Committee on Criminal Justice

CS/CS/HB 75 — Electronic Monitoring Devices

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Torres and others (CS/CS/SB 954 by Fiscal Policy Committee; Criminal Justice Committee; and Senator Simmons)

The bill (Chapter 2016-15, L.O.F.) repeals s. 948.11(7), F.S., and moves its provisions into newly created s. 843.23, F.S. Section 843.23, F.S., makes it a third degree felony for a person to intentionally and without authority remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or an order by the Florida Commission on Offender Review.

The bill also makes it a third degree felony for a person to request or solicit another person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that is being worn as described above.

The bill clarifies that the Department of Corrections may electronically monitor offenders sentenced to community control only when the court has imposed electronic monitoring as a condition of community control.

These provisions were approved by the Governor and take effect October 1, 2016.
Vote: Senate 40-0; House 111-3

Committee on Criminal Justice

HB 93 — Law Enforcement Officer Body Cameras

by Reps. S. Jones, Williams, and others (SB 418 by Senators Smith, Thompson, Gibson, and Evers)

The bill creates s. 943.1718, F.S., pertaining to body cameras, to:

- Define relevant terms including the term "body camera," which means "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";
- Require a law enforcement agency that permits its law enforcement officers to wear body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras;
- Specify what must be included in those policies and procedures, such as general guidelines for the proper use, maintenance, and storage of body cameras and limitations on recording law-enforcement-related encounters and activities; and
- Require these agencies to conduct training on those policies and procedures, retain audio and video data recorded by body cameras, and perform periodic review of body camera practices.

The bill specifies that ch. 934, F.S. (interception of communications), does not apply to body camera recordings made by law enforcement agencies that elect to use body cameras.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 37-0; House 113-0

Committee on Criminal Justice

CS/CS/SB 130 — Discharging a Firearm

by Community Affairs Committee; Criminal Justice Committee; and Senator Richter

The bill (Chapter 2016-12, L.O.F.) amends s. 790.15, F.S., to prohibit the recreational discharge of a firearm outdoors, including for target shooting, in an area that the person knows or reasonably should know is primarily residential in nature and that has a residential density of one or more dwelling units per acre. A violation of this law is a first degree misdemeanor punishable by up to a year in jail and a $1,000 fine.

The bill provides exemptions for the lawful defense of life or property, the accidental discharge of a firearm, or the performance of official duties that require the discharge of a firearm. Additionally, the penalties do not apply if, under the circumstances, the discharge does not pose a reasonably foreseeable risk to life, safety, or property.

These provisions became law upon approval by the Governor on February 24, 2016.
Vote: Senate 37-0; House 118-0

Committee on Criminal Justice

CS/CS/HB 131 — Unattended Persons and Animals in Motor Vehicles

by Judiciary Committee; Civil Justice Subcommittee; and Reps. Young, Moskowitz, and others (CS/CS/SB 308 by Judiciary Committee; Criminal Justice Committee; and Senators Benacquisto and Evers)

The bill (Chapter 2016-18, L.O.F.) creates immunity from civil liability for property damage that may occur when an individual attempts to rescue a minor, elderly or disabled adult, or domestic animal from a motor vehicle.

In order to qualify for such immunity, the individual must:

- Determine that the vehicle is locked or there is no other reasonable method for the minor, elderly or disabled person, or animal to get out of the vehicle without help;
- Have a good faith and reasonable belief, based upon the known circumstances, that it is necessary to enter the vehicle because the minor, vulnerable adult, or animal is in imminent danger of suffering harm;
- Contact a law enforcement agency or 911 before entering the vehicle or immediately thereafter;
- Use no more force than necessary to make entry into the vehicle and remove the person or animal; and
- Stay with the person or animal in a safe location, in reasonable proximity to the vehicle, until a law enforcement officer or other first responder arrives.

Good Samaritans who enter a motor vehicle to rescue an endangered person or animal may be subject to criminal penalty for tampering or interfering with a motor vehicle under s. 860.17, F.S., or trespass in a conveyance under s. 810.08, F.S. The immunity provided by the bill does not appear to absolve a Good Samaritan of any potential criminal liability in such cases.

These provisions became law upon approval by the Governor on March 8, 2016.
Vote: Senate 38-0; House 118-0

Committee on Criminal Justice

CS/SB 218 — Offenses Involving Electronic Benefits Transfer Cards

by Criminal Justice Committee and Senators Hutson, Gaetz, and Negron

The bill amends s. 414.39, F.S., relating to public assistance fraud. This statute, in part, punishes a person who knowingly traffics (or knowingly attempts to traffic or knowingly aids another person in trafficking) in a food assistance card, an authorization for the expenditure of food assistance benefits, a certificate of eligibility for medical services, or a Medicaid identification card in any manner not authorized by law.

