show cause, or a similar order;

42 c. Files a petition with the circuit court to contest the
43 delinquency action;

44 d. Demonstrates that he or she receives reemployment
45 assistance or unemployment compensation pursuant to chapter 443;

46 e. Demonstrates that he or she is disabled and incapable of
47 self-support or that he or she receives benefits under the
48 federal Supplemental Security Income program or Social Security
49 Disability Insurance program;

50 f. Demonstrates that he or she receives temporary cash
51 assistance pursuant to chapter 414; ~~or~~

52 g. Demonstrates that he or she is unable to pay support due
53 to an act of God, his or her own medical emergency, or sudden
54 involuntary unemployment beyond his or her control. For purposes
55 of this sub-subparagraph, the term "act of God" means an
56 unforeseeable act exclusively occasioned by the violence of
57 nature without the interference of any human agency; or

58 h.~~g.~~ Demonstrates that he or she is making payments in
59 accordance with a confirmed bankruptcy plan under chapter 11,
60 chapter 12, or chapter 13 of the United States Bankruptcy Code,
61 11 U.S.C. ss. 101 et seq.; and

62 2. Pays any applicable delinquency fees.

63
64 If an obligor in a non-IV-D case enters into a written agreement
65 for payment before the expiration of the 20-day period, the
66 obligor must provide a copy of the signed written agreement to
67 the depository or the clerk of the court. If an obligor seeks to
68 satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-



69 subparagraph 1.f., ~~or~~ sub-subparagraph 1.g., or sub-subparagraph
70 1.h. before expiration of the 20-day period, the obligor must
71 provide the applicable documentation or proof to the depository
72 or the clerk of the court.

73 (3) If the obligor does not, within 20 days after the
74 mailing date on the notice, pay the delinquency; enter into a
75 written agreement; comply with the subpoena, order to appear,
76 order to show cause, or other similar order; file a motion to
77 contest; or satisfy subparagraph (1)(c)1.d., sub-
78 subparagraph (1)(c)1.e., subparagraph (1)(c)1.f., ~~or~~ sub-
79 subparagraph (1)(c)1.g., or sub-subparagraph (1)(c)1.h., the
80 Title IV-D agency in IV-D cases, or the depository or clerk of
81 the court in non-IV-D cases, may file the notice with the
82 Department of Highway Safety and Motor Vehicles and request the
83 suspension of the obligor's driver license and motor vehicle
84 registration in accordance with s. 322.058.

85 Section 3. Paragraph (a) of subsection (5) of section
86 61.14, Florida Statutes, is amended to read:

87 61.14 Enforcement and modification of support, maintenance,
88 or alimony agreements or orders.—

89 (5) (a) When a court of competent jurisdiction enters an
90 order for the payment of alimony or child support or both, the
91 court shall make a finding of the obligor's imputed or actual
92 present ability to comply with the order. If the obligor
93 subsequently fails to pay alimony or support and a contempt
94 hearing is held, the original order of the court creates a
95 presumption that the obligor has the present ability to pay the
96 alimony or support and to purge himself or herself from the
97 contempt. At the contempt hearing, the obligor shall have the



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98 burden of proof to show that he or she lacks the ability to
99 purge himself or herself from the contempt. This presumption is
100 adopted as a presumption under s. 90.302(2) to implement the
101 public policy of this state that children shall be maintained
102 from the resources of their parents and as provided for in s.
103 409.2551, and that spouses be maintained as provided for in s.
104 61.08. The court shall state in its order the reasons for
105 granting or denying the contempt. The court shall deny the
106 contempt if the obligor demonstrates that he or she is unable to
107 pay support due to an act of God, his or her own medical
108 emergency, or sudden involuntary unemployment beyond his or her
109 control. For purposes of this paragraph, the term "act of God"
110 means an unforeseeable act exclusively occasioned by the
111 violence of nature without the interference of any human agency.

