

THE FLORIDA SENATE  
2014 SUMMARY OF LEGISLATION PASSED  
**Committee on Judiciary**

**CS/HB 227 — Victims of Wrongful Incarceration**

by Criminal Justice Subcommittee; Rep. Kerner and others (CS/CS/SB 326 by Rules Committee; Judiciary Committee; and Senator Thompson)

The existing Victims of Wrongful Incarceration Act (“Act”) provides an administrative process for persons who have been found to have been wrongfully incarcerated to qualify for and receive compensation. Among the conditions for eligibility, an applicant must provide a copy of a court order vacating his or her conviction and sentence.

This bill provides a limited expansion of the Act for those persons who cannot obtain the court order. Under the bill, a person who has been wrongfully incarcerated can qualify for compensation if:

- The person was convicted and sentenced to death on or before December 31, 1979;
- A Governor issued an executive order appointing a special prosecutor to review the conviction;
- The special prosecutor entered a nolle prosequi, or a dismissal of the charges for which the defendant was convicted and sentenced to death; and
- The wrongfully incarcerated person applies for compensation by July 1, 2016.

An applicant for compensation must comply with all other requirements of the Act.

If approved by the Governor, these provisions take effect July 1, 2014.

*Vote: Senate 38-0; House 116-0*

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2014 SUMMARY OF LEGISLATION PASSED  
**Committee on Judiciary**

**CS/CS/SB 280 — Public Records/Participants in Treatment-based Drug Court Programs**

by Rules Committee; Governmental Oversight and Accountability Committee; and Senator Garcia

The bill creates a public records exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records:

- Screenings for participation in the program.
- Substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

This bill provides that records may be released by consent of the participant or to governmental entities.

The bill provides that the exemption is subject to legislative review and repeal under the Open Government Sunset Review Act. The bill also contains a statement of public necessity as required by the Florida Constitution.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 38-0; House 111-0*

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**Committee on Judiciary**

**SB 386 — Application of Foreign Law in Courts**

by Senator Hays

This bill is intended to ensure that Floridians will be protected from the application of unfair and unjust laws of foreign nations during the litigation of family law and child custody matters. This bill codifies existing case law from appellate and Florida Supreme Court opinions.

The bill prohibits courts from enforcing a foreign law that violates the strong public policy of this state or that is unjust or unreasonable. Similarly, the bill prohibits a court from enforcing:

- A choice of law clause selecting a foreign law to govern the contract if the foreign law contravenes the strong public policy of this state or is unjust or unreasonable; or
- A forum selection clause that selects a foreign court to resolve disputes arising under the contract if the clause is unreasonable or unjust or if strong public policy would prohibit the enforceability of the clause.

Additionally, the bill limits the authority of courts to enforce foreign judgments or dismiss a case for filing in another country. Under the bill, a court may not enforce judgment or order of a foreign court or tribunal if the parties were not afforded due process rights or if the foreign court or tribunal did not have jurisdiction over the matter. Additionally, a court must find that an adequate alternate forum exists before the court dismisses an action on the basis that a satisfactory remedy may be more conveniently sought in another country.

If approved by the Governor, these provisions take effect October 1, 2014.

*Vote: Senate 24-14; House 78-40*

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**Committee on Judiciary**

**CS/CS/HB 405 — Trusts**

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Peters and others (CS/SB 826 by Judiciary Committee; and Senator Joyner)

A directing trustee is a cotrustee of a trust who has specific powers to the exclusion of other cotrustees, known as excluded trustees. Under existing law, the excluded trustee may be liable for complying with a directive by the directing trustee, if an excluded trustee has actual knowledge of the willful misconduct of the directing cotrustee. Under the bill, institutions or individuals who serve as an excluded trustee are not liable for complying with a directive by a directing cotrustee unless the excluded trustee's conduct constitutes willful misconduct.

If approved by the Governor, these provisions take effect July 1, 2014.