The bill specifies acts included in the term "traffic" such as buying or selling electronic benefits transfer cards for cash or consideration other than eligible food and exchanging firearms or controlled substances for food assistance benefits. The bill also punishes a person who possesses two or more electronic benefits transfer cards issued to other persons and sells or attempts to sell one or more of those cards. The first violation is a first degree misdemeanor; a second or subsequent violation is a third degree felony. Further, in addition to any other penalty, a violator shall be ordered by the court to serve at least 20 hours of community service. Community service hours must be performed at a nonprofit entity that provides the community with food services, if the court determines that community service can be performed at such entity.

If approved by the Governor, these provisions take effect October 1, 2016.
Vote: Senate 39-0; House 86-31

Committee on Criminal Justice

CS/SB 228 — Mandatory Minimum Sentences

by Criminal Justice Committee and Senators Bean, Bradley, and Evers

The bill (Chapter 2016-7, L.O.F.) eliminates the minimum mandatory sentences for aggravated assault in the 10-20-Life statute by deleting aggravated assault from the list of crimes to which 10-20-Life applies. As a result, persons who are convicted of only an aggravated assault offense will no longer qualify for the 10-20-Life penalties.

The bill repeals the exception for sentencing in aggravated assault cases enacted in 2014. This exception allows the sentencing court to deviate from the minimum mandatory sentences for crimes of aggravated assault if the court makes certain statutory findings based upon mitigating evidence presented at sentencing. Under the bill, because a person convicted of only aggravated assault will no longer qualify for 10-20-Life sentencing, the repealed language would have no further application in cases of aggravated assault committed after the effective date of the bill.

The 10-20-Life statute is referenced in ss. 27.366, 921.0022(2), 921.0024(1)(b), 947.146(3)(b), and 985.557(2)(d), F.S., therefore those sections are amended or reenacted to incorporate or conform the amendments made to s. 775.087, F.S., by the bill.

These provisions were approved by the Governor and take effect July 1, 2016.
Vote: Senate 38-0; House 119-0

Committee on Criminal Justice

CS/SB 230 — Missing Persons with Special Needs

by Appropriations Committee and Senator Dean

The bill addresses personal safety of persons with special needs who elope (wander) by providing personal devices to aid search-and-rescue efforts for such persons. For this purpose, the bill creates pilot projects to provide these devices and also provides for a specific appropriation.

The bill creates a pilot project in Alachua, Columbia, Hamilton, and Suwannee Counties, which is administered by the Center for Autism and Related Disabilities at the University of Florida; a pilot project in Palm Beach County, which is administered by the Center for Autism and Related Disabilities at the Florida Atlantic University; and a pilot project in Hillsborough County, which is administered by the Center for Autism and Related Disabilities at the University of South Florida.

The bill provides that for the 2016-2017 fiscal year, the sum of $100,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Center for Autism and Related Disabilities at the University of Florida, the sum of $100,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Center for Autism and Related Disabilities at Florida Atlantic University, and the sum of $100,000 in nonrecurring funds is appropriated from the General Revenue Fund to the Center for Autism and Related Disabilities at the University of South Florida.

Under each pilot project, the administrating center must select project participants based on criteria the center develops. Criteria must include, at a minimum, the person's risk of elopement. Qualifying participants are selected on a first-come, first-serve basis by the center to the extent of available funding within the center's existing resources. Each project must be voluntary and free of charge to project participants.

The personal devices, which are attachable to clothing or otherwise worn, must be provided by the center to the sheriff's offices of the participating counties. The sheriff's offices, in conjunction with the center, distribute the devices to project participants. Each center funds any costs associated with monitoring the devices.

Each center must submit a preliminary report by December 1, 2016, and a final report by December 15, 2017, to the Governor, the President of the Senate, and the Speaker of the House of Representatives describing the implementation and operation of its pilot project. The bill specifies what must be included, at a minimum, in the report. Each final report must also provide recommendations for modification or continued implementation of the project.

If approved by the Governor, these provisions take effect July 1, 2016.
Vote: Senate 40-0; House 115-1

Committee on Criminal Justice

CS/CS/HB 293 — Public Records/Juvenile Criminal History Records

by Judiciary Committee; Criminal Justice Subcommittee; and Rep. Pritchett and others
(CS/SB 700 by Fiscal Policy Committee and Senators Soto and Evers)

The bill addresses the inconsistencies that exist between s. 985.04(1), F.S. (making the majority of juvenile records confidential), and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult), by:

- Ensuring that the specified juvenile records deemed to be not confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed to be not confidential and exempt under s. 985.04, F.S.; and
- Requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status.

Section 985.04, F.S., Confidential Information of Juveniles

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential). The changes apply to records obtained before, on, and after the effective date of the bill.