112 Section 4. This act shall take effect July 1, 2017.

113
114 ===== T I T L E A M E N D M E N T =====

115 And the title is amended as follows:

116 Delete everything before the enacting clause
117 and insert:

118 A bill to be entitled

119 An act relating to child support; creating the
120 "Florida Responsible Parent Act"; amending s.
121 61.13016, F.S.; providing additional circumstances
122 under which an obligor who fails to pay child support
123 may avoid suspension of his or her driver license and
124 motor vehicle registration; amending s. 61.14, F.S.;
125 requiring a court to deny an order for contempt if an
126 obligor demonstrates that he or she is unable to pay



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127
128

child support due to specified circumstances;
providing an effective date.

By Senator Bracy

11-00926-17

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1 A bill to be entitled
 2 An act relating to child support; creating the
 3 "Florida Responsible Parent Act"; amending s.
 4 61.13016, F.S.; providing additional circumstances
 5 under which an obligor who fails to pay child support
 6 may avoid suspension of his or her driver license and
 7 motor vehicle registration; amending s. 61.14, F.S.;
 8 requiring a court to deny an order for contempt if an
 9 obligor demonstrates that he or she is unable to pay
 10 child support due to specified circumstances;
 11 authorizing the court to order an obligor to be placed
 12 in a work-release program or under supervised home
 13 confinement without electronic monitoring for failure
 14 to pay child support due to any of such circumstances;
 15 requiring the Department of Economic Opportunity to
 16 develop and administer a tax credit program for
 17 business entities that employ such obligors; requiring
 18 the department to adopt rules; providing an effective
 19 date.

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

22
 23 Section 1. This act may be cited as the "Florida
 24 Responsible Parent Act."

25 Section 2. Paragraph (c) of subsection (1) and subsection
 26 (3) of section 61.13016, Florida Statutes, are amended to read:
 27 61.13016 Suspension of driver licenses and motor vehicle
 28 registrations.-

29 (1) The driver license and motor vehicle registration of a
 30 support obligor who is delinquent in payment or who has failed
 31 to comply with subpoenas or a similar order to appear or show
 32 cause relating to paternity or support proceedings may be

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

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33 suspended. When an obligor is 15 days delinquent making a
 34 payment in support or failure to comply with a subpoena, order
 35 to appear, order to show cause, or similar order in IV-D cases,
 36 the Title IV-D agency may provide notice to the obligor of the
 37 delinquency or failure to comply with a subpoena, order to
 38 appear, order to show cause, or similar order and the intent to
 39 suspend by regular United States mail that is posted to the
 40 obligor's last address of record with the Department of Highway
 41 Safety and Motor Vehicles. When an obligor is 15 days delinquent
 42 in making a payment in support in non-IV-D cases, and upon the
 43 request of the obligee, the depository or the clerk of the court
 44 must provide notice to the obligor of the delinquency and the
 45 intent to suspend by regular United States mail that is posted
 46 to the obligor's last address of record with the Department of
 47 Highway Safety and Motor Vehicles. In either case, the notice
 48 must state:

49 (c) That notification will be given to the Department of
 50 Highway Safety and Motor Vehicles to suspend the obligor's
 51 driver license and motor vehicle registration unless, within 20
 52 days after the date that the notice is mailed, the obligor:

53 1.a. Pays the delinquency in full and any other costs and
 54 fees accrued between the date of the notice and the date the
 55 delinquency is paid;

56 b. Enters into a written agreement for payment with the
 57 obligee in non-IV-D cases or with the Title IV-D agency in IV-D
 58 cases; or in IV-D cases, complies with a subpoena or order to
 59 appear, order to show cause, or a similar order;

60 c. Files a petition with the circuit court to contest the
 61 delinquency action;

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62 d. Demonstrates that he or she receives reemployment
63 assistance or unemployment compensation pursuant to chapter 443;

64 e. Demonstrates that he or she is disabled and incapable of
65 self-support or that he or she receives benefits under the
66 federal Supplemental Security Income program or Social Security
67 Disability Insurance program;

68 f. Demonstrates that he or she receives temporary cash
69 assistance pursuant to chapter 414; ~~or~~