*Vote: Senate 35-0; House 115-0*

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**Committee on Judiciary**

**CS/HB 609 — Article V Constitutional Conventions**

by Civil Justice Subcommittee; and Rep. Wood and others (CS/SB 1008 by Appropriations Committee; and Senator Stargel)

The bill creates the “Article V Constitutional Convention Act” and establishes a framework for selecting and authorizing delegates to attend an Article V convention for the purpose of proposing amendments to the United States Constitution.

The bill provides that:

- Delegates and alternate delegates will be appointed by the Senate and House of Representatives pursuant to joint rules adopted by both chambers;
- Delegates must execute a written oath stating that the delegate will support the U.S. Constitution and the State Constitution and abide by any instructions adopted by the Legislature;
- The Legislature must adopt a concurrent resolution once delegates are appointed and provide instructions to the delegates regarding the rules of procedure and relevant matters relating to the Article V convention;
- A delegate who votes outside the scope of the instructions established by a concurrent resolution is subject to criminal penalties, forfeits his or her appointment, and the vote is void; and
- An advisory group shall be appointed to advise the delegates on whether certain actions would violate the instructions established by a concurrent resolution. The advisory group consists of an attorney appointed by the President of the Senate, an attorney appointed by the Speaker of the House of Representatives, and an attorney selected by agreement of the appointed attorneys, who will serve as chair of the advisory group. The group will meet at the call of the chair and establish policies and procedures that the group deems necessary to carry out the provisions of this bill.

If approved by the Governor, these provisions take effect July 1, 2014.

*Vote: Senate 21-15; House 73-42*

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**HB 627 — Service of Process**

by Reps. Pilon and others (SB 620 by Senator Detert)

The bill revises the law relating to service of process by:

- Authorizing a sheriff to charge a \$40 fee for each summons served instead of a \$40 fee for serving multiple summons at the same time.
- Providing that if a sheriff relies on an affidavit from a levying creditor, the sheriff is immune from liability for the wrongful levy or distribution of the proceeds of an execution sale.
- Requiring that the party requesting service of process or the process server file the return-of-service form instead of the person issuing the process.
- Adding a noncriminal violation punishable by a fine of up to \$1,000 for an employer, employee, or a representative or agent of the employer who refuses to accommodate service on an employee.
- Permitting service of process on a corporation at any address where the registered agent, president, vice president, or other head of the corporation is located.

If approved by the Governor, these provisions take effect July 1, 2014.

*Vote: Senate 37-0; House 116-1*

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**Committee on Judiciary**

**CS/SB 650 — OGSR/Inventories of an Estate or Elective Estate**

by Governmental Oversight and Accountability Committee; and Judiciary Committee

The bill removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result, the documents will remain confidential and exempt from disclosure requirements under the public records laws when filed with the clerk of court. The continued existence of the public records exemptions reenacted by the bill may help protect heirs or beneficiaries of a decedent's estate from being targeted for fraud or theft.

If approved by the Governor, these provisions take effect July 1, 2014.

*Vote: Senate 37-0; House 116-0*

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**Committee on Judiciary**

**CS/CS/HB 755 — Courts**

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Steube (CS/SB 104 by Judiciary Committee; and Senator Soto)

***Child Support***

This bill allows a court to deviate from the minimum amount of child support required under child support guidelines based on a child's visitation with a parent or the time-sharing schedule exercised by the parents.

***Judicial Notice***

Florida law authorizes a court to take judicial notice or admit into evidence certain rules and records without requiring a proponent to prove their admissibility. These records include Acts of Congress, statutes, and court records. The use of judicial notice generally requires advance notice to the parties.

This bill authorizes courts to take judicial notice of any court record of other courts when imminent danger is alleged in family cases in which domestic violence is an issue. The exigency of the situation waives the requirement that the court provide advance notice to the parties and an opportunity for a hearing. Notice must instead be provided within 2 business days after the court takes judicial notice.

***The Florida Supreme Court and Admission into The Florida Bar***

Federal law precludes aliens who are not lawfully present in the United States from receiving certain public benefits including a professional license unless the benefit is authorized by a state statute.