Section 985.04(2), F.S., is amended to specify that the following juvenile records are not confidential and exempt:

- Records of a juvenile taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Records of a juvenile who is charged with a violation of law which, if committed by an adult, would be a felony;
- Records of a juvenile who has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records of a juvenile who has been transferred to adult court pursuant to ch. 985, part X, F.S.

The bill removes language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records are now confidential and exempt.

The bill authorizes a custodian of public records to choose not to post a juvenile's arrest or booking photograph on the custodian's website even though the photograph is not confidential and exempt or otherwise restricted from publication by law. This authorization does not restrict public access to the record.

Section 943.053, F.S., Dissemination of Criminal History Information

The bill amends s. 943.053, F.S., to make the list of juvenile records deemed to be not confidential and exempt identical to the list of juvenile records deemed to be not confidential and exempt under s. 985.04(2), F.S. Because the language regarding three or more misdemeanors is not included on the list, the FDLE is no longer tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies. Records relating to misdemeanors are now confidential and exempt.

The bill amends s. 943.053(3), F.S., to establish a separate process to disseminate juvenile criminal history information. Under this process, juvenile criminal history information, including the information that is confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in ss. 943.0585(4) or 943.059(4), F.S., for the stated purposes, and to any person within the agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

Juvenile records deemed confidential and exempt under s. 943.053, F.S., which are released by the sheriff, the Department of Corrections, or the Department of Juvenile Justice to private entities under contract with each entity retain their confidential and exempt status upon release to these private entities.

The bill repeals all new public records exemptions created in the bill on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 114-2

Committee on Criminal Justice

CS/SB 380 — Violation of an Injunction for Protection

by Fiscal Policy Committee and Senators Abruzzo and Diaz de la Portilla

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., to provide enhanced criminal penalties for a person who commits a third or subsequent violation of an injunction for protection or a foreign protection order against domestic violence, repeat violence, sexual violence, dating violence, stalking, or cyberstalking. Currently, a person who violates an injunction for protection or a foreign protection order commits a misdemeanor of the first degree. The bill increases the penalty to a third degree felony for a person who has two or more prior convictions for violating an injunction for protection or foreign protection order and commits a third or subsequent violation against the same victim. A third degree felony is punishable by probation or up to a maximum of five years in prison and up to a $5,000 fine.

If approved by the Governor, these provisions take effect October 1, 2016.
Vote: Senate 40-0; House 114-0

Committee on Criminal Justice

CS/SB 386 — Expunction of Records of Minors

by Fiscal Policy Committee and Senators Detert, Soto, Joyner, and Evers

Automatic Expunction of Criminal History Records of Minors

The bill (Chapter 2016-42, L.O.F.) amends s. 943.0515, F.S., to require all records maintained by the Florida Department of Law Enforcement (FDLE) related to minors who are not classified as serious or habitual juvenile offenders or who have not been committed to a juvenile correctional facility or juvenile prison to be automatically expunged when the minor reaches the age of 21 years, instead of 24 years of age.

Automatic expunction will occur so long as one of the following exceptions does not apply:

- A person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed;
- At any time a minor is adjudicated as an adult for a forcible felony; or
- The record relates to a minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S., involving certain sexual offenses.

Automatic expunction of records related to juveniles who are classified as serious or habitual juvenile offenders or who have been committed to a juvenile correctional facility or juvenile prison will remain at 26 years of age under the bill.

Application for Expunction of Criminal History Records Prior to Age 21

The bill provides that a minor who is eligible for automatic expunction of criminal history records at age 21 may apply for an expunction any time after reaching 18 years but before reaching 21 years of age. The only offenses eligible to be expunged are those that the minor committed before reaching the age of 18 years. In order to qualify for expunction prior to age 21, the minor is required to apply to the FDLE and must:

- Submit a $75 processing fee;
- Submit a full set of fingerprints for identity verification;
- Have the approval of the state attorney for each circuit in which an offense specified in the criminal history record occurred; and
- Submit a sworn, written statement attesting that he or she:
  - Is no longer under court supervision applicable to the disposition of the arrest of alleged criminal activity to which the application to expunge pertains; and
  - Has not been charged with or found to have committed a criminal offense in any jurisdiction of the state or within the United States within five years prior to the application date.

An unsuccessful request for early expunction of criminal history records will not affect the applicant's eligibility for automatic expunction of the records upon reaching age 21.

The bill provides that knowingly submitting false information on the sworn statement is a first degree misdemeanor.

Juvenile Diversion Expunction

The bill amends s. 943.0582, F.S., to eliminate the requirement that an application for prearrest or postarrest diversion expunction must be submitted within 12 months after the minor completes the diversion program.

Possession of Firearms

The bill amends s. 790.23, F.S., to allow an individual whose criminal record has been expunged, pursuant to the bill, to possess firearms.