70 g. Demonstrates that he or she is unable to pay support due
71 to an act of God, a medical emergency involving him or her, or
72 sudden involuntary unemployment beyond his or her control;

73 h. Demonstrates that he or she has been ordered by the
74 court to be placed in a work-release program or under supervised
75 home confinement without electronic monitoring for failure to
76 pay support pursuant to s. 61.14(5)(a); or

77 ~~i. g.~~ Demonstrates that he or she is making payments in
78 accordance with a confirmed bankruptcy plan under chapter 11,
79 chapter 12, or chapter 13 of the United States Bankruptcy Code,
80 11 U.S.C. ss. 101 et seq.; and

81 2. Pays any applicable delinquency fees.

82
83 If an obligor in a non-IV-D case enters into a written agreement
84 for payment before the expiration of the 20-day period, the
85 obligor must provide a copy of the signed written agreement to
86 the depository or the clerk of the court. If an obligor seeks to
87 satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-
88 subparagraph 1.f., ~~or~~ sub-subparagraph 1.g., sub-subparagraph
89 1.h., or sub-subparagraph 1.i. before expiration of the 20-day
90 period, the obligor must provide the applicable documentation or

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91 proof to the depository or the clerk of the court.

92 (3) If the obligor does not, within 20 days after the
93 mailing date on the notice, pay the delinquency; enter into a
94 written agreement; comply with the subpoena, order to appear,
95 order to show cause, or other similar order; file a motion to
96 contest; or satisfy sub-subparagraph (1)(c)1.d., sub-
97 subparagraph (1)(c)1.e., sub-subparagraph (1)(c)1.f., ~~or~~ sub-
98 subparagraph (1)(c)1.g., sub-subparagraph (1)(c)1.h., or sub-
99 subparagraph (1)(c)1.i., the Title IV-D agency in IV-D cases, or
100 the depository or clerk of the court in non-IV-D cases, may file
101 the notice with the Department of Highway Safety and Motor
102 Vehicles and request the suspension of the obligor's driver
103 license and motor vehicle registration in accordance with s.
104 322.058.

105 Section 3. Paragraph (a) of subsection (5) of section
106 61.14, Florida Statutes, is amended to read:

107 61.14 Enforcement and modification of support, maintenance,
108 or alimony agreements or orders.—

109 (5) (a) When a court of competent jurisdiction enters an
110 order for the payment of alimony or child support or both, the
111 court shall make a finding of the obligor's imputed or actual
112 present ability to comply with the order. If the obligor
113 subsequently fails to pay alimony or support and a contempt
114 hearing is held, the original order of the court creates a
115 presumption that the obligor has the present ability to pay the
116 alimony or support and to purge himself or herself from the
117 contempt. At the contempt hearing, the obligor shall have the
118 burden of proof to show that he or she lacks the ability to
119 purge himself or herself from the contempt. This presumption is

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120 adopted as a presumption under s. 90.302(2) to implement the
121 public policy of this state that children shall be maintained
122 from the resources of their parents and as provided for in s.
123 409.2551, and that spouses be maintained as provided for in s.
124 61.08. The court shall state in its order the reasons for
125 granting or denying the contempt. The court shall deny the
126 contempt if the obligor demonstrates that he or she is unable to
127 pay child support due to an act of God, a medical emergency
128 involving him or her, or sudden involuntary unemployment beyond
129 his or her control. If the court finds that the obligor has
130 failed to pay child support due to any of such circumstances,
131 the court may order the obligor to be placed in a work-release
132 program or under supervised home confinement without electronic
133 monitoring.

134 Section 4. The Department of Economic Opportunity shall
135 develop and administer a program to provide tax credits to any
136 business entity that employs an obligor who is ordered to be
137 placed in a work-release program or under supervised home
138 confinement without electronic monitoring pursuant to s.
139 61.14(5), Florida Statutes. The department shall adopt rules to
140 administer this section.