This bill authorizes the Florida Supreme Court to admit an unauthorized immigrant into The Florida Bar, if the applicant:

- Was brought to the United States as a minor;
- Was present in the United States for more than 10 years;
- Has fulfilled all requirements for admission to practice law;
- Has written authorization for employment from the United States Citizenship and Immigration Services;
- Has a social security number; and
- Has registered with the Selective Service System, if the applicant is male.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 26-7; House 79-37*



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**CS/CS/HB 757 — Estates**

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Spano (CS/SB 998 by Judiciary Committee; and Senator Hukill)

The bill amends provisions in the Probate Code and Trust Code. The changes were recommended by the Real Property, Probate, and Trust Law Section of The Florida Bar.

First, the bill clarifies the effective date of legislation passed during the 2013 Regular Session which renders void any part of a written instrument making gifts to a lawyer or lawyer's relatives. As such, the bill grandfathers gifts made in wills before October 1, 2013, the effective date of the 2013 legislation.

Second, the bill clarifies that the party who is contesting the validity of a trust or seeking to revoke a trust bears the burden of establishing the grounds of the invalidity on all issues.

Third, the bill specifies that death benefits, often in the form of life insurance, which are payable to a trust are not available to pay the expenses of administration of a settlor's estate or creditor's claims unless specific language and references are made.

Finally, the bill aligns the anti-lapse provisions of the Trust Code to mirror the same provisions of the Probate Code involving outright devises of gifts to certain relatives. Accordingly, an outright devise made by a trust to a deceased beneficiary will lapse unless the beneficiary was a grandparent, a lineal descendent of a grandparent of the settlor of a revocable trust, or the testator of a testamentary trust.

Several of these provisions are designed to clarify existing law and are remedial in nature and apply retroactively while others have prospective application.

If approved by the Governor, these provisions take effect July 1, 2014.

*Vote: Senate 34-0; House 115-0*

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**CS/CS/HB 797 — Clerks of Court**

by Finance and Tax Subcommittee; Civil Justice Subcommittee; and Rep. Pilon (CS/SB 788 by Judiciary Committee; and Senator Ring)

The bill makes various changes to processes administered by clerks of court.

***Sale of Tax Certificates***

When a property owner fails to pay property taxes, the county tax collector sells a tax certificate for the unpaid taxes. When a tax certificate on homestead property represents less than \$250 in delinquent taxes, the tax collector cannot sell the certificate, but instead must issue the certificate to the county. Certificates accrue interest at the rate of 18 percent per year.

The bill clarifies that counties may make available for public sale county-held tax certificates on a homestead property after the sum of all taxes and interest on the certificates on the property exceed \$250.

***Tax Deeds***

Two years after a tax certificate is issued, the holder of the tax certificate may apply for a tax deed. Once the certificateholder applies for a tax deed, the process begins for putting the property up for public auction.

Under the bill, the clerk of court must enter property on the list of “lands available for taxes” if after a tax deed sale the certificateholder fails to timely pay:

- Costs necessary to conduct a resale of the tax deed; or
- Additional amounts, such as one-half the value of homestead property, which are due if there are no bidders on a tax deed on a homestead property during the tax deed sale.

***Compensation for Service***

Jurors and witnesses may be compensated for their court service in certain instances. The clerk of court is responsible for disbursing payment to jurors and witnesses and may do so by cash or warrant. The bill additionally authorizes clerks of court to pay jurors and witnesses by check.

***Writs of Garnishment***

Persons who have sued to recover a debt and received a judgment have the right to a writ of garnishment to enforce the judgment against the judgment debtor. The applicant for the writ must place a \$100 deposit in the court registry. The bill requires a person who applies for a writ of garnishment to pay the deposit directly to the garnishee, rather than to the court.

If approved by the Governor, these provisions take effect July 1, 2014.

*Vote: Senate 40-0; House 117-0*

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**CS/SB 828 – Court System**

by Judiciary Committee; and Senator Bradley

The bill repeals or modifies court-related statutes that are unnecessary or outdated. Statutes that are a duplication of provisions in Article V of the State Constitution are repealed as unnecessary. Statutes that unconstitutionally create additional requirements for a judicial office are repealed because they are likely in conflict with constitutional qualifications for office. Other statutes are amended or repealed to reflect current practices or eliminate outdated provisions.