These provisions were approved by the Governor and take effect July 1, 2016.
Vote: Senate 37-0; House 113-2

Committee on Criminal Justice

HB 387 — Offenses Evidencing Prejudice

by Rep. Stevenson and others (SB 356 by Senators Hutson and Evers)

The bill removes prejudice based on mental or physical disability as a factor for reclassifying a criminal offense or having a civil cause of action under s. 775.085, F.S., Florida's hate crimes statute. The bill creates a new section of law, s. 775.0863, F.S., which may be cited as "Carl's Law," to establish a separate hate crime statute that is substantively identical to s. 775.085, F.S., except that it applies exclusively to crimes evidencing prejudice based on mental or physical disability.

If approved by the Governor, these provisions take effect October 1, 2016.
Vote: Senate 38-0; House 116-0

Committee on Criminal Justice

CS/CS/SB 436 — Crime of Making Threats of Terror or Violence

by Appropriations Committee; Criminal Justice Committee; and Senators Simpson, Dean, Evers, Stargel, Detert, and Bradley

The bill amends ss. 790.163 and 790.164, F.S., which prohibit making false reports concerning planting a bomb, explosive, or weapon of mass destruction, to also prohibit making a false report concerning use of a firearm in a violent manner. Commission of either of these offenses is a second degree felony, punishable by up to 15 years imprisonment and a $10,000 fine.

The bill creates s. 836.12, F.S., making it a first degree misdemeanor to threaten a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, elected official, or any of their family members with death or serious bodily harm. A second or subsequent offense would be a third degree felony.

If approved by the Governor, these provisions take effect October 1, 2016.
Vote: Senate 40-0; House 116-0

Committee on Criminal Justice

SB 498 — Repeal of a Prohibition on Cohabitation

by Senators Sobel and Joyner

The bill repeals the crime of cohabitation, which makes it a second degree misdemeanor for a man and woman, lewdly and lasciviously to associate and cohabit together, without being married to each other.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 112-5

Committee on Criminal Justice

CS/CS/HB 545 — Human Trafficking

by Justice Appropriations Subcommittee; Criminal Justice Subcommittee; and Rep. Spano and others (CS/SB 784 by Criminal Justice Committee and Senators Flores, Sachs, and Evers)

The bill (Chapter 2016-24, L.O.F.) reclassifies human trafficking offenses under s. 787.06, F.S., if a person causes great bodily harm, permanent disability, or permanent disfigurement to another person and clarifies that a person can be convicted of branding a victim of human trafficking if the branding is for the purpose of committing or facilitating the offense of human trafficking.

The bill also adds human trafficking as a qualifying felony offense for first degree felony murder.

The penalties for a first-time violation of s. 796.06(2), F.S. (renting a space to be used for lewdness, assignation, or prostitution), are increased from a second degree misdemeanor to a first degree misdemeanor. The penalties for a second or subsequent violation are increased from a first degree misdemeanor to a third degree felony.

The bill addresses prostitution and related acts by:

- Removing minors from being prosecuted for prostitution, lewdness, or assignation under s. 796.07, F.S.;
- Revising the definition of the term "sexual abuse of a child" in s. 39.01, F.S. (a definition relevant to dependency proceedings), to delete reference to a child being arrested or prosecuted for a violation of any offense in ch. 796, F.S. (prostitution);
- Specifying that programs offered by faith-based providers may be included in required educational programs on the negative effects of prostitution and human trafficking;
- Reclassifying a violation of s. 796.07, F.S., to the next degree higher if the place, structure, building, or conveyance that is owned, established, maintained, or operated in violation of the statute is a massage establishment that is or should be licensed under s. 480.043, F.S.; and
- Adding s. 796.07, F.S., to the list of offenses which requires an emergency order suspending a massage therapist or establishment license and denying an application for a new or renewal massage therapist or establishment license.

Finally, the bill adds the offense of racketeering to the list of qualifying offenses for classification as a sexual predator or sexual offender only if the court makes a written finding that the racketeering activity involved at least one registration-qualifying sexual offense or one registration-qualifying offense with sexual intent or motive.

These provisions were approved by the Governor and take effect October 1, 2016.
Vote: Senate 39-0; House 117-0

Committee on Criminal Justice

HB 549 — Offenses Concerning Racketeering and Illegal Debts

by Rep. Burton (SB 850 by Senators Bradley and Evers)

The bill amends civil enforcement provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. Major features of the bill include:

- Authorizing an investigative agency, on behalf of the state, to institute a RICO civil proceeding for forfeiture in the circuit court for the judicial circuit in which the real or personal tangible property is located or in a circuit court in the state for intangible property;
- Authorizing an investigative agency to pursue an action to recover fair market value of unavailable property regardless of when the property is conveyed, alienated, disposed of, diminished in value, or otherwise rendered unavailable for forfeiture;
- Authorizing a court to order the forfeiture of any other property of a defendant up to the value of the property subject to forfeiture (as an alternative to the court ordering an amount equal to the fair market value of the unavailable property);
- Authorizing the Department of Legal Affairs to bring an action for a Florida RICO Act violation to obtain injunctive relief, civil penalties, attorney fees, and costs incurred in the investigation and prosecution of any action under the Florida RICO Act;
- Providing that a natural person who violates the Florida RICO Act may be subject to a civil penalty of up to $100,000 and any other person who violates the act may be subject to a civil penalty of up to $1 million, and requiring that moneys recovered for such civil penalties be deposited into the General Revenue Fund;
- Requiring that moneys recovered by the Department of Legal Affairs for attorney fees and costs under the Florida Rico Act be deposited into the Legal Affairs Revolving Trust Fund and authorizing use of those funds to investigate Florida RICO Act violations and enforce the act;
- Authorizing any party to a Florida RICO Act civil action to petition the court for entry of a consent decree or for approval of a settlement agreement;
- Providing that an investigative subpoena issued pursuant to the Florida RICO Act is confidential for 120 days after the date of issuance, unless extended by the court upon a showing of good cause by the investigating agency;
- Providing that the list of claims for which a court directs distribution of forfeiture funds includes claims for restitution by RICO victims; and
- Providing that where the forfeiture action was brought by the Department of Legal Affairs, the restitution is distributed through the Legal Affairs Trust Fund (otherwise, the restitution is distributed by the clerk of the circuit court).

If approved by the Governor, these provisions take effect July 1, 2016.
Vote: Senate 38-0; House 111-0

Committee on Criminal Justice

CS/CS/SB 636 — Evidence Collected in Sexual Offense Investigations

by Appropriations Committee; Criminal Justice Committee; and Senators Benacquisto, Flores, Joyner, Bradley, Gibson, and Evers

The bill creates s. 943.326, F.S., which addresses the collection and processing of evidence in sexual offense investigations that may contain DNA evidence.

The bill requires that a sexual offense evidence kit collected in a sexual offense investigation be submitted to the statewide criminal analysis laboratory system for forensic testing within 30 days after the evidence is received by a law enforcement agency if a report of the sexual offense is made to the agency, or when the victim or his or her representative requests that the evidence be tested.

Testing of the sexual offense evidence kit must be completed no later than 120 days after submission to a member of the statewide criminal analysis laboratory system.

A collected sexual offense evidence kit must be retained in a secure, environmentally safe manner until the prosecuting agency approves the kit's destruction.

The victim, or his or her representative, shall be informed of the purpose of testing and of his or her right to demand testing. The victim shall be informed by either the medical provider conducting the physical forensic examination for purposes of evidence collection for a sexual offense evidence kit or, if no kit is collected, a law enforcement agency that collects *other* DNA evidence associated with the offense.

By January 1, 2017, the Florida Department of Law Enforcement and each lab within the statewide criminal analysis laboratory system, in coordination with the Florida Council Against Sexual Violence, must adopt and disseminate guidelines and procedures for the collection, submission, and testing of DNA evidence obtained in connection with an alleged sexual offense.

The guidelines and procedures must include:

- Standards for packaging evidence for submission to the laboratories for testing;
- What evidence must be submitted for testing, which would include a collected sexual offense evidence kit and possibly other evidence related to the crime scene;
- Timeframes for evidence submission including the 30 day deadline for collected sexual offense evidence kits as set forth in the bill;
- Timeframes for evidence analysis including the bill's requirement that testing of sexual offense evidence kits must be completed no later than 120 days after submission; and
- Timeframes for evidence comparison to DNA databases.

The newly-created s. 943.326, F.S., does not create a cause of action or create rights for a person to challenge the admission of evidence or create an action for damages or relief for a violation of the new section of law.

If approved by the Governor, these provisions take effect July 1, 2016.
Vote: Senate 36-0; House 114-0

CS/CS/HB 769 — Mental Health Treatment

by Judiciary Committee; Children, Families and Seniors Subcommittee; and Rep. Peters and others (CS/CS/SB 862 by Children, Families, and Elder Affairs Committee; Criminal Justice Committee; and Senator Legg)

The bill amends ss. 916.13 and 916.15, F.S., to require a competency hearing to be held within 30 days after the court has been notified that a defendant is competent to proceed, or no longer meets the criteria for continued commitment. The bill also requires that the defendant be transported to the committing court's jurisdiction for these hearings.