141 Section 5. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

552

Meeting Date

Bill Number (if applicable)

Topic SB 552 - Child Support

Amendment Barcode (if applicable)

Name Norberto Katz

Job Title Judicial Hearing Officer

Address 2 Courthouse Square

Phone

Street

Kissimmee FL 34740

Email

City

State

Zip

Speaking: For Against Information

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

Representing Family Law Section - Florida Bar

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)

5 March 17
Meeting Date

552
Bill Number (if applicable)

Topic child support

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Fla. 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.

CourtSmart Tag Report

Room: LL 37

Caption: Senate Criminal Justice Committee

Case No.:

Judge:

Type:

Started: 3/6/2017 2:12:28 PM

Ends: 3/6/2017 3:28:34 PM Length: 01:16:07

2:12:27 PM Meeting called to order
2:12:37 PM Roll Call
2:13:45 PM Tab 2- SJR 270 by Senator Thurston-Restoration of Civil Rights
2:14:23 PM Speakers waive in support
2:14:49 PM Debate on SJR 270
2:15:06 PM Close on SJR 270
2:15:21 PM Roll call on SJR 270
2:15:30 PM Tab 6- SB 934 by Senator Thurston-Restoration of Civil Rights
2:16:50 PM Questions of the sponsor from Senator Bean regarding excluding rights
2:19:51 PM SB 934 - TP'd
2:20:59 PM Tab 4- SB 624 by Senator Steube-Body Cameras
2:21:09 PM Amendment Barcode 837386
2:21:38 PM Questions on the bill as amended
2:23:27 PM Speaker Matt Puckett from Florida Police Benevolent Association
2:29:07 PM Debate on SB 624
2:34:12 PM Close on SB 624
2:35:12 PM Roll call on SB 624
2:36:03 PM Tab 1- CS/SB 118 by Judiciary / Senator Steube-Criminal History Records
2:36:34 PM Amendment Barcode 240462 and Amendment Barcode 756200
2:37:04 PM Amendment Barcode 371480 from Senator Brandes
2:37:21 PM CS/SB 118 as amended
2:38:20 PM Questions on CS/SB 118 as amended
2:42:27 PM Speakers waive in support
2:43:26 PM Follow up questions from the senators to the sponsor
2:49:25 PM Debate on CS/SB 118
2:50:48 PM Roll call on CS/SB 118
2:51:49 PM Tab 3- SB 382 by Senator Gibson-Judicial Accountability
2:55:47 PM Amendment Barcode 971442
2:57:03 PM Questions on SB 382 as amended
2:59:59 PM Speaker A. Wellington Barlow from Justice for All
3:03:46 PM Speaker Peter Dunbar from Florida Conference of Circuit Court Judges
3:07:42 PM Speaker Lee Haworth from 12th Circuit Court
3:10:56 PM Debate on SB 382
3:11:08 PM Motion to postpone SB 382
3:11:37 PM Tab 5- SCR 920 by Senator Farmer-Groveland Four
3:14:45 PM Speaker waives in support
3:15:47 PM Close on SCR 920
3:15:56 PM Roll call on SCR 920
3:16:15 PM Tab 10- SB 788 by Senator Clemens-Marketing Practices for Substance Abuse Services
3:17:51 PM Amendment Barcode 870674
3:19:22 PM Amendment Barcode 340588
3:19:26 PM Amendment Barcode 352472
3:20:04 PM Amendment Barcode 187014
3:21:05 PM Speakers waive in support
3:22:05 PM Close on SB 788
3:22:21 PM Roll call on SB 788
3:22:29 PM Tab 9- SB 608 by Senator Clemens-Decreasing Penalties for Certain Criminal Acts
3:22:55 PM Amendment Barcode 913354
3:23:37 PM Speaker Melissa Ramba from Florida Retail Federation
3:24:59 PM Speaker Shane Bennett from The Florida Police Chiefs Association
3:25:51 PM Speaker Matt Dunagan from Florida Sherriffs Association
3:26:52 PM Speakers waive in support
3:27:21 PM Roll call on SB 608
3:27:33 PM Meeting moved to adjourn by Senator Bean