One example of an unnecessary statute that is being repealed states that books for the Supreme Court's library may be acquired by purchase or exchange. It is unclear why that directive ever needed to be included in the statutes.

Similarly, provisions requiring the Supreme Court to appoint a clerk and marshal, directives that are already covered in the State Constitution, are repealed as unnecessary.

Three existing statutes require certain judges to live in specified counties in a judicial circuit. This restricts eligibility for the office beyond the requirements of the State Constitution. Accordingly, these provisions are being repealed because they are most likely unconstitutional.

An example of an outdated statute that is being repealed addresses an evidentiary issue involving receipts of a receiver of the United States Land Office. The land grant office appears to have closed in 1933 and the last appellate case under the statute was decided 100 years ago in 1914.

If approved by the Governor, these provisions take effect on July 1, 2014.

*Vote: Senate 36-0; House 115-1*

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**CS/SJR 1188 — Prospective Appointment of Judicial Vacancies**

by Rules Committee; and Senator Lee

This joint resolution proposes an amendment to the State Constitution to require the Governor to prospectively fill vacancies on the Florida Supreme Court or a district court of appeal that will occur under certain circumstances. The Governor must prospectively fill a vacancy that will occur due to a justice or judge reaching the mandatory retirement age or failing to qualify for a retention election. Additionally, the amendment allows the Governor to prospectively fill a vacancy that will occur because a justice or judge fails to be retained in office at a retention election.

Currently, the Governor's authority to appoint a Supreme Court Justice or district court of appeal judge does not manifest itself until the expiration of the sitting justice's or judge's term. Additionally, under the existing timeframes for filling a judicial vacancy, the potential exists for a judicial office to be vacant for 120 days after a vacancy occurs. Under the amendment, the existing timeframes for a judicial nominating commission to nominate individuals to fill a prospective vacancy begin at the conclusion of the qualifying period for retention or immediately following the general election in which the voters do not retain a judge or justice.

If approved by a vote of at least 60 percent of the voters voting on the measure at the 2014 General Election, these provisions will take effect on January 6, 2015.

*Vote: Senate 26-14; House 74-45*

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**CS/CS/SB 1526 — Public Records/Department of Legal Affairs**

by Rules Committee; Judiciary Committee; and Senator Thrasher

The bill provides the public records exemptions for CS/CS/SB 1524, which establishes the Florida Information Protection Act of 2014. The Act requires commercial entities and certain government agencies to provide notice to the Department of Legal Affairs and affected individuals when a security breach occurs and personal information held in electronic form is illegally accessed.

The bill provides that certain information reported to the Department of Legal Affairs relating to security breaches or received pursuant to investigations is confidential and exempt from public inspection pursuant to statute and the State Constitution. The bill also provides for future review and repeal in accordance with the Open Government Sunset Review Act and contains a statement of public necessity as required by law.

If approved by the Governor, these provisions take effect on the same date that CS/CS/SB 1524 takes effect, if such legislation is adopted in this legislative session and becomes a law.

*Vote: Senate 36-0; House 118-0*

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**Committee on Judiciary**

**SB 1664 — Arbitration**

by Judiciary Committee

This bill corrects scrivener’s error in the Revised Florida Arbitration Code, which was enacted by the Legislature during the 2013 Legislative Session.

The revised code lists a number of provisions or rights that the parties to an arbitration agreement may not waive. One of these is “The remedies provided under s. 682.12[, F.S].” The description, “remedies,” is inconsistent with the cross-reference to s. 682.12, F.S, which relates to the right of a party to have a court enter an order confirming the award. As corrected by the bill, a party to an arbitration agreement may waive a remedy, not the right to the confirmation of the award by a court.

The bill applies retroactively to July 1, 2013, which was the effective date of the legislation enacting the Revised Florida Arbitration Code.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 40-0; House 118-0*