The bill amends s. 916.145, F.S., to require that all charges be dismissed if the defendant remains incompetent to proceed for 5 continuous, uninterrupted years after the initial determination. The bill also permits a court to dismiss charges for an individual whom the court has determined to be incompetent to proceed and who remains incompetent for 3 years after the original determination, unless the charge is:

- Arson;
- Sexual battery;
- Robbery;
- Kidnapping;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aggravated assault with a deadly weapon;
- Murder;
- Manslaughter;
- Aggravated manslaughter of an elderly person or disabled adult;
- Aggravated manslaughter of a child;
- Unlawful throwing, projecting, placing, or discharging of a destructive device or bomb;
- Armed burglary;
- Aggravated battery;
- Aggravated stalking;
- A forcible felony as defined in s. 776.08, F.S., that is not otherwise listed;
- An offense involving the possession, use, or discharge of a firearm;
- An attempt to commit any of these offenses;
- Any offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the five years preceding the date of arrest for the nonviolent felony sought to be dismissed;
- Any offense allegedly committed by a defendant who, after having been found incompetent and under court supervision in a community-based program, is formally charged by a State Attorney with a new felony offense; or
- An offense for which there is an identifiable victim and the victim has not consented to the dismissal.

The bill requires jail physicians to provide a current psychotropic medication order at the time of an inmate's transfer to a forensic or civil facility. The bill authorizes an admitting physician at a state forensic or civil facility to continue the administration of psychotropic medication previously prescribed in jail, when a forensic client lacks the capacity to make an informed decision and, in the opinion of the physician, the abrupt cessation of medication could risk the health and safety of the client during the time a court order to medicate is pursued. This authority is for non-emergency situations and is limited to the time period required to obtain a court order for the medication.

The bill requires the administrator or designee of the civil or forensic facility to petition the committing court or the circuit court serving the county where the facility is located within 5 days of the inmate's admission, excluding weekends and legal holidays, for an order authorizing continued treatment.

If approved by the Governor, these provisions take effect July 1, 2016.
Vote: Senate 40-0; House 119-0

Committee on Criminal Justice

CS/CS/CS/SB 912 — Fraudulent Activities Associated with Payment Systems

by Rules Committee; Fiscal Policy Committee; Criminal Justice Committee; and Senators Flores, Soto, Montford, and Evers

The bill addresses fraudulent activity occurring at fuel stations. The bill amends s. 316.80, F.S. (unlawful conveyance of fuel), and 921.0022, F.S. (the offense severity level ranking chart of the Criminal Punishment Code), to increase the penalty for unlawful conveyance of fuel from a Level 1 third degree felony to a Level 5 second degree felony.

The bill amends s. 316.80, F.S., to require each person who owns or manages a retail petroleum fuel measuring device (fuel pump) with a scanning device to affix or install a security measure on the fuel pump to restrict the unauthorized access of customer payment card information. Specified security measures include placing pressure-sensitive security tape over the panel opening that leads to the scanning device.

The Department of Agriculture and Consumer Services may prohibit the use of a fuel pump until a security measure is installed, replaced, or repaired. The department must provide written notice to the owner or manager of noncompliance and allow the owner or manager 5 days to come into compliance. If a repeat violation is found on the same fuel pump, the department may immediately take the fuel pump out of service.

The bill amends s. 817.611, F.S (counterfeit credit cards), to revise the offense of trafficking in counterfeit credit cards and related documents to include possession and provide that this offense applies to trafficking in or possession of 5 such cards or documents.

Finally, the bill amends ss. 817.611 and 921.0022, F.S., to create tiered penalties for the revised offense of trafficking in or possession of counterfeit cards and related documents based upon the number of items involved. Specifically, the bill provides that trafficking in or possession of:

- 5-14 counterfeit cards or related documents is a Level 5 second degree felony;
- 15-49 counterfeit cards or related documents is a Level 7 second degree felony; and
- 50 or more counterfeit cards or related documents is a Level 8 first degree felony.

If approved by the Governor, these provisions take effect October 1, 2016.
Vote: Senate 39-0; House 111-1

Committee on Criminal Justice

CS/CS/SB 936 — Persons with Disabilities

by Appropriations Committee; Criminal Justice Committee; and Senators Ring and Evers

The bill provides that a law enforcement officer, correctional officer, or public safety officer shall, upon the request of an individual with autism (or an autism spectrum disorder) or his or her parent or guardian, make a good faith effort to ensure that a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional is present at all interviews of the individual. The bill describes the qualifications the professional must have to serve in this capacity. In addition, the bill provides that the failure to have a professional present at the time of the interview is not a basis for suppression of the statement or the contents of the interview or for a cause of action against the officer or agency. The bill requires that law enforcement agencies develop appropriate policies to implement the bill's provisions and that officers be trained based on these policies.

If approved by the Governor, these provisions take effect July 1, 2016, except where otherwise provided.
Vote: Senate 32-2; House 115-1

Committee on Criminal Justice

CS/CS/SB 1044 — Contraband Forfeiture

by Fiscal Policy Committee; Criminal Justice Committee; and Senators Brandes, Negron, Clemens, Bean, and Evers

This bill amends the Florida Contraband Forfeiture Act to specify that a seizure may occur only if the property owner is arrested for a criminal offense that forms the basis for determining that the property is a contraband article under s. 932.701, F.S., or if one or more of the following circumstances apply:

- The owner of the property cannot be identified after a diligent search or the person in possession of the property denies ownership and the owner of the property cannot be identified by available means at the time of seizure;
- The owner of the property is a fugitive from justice or is deceased;
- An individual who does not own the property is arrested for the criminal offense that forms the basis for determining that the property is a contraband article and the owner of the property had actual knowledge of the criminal activity;
- The owner of the property agrees to be a confidential informant as defined in s. 914.28, F.S.; or
- The property is a monetary instrument.

If after a diligent effort by the seizing agency, the owner of the seized property cannot be found after 90 days, the property is deemed a contraband article and forfeited subject to the act.

The bill also:

- Prescribes procedures for judicial review of seizures;
- Specifies when a seizing agency must apply for a probable cause determination and the findings a court must make regarding probable cause;
- Provides that any forfeiture hold or lien on seized property must be released within 5 days if the court finds that the new requirements for seizing property were not met or that no probable cause existed for seizing the property;
- Requires proof beyond a reasonable doubt that the contraband article was being used in violation of the act;
- Provides that the seizing agency is responsible for any damage to the property and any storage fees or maintenance costs, unless the parties expressly agree otherwise in writing;
- Increases from $1,000 to $2,000 the reasonable attorney's fees and costs a claimant can receive if the court makes a finding of no probable cause at the close of the adversarial preliminary hearing;
- Provides that a $1,500 bond is payable to the claimant if the claimant prevails at the close of the forfeiture proceedings and any appeal, unless the parties expressly agree otherwise in writing;
- Requires that specified persons approve all settlement agreements concerning the seized property;

- Increases the minimum percentage of forfeiture proceeds from 15 percent to 25 percent that law enforcement agencies receiving over $15,000 annually in forfeiture funds must donate to certain enumerated programs;
- Requires that 70 percent of net proceeds from seizures of motor vehicles driven by specified DUI offenders first be applied to payment of court costs, fines, and fees and the remainder deposited in the General Revenue Fund for use by regional workforce boards in providing transportation services for participants of the welfare transition program;
- Provides reporting requirements for law enforcement agencies seizing property under the act; and
- Provides penalties for noncompliance with the reporting requirements, to be enforced by the Department of Financial Services.

If approved by the Governor, these provisions take effect July 1, 2016.
Vote: Senate 38-0; House 116-0

Committee on Criminal Justice

CS/HB 1149 — Alternative Sanctioning

by Criminal Justice Subcommittee and Reps. Spano, Edwards, and others (CS/SB 1256 by Criminal Justice Committee and Senators Brandes and Evers)

The bill creates an alternative sanctioning program for technical violations of probation. The bill defines "technical violation" as any alleged violation of supervision that is not a new felony offense, misdemeanor offense, or criminal traffic offense. The bill allows the chief judge of each judicial circuit, in consultation with the state attorney, public defender, and Department of Corrections, to establish an alternative sanctioning program and determine which technical violations will be eligible for alternative sanctioning.

An eligible probationer who commits a technical violation may choose to participate in the program and admit to the violation, comply with a probation officer's recommended sanctions, and waive his or her right to a hearing on the violation. A probation officer's recommended alternative sanction must be reviewed by the court, which may approve the sanction or remove the probationer from the program.

If approved by the Governor, these provisions take effect July 1, 2016.
Vote: Senate 37-0; House 115-1

Committee on Criminal Justice

CS/SB 1294 — Victim and Witness Protection

by Fiscal Policy Committee and Senators Flores, Grimsley, Sachs, and Bullard

The bill increases protections for minors and victims of human trafficking. Specifically the bill:

- Increases the eligible age of a child victim or witness who may have his or her testimony videotaped or who may testify by closed circuit television from under 16 years of age to under 18 years of age;
- Increases the age of under 16 to under 18 to extend the protections of court orders intended to protect a victim or witness from severe emotional or mental harm due to the presence of the defendant and in the definition of "sexual offense victim or witness;"
- Allows a person appointed by the court pursuant to s. 914.17, F.S., to make a motion to the court to enter a protective order on behalf of the victim or witness;
- Eliminates a potential defense to human trafficking crimes by specifying that a victim's lack of chastity or the willingness or consent of a victim is not a defense to prosecution if the victim is under 18 years of age at the time of the offense; and
- Amends the Rape Shield Law to include prosecutions for human trafficking and lewd or lascivious offenses in which the admission of certain evidence about the victim is limited.

If approved by the Governor, these provisions take effect July 1, 2016.
Vote: Senate 40-0; House 114-0

Committee on Criminal Justice

CS/HB 1333 — Sexual Offenders

by Judiciary Committee and Rep. Baxley (CS/SB 1662 by Appropriations Committee and Senators Bradley and Evers)

The bill amends numerous provisions of the laws pertaining to registration of sexual predators and sexual offenders. Some of these changes are to more closely align Florida's registry laws with requirements of the federal Sex Offender Registration and Notification Act. Major features of the bill include:

- Requiring sexual predator or sexual offender registration by a parent or guardian convicted of kidnapping, falsely imprisoning, or luring or enticing his or her child if the child is a minor and the offense has a sexual component and making conforming changes to references to these offenses in s. 856.022, F.S. (loitering or prowling by certain offenders in close proximity to children);
- Clarifying that s. 943.0435, F.S. (the "Romeo and Juliet" statute), applies only to consensual acts and removing sexual battery as a qualifying offense;
- Clarifying to which court a sexual offender must petition for removal from registration requirements and removing inoperable language regarding calculation of the registration period;
- Including lewd or lascivious battery upon an elderly or disabled person as an offense that requires sexual offenders to register quarterly and for life;
- Amending various definitions relevant to registration of certain information, primarily to address omissions, and providing consistency among relevant statutes regarding registration requirements;
- Expanding the types of information that can be registered or updated through the Florida Department of Law Enforcement's online system;
- Clarifying the appropriate entity to which a sexual predator or sexual offender must report;
- Modifying reporting requirements for international travel;
- Requiring sexual predators and sexual offenders taking online courses at Florida higher education institutions to report such information and for institutions of higher education to be notified of such attendance; and
- Clarifying the obligation to obtain a driver license or identification card.

If approved by the Governor, these provisions take effect October 1, 2016.
Vote: Senate 37-0; House 115-0

Committee on Criminal Justice

HB 4009 — Slungshot

by Rep. Combee and others (SB 612 by Senators Hays and Evers)

"Slungshot" is defined in s. 790.001(12), F.S., as a small mass of metal, stone, sand, or similar material fixed on a flexible handle, strap, or the like, used as a weapon. The bill repeals references to slungshot in ch. 790, F.S. The slungshot may be manufactured, displayed for sale, sold, and carried in a concealed manner under the provisions of the bill. The bill will also allow a dealer in arms to sell or transfer a slungshot to a minor.

The bill makes conforming changes in s. 790.09, F.S., to reflect that the section applies only to metallic knuckles, the section's application to slungshots having been deleted.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 38-0; House 117-0

Committee on Criminal Justice

SB 7022 — OGSR/Depictions or Recordings of the Killing of a Law Enforcement Officer

by Criminal Justice Committee

The bill narrows the public records exemption in s. 406.136, F.S., which provides that photographs and video and audio recordings that depict or record the killing of any person when held by an agency are confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a), State Constitution, except they are accessible to certain specified family members of the deceased person and public governmental agencies without a court order. Under the bill, the exemption will only apply to photographs and video and audio recordings held by an agency that depict or record the killing of a law enforcement officer who was acting in accordance with his or her official duties.

If approved by the Governor, these provisions take effect October 1, 2016.
Vote: Senate 36-0; House 117-0

Committee on Criminal Justice

HB 7101 — Sentencing for Capital Felonies

by Criminal Justice Subcommittee and Reps. Trujillo, Spano, and others (CS/SB 7068 by Appropriations Committee and Criminal Justice Committee)

The bill (Chapter 2016-13, L.O.F.) makes changes to Florida's capital sentencing scheme.

On January 12, 2016, the U.S. Supreme Court held Florida's capital sentencing scheme unconstitutional in an eight to one opinion. (*Hurst v. Florida*, 577 U.S. _____ (2016), 2016 WL 112683, at *3) The Court ruled that "the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death." (*Id.* at *1) Several provisions contained within the bill are intended to comply with the U.S. Supreme Court ruling.

Specifically, the bill amends Florida's capital sentencing scheme in the following ways:

- The prosecutor is required to provide notice to the defendant and file notice with the court when the state is seeking the death penalty and the notice must contain a list of the aggravating factors the state intends to prove;
- The jury is required to identify each aggravating factor found to exist by a unanimous vote in order for a defendant to be eligible for a sentence of death;
- The jury is required to determine whether the aggravating factors outweigh the mitigating circumstances in reaching its sentencing recommendation;
- If at least ten of the twelve members of the jury determine that the defendant should be sentenced to death, the jury's recommendation is a sentence of death;
- The jury is required to recommend a sentence of life imprisonment without the possibility of parole if fewer than ten jurors determined that the defendant should be sentenced to death;
- The judge is permitted to impose a sentence of life imprisonment without the possibility of parole when the jury unanimously recommends a sentence of death; and
- The judge is no longer permitted to "override" the jury's recommendation of a sentence of life imprisonment by imposing a sentence of death.

These provisions became law upon approval by the Governor on March 7, 2016.
Vote: Senate 35-5; House 93